

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 784/KOL/2019  
Assessment Year: 2012-2013**

***Income Tax Officer,.....Appellant  
Ward-1(2), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**-Vs.-**

***M/s. Lifewood Infotech Pvt. Limited, .....Respondent  
7/1A, Grant Lane, Kolkata-700012  
[PAN:AACCL2310D]***

**Appearances by:**

*Shri Amal Kamat, CIT (DR), appeared on behalf of the Revenue  
None, appeared on behalf of the assessee*

**Date of concluding the hearing : November 03, 2022  
Date of pronouncing the order : November 04, 2022**

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-1, Kolkata dated 16.01.2019 passed for A.Y. 2012-13.

2. The Revenue has taken three grounds of appeal, out of them Ground No. 3 is a general ground, which does not call for recording of any specific finding.

3. Grounds No. 1 & 2 are inter-connected with each other. In these grounds, grievance of the Revenue is that the Id. CIT(Appeals) has erred in deleting the addition of Rs.9,91,00,000/-, which was added by the Id. Assessing Officer with the aid of section 68. We have sent repeated notices to the assessee, but every time the notices returned back. Therefore, we proceed *ex-parte qua* the assessee.

4. Brief facts of the case are that the assessee has filed its return of income on 25.08.2012 disclosing total income of Rs.474/-. The case was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. The Id. Assessing Officer has passed an assessment order under section 143(3) and made an addition of Rs.9,91,00,000/-. It is a very brief and sketchy assessment order. We deem it appropriate to reproduce the complete assessment order, which reads as under:-

INCOME TAX DEPARTMENT

1.	Name of the Assessee	M/s. Lifewood Infotech Pvt. Ltd.
	Address	7/1A, Grant Lane, Kolkata – 12.
3.	PAN	AACCL2310D
4.	District/Ward/Circle	ITO, Ward 1(2), Kolkata
5.	Whether Resident/Resident but not Ordinary Resident/Non Resident	Resident
6.	Assessment Year	2012-13
7.	Method Accounting	Mercantile
8.	Previous Year	2011-12
9.	Nature of business	Investment in shares and securities
10.	Date (s) of hearing	As per order sheet
11.	Section and subsection under which order is passed	u/s. 143(3) of the I. T. Act, 1961
12.	Date of Order	27/03/2015

ASSESSMENT ORDER

The assessee filed return of income on 25/08/2012 disclosing total income of Rs.474/-. The case was selected for scrutiny owing to receipt of large share premium. Notices u/s. 143(2) and 142(1) were issued after which relevant documents were submitted.

On perusal of available records, it is seen that Rs.1,99,000/- and Rs.9,89,01,000/- were credited in the books of the company as fresh share capital and share premium respectively in the relevant F.Y. So, the A/R was asked to produce the directors and share-holders urgently vide order sheet dated 16/02/2015. As the directors and share-holders were not produced, summons had to be issued u/s.131 directly to fresh share-holders and the-then directors on 24/02/2015. Nobody appeared in its response and many submitted documents in response. Still their identity, genuineness and credit worthiness could not be examined due to non-appearance.



*done*

Certified to be true Copy

*David Toppo*  
डेविड टोपो  
DAVID TOPPO  
आयकर अधिकारी, वार्ड-1(2), कोल.  
Income Tax Officer, Ward-1(2), Kolkata

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It is clear from the entire proceedings that the subscribers to share capital and premium must be dubious due to which they preferred not to attend for deposition. Due to lack of details of share-holders, a comparative study of this company's profile was made for the only two A.Y.s in which returns were filed. It was noted that the company filed its first return in A.Y.2012-13. During this period, there appears to be no substantive business of the assessee. There was meagre total income and no turnover in this period. It is surprising that the company succeeded in attracting so high premium for its shares at such an early stage without any solvent track record and reputation in the market. It can be inferred from the above observations that it is a dummy company which was brought into existence merely for raising share capital. Still another opportunity was provided on 09/03/2015 asking the reason for not treating fresh credits of share capital/premium as unexplained cash credits u/s.68. In response to this, several documents of share-holders were submitted which were examined carefully. Their final accounts reflected certain common factors – low total income, no revenue from operations and no tangible assets.

In view of the above, the share capital/premium of Rs.1,99,000/- and Rs.9,89,01,000/- must be treated as unexplained cash credits u/s.68 and added back to the assessee's total income as identity, genuineness and credit worthiness could not be examined. It is to be noted here that the taxability of share capital/premium is further warranted by the observations of the ITAT, Kolkata Bench in Bisakha Sales Pvt. Ltd. in Paras 7.9 and 7.10. Penalty u/s.271(1)(c) is initiated on these amounts for concealment of income.

Assessed u/s. 143(3) as above.

Calculation of tax being a part of this order is annexed herewith.

Penalty u/s. 271(1)(c) is initiated for concealment of income.

Issue copy of the order, D.N. and notice u/s. 274.



Certified to be true Copy  
*David Toppo*  
डेविड टोपो  
DAVID TOPPO  
आयकर अधिकारी, वार्ड-1(2), कोलकाता  
Income Tax Officer, Ward-1(2), Kolkata

*Roy*  
(Rupasri Roy Chakravarty)  
ITO, Ward - 1(2), Kolkata

श्रीमती रूपश्री राय चक्रवर्ती  
SMT. RUPASRI ROY CHAKRAVARTY  
आयकर अधिकारी, वार्ड-1(2), कोलकाता  
Income Tax Officer, Ward-1(2), Kol.  
Code No.: WBG-W-101(2)

5. On appeal, Id. CIT(Appeals) has deleted this addition. Though the impugned order passed by the Id. CIT(Appeals) is running into 11 pages. But in these 11 pages, he has reproduced the parts of the judgment of the Hon'ble Calcutta High Court in the case of Jatia

Investment Company -vs.- CIT reported in 206 ITR 718 and the order of ITAT in ITA No. 1141/KOL/2017 from pages no. 4 to 11. Apart from this reproduction of these two orders his own devotion to the issue is only in two paragraphs. In Paragraphs no. 2 to 6, he has briefly mentioned the facts about filing of return, issuance of notice under section 143(2) and 142(1), grounds of appeal raised by the assessee and reproduction of section 68 of the Income Tax Act. Thereafter his finding starts from paragraphs no.7 and 13. In between, he has reproduced the judgment of the Hon'ble Calcutta High Court and the order of ITAT. The relevant paragraphs no. 7 & 13 are reproduced hereunder:-

*"7. In other words, no amount has been credited to the books of accounts of the assessee for purchase of shares. It was adjusted against investments made. In other words, the share application was separate. Investment which had been made had been adjusted. The share capital was not issued on receipt of any cash. Shares were issued for consideration other than cash in lieu of assessee-company making investment any shares in some other company".*

*"13. Therefore, going by the decision of the Hon'ble Tribunal the Calcutta High Court, Madras High Court as well as the facts of the case since there was no infusion of cash for purchase of shares and that sum cannot be held as being credited to the account of the assessee, no addition can be made u/s 68 of the Income Tax Act, 1961. In view of the above, addition made in Grounds of Appeal No. 1 to 3 are deleted".*

6. We have gone through both the orders, but unable to appreciate what is the nature of transaction and what are the facts on the record. It appears that Id. CIT(Appeals) has deleted the addition by observing that the assessee has not received cash on account of share application

money, rather it has adjusted these sale of shares against some investments made earlier. It is not specifically discernable what was the investment, which is the investor company when investment was made etc. It is also pertinent to observe that the Id. Assessing Officer was also required to verify the nature of investment, the nature of character of the company, who allowed to have made investment. Before us, it appears that the assessee-company is a paper company. Nobody has taken the litigation seriously, i.e. the Id. Assessing Officer as well as Id. CIT(Appeals). The Id. 1<sup>st</sup> Appellate Authority has erred in adjusting the facts of this case with ratio of law laid down in some other judgement. The impugned orders are not sustainable on account of non-speaking orders. Therefore, we set aside both the orders and restore this issue to the file of Id. Assessing Officer for re-adjudication. The Id. Assessing Officer is directed to collect complete facts and discuss lucidly in the order required to be passed by him after this restoration.

**7. In the result, the appeal of the Revenue is treated as allowed for statistical purposes.**

Order pronounced in the open Court on November 04, 2022.

Sd/-

**(Rajesh Kumar)**  
**Accountant Member**

Sd/-

**(Rajpal Yadav)**  
**Vice-President (KZ)**

***Kolkata, the 4<sup>th</sup> day of November, 2022***

*Copies to : (1) Income Tax Officer,  
Ward-1(2), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square, Kolkata-700069*

**(2) M/s. Lifewood Infotech Pvt. Limited,  
7/1A, Grant Lane, Kolkata-700012**

(3) *Commissioner of Income Tax (Appeals)-1, Kolkata;*

(4) *Commissioner of Income Tax- , Kolkata;*

(5) *The Departmental Representative*

(6) *Guard File*

**TRUE COPY**

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**