

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

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

**I.T.A. No. 484/KOL/2018
Assessment Year: 2012-2013**

***Wealth Planners Pvt. Limited,.....Appellant
161/1, Mahatma Gandhi Road,
2nd Floor, Room No. 40,
Kolkata-700007
[PAN: AAACW5731B]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-9(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*No n e, appeared on behalf of the assessee
Shri G. Hukugha Sema, CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : February 23, 2023

Date of pronouncing the order : April 26, 2023

O R D E R

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

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-3, Kolkata dated 19th January, 2018 passed for assessment year 2012-13.

2. The assessee has taken eight grounds of appeal. However, in brief, its grievances revolve around three-folds, namely-

- (a) Id. CIT(Appeals) has erred in confirming the addition of Rs.11,04,51,450/-;
- (b) Id. CIT(Appeals) has erred in confirming the charging of interest under sections 234B & 234C;
- (c) Id. CIT(Appeals) has erred in confirming the initiation of penalty proceedings under section 271(1)(c) of the Income Tax Act.

3. Apart from these three grievances, the assessee has raised peripheral arguments in all other grounds of appeal. As far as charging of interest is concerned, it is a consequential in nature because charging of interest under section 234B is a mandatory aspect. Similarly challenge to initiation of proceedings under section 271(1)(c), it is a pre-mature in nature. Assessee has an independent remedy. Show-cause notice for imposition of penalty under section 274 of the Income Tax Act would be issued to it. In case penalty is imposed, then separate

appellant remedy is provided. Hence this ground of appeal is also rejected.

4. Now we take the main ground of appeal, i.e. addition of Rs.11,04,51,450/-. Brief facts of the case are that the assessee has filed its return of income on 28.08.2012 declaring 'NIL' income. Its case was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. The ld. Assessing Officer has observed that assessee has raised fresh paid-up share capital of Rs.11,04,51,450/-, which includes share premium by issue of fresh share during the instant previous year. The ld. Assessing Officer straightway discussed position of law and then observed that assessee failed to submit specific details, hence he made the addition.

5. On appeal, the ld. CIT(Appeals) has examined the issue more elaborately, therefore, we take note of the relevant factual finding of the ld. CIT(Appeals), i.e. excluding the position of law discussed by the ld. CIT(Appeals) because that will only multiply the same finding. The relevant part of the finding reads as under:-

*"Each of the grounds of appeal of the appellant is discussed as under:
Ground Nos.1 to 6 are related each other and against the addition of
Rs.1,04,51,450/- u/s 68 of the Act.*

Decision: The issue is regarding the addition made by the AO on account of unexplained share capital along with the premium received by the assessee during the previous year of Rs. 11,04,51,450/-. The appellant company filed its return of income for the impugned

assessment year on 28.02.2012 declaring total income of Rs. NIL/-. During the course of assessment proceedings no compliance was made in response to summons u/s 131 issued to the directors of the assess company for personal attendance. AO passed order u/s. 143(3) wherein he made the addition of Rs. 11,04,51,450/- u/s. 68 on account of unexplained share capital along with share premium. The basic issue is the genuineness of the transactions of receipt of share capital and huge share premium. In order to decide the issue first the credentials and the financial capacity of the appellant company to issue shares on such high premium value is hereby examined:

(i) On perusal of the P/L account it is seen that the assessee has not reported any revenue from operations either during the previous year 2011-12 or during the last financial year i.e. 2010-11. During the year the assessee has reported other income of Rs. 200614/- therefore it is observed that the assessee does not have any operational business activity and is reporting only other income.

(ii) The company had share capital of Rs. 352750/- as on 31.03.2011. Further the assessee reported Profit of Rs. 66109/- during financial year 2010-11. The assessee did not have any fixed assets or inventories. On a share capital base of Rs. 352750/- and with hardly any income it is highly improbable for any company to raise equity even at par let alone commanding any premium on it. Therefore it is obvious that with such kind of financials there is no justification for the share capital & premium claimed to have been received of Rs. 11,04,51,450/-.

The assessee has claimed that the shares have been issued on premium to the following companies namely:

- (a) Mentor Insurance Brokers Private Limited.
- (b) Trendon Distributors Private Limited.
- (c) Navnidhi Commerce Private Limited.
- (d) Meghdoot Vanijya Private Limited.
- (e) Amritrashi Suppliers Private Limited.
- (f) Pradhan Dealers Private Limited.
- (g) Nishchaya Traders Private Limited.
- (h) Unitrenz Textiles Private Limited.

The financials and the credentials and the business performance of each of the companies who have subscribed to the share capital and premium of the appellate company are discussed as follows:

(a) Mentor Insurance Brokers Private Limited:

- (i) This company does not have any core business activity. The income from Operations during the financial year 2011-12 is loss of Rs. 3973. The income from operations i.e. from sale of goods and services in the last A. Yr. was NIL. The company had shown other income during the previous year of Rs. 16,419/-. The said figure in the last year was NIL.

- (ii) *There are fixed assets shown of Rs. 43300/-. The figure last year was Rs. 43107/-. There are no inventories.*
- (iii) *The assessee company has also not shown any core activity or business to justify issuance of shares at a substantial premium. The assessee company has reported nominal income. The total income as per computation of income is loss of Rs. 3973/-. The extent of operation does not justify the capacity of this company to pay such huge share premium.*

(b) Trendon Distributors Private Limited:

- (i) *This company does not have any core business activity. The income from Operations during the F.Y 2011-12 is loss of Rs. 290410/-. The income from operations i.e. from sale of goods and services in the last A.Y was NIL. The income from operations in the last A. Yr. was NIL. The company had shown other income in the F.Y 2011-12 was of Rs. 2601842/-. The said figure in the last year was Rs. 1312850/-.*
- (ii) *There are fixed assets shown of Rs. 4275603/-. The figure last year was Rs. 1368810/-. There are no inventories.*
- (iii) *The assessee company has also not shown any core activity or business to justify issuance of shares at a substantial premium. The assessee company has reported nominal income. The total income as per computation of income is loss of Rs. 290410/-. The extent of operation does not justify the capacity of this company to pay such huge share premium.*

(c) Navnidhi Commerce Private Limited:

- (i) *The company is a Private Ltd Company incorporated on 16.03.2012 under the Companies Act, 1956. This company does not have any core business activity. The income from Operations during the F.Y 2011-12 was loss of Rs. 46627/-. The income from operations i.e. from sale of goods and services in the last A.Y was NIL.*

(d) Meghdoot Vanijya Private Limited:

- (i) *The company is a Private Ltd Company incorporated on 19.03.2012 under the Companies Act, 1956. This company does not have any core business activity. The income from Operations during the F.Y 2011-12 is Loss of Rs. 9660/-. The income from operations i.e. from sale of goods and services in the last A. Yr. was also NIL. The company had shown other income during the previous year NIL.*
- (ii) *The assessee company has also not shown any core activity or business to justify issuance of shares at a substantial premium. The assessee company has reported a nominal income in the ITR.*

(e) Amritrashi Suppliers Private Limited:

(i) *The company is a Private Ltd Company incorporated on 22.03.2012 under the Companies Act, 1956. This company does not have any core business activity. The income from Operations during the F.Y 2011-12 is loss of Rs. 15,004/-.*

(ii) *The assessee company has also not shown any core activity or business to justify issuance of shares at a substantial premium. The assessee company has reported a loss in the ITR. The total income as per computation of income is a loss of Rs. 15,004/-. The extent of operation does not justify the capacity of this company to pay such huge share premium.*

(f) *Pradhan Dealers Private Limited.*

(i) *The company is a Private Ltd Company incorporated on 20.03.2012 under the Companies Act, 1956. This company does not have any core business activity. The income from Operations during the F.Y 2011-12 is loss of Rs. 12,552/-.*

(ii) *The assessee company has also not shown any core activity or business to justify issuance of shares at a substantial premium. The assessee company has reported a nominal income in the ITR. The total income as per computation of income is loss of Rs. 12552/-. The extent of operation does not justify the capacity of this company to pay such huge share premium.*

(g) *Nishchaya Traders Private Limited:*

(i) *The company is a Private Ltd Company incorporated on 19.03.2012 under the Companies Act, 1956. This company does not have any core business activity. The income from Operations during the F.Y 2011-12 is loss of Rs. 13598/-.*

(ii) *The assessee company has also not shown any core activity or business to justify issuance of shares at a substantial premium. The assessee company has reported nominal income. The extent of operation does not justify the capacity of this company to pay such huge share premium.*

(h) *Unitrenz Textiles Private Limited.*

(i) *The company is a Private Ltd Company incorporated on 28.11.2011 under the Companies Act, 1956. This company does not have any core business activity. The income from Operations during the F.Y 2011-12 is loss of Rs. 6704/-.*

(ii) *The assessee company has also not shown any core activity or business to justify issuance of shares at a substantial premium. The assessee company has reported loss in the ITR. The total income as per computation of income is a loss of Rs. 6704/-. The extent of operation does not justify the capacity of this company to pay such huge share premium.*

It is therefore observed that the companies that have subscribed to the shares of Assessee Company on substantial premium do not have the capacity or the financial standing to do so. During the course of assessment proceedings the identity, capacity and the genuineness of the transaction has not been established by the appellant. Therefore, on preponderance of probabilities the contention of the assessee company regarding share capital and premium cannot be accepted.

It is observed that a company which has been recently incorporated without any track record does not in any way justify a premium. It is the onus of the assessee to prove with all the relevant details regarding raising of the share capital and the genuineness of the transaction. It is not clear as to whether any due diligence was done by the subscribing companies, whether any peculiar or personal reason was valid for the investment or whether any arrangement was made for the protection of the fund. In this case certain documents were filed before the AO however genuineness of the transaction could not be substantiated. Mere filing of documents before the AO does not absolve the assessee of its duty cast u/s 68. An assessee's duty to establish the source of the funds does not cease by merely furnishing the names, address and PAN particulars or relying on entries in the Registrar of company's website. The relationship of the assessee to the applicants should be at arm's length in such cases and this is what the appellant was required to establish. Also the concept of "shifting onus" does not mean that once certain facts are provided, the assessee's duties are over. If on verification, the information becomes false, unsatisfactory or unverifiable, the onus shifts back to the assessee. Therefore, the assessee was required to present himself before the AO for examination and verification of the documents. However, the assessee has avoided the same as the summons were not complied with. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. The details available reflect some paper work or documentation but genuineness, creditworthiness and identity are deeper and obtrusive. Verification of all aspects was needed but due to complete non-compliance, the applicant's case falls flat.

The Apex court of the land has laid down the Human Probability Test to analyze the genuineness of the entry through logical analysis in the case of CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC) which has also been followed in case of Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC). Applying the test of human probability and preponderance of probability as laid down by the Apex Court to the surrounding facts and circumstances of this case, as discussed above, the claim of the appellant is farfetched and cannot be sustained on the test of Human probabilities.

Moreover, the issue is squarely covered by the judgment of Hon High Court, Kolkata, in the case of Rajmandir Estate Pvt. Ltd v PCIT in GA No 509 of 2016, wherein it has been held as under:-

x x

Further in this case it is observed that there is huge premium on shares. There is discrepancy and difference in charging of premium also. Shares of face value Rs. 10/- have been issued at a premium of Rs. 240/-. Shares of face value of Rs. 1/- have been issued at a premium of Rs. 499/-. Here once again it is observed that even premium has been charged a two different rates from various parties as under:-

S.No	Date of allotment	Name of the share holder	PAN	Number of share applied and allotted	Total amount paid	Value of share
01	25.07.11	Dinesh Kumar Agarwal(HUF)	ACHD7675L	680 (Rs. 10/-)	170000	250
02	25.07.11	Kamal Kumar Agarwal(HUF)	AADHK8632D	400 (Rs. 10/-)	100000	250
03	25.07.11	Sarita Mittal	AEIPM8615K	200 (Rs. 10/-)	50000	250
04	25.07.11	Mentor Insurance Brokers Private Limited	AABCM8132F	4400 (Rs. 10/-)	1100000	250
05	25.07.11	Trendon Distributors Pvt Ltd	AACCT2786M	8000 (Rs. 10/-)	2000000	250
06	30.03.12	Navnidhi Commerce Private Limited	AADCN9261G	30000 (Rs. 1/-)	15000000	500
07	30.03.12	Meghdoot Vanijya Private Limited	AAHCM8012G	40000 (Rs. 1/-)	20000000	500
08	30.03.12	Amritrashi Suppliers Private Limited	AAKCA2782P	30000 (Rs. 1/-)	15000000	500
09	30.03.12	Pradhan Dealers Private Limited	AAGCP5008A	40000 (Rs. 1/-)	20000000	500
10	30.03.12	Nishchaya Traders Private Limited	AADCN9262F	70000 (Rs. 1/-)	35000000	500
11	30.03.12	Trendon Distributors Pvt Ltd	AACCT2786M	1600 (Rs. 1/-)	800000	500
12	30.03.12	Mentor Insurance Brokers Private Limited	AABCM8132F	450 (Rs. 1/-)	225000	500
13	30.03.12	Unitrenz Textiles Private Limited	AABCU3780H	2000 (Rs. 1/-)	1000000	500

It is observed that there is no justification for the high premium charged. The financials do not justify the premium charged. Moreover, the issue is squarely covered by the judgment of Hon'ble ITAT "C" Bench, Kolkata, in the case of ITO, Ward-5(3), Kolkata -vs.- M/s. Blessings Commercial Pvt. Limited in ITA No. 271/KOL/2014 for A.Y. 2010-11. x x x x x x x x x x

6. With the assistance of ld. CIT(DR), we have gone through the record carefully. There is no dispute that the assessee has received share capital along with the premium. The ld. CIT(Appeals) has observed that the

assessee has taken premium on the same nature of shares at two different rates. According to the Id. CIT(Appeals), it is highly improbable that some genuine company would pay the premium as shown by the assessee. The simple reason is that there should some scientific study for commanding the premium and here in this case, the assessee has taken premium @ Rs.249/- per share as well as Rs.499/- per share. The face value of the share is only Rs.1/- in both the cases. We have taken note of this finding of the Id. CIT(Appeals) in the order extracted supra. The assessee failed to submit plausible details before the Id. Assessing Officer as well as Id. CIT(Appeals). It has not filed any paper book before the Tribunal. After going through the well reasoned finding of the Id. 1st Appellate Authority, we do not find any reason to interfere in it. Hence, this appeal of the assessee is dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on April 26, 2023.

**Sd/-
(Rajesh Kumar)
Accountant Member**

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

Kolkata, the 26th day of April, 2023

*Copies to : (1) Wealth Planners Pvt. Limited,
161/1, Mahatma Gandhi Road,*

**2nd Floor, Room No. 40,
Kolkata-700007**

- (2) **Income Tax Officer,
Ward-9(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069**
- (3) *Commissioner of Income Tax (Appeals)-3,
Kolkata;*
- (4) *Commissioner of Income Tax ,*
- (5) *The Departmental Representative*
- (6) *Guard File*

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By order

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

Laha/Sr. P.S.