

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'A', NEW DELHI**

Before Sh. Saktiit Dey, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 538/Del/2019 : Asstt. Year: 2014-15

Alanice Computer Services P. Ltd, House No. UNIL NO. 224, 2 nd Floor LSC, BLG-A, Samrat Enclave, Pitampura Landmark Near Mother Dairy, New Delhi-110034	Vs.	ITO, Ward-10(1) New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AADCG3866E		

Assessee by : None

Revenue by : Sh. P. Praveen Sidharth, CIT DR

Date of Hearing: 25.04.2023

Date of Pronouncement: 28.04.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-4, New Delhi dated 12.11.2018 for AY 2014-15.

2. The assessee has raised the following grounds of appeal:-

"1. Under the facts and circumstances of the case, the assessment order passed by the Id. Assessing Authority u/s 143(3) of the Act and upheld by Id. First Appellate Authority is arbitrary, injudicious, invalid & bad at law.

2. Under the facts and circumstances of the case, Id. Assessing Authority and Id. First Appellate Authority has grossly erred in making addition of 20,19,23,500/- u/s 68 of the Act when no cash credit has been received by the assessee which is grossly injudicious, unwarranted, against the facts of the case & bad at law.

Tax Effect relating to above mentioned ground of appeal is 6,86,33,798/-.

3. *Under the facts and circumstances of the case, Id. Assessing Authority and Id. First Appellate Authority has grossly erred in making addition of 20,19,23,500/- u/s 68 of the Act which is highly injudicious, unwarranted, against the facts of the case and bad at law as no cash credit either in the year under consideration or in any of the earlier years had ever been received by the assessee & the same were issued against the investment received by the assessee which do not tantamount to cash credit for the purpose of section 68 of the Act.*

4. *Under the facts and circumstances of the case, reference to Section 197(c) of the Finance Act, 2016 made by the Id. Assessing Authority and Id. First Appellate Authority is grossly misplaced and bad at law as the said section has no application in the case under consideration.*

5. *Under the facts and circumstances of the case, Id. Assessing Authority and Id. First Appellate Authority has grossly erred in alleging that the assessee has failed to establish the identity & creditworthiness of the shareholders and genuineness of the transaction of allotment of shares.*

6. *Under the facts and circumstances of the case, Id. Assessing Authority and Id. First Appellate Authority has grossly erred in alleging that credits on account of share capital & premium received by the assessee during F.Y. 2008-09 as credits of the year under consideration i.e. F.Y. 2013-14 which is highly injudicious, unwarranted, against the facts of the case, based on surmise and conjectures and bad at law.*

7. *Under the facts and circumstances of the case, Id. Assessing Authority and Id. First Appellate Authority has grossly erred in alleging that the assessee has not submitted any document to establish that the share capital & premium was received by it during F.Y. 2007-08 as the assessee had duly submitted all the necessary evidences pertaining to the same.*

8. *Under the facts and circumstances of the case, Id. Assessing Authority and Id. First Appellate Authority has grossly erred in making addition of 40,38,470/- u/s 69C of the Act alleging that the assessee has paid 2% commission on the amount of share capital & premium of 20,19,23,500/- which is highly arbitrary, injudicious, unwarranted, based on surmise and conjectures, and bad at law.*

Tax Effect relating to above mentioned ground of appeal is 13,72,676/-

9. *The appellant prays for leave to add, amend, alter or withdraw any grounds of appeal.*

Total Tax Effect relating to all the above mentioned grounds of appeal is 7,00,06,474/-."

3. In this case, the AO made addition of Rs.20,19,23,500/- on account of unexplained cash credits u/s 68 of the Act and Rs.40,38,470/- on account of commission paid u/s 69C of the Act.

4. In spite of the issue of valid notice, the assessee failed to bring on record any evidence contrary to the ruling of the Id. CIT(A) after filing of appeal before the Tribunal on 24.01.2019. The notices of the Tribunal have been validly served on the assessee, however neither the assessee nor the Authorized Representative attended the hearings before the Tribunal. Hence, the appeal is being decided based on the evidences available on record and on merits of the issue.

5. We find from the record that before the Id. CIT(A), the Id. AR of the appellant has submitted its submission on 16/10/2017, which is as under:-

"1. Brief facts of the case are enumerated hereunder:

i. The assessee company was incorporated on 16.02.2009 and it had during the F.Y. 2008- 09 relevant to A.Y. 2009-10, made allotment of 89,700 no. of shares. The said shares were Issued for consideration other than cash and no funds whatsoever in cash or in the Bank A/c of the assessee were received. Consideration received against the issue of shares was primarily investments from the said shareholders. In other words, the said shares were issued in exchange of shares of other companies and no cash consideration was received for the issue of the same. The detail of shareholders to whom the assessee company issued the said shares alongwith the detail of respective investments received from them is being enclosed herewith on page no. 1 of this paper book.

ii. For the aforesaid transaction of exchange of shares, agreements were also entered into by the assessee company with the respective share applicants on 28.03.2009. Copy of the said agreements is being enclosed herewith on page no. 2 to 21 of this paper book.

iii. The assessee filed its return of income for A.Y. 2014-15 on 20.02.2016 at Nil income as the company did not have any income during the relevant year. Copy of the said Income Tax Return alongwith the Financial Statements of the assessee company for the year under consideration are being enclosed herewith on page no. 259 to 265 of this paper book.

Iv. The case of assessee was selected for scrutiny and the Id. A.O. vide his order dated 30.12.2016 passed u/s 143(3) of the Act made addition of to the returned Income of the assessee as under-

Particulars	Amount (in)	Amount (in)
Returned Income		NIL
Add:		
Addition u/s 68 of the Act	20,19,23,500	
Addition u/s 69C of the Act	40,38,470	20,59,61,970/-
Assessed Income		20,59,61,970

Copy of the said assessment order is enclosed alongwith the memorandum of appeal in Form 35 and the same may be referred therefrom.

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Cash credits

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year: Provided that where the assessee is a company (not being a company in which the public are substantially Interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation

offered by such assessee-company shall be deemed to be not satisfactory, unless-

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

7. From the reading of the aforesaid provisions of sec. 68 of the Act, it becomes clearly evident that the said section applies only in case there is credit in the books of the assessee and such credit is of the sum of money during the year. The said Interpretation is also evident from the heading of sec, 68 of the Act which is 'Cash Credits implying thereby that the said section applies only to the credits received in money form. In other words, primary condition for application of sec. 68 of the Act is that there has to be receipt of money either in cash or in bank so as to construe it as cash credit.

8. To substantiate the aforesaid submissions that section has to be construed from its heading, reliance is placed on the ruling of Hon. Supreme Court in the case of CIT vs. Sun Engineering Works Pvt. Ltd., [1992] 64 Taxman 442 (SC) wherein the Hon. Bench construed the provisions of sec. 147 of the Act referring to its heading. The relevant findings of the Hon. Bench are being reproduced hereunder for the sake of ready reference:

"13. To answer this question it is necessary to first extract the provisions of sections 147 and 148 (as they existed of the relevant time). Section 147 read thus: "147. Income escaping assessment.-

(a) the Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax officer has in consequence of Information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income or re-compute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year).

14.... Thus, under section 147, the assessing officer has been vested with the power to 'assess or reassess the escaped income of an assessee. The use of expression 'assess or reassess such Income or re-compute the loss or depreciation allowance' in section 147 after the conditions for reassessment are satisfied, is only relatable to the preceding expression in clauses (a) and (b) viz., 'escaped assessment...."

9. Further, it is hereby submitted that the provisions of sec. 68 of the Act are deeming provisions and it is a settled law that deeming provisions are to be construed strictly. Therefore, the provisions of sec. 68 of the Act can only be applied in case of receipt of credits in the money from either in cash or in bank. The said sec. 68 cannot be extended to include credits arising on account of issue of shares for consideration other than cash/bank.

10. Further, to substantiate the argument that in case there is no receipt of money, the provisions of sec. 68 of the Act cannot be applied, reliance is placed on the following judicial precedents: Ruling of Hon. Supreme Court in the case of CIT vs. P. Mohankala, [2007] 161 TAXMAN 169 (SC). The relevant findings of the Hon. Court are being reproduced hereunder for the sake of ready reference:

14. The question is what is the true nature and scope of section 68 of the Act? When and in what circumstances section 68 of the Act would come into play? That a bare reading of section 68 suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be of a sum during the previous year..."

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6. In view of the above facts since the assessee has filed first return of income for the AY 2014- 15 and it has been proved that the assessee has no evidence that the share capital and share premium amounting to Rs. 20,19,23,500/- was received in the financial year 2008-09 relevant to assessment year 2009-10, it is held that the assessee has credited the aforesaid sum in its books of accounts during the year itself for which it failed to satisfactory explain the identity, genuineness and creditworthiness of the parties against whom the amount in question has been credited. Moreover, the assessee cannot be granted benefits of its own defaults which it committed."

23. The aforesaid findings of the Id. A.O. are grossly erroneous, based on surmise & conjectures and bad at law as explained hereunder:-

i. Firstly, the findings of the Id. A.O. that the assessee has failed to establish that money in the form of share capital and share premium was received in the F.Y. 2008-09 are grossly erroneous as the assessee has repeatedly explained and submitted before the Id. A.O. that the shares were issue against investment received and no money was ever received for the said allotment of shares.

Ii. Secondly, the Id. A.O. has alleged that the assessee failed to provide the bank statement for the year 2008-09 to 2014-15 to prove that the money was actually received in these years. In this regards, as submitted above it is hereby again submitted that the assessee company issued its shares against investment in shares of other companies received by it from the share applicants. In other words, shares were exchanged for shares and no consideration in money was ever received by the assessee for the issue of shares. Further, the assessee did not maintained any bank account during the aforesaid period and consequently, there was no bank statement. The fact that the assessee company did not have any bank account was also acknowledged by the Id. A.O. vide para 3 on page no. 11 of the assessment order.

24. Further, the Id. A.O. vide last para on page no. 13 of the assessment order has alleged as under:-

In view of the foregoing it is clear that assessee failed to prove that the sums so credited in books of accounts are related to earlier years. It is pertinent to mention here again that the assessee failed to prove that it had filed return in earlier years as evidences shows, as discussed above, that the current year's return is the 1st return of the assessee, therefore credited shown in this return is the credit for the year under consideration, i.e., AY 2014-15 only. Therefore, it is clear that the amount of Rs. 20,19,23,500/- recorded by the assessee company in its balance sheet has failed to pass the test of identity, creditworthiness and genuineness of transactions within the meaning of section 68 of Income Tax Act 1961 as no documents filed in support of receipt of share capital/share premium in the financial year 2008-09 relevant to assessment year 2009-10.

25. In this regards, it is hereby submitted that the aforesaid findings of the Id. A.O. are grossly baseless and based on surmise & conjectures. The assessee company in order to substantiate the issue of shares in F.Y. 2008-09, duly submitted the following evidences:-

i. Audited Financial Statements of the assessee company for the year ended 31.03.2009 reflecting the transaction of issue of shares. Copy of the said Financial Statements of the assessee company from F.Y. 2008-09 to F.Y. 2013-14 are being enclosed herewith on page no. 214 to 265 of this paper book.

ii. Returns filed with ROC for F.Y. 2008-09 wherein the aforesaid transactions of issue of share capital is duly disclosed. Copy of the said returns is being enclosed herewith on page no. 22 to 213 of this paper book. Agreements dt. 28.03.2009 entered into by the assessee company with respective share applicants for exchange of shares. Copy of the said agreements is being enclosed herewith on page no. 2 to 21 of this paper book.

iv. Further, the appellant also submitted the copy of share transfer forms executed during the F.Y. 2010-11 by the shareholders for transfer of shares of the assessee company held by them to M/s Lichchavi

Construction & Engineering Pvt. Ltd. Copy of the said share transfer forms are being enclosed herewith on page no. 266 to 272 of this paper book. From the perusal of these share transfer forms it is clearly evident that the shares allotted by the assessee company to its shareholders were subsequently in the next year i.e. F.Y. 2010-11 transferred by them to M/s Lichchavi Construction & Engineering Pvt. Ltd. Now once it is established that the shares of the assessee company were transferred in F.Y. 2010-11 then by no stretch of imagination it can be concluded that these shares were issued & allotted by the assessee company in the year under consideration i.e. F.Y. 2013-14.

v. Moreover, to substantiate the aforesaid transfer to shares, reference of your goodself is drawn to the annual return in Form 208 filed with ROC by the assessee company for F.Y. 2010- 11 wherein it the said transaction of transfer of shares is duly reflected.

vi. Further, in this regards, copy of financial statements of the said company M/s Lichchavi Construction & Engineering Pvt. Ltd. from F.Y. 2010-11 to F.Y. 2013-14 is also being enclosed herewith on page no. 273 to 301 of this paper book. From the perusal of these financial statements, it is clearly evident that the said company were holding shares of the assessee company since F.Y. 2010-11.

26. However, the Id. A.O. disregarding the aforesaid evidences and on the basis of his own whims and fancies has concluded that the shares were issued in the current year which is grossly injudicious, unwarranted, against the facts of the case and bad at law.

27. Further, the Id. A.O. has alleged that the assessee company has filed its first return of income for A.Y. 2014-15 and no return of income for earlier years have been filed and as the current year's return is the first return filed by the assessee, credits shown in this return is the credit for the year under consideration. In this regards, it is hereby submitted that the said findings of the Id. A.O. is grossly frivolous, against the basic principles of accounting, based on surmise & conjectures and bad at low. It cannot be disputed that the credits belongs to that year in which it is introduced in the books of accounts irrespective of the fact whether return

of income for that year is filed or not. The filing of return of income can by no stretch of imagination determine the year of a credit.

28. Moreover, under the Income Tax Act, 1961, each year is a separate year and the action for any default in a particular year has to be taken for that year and not in any other year. Therefore, if the Id. A.O. wanted to take action for the defaults committed in A.Y. 2009-10, he should have taken action in A.Y. 2009-10 and not in A.Y. 2014-15. The Income Tax Act, 1961, empowers the Id. A.O. to make the assessment u/s 144 even if the assessee had not filed its return of income and therefore, in the present case as the appellant had not filed its return of income for A.Y. 2009-10, the Id. A.O. had all the powers to make the assessment of the assessee for A.Y. 2009-10 u/s 144 of the Act, however, no such action was undertaken by the Id. A.O. and instead of taking said appropriate legal recourse, the Id. A.O. making the basis of non-filing of return of income by appellant for A.Y. 2009-10, alleged that credits of A.Y. 2009-10 as credits of A.Y. 2014-15 which is highly arbitrary, based on surmise and conjectures and bad at law.

29. Further, the assessee in order to substantiate the issue of shares during the F.Y. 2008-09 had duly submitted the Audited Financial Statements for the year ended 31.03.2009 & returns filed with ROC for the F.Y. 2008-09. Copy of the same is being enclosed herewith on page no. 259 to 265 & 22 to 57 respectively of this paper book..

30. Further, it is hereby submitted that once the assessee has claimed that the credits pertains to a particular year and has also substantiated the same with documentary evidences, however, the Id. A.O. alleges these credits to be of other year then the onus is on the A.O. to prove that the credits pertains to the year as claimed by him. The Id. A.O. cannot allege the credits to be of the year other than claimed by the assessee on the basis of his whims & fancies, he has to brought sufficient evidence on record to substantiate his claim. However, in the case under consideration, no evidence whatsoever has been brought on record by the Id. A.O. to substantiate that the aforesaid credits pertains to A.Y. 2014-15. The Id. A.O. had merely alleged that the said credits pertain to A.Y. 2014-15 which is based on surmise & conjectures without any evidence whatsoever.

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31. Further, it is hereby submitted that the Id. A.O. has grossly erred in making addition of 40,38,470/- u/s 69C of the Act estimating that the assessee had paid commission @ 2% on the amount of share capital of 20,19,23,500/- which is highly arbitrary, injudicious, unwarranted, based on surmise and conjectures & bad at law.

32. The relevant findings of the Id. A.O. while making the aforesaid addition of 40,38,470/- are contained in page no. 15 of the assessment order which is being reproduced hereunder for the sake of ready reference:-

"Since the assessee has not been able to tender any evidence against above issues, hence apart from accommodation entries of Rs. 20,19,23,500/-, it is reasonable to estimate the assessee company has also paid commission @ 2% on the amount of accommodation entries which comes to Rs. 40,38,470/-. The same is added to the income of assessee u/s 69C of the income Tax Act, 1961."

33. In order to have better understanding of the issue involved, reference of your goodself is drawn to the provisions of sec. 69C of the Act which provides as under:- 66[Unexplained expenditure, etc.

69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year:]

[Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.]

34. From the reading of the said sec. 69C of the Act, it becomes clearly evident that the primary condition for the application of said section is that the assessee has incurred any expenditure. In the case under

consideration, the assessee has not incurred any expenditure as alleged by the Id. A.O. The said additions has been made by the Id. A.O. on the basis of his whims and fancies estimating that the assessee has incurred the said amount of expenditure of 40,38,470/-. The Id. A.O. has not brought any evidence on record so as substantiate his claim that any such expenditure was incurred by the assessee, he has just estimated the expenditure and added the same to the income of the assessee.

35. Further, it is hereby submitted that under the provisions of sec. 69C of the Act, the onus is on the revenue to prove that the assessee has actually incurred any expenditure and it also has to substantiate the same with cogent material. In case, the revenue is not able to discharge the onus casted on it, addition u/s 69C of the Act cannot be made.

36. In this regards, reliance is placed on the following judicial precedents:-

i. Ruling of Hon. ITAT Delhi in the case of ACIT vs. Kishan Lal Jewels Pvt. Ltd., ITA No. 229/Del/2011 wherein it was held as under-

"6.6 On a careful consideration, I find that the provisions of Section 69C may be invoked only in situations where the assessing officer finds that any expenditure has actually been incurred by some assessee and for which he/she does not have any satisfactory explanation. The Hon'ble Delhi High Court in the cases of CIT VS Lubetech 301 ITR 175(Delhi) and CIT vs. Ved Prakash Choudhary 305 ITR 245 (Delhi) has held that it has first to be established by corroborative evidence that an expenditure has been incurred and only thereafter if the explanation offered by the assessee about the source of such expenditure is not found satisfactory, the amount may be added to the income.. Examining from this standpoint what emerges from the order of the AO is that he has not brought out any evidence whatsoever to demonstrate that the purchases to the extent of Rs. 3,69,58,004/- were made from "unknown" parties. It is not even mentioned from whom they were purchased and what was the description of such purchases. The AO has merely stated that he was of the 'strong opinion that the assessee made purchases from some unknown parties other than the 59 ITA 229 & CO 43(Del) 2011 two parties mentioned

above. Undisputedly, no addition can be made merely on the basis of "strong opinion"

ii. Ruling of Hon. ITAT Lucknow in the case of Rajendra Kumar Somani vs. DCIT, ITA No. 35,36 & 37/Lkw/2016 wherein it was held as under:-

4 We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We noted that so far the addition of Rs.3,00,000/- towards the low house hold withdrawals, the Assessing Officer just estimated the monthly expenditure of the assessee @Rs.25,000/-. The assessee made the drawings at Rs. 85,000/-. No detail whatsoever was brought on record that the assessee has incurred the expenditure more than Rs.85,000/-. The addition has been made by the Assessing Officer u/s 69C of the Act. The provisions of section 69 lays down a rule of law. The section mandates that where in any financial year the assessee has incurred any expenditure and offers no explanation about the source of such expenditure or part thereof or the explanation, if any, offered by him is not in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee. From these provisions, it is apparent that the onus is on the Revenue to prove that the assessee has actually incurred the expenditure. There is no evidence or cogent material being brought on record or placed before us by learned D.R. which may prove that the assessee has incurred the expenditure much more than the sum of Rs.85,000/- which has been withdrawn by the assessee as drawings except the payment of electricity. The Assessing Officer just estimated the expenditure. Once the Revenue discharges its onus only then the onus gets shifted on the assessee to give explanation proving the nature and source of the expenditure to the satisfaction of the Assessing Officer. Since the Revenue did not discharge its onus we therefore, set aside the order of CIT(A) and delete the addition of Rs.3 lac made on account of low drawings. Thus, ground No. 1 stands allowed.

iii. Ruling of Hon. ITAT Ahmedabad in the case of Kiritsinh Vakhatsinh Gohil vs. ITO, ITA No. 1340/Ahd/2009 wherein it was held as under-

"8... In our opinion under section 69C, no addition can be made until and unless the Assessing Officer first discharges his onus and prove that the assessee has incurred the expenditure, once the Assessing Officer discharges the onus, the onus gets shifted on the assessee to offer an explanation about the source of such expenditure as is apparent from the Assessing Officer, the Assessing Officer has not discharged the onus as is expected from him and laid down under section 69C. Under these circumstances we did not have any other alternate except to delete the addition. Thus, ground No. 2 is allowed."

Under the aforesaid facts and circumstances of the case and in light of the judicial precedents cited above, it is hereby submitted that the addition made by the Id. A.O. u/s 69C of the Act in the case under consideration is grossly arbitrary, injudicious, unwarranted, based on surmise & conjectures and bad at law as the Id. A.O. has not been able to prove that the assessee has actually any expenditure and no evidence whatsoever has been brought on record by the Id. A.O to substantiate his claim and therefore, the appellant hereby prays that the said addition be deleted by this Hon. Court in the interest of justice..."

5.2 Further, AR of the appellant vide its letter dated 04/09/2018 has submitted as under:

"... As regards to the aforesaid matter, it is hereby submitted that in the recent ruling of Hon. High court of Madras in the case of M/s V.R. Global Energy Pvt. Limited [Tax case (Appeal) No 246 of 2017], it has been held that where allotment of shares is done through book adjustments, there is no scope for additions under section 68 of the Act. Copy of the said case law is enclosed for your ready reference.

The assessee relies on the abovesaid case law and hereby prays that the addition made by the Ld. A.O. are grossly injudicious, unwarranted and bad at law and deserves to be deleted by this Hon. Court in the interest of justice..."

6. The Id. CIT(A) held that the AO has made the addition under Section 68 of the Act amounting to Rs. 20,19,23,500/- as

the appellant company has failed to prove the identity, genuineness and creditworthiness of the parties to whom the share capital including premium was issued. Further, an amount of Rs. 40,38,470/- was added under Section 69C of the Act.

7. The Id. CIT(A) held that *the first important point to take note of is that the company does not have any bank account and never had any bank account. The appellant before the AO submitted that the company in the FY 2008-09, the year in which the company was incorporated allotted 99700 shares of which 10,000 shares were originally subscribed at Rs. 10/- per share and 89,700 number of shares of face value of Rs. 10 for a premium of Rs. 2240/-. The total share capital of Rs.9,97,000/- consisted of 10,000 shares originally subscribed at Rs.10/- per share plus 89700 shares allotted to 7 different companies for a premium of Rs.2240/-. According to the appellant company, the said shares were allotted for a consideration other than a sum of money and the appellant has received shares of other company in lieu of allotment of these shares. The AO during the assessment proceedings for the AY 2014-15 i.e. year under consideration noticed that though the assessee has claimed to have received such huge share money during the FY 2008-09 but has filed its first return of income for the FY 2014-15 and after detailed discussion held that the assessee has failed to establish that money in the form of share capital and share premium was received in FY 2008- 09 as claimed and has failed to prove the genuineness of the transactions in terms of section 68 of the Act. As mentioned in the assessment order, the AO noticed that the assessee has shown share capital of Rs.9,97,000/- and share premium of Rs.20,09,28,500/- as per balance sheet as on 31/03/2014 and didn't provide any details of share holders in spite of repeated notices. After detailed discussion AO made addition of Rs. 20,19,23,500/- under section 68 of the Act and further holding that the assessee has received accommodation*

entries of above said amount by paying commission to entry providers at the rate of 2% of accommodation entries, added Rs. 40,38,740/- under section 69C of the Act.

8. The Id. CIT(A) considered the chart filed by the assessee showing that the shares has been transferred to Lichchavi Construction & Engineers P. Ltd. on 28/07/2010 from the following primary share holders:

Name of the primary share holder	No. of share transferred
Mohan Singh	6567
Ajay	3233
Grow Big Marketing Pvt. Ltd.	7333
Khan Kinetic Treatment Pvt. Ltd.	8223
Relax Direct Selling Pvt. Ltd.	26000
Shree Sobhagya Lakshmi Marketing Pvt. Ltd.	7500
Tenstar Animal Farming Pvt. Ltd.	7333
Thapar Infrastructures Pvt. Ltd.	14500
AV Webtech Pvt. Ltd.	18811
Total	99500

and as on 31/03/2014 M/s Lichchavi Construction & Engineers Pvt. Ltd. is having 99.80% share holding. The assessee has furnished documents relating to M/s Lichchavi Construction & Engineers Pvt. Ltd. The Id. CIT(A) held that on going through the B/sheet it is noticed that M/s Lichchavi Construction & Engineers Pvt. Ltd. has shown the investment of Rs.9,97,000/- whereas the assessee company i.e. M/s Alanice Computer Pvt. Ltd. has shown share capital with premium at Rs.20,19,23,500/- . It is also seen that the director of the assessee company and M/s Lichchavi Construction & Engineers Pvt. Ltd. are common

i.e. Shri Ajay. This show that assessee has introduced its unaccounted money in the form of share premium.

9. The Id. CIT(A) held that the assessee (1) Failed to establish that the money in the form of share capital and share premium was received in the financial year 2008-09 as claimed. (ii) Assessee failed to provide the bank statement for the year 2009-10 to 2014-15 to prove that the money was actually received in these years. Assessee failed to produce Directors of the assessee company as well as the alleged share subscribers companies.

10. The Id. CIT(A) held in view of the above facts since the assessee has filed first return of income for the AY 2014-15 and it has been proved that the assessee has no evidence that the share capital and share premium amounting to Rs.20,19,23,500/- was received in the financial year 2008-09 relevant to assessment year 2009-10, it is held that the assessee has credited the aforesaid sum in its books of accounts during the year itself for which it failed to satisfactorily explain the identity, genuineness and creditworthiness of the parties against whom the amount in question has been credited.

11. On going through the issues, since the assessee failed to rebut the findings of the revenue, the order of the Id CIT(A) is hereby affirmed.

12. In the result, the appeal of the assessee is dismissed.
Order Pronounced in the Open Court on 28/04/2023.

Sd/-

(Saktiit Dey)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 28/04/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR