

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,  
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1407/DEL/2023 [A.Y. 2018-19]

Ecogreen Energy Pvt. Ltd  
228-236, Tower - A, Spaze -  
I Tech Park, Sohna Road  
Sector - 49, Gurgaon

Vs.

The Dy. C.I.T  
Circle - 1(1),  
Gurgaon

PAN: AACCE 5981 H

(Applicant)

(Respondent)

Assessee By : Shri Ajay Wadhwa, Adv  
Ms. Ayushi Gupta, CA

Department By : Shri T. James Singson, CIT- DR

**Date of Hearing : 30.10.2023**

**Date of Pronouncement : 06.10.2023**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order dated  
06.03.2023 by NFAC, Delhi pertaining to A.Y. 2018-19.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A)/NFAC erred in confirming the addition of Rs. 157,80,68,370/- being compulsory convertible preference share capital received by the assessee company from its parent company as unexplained cash credits u/s 68 of the Income-tax Act, 1961 [the Act, for short].

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Briefly stated the facts of the case are that the assessee filed its return of income on 30.11.2018 declaring loss of Rs. 3,72,36,216/-. Return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee.

5. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has introduced share capital to the tune of Rs. 1,57,80,68,370/-. The Assessing Officer also found that the assessee has sold fixed assets for a consideration of Rs. 40,60,32,000/- on which no capital gain was returned.

6. The assessee was issued a show cause notice alongwith draft assessment order wherein two additions were proposed:

- (1) Introduction of share capital u/s 68 of the Act - Rs. 157,80,68,370/-
- (2) Short term capital gain on sale of fixed assets - Rs. 40,60,32,000/-

7. In its reply, the assessee explained that it has issued convertible preference share capital during the year under consideration and the same has been contributed by the holding company of the assessee which is Lamoon Holdings Pvt Ltd situated at Tortola, British Virgin Islands, United Kingdom

8. In support of its reply, the assessee filed the following :

- (i) Copy of board resolution passing for issuing convertible preference shares;
- (ii) Copy of bank statement reflecting the foreign currency received for allotment of shares;
- (iii) Copy of Share Valuation Certificate
- (iv) Copy of PAS-3 Forms which is return of allotment filed under the Companies Act.
- (v) Copy of FCGPR form filed in compliance with RBI regulations.

9. Surprisingly, the Assessing Officer at Para 5 observed that:

*“The documents furnished by the assessee only evidence the issue of preference shares to the holding company Lamoon Holdings Pvt Ltd situated at Tortola, BVI, UK”.*

10. The Assessing Officer further observed that these details do not prove the genuineness of the transactions and the identity of the subscriber (?) who introduced the share capital.

11. We can understand that the documents submitted do not prove the genuineness of the transactions, but by no stretch of imagination the Assessing Officer can say that the assessee has not identified the person when he has accepted that the convertible preference shares have been contributed by the holding company of the assessee Lamoon Holdings Pvt Ltd.

12. Proceeding further, the Assessing Officer asked the assessee to furnish the bank statements of Lamoon Holdings Pvt Ltd and confirmations. On receiving no plausible reply, the Assessing Officer formed a belief that the assessee has failed to establish the

genuineness of the transaction and credit worthiness of the subscriber to the convertible preference shares and completed assessment proceedings by making addition of Rs. 157,80,68,370/- u/s 68 of the Act.

13. The addition was agitated before the Id. CIT(A) but without any success.

14. On going through the documentary evidence, we find that 30150000 shares were issued in 2016-17 for a consideration of Rs. 30.15 crores which aspect was thoroughly examined in the scrutiny assessment for A.Y 2016-17 and accepted as it is. Therefore, in our humble opinion, this year the Assessing Officer cannot question the identity of the subscriber company, which happens to be the holding company of the assessee.

15. Now coming to the genuineness of the transactions, we find that the details of share raised during the year under consideration has been fully filed by the assessee not only in F.Y. 2016-17, but also during the year under consideration supported by Board's resolution. The confirmation received from the holding company is also placed on

record which evidences Lamoon Holdings Pvt Ltd as tax resident of BVI having Unique Identification Number 1477966.

16. Page 21 of the Paper Book is the certificate of Foreign Inward Remittance certifying the inward remittances of foreign currency remitted by Lamoon Holdings Pvt Ltd, which is further evidenced by the entries in the bank statements exhibited at pages 16 to 19 of the Paper book. Page 23 of the Paper Book is the copy of bank statement of Lamoon Holdings Pvt Ltd with HSBC. Exhibits 24 to 28 are allotment details of compulsory convertible preference shares.

17. These clinching evidences go on to establish not only the genuineness of the transactions but also the capacity of Lamoon Holdings Pvt Ltd and the ultimate Parent Company M/s China Jingiang Environment Holdings Company Limited.

18. In light of the evidences, we are of the considered view that the assessee has successfully discharged the initial onus cast upon it by provisions of section 68 of the Act. It is not the case of the Revenue that the funds received by the assessee are part of some round tripping

nor is the case of the Revenue that the assessee has purchased share application money by paying cash to the subscriber holding company.

19. Considering the facts of the case from all possible angles, only one conclusion can be drawn i.e. the assessee has successfully discharged the onus and therefore, no addition should be made u/s 68 of the Act. The Assessing Officer is accordingly directed to delete the impugned addition.

20. In the result the appeal of the assessee in ITA No. 1407/DEL/2023 is allowed.

The order is pronounced in the open court on 06.11.2023 in the presence of both the rival representatives.

Sd/-

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 06<sup>th</sup> NOVEMBER, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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