

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

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA No.7542/Del/2018
(Assessment year: 2012-13)**

ITO, Ward 15(3) Room No. 311-A, 3 rd Floor, C.R. Building, I.P. Estate, New Delhi - 110002	Vs.	M/s Livewire Commercial Private Limited 39/1386, Chandni Chowk, Delhi - 110006
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAACL2105J		
Appellant	..	Respondent

Appellant by :	Ms. Monika Singh, CIT, DR
Respondent by :	Shri Praveen Kumar (Executive of the company)

Date of Hearing	21.07.2025
Date of Pronouncement	30.07.2025

ORDER

PER AMITABH SHUKLA, AM:

The present appeal filed by the Revenue is directed against the order dated 25.09.2018 passed by the CIT(A)-32, New Delhi, arising out of the Assessment Order dated 24.03.2015 passed by the ITO, 15(3) New

Delhi, under Section 143(3) of the Income Tax Act, 1961 (for short 'the Act') for Assessment Year 2012-13.

3. The Revenue has raised the following grounds of appeal before us:

- “1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the additions of Rs.25,00,00,000/- U/s 68 of the IT Act, in respect of share capital received which were not found genuine during assessment proceedings.**
- 2. The Ld.CIT(A) has erred in law and on facts by not appreciating that creditworthiness of the party remained unexplained as the party was not having funds to extend such huge share capital to the assessee.**
- 3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the additions of Rs.6,35,930/- U/s 14A of the IT Act.**
- 4. That the appellant are craves leaves to add, alter, amend or forgo any ground(s) of appeal raised above at the time of hearing.”**

3. Briefly stated, the facts of the case are that the assessee filed its return of income on 29.09.2012 declaring income of Rs. 4,454/-. The case was selected for scrutiny through CASS. Accordingly, statutory notice u/s 143(2) of the Act was issued on 06.08.2013 and served upon the assessee. Subsequently, notice u/s 142(1) along with questionnaire was also issued.

In response to notices issued Mr. Prakash Hirawat CA/AR appeared from time to time before the ld. Assessing Officer and filed the details.

4. The assessee company is engaged in making finance, advances, investment and trading. The company deals in purchase and sale of shares from the market and through direct investment. During the year the assessee made purchases of shares at Rs.25,01,50,000/- and sales of unquoted shares of small companies at Rs. 25,02,24,000/- Against the income of Rs.51, 775/- being interest and gain on investment the assessee has claimed expenditure of Rs 47,291/- and showed profit before tax of Rs 4,454/- only.

5. Ground Nos. 1 and 2 taken together pertain to deletion of addition of Rs. 25 crores u/s 68 of the Act.

6. Facts, in brief, pertaining to this addition are that shares of four companies were purchased from Zeal Consultancy Pvt Ltd. for a sum of Rs.25,01,75,000/-. Subsequently, in lieu of purchase of the above mentioned shares, the assessee company issued its 5,00,000 shares of face value of Rs.10/- and a premium of Rs.490/- for a total sum of Rs.25,00,00,000/- to M/s Zeal Consultancy Pvt Ltd on 30.03.2012. The

remaining amount of Rs.1,75,000/- was paid by the assessee company to Zeal Consultancy Pvt Ltd by cheque.

7. The Assessing Officer observed that modus operandi adopted is that the assessee company bought the shares of some other three companies from M/s Zeal Consultancy Services Pvt Ltd priced at Rs.25 Crores but did not exchange any money and instead of consideration applies for shares of the assessee company at such high premium. The transaction of such a huge amount is completed by book entries. It also seems that it is an afterthought by back dating the book entries and paper formalities have been completed to give it the shape of genuine transaction." It was also observed by the Assessing Officer that the so called transaction of issue of shares at premium of Rs.490/- is nothing but sham and illusory and to bring the unaccounted money in the main financial stream through book entries because it would not have been possible to complete transactions by banking transactions and neither the assessee nor so called assessee M/s Zeal Consultancy Services Pvt Ltd had the liquidity to make investment of Rs. 25 Crores. He, therefore, treated the transaction as unexplained cash credit in the books of the assessee company and assessed the same as income from other sources u/s 68 of the Act.

8. Aggrieved, the assessee went in appeal before the ld. CIT(A) who deleted the addition.
9. The Revenue is aggrieved and is in appeal before us.
10. Before us, the ld. counsel for the assessee supported the order of the ld. CIT(A).
11. Per contra, the ld. DR relied upon the orders of the Assessing Officer.
12. We have heard the rival submissions and have perused the relevant material on record. It would be pertinent to extract the relevant findings of the ld. CIT(A) on this issue which reads as under:

"6.5 In this regard, the assessment order and the written submission of the appellant have duly been considered. It is noted that in this case, shares of four companies were purchased by the appellant on 06.03.2012 from Zeal Consultancy Pvt Ltd for a sum of Rs.25,01,75,000/-. Subsequently, in lieu of purchase of the above mentioned shares, the appellant company issued its own 5,00,000 shares of face value of Rs. 10/- and a premium of Rs.490/- for a total sum of Rs.25,00,00,000/- to M/s Zeal Consultancy Pvt Ltd on 30.03.2012. It is submitted that the remaining amount of Rs.1,75,000/- was paid by the appellant company to

Zeal Consultancy Pvt Ltd by cheque. The AO observed that this transaction was completed by book entries only. It is submitted by the appellant that the AO has not been able to bring out any adverse material and concrete evidence against the transactions carried out by the appellant and the addition has been made on the basis of suspicion and surmises. It is also submitted that in response to notice u/s 133(6) to the share holders, the details were furnished by such parties. It is also submitted by the appellant that in the case of Zeal Consultancy Services Pvt Ltd, from which shares were purchased by the appellant, assessment order was passed u/s 143(3) of the Act on 27.02.2015 accepting the returned income. It is contended that when the sale of shares by the Zeal Consultancy Services Pvt Ltd to the appellant company is accepted by the Department, the purchase of shares amounting to Rs.25,01,75,000/- by the appellant cannot be doubted and treated as sham transaction by the AO of the appellant. The appellant has vehemently relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs Lovely Exports Pvt Ltd [2008] 216 CTR (SC) 195. The appellant has also relied upon the decision of the Hon'ble Gujrat High Court in the case of PCIT, Surat-1 vs Tejua Rohit Kumar Kaparia in Tax Appeal no.691 of 2017. The SLP of the Revenue against the aforesaid order was dismissed by the Hon'ble Supreme Court vide order dated 04.05.2018. The AR of the appellant has relied upon various judicial pronouncements of the jurisdictional Delhi High Court, other High Courts and ITAT.

6.6 In this case, it is noted that the amount of Rs.25,00,00,000/- has been credited to the books of the company by way of book entry only. The appellant has shown purchase of shares of different companies from Zeal Consultancy Services Pvt Ltd for an amount of Rs.25,01,75,000/- and in lieu of the purchase consideration, 5,00,000 shares of face value of Rs. 10/- at a premium of Rs.490/- of the appellant company itself were issued to Zeal Consultancy Services Pvt Ltd for a total sum of Rs.25,00,00,000/-. Therefore, the above transactions are in the nature of swap arrangement of shares only. The credit arose only because purchase of shares by the appellant from Zeal Consultancy Services Pvt Ltd. Had there been no purchase of shares by the appellant, there would not have been any credit. There was no money brought into the account books of the appellant by way of cash / cheque / draft. It is further noted that the appellant has discharged the onus in respect of the identity of the share holders as relevant documents were produced before the AO and there was compliance by the parties, involved in the transaction, to notice u/s 133(6) issued by the AO. The appellant also submitted copy of the return of income, Tax audit report and the copy of the assessment order in respect of the creditor M/s Zeal Consultancy Services Pvt. Ltd. The appellant has relied upon various judicial pronouncements in this regard and has submitted that there was no question of any addition in the hands of the appellant company.

In this regard, Full Bench of Hon'ble jurisdictional Delhi High Court in case of CIT vs Sophiya Finance Limited 205 ITR 98 held that once

identity of the shareholder is established, no addition on account of share capital can be made in the hands of the company-assessee. Further, it was held by Hon'ble Delhi High Court in the case of CIT vs. Steller Investment Limited 192 ITR 287 that addition of share capital cannot be made in the hands of the assessee company. The above decision was later on affirmed in CIT vs Steller Investment Ltd 251 ITR 263 (Supreme Court). In this regard, reference was made to the following decisions also:

Anima Investment (P) Ltd. VS. ACIT 73 ITD 125 (Delhi) (TM)

- Share application money - Where the share application money is received by the assessee company through banking channel, the assessee has only to prove the existence of the person in whose name share application is received Additions could not be sustained where the existence of the investors is not doubted and the investment is not shown to have been made by somebody else - BARKHA SYNTHETICS LTD. VS. ASSTT. CIT 197 CTR 432 (RAJ)

- Share application money Assessee having proved genuineness of subscribers of share capital, addition under section 68 could not be made on the ground that it did not establish genuineness of source of subscribers - SUMAK POWERCAP LIMITED VS. ASSTT.CIT 90 TTJ 420 (LUCKNOW).

Share application money Registered shareholders having not denied subscription to shares standing in their names, amount could not be regarded as undisclosed income of assessee company even if the

subscribers were not genuine BALDEO COLD STORAGE & ICE FACTORY
PVT.LTD. VS. ACIT 89 TJ 908 (AGRA).

13. We find that the ld. CIT(A) observed that under the law purchases cannot be declared void when the entire purchase made by the assessee from the parties has been accounted by and seller have paid the taxes accordingly on the respective sales. In this connection, the assessee has relied upon the decision of the Hon'ble Supreme Court in SLP No.12670/2018 in the case of Principal CIT vs. Tejua Rohit kumar Kapadia dated 4.5.2018 confirming the decision of the Hon'ble Gujarat High Court in the case of PCIT, Surant-1 v Tejua Rohit Kumar Kapadia in Tax Appeal No. 691 of 2017.

14. Considering the factual matrix of the case and respectfully following the judicial pronouncements referred to hereinabove, the ld. CIT(A) held that the addition of Rs. 25,00,00,000/- cannot be upheld and deleted the same. In view of the detailed discussion made by the ld. CIT(A) and the decisions relied upon which support his case, we are of the considered opinion that there is no lacuna in the order of the ld. CIT(A)

and accordingly we uphold the same. Ground No 1 and 2 taken together by the Revenue stand dismissed.

15. Ground No. 2 pertains to disallowance u/s 14A of the Act.

16. During the course of scrutiny assessment proceedings, the Assessing Officer noticed from the balance-sheet that the assessee company has shown investment as on 01.0.42011 and 31.03.2012 at Rs 23,87,000/- and Rs 25,19,85,000/- respectively. The assessee was asked to give the working of disallowance u/s 14A of the Act, in response to which the assessee did not furnish any reply.

17. The Assessing Officer observed that the Central Board of Direct tax (CBDT) issued a Circular No. 5/2014 dated 11th February, 2014 (F. No. 225/182/2013-ITA.II) clarified that the disallowance of the expenditure u/s 14A of the Act incurred in relation to exempt income have been dealt with by various courts as to whether disallowance under Section 14A of the Act should be made even if no exempt income has been earned by a taxpayer during the financial year. It has been clarified that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.

18. In view thereof, the Assessing Officer observed that even though the assessee has not earned any exempt/tax free dividend income during the year, provisions of section 14A read with Rule 8D is applicable in the facts and circumstances of assessee's case, worked out a sum of Rs. 6,35,930/- and added the same to the income of the assessee.

19. Aggrieved, the assessee went in appeal before the Id. CIT(A) who allowed the ground of appeal.

20. Now the aggrieved Revenue is in appeal against the deletion of addition by the Id. CIT(A).

21. Before us, both the rival representatives reiterated what has been stated before the lower authorities and relied upon various case laws.

22. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee did not earn any exempt income during the year under consideration. Since there is no exempt income earned by the assessee during the year, there cannot be any disallowance u/s 14A of the Act. This issue is by now well settled in favour of the assessee and against the revenue by the decision of the

Special Bench of the Tribunal in the case of M/s Cheminvest Ltd 121 ITD 318 which was affirmed by the Hon'ble High Court of Delhi. Same view is taken by the Hon'ble Gujarat High Court in the case of Corrttech Energy (P) Ltd 372 ITR 97. In view of the above, we decline to interfere with the findings of the Id. CIT(A). Respectfully following the above mentioned judicial decisions, Ground No. 3 raised by the Revenue is dismissed.

23. In the result, appeal of Revenue in ITA No. 7542/DEL/2018 is dismissed.

The order is pronounced in the open court on 30.07.2025.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[AMITABH SHUKLA]
ACCOUNTANT MEMBER**

Dated: 30TH JULY, 2025.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Sl. No	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order</i>	
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	
3.	<i>Date on which the typed draft Tribunal Order is placed before the other Member</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial)</i>	
11.	<i>The date on which the file goes for xerox</i>	
12.	<i>The date on which the file goes for endorsement</i>	
13.	<i>The date on which the file goes to the Superintendent for checking</i>	
14.	<i>The date on which the file goes to the Assistant Registrar for signature on the Tribunal order</i>	
15.	<i>Date on which the file goes to the dispatch section</i>	
16.	<i>Date of Dispatch of the Order</i>	