

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 5314 /Mum/2017  
(Assessment Year: 2011-12)**

**ITA No. 5315 /Mum/2017  
(Assessment Year:2012-13)**

ITO-11(3)(4), Room No. 429, Aayakar Bhavan, 4 <sup>th</sup> Floor, M.K. Marg, Mumbai- 400020.	<b>बनाम/ Vs.</b>	M/s.WinstarEComPvt.Ltd, The Capital, Plot No. C- 70/G-Block, 7 <sup>th</sup> Floor, BKC, Bandra (E) Mumbai-400051.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACW5741R</b>		
(अपीलार्थी/ <b>Appellant</b> )		(प्रत्यर्थी/ <b>Respondent</b> )

अपीलार्थी ओर से / <b>Appellant/Revenue by :</b>	Ms. Bhumika Patel- Sr.DR
प्रत्यर्थी की ओर से/ <b>Respondent/Assessee by :</b>	None

सुनवाई की तारीख / <b>Date of Hearing</b>	16/01/2024
घोषणा की तारीख / <b>Date of Pronouncement</b>	17/01/2024

आदेश / ORDER

**PER BENCH :**

These are the two appeals filed by the Revenue against the separate orders of Commissioner of Income Tax (Appeals)-18, Mumbai passed under section 143(3) and 250 of the Income Tax Act, 1961 (“the Act”).

2. For the sake up convenience, we shall take up ITA No. 5315/Mum/2017, A.Y. 2012-13 as a lead case and the facts narrated. The Revenue has raised the following grounds of appeal:-

*1.a) "In the facts and circumstances of law, the Ld.CIT(A) has erred in appreciating the fact that the amount of Rs. 2,00,00,000/- has credited in books of assessee in form of share capital in AY 2007-08, but shares were allotted in AY 2012-13, after 5 years of introduction which is violation of the statutory provisions of Company Act, hence, it is a loan in disguise of share capital and which has changed its nature in AY 2012-13."*

3. The Brief facts of the case are that, the assessee company is engaged in the business of information technology services. The assessee's has filed the return of income for the A.Y. 2012-13 on 27.09.2012 disclosing a total income of Rs. Nil and the return of income was processed u/sec 143(1) of the Act. Subsequently, the case was selected scrutiny under CASS and the Assessing Officer (A.O) has issued notice u/sec 143(2) and U/sec 142(1) of the Act. In compliance to notice, the Ld.AR of the assessee has appeared from time to time and the submitted the details. The assessing officer on perusal of the financial statements found that there was increase in authorized capital from Rs.10,00,000/- to Rs.14,00,000/- i.e financial year 2006-07 to financial year 2011-12.The AO found that the assessee has received the share application money along with the share premium in the financial year 2006-07 and subsequently, in the financial year 2011-12 Rs.4,00,000/- was transferred to

share capital account and Rs.1,96,00,000/- was transferred to share premium account. Whereas the assessee has shown in the financial year 2006-07 share application money pending allotment Rs.4,45,00,000/- which includes the share application money of Rs. 2,00,00,000/-. The assessee has filed the detailed submissions through letter and the assessing officer has issued notice u/sec 133(6) of the Act on the share/investor applicants and there was no compliance to notices. Therefore, the AO has issued a show cause notice dated 13.03.2015 and in reply the assessee had filed the detailed explanations by letter dated 17.03.2015 mentioning that there is no unexplained cash credit in the books of the assessee for financial year 2011-12 and the assessee has only allotted the shares in F.Y 2011-12 against the share application money pending allotment disclosed and received in earlier years. The assessee's contentions are that the assessee has not received any share application money in the financial year 2011-12 and except allotment of shares. Whereas the Assessing officer was not satisfied with the explanations and observed that the genuineness and creditworthiness of the share applicants are not proved and invoked the provisions of section 68 of the Act and made addition of Rs 2,00,00,000/- as unexplained cash credit and assessed the total income of Rs.2,00,00,000/- and passed the order u/sec143(3) of the Act dated 30.03.2015.

4. Aggrieved by the order, the assessee has filed the appeal with the CIT(A). In appellate proceedings CIT(A) considered the grounds of appeal, statement of facts, assessee's submissions and dealt on

the material information filed and has directed the assessing officer to delete the addition u/sec68 of the Act and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed the appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in deleting the addition of share capital and premium irrespective of the facts that the assessee has failed to establish the genuineness and creditworthiness of the transactions and supported the order of the Assessing Officer. None appeared on behalf of the assessee.

6. We have heard Ld.DR submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld. DR that the CIT(A) has erred in deleting the share capital and share premium ignoring the fact that the assessee has not establish the genuineness and credit worthiness of the transactions. The AO has relied on the financial statements of F.Y 2006-07 and accepted that the assessee has received the share application money pending allotment of Rs. 2,00,00,000/- which includes Rs.1,96,00,000/- towards the share premium and Rs.4,00,000/- towards the share capital. Whereas the shares were allotted in F.Y. 2011-12 were the amounts are transferred to share premium account and the share capital account. The Revenue contentions are that the assessee has not proved the genuiness and creditworthiness of the parties. We find the CIT(A) has dealt on the provisions of section 68 of the Act and the submissions of the

assessee on the disputed issues and observed that the share application money was received in F.Y. 2006-07 by the assessee and further, there is no sum credited/ received in the books of account of the assessee during the F.Y. 2011-12 and hence addition is not sustainable and granted relief to the assessee observing at page 9 of the order read as under:-

*“Ground No. 2:*

*Under this ground of appeal the appellant has disputed addition of Rs. 2crores made by the AO u/s 68 in respect of 10 shareholders mentioned in para 2 of the assessment order. I have carefully considered the rival submissions and find that vide letter dtd. 17.03.2015 the appellant vehemently argued that,*

*"As regards your show cause to make the addition of Rs. 2,00,00,000/- as unexplained cash credit as the notice sent to parties returned unserved. In this regards we have to mention that there is no unexplained cash credit in the books of your assessee in the FY 2011-12, your assessee had allotted the shares in the F.Y. 2011-12 against the share application money received in earlier years. We are enclosing herewith the bank statement of your assessee for the period when the share applications were received and we have already submitted the financial statements of earlier years reflecting the share application money. As your assessee had not received any money during the F.Y. 2011-12 towards the share capital issued during the F.Y. 2011-12, hence by no stretch of imagination there can be any addition for unexplained cash credit during the F.Y. 2011-12."*

*I have considered the show cause notice as well as the contention of the appellant and find that Sec. 68 refers to sums found credited in the books during the year. Accordingly, the contention of the appellant this sum could not be brought to tax in FY 2011-12 because the sum was received in AY 2007-08 Accordingly, the addition made by the*

*AO in AY 2012-13 is uncalled for and therefore direct the AO to delete the same.*

*This ground of appeal succeeds”.*

7. We find that the CIT(A) has considered the factual aspects that there is no unexplained cash credit in the books of accounts of the assessee in the F.Y.2011-12. Whereas the assessee has received the share application money along with the share premium in the financial year 2006-07 and subsequently, in the financial year 2011-12 Rs.4,00,000/- was transferred to share capital account and Rs.1,96,00,000/- was transferred to share premium account and the assessee has shown in the financial year 2006-07 share application money pending allotment of Rs.4,45,00,000/- which includes the share application money of Rs. 2,00,00,000/-. It is not disputed that the assessee has not received any share application money in the financial year 2011-12 except allotment of shares. We find that the provisions of section 68 of the Act can be invoked or applicable, where the amount is found credited in the books of accounts of the assessee in the F.Y.2011-12 and the assessee fails to offer explanations or explanations are not satisfactory. The assessee has received the share application money along with the share premium in the financial year 2006-07 and not in F.Y.2011-12. We find the CIT(A) has dealt on the facts, provisions of law and judicial decisions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information to take different view. We considered the facts, circumstances, submissions as discussed above are of the

view that the CIT(A) has passed a reasoned and conclusive order. Accordingly we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue. In the result, the appeal filed by the revenue is dismissed.

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8. The Revenue has filed an appeal against the order of Commissioner of Income Tax appeals (CIT(A))-18 passed u/sec 250 of the Income Tax Act, 1961. The Revenue has raised the following grounds of appeal as under:-

1. a) "On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) was justified in allowing the long term capital loss incurred by the assessee by treating the forfeiture of convertible warrant as transfer, within the meaning of sec.2(47), when the decision of the Hon'ble Supreme Court was in the context of shares forfeiture, as distinct and separate from the forfeiture of convertible warrant."

b)"On the facts and in the circumstances of the case and in law, whether the Ld.CIT(A) was justified in treating the convertible warrants as capital asset, when the same is not covered under the definition of capital asset as per sec.2(14) of the I T Act."

9. At the time of hearing, it was brought to the knowledge of the bench, that the tax effect in the appeal is below Rs. 50 lakhs and is covered by the CBDT Circular No 17/2019 dated 08.08.2019. The Ld. DR has accepted the low tax effect aspects and applicability of CBDT Circular. We find as per the CBDT Circular dated 08.08.2019, no appeal shall be filed by the revenue before the Hon'ble Tribunal where the tax effect is below Rs. 50 lakhs. Further

the circular of the CBDT is also applicable to the pending cases. Accordingly, we dismiss the revenue appeal on maintainability and low tax effect.

10. In case, if the revenue is able to provide evidence that the case falls under any of the exceptions provided in the circular issued by the CBDT. The revenue may prefer miscellaneous application for recalling of this order, if they so desire, in which circumstances, this order shall be recalled by the Hon'ble Tribunal.

11. In the result, the appeal filed by the revenue is dismissed.

12. Finally, the appeals for A.Y.2011-12 & A.Y.2012-13 filed by the revenue are dismissed.

Order pronounced in the open court on 17.01.2024.

Sd/-

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Sd-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 17/01/2024  
Shubham Lohar

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / Concerned CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai