आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No. 1058/Mds/2014**

निर्धारण वर्ष / Assessment Year : 2009-10

M/s United Capital Partners (India) Private Limited, K 27-6, Golden Windsor, 1st Avenue, Anna Nagar East, Chennai - 600 102.	v.	The Income Tax Officer, Company Circle III(1), Chennai - 600 034.
PAN : AAACU 9457 G (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA No. 1549/Mds/2014**

निर्धारण वर्ष / Assessment Year : 2009-10

The Income Tax Officer, Company Ward - III(1), Chennai - 600 034.	v.	M/s United Capital Partners (India) Private Limited, K 27-6, Golden Windsor, 1st Avenue, Anna Nagar East, Chennai - 600 102.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Shri S. Sridhar, Advocate

राजस्व की ओर से /Revenue by : Shri A.B. Koli, JCIT

सुनवाई की तारीख/Date of Hearing : 30.03.2016

घोषणा की तारीख/Date of Pronouncement : 13.04.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the assessee and the Revenue have filed appeals against the very same order of the Commissioner of Income Tax (Appeals) for the assessment year 2009-10. Therefore, we heard both the appeals together and disposing of the same by this common order.

2. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the first issue arises for consideration is with regard to disallowance made by the Assessing Officer under Section 40(a)(ia) of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, during the year under consideration, the assessee paid a sum of ₹6,70,000/- to one M/s Menon Holdings towards consultancy charges and another sum of ₹52,060/- towards audit fees. The assessee has not deducted tax. According to the Ld. counsel, the assessee has already paid the amount, therefore, in view of the decision of Special Bench of this Tribunal in Merilyn Shipping and Transports v. Addl.CIT (136 ITD 23), there cannot be any disallowance under Section 40(a)(ia) of the Act.

3. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that the decision of the Special Bench in Merilyn Shipping and Transports (supra) was considered by the Calcutta High Court and Gujarat High Court and it was held that the decision of the Special Bench in Merilyn Shipping and Transports (supra) is no longer a good law. Therefore, the CIT(Appeals) by following the judgment of Calcutta High Court in CIT v. Cresent Export Syndicate (216 Taxman 258) and Gujarat High Court in CIT v. Sikandarkhan N. Tunvar (2013) 357 ITR 312, confirmed the order of the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Under the scheme of Income-tax Act, the tax has to be deducted at the time of payment or while giving credit in the books of account. In this case, admittedly, the assessee has paid the amount without deducting the tax. Since the assessee admittedly failed to deduct tax at the time of payment, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

5. We have carefully gone through the decision of Special Bench of this Tribunal in Merilyn Shipping and Transports (supra). We find that the Calcutta High Court in Cresent Export Syndicate (supra) examined the correctness of the decision of the Special Bench and found that the decision of the Special Bench is no longer a good law. A similar view was taken by the Gujarat High Court in Sikandarkhan N. Tunvar (supra). The Cochin Bench of this Tribunal had an occasion to examine an identical issue in Shri Thomas George Muthoot v. ACIT in I.T.A. No. 63 & 64/Coch/2014 dated 28.08.2014, and observed as follows:-

> "*11. The next contention of the assessee is that the has already paid the amount, provisions of section 40(a)(ia) is applicable only in respect of amount which remains to be payable on the last day of the financial year. The Ld. representative placed his reliance on the decision of Special Bench of this Tribunal in Merilyn Shipping and Transport v. Addl.CIT (2012) 70 DTR 81 and also the judgment of the Allahabad High Court in CIT vs M/s Vector Shipping Services (P) Ltd. I.T.A. No. 122 of 2013 judgment dated 09-07-2013 and submitted that the SLP filed by the revenue in the Apex Court against the judgment of the Allahabad High Court in M/s Vector Shipping Services (P) Ltd. (supra) is dismissed by the Apex Court. It is well settled principles of law that the law laid down by the Apex Court is binding on all courts and authorities including this Tribunal under Article 141 of the Constitution of India. It is also equally settled principle that a dismissal of SLP without any discussion is not the law declared by the Apex Court. The Apex Court thought it fit that it was not a fit case to be admitted for consideration. Therefore, while dismissing the SLP, the Apex Court did not declare any law. Hence, we cannot say that the Apex Court has declared the law declaring that section 40(a)(ia) is applicable only in respect of the*

amounts remains to be payable at the last day of the financial year.

12. We have also carefully gone through the judgment of the Allahabad High Court in CIT vs M/s Vector Shipping Services (P) Ltd (supra), copy of which is filed by the assessee. The Allahabad High Court, after reproducing the relevant paragraph from the order of CIT(A) and referring to the decision of the Special Bench of this Tribunal in Merilyin Shipping & Transports (supra) found that the Tribunal has not committed an error. It is obvious that there is no discussion about the correctness or otherwise of the decision rendered by the Special Bench of this Tribunal in Merilyn Shipping & Transports (supra). However, we find that the Gujarat High Court in the case of CIT vs Sikandarkhan N Tunvar ITA Nos 905 of 2012, 709 & 710 of 2012, 333 of 2013, 832 of 2012, 857 of 2012, 894 of 2012, 928 of 2012, 12 of 2013, 51 of 2013, 58 of 2013 and 218 of 2013 judgment dated 02-05-2013 considered the decision of the Special Bench of this Tribunal in Merilyn Shipping & Transports (supra) and specifically disagreed with the principles laid down by the Special of this Tribunal in Merilyn Shipping & Transports (supra). The Calcutta High Court also in the case of Crescent Exports Syndicate & Another in ITAT 20 of 2013 and GA 190 of 2013 judgment dated 03-04-2013 considered elaborately the judgment of the Special Bench of this Tribunal in Merilyn Shipping & Transports (supra) and found that the decision rendered by the Special Bench of this Tribunal is not the correct law. It is well settled principles of law that when different High Courts expressed different opinions on a point of law, then, normally, the benefit of doubt under the taxation law would go to the assessee. It is also equally settled principles of law that the judgment which discusses the point in issue elaborately and gives an elaborate reasoning has to be preferred when compared to the judgment which has no reasoning and discussion. Admittedly, the Calcutta High Court and Gujarat High Court have discussed the issue elaborately and the specific reasoning has also been recorded as to why the Special Bench is not correct. Therefore, this Tribunal is of the considered opinion that the judgments of the Calcutta High Court Crescent Exports Syndicate & Another (supra) and Gujarat High Court in Sikandarkhan N Tunvar (supra) have to be preferred when compared to the Allahabad High Court in M/s Vector Shipping Services (P) Ltd (supra).

13. For the purpose of convenience we reproducing below the observations made by the Calcutta High Court in Crescent

Exports Syndicate & Another (supra) and Gujarat High Court in Sikandarkhan N Tunvar (supra):

Calcutta High Court in Crescent Exports Syndicate & Another (supra)

> *"Before dealing with the submissions of the learned Counsel appearing for the assessees in both the appeals we have to examine the correctness of the majority views in the case of Merilyn Shipping.*
>
> *We already have quoted extensively both the majority and the minority views expressed in the aforesaid case. The main thrust of the majority view is based on the fact "that the Legislature has replaced the expression "amounts credited or paid" with the expression 'payable' in the final enactment.*
>
> *Comparison between the pre-amendment and post amendment law is permissible for the purpose of ascertaining the mischief sought to be remedied or the object sought to be achieved by an amendment. This is precisely what was done by the Apex Court in the case of CIT Vs. Kelvinator reported in 2010(2) SCC 723. But the same comparison between the draft and the enacted law is not permissible. Nor can the draft or the bill be used for the purpose of regulating the meaning and purport of the enacted law. It is the finally enacted law which is the will of the legislature.*
>
> *The Learned Tribunal fell into an error in not realizing this aspect of the matter.*
>
> *The Learned Tribunal held "that where language is clear the intention of the legislature is to be gathered from the language used". Having held so, it was not open to seek to interpret the section on the basis of any comparison between the draft and the section actually enacted nor was it open to speculate as to the effect of the so-called representations made by the professional bodies.*
>
> *The Learned Tribunal held that "Section 40(a)(ia) of the Act creates a legal fiction by virtue of which even the genuine and admissible expenses claimed by an assessee under the head "income from business and profession": if the assessee does not deduct TDS on such expenses are disallowed".*
>
> *Having held so was it open to the Tribunal to seek to justify that "this fiction cannot be extended any further and, therefore, cannot be invoked by Assessing Officer to disallow the genuine and reasonable expenditure on the amounts of expenditure already paid"? Does this not*

amount to deliberately reading something in the law which is not there? We, as such, have no doubt in our mind that the Learned Tribunal realized the meaning and purport of Section 40(a)(ia) correctly when it held that in case of omission to deduct tax even the genuine and admissible expenses are to be disallowed. But they sought to remove the rigour of the law by holding that the disallowance shall be restricted to the money which is yet to be paid. What the Tribunal by majority did was to supply the casus omissus which was not permissible and could only have been done by the Supreme Court in an appropriate case. Reference in this regard may be made to the judgment in the case of Bhuwalka Steel Industries vs. Bombay Iron & Steel Labour Board reported in 2010(2) SCC 273.

'Unprotected worker' was finally defined in Section 2(11) of the Mathadi Act as follows:-

''unprotected worker' means a manual worker who is engaged or to be engaged in any scheduled employment." The contention raised with reference to what was there in the bill was rejected by the Supreme Court by holding as follows: "It must, at this juncture, be noted that in spite of Section 2(11), which included the words "but for the provisions of this Act is not adequately protected by legislation for welfare and benefits of the labour force in the State", these precise words were removed by the legislature and the definition was made limited as it has been finally legislated upon. It is to be noted that when the Bill came to be passed and received the assent of the Vice-President on 05-06-1969 and was first published in the Maharashtra Government Gazette Extraordinary, Part IV on 13-06-1969, the aforementioned words were omitted. Therefore, t his would be a clear pointer to the legislative intent that the legislature being conscious of the fact and being armed with all the Committee reports and also being armed with the factual data, deliberately avoided those words. What the appellants are asking was to read in that definition, these precise words, which were consciously and deliberately omitted from the definition. That would amount to supplying the casus omissus and we do not think that it is possible, particularly, in this case. The law of supplying the casus omissus by the courts is extremely clear and settled that though this Court may supply the casus omissus, it would be in the rarest of the rate case and thus supplying of this casus omissus would be extremely necessary due to the inadvertent omission on the part of the legislature. But, that is certainly not the case here.

We shall now endeavour to show that no other interpretation is possible.

The key words used in Section 40(a)(ia), according to us, are "on which tax is deductible at source under Chapter XVII-B". If the question is "which expenses are sought to be disallowed?" The answer is bound to be "those expenses on which tax is deductible at source under Chapter XVII-B. Once this is realized nothing turns on the basis of the fact that the legislature used the word 'payable' and not 'paid or credited'. Unless any amount is payable, it can neither be paid nor credited. If n amount has neither been paid nor credited, there can be no occasion for claiming any deduction.

The language used in the draft was unclear and susceptible to giving more than one meaning. By looking at the draft it could be said that the legislature wanted to treat the payments made or credited in favour of a contractor of subcontractor differently than the payments on account of interest, commission or brokerage, fees for professional services or fees for technical services because the words "mounts credited or paid" were used only in relation to a contractor of sub-contractor. This differential treatment was not intended. Therefore, the legislature provided that the amounts, on which tax is deductible at source under XVII-B payable on account of interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services or to a contractor of sub-contractor shall not be deducted in com putting the income of an assessee in case he has not deducted, or after deduction has not paid within the specified time. The language used by the legislature in the finally enacted law is clear and unambiguous whereas the language used in the bill was ambiguous.

A few words are now necessary to deal with the submission of Mr. Bagchi and Ms. Roychowdhuri. There can be no denial that the provision in question is harsh. But that is no ground to read the same in a manner which was not intended by the legislature. This is our answer to the submission of Mr. Bagchi. The submission of Mr. Roychowdhuri that the second proviso sought to become effective from 1st April, 2013 should be held to have already become operative prior to the appointed date cannot also be acceded to for the same reason indicated above. The law was deliberately made harsh to secure compliance of the provisions requiring deductions of tax at source. It is not the case of an inadvertent error.

For the reasons discussed above, we are of the opinion that the majority views expressed in the case of

Merilyn Shipping & Transports are not acceptable. The submissions advanced by learned advocates have already been dealt with and rejected."

Gujarat High Court in Sikandarkhan N Tunvar(supra)

"23. Despite this narrow interpretation of section 40(a)(ia), the question still survives if the Tribunal in case of M/s Merilyn Shipping & Transpors vs. ACIT (supra) was accurate in its opinion. In this context, we would like to examine two aspects. Firstly, what would be the correct interpretation of the said provision. Secondly, whether our such understanding of the language used by the legislature should waver on the premise that as propounded by the Tribunal, this was a case of conscious omission on the part of the Parliament. Both these aspects we would address one after another. If one looks closely to the provision, in question, adverse consequences of not being able to claim deduction on certain payments irrespective of the provisions contained in Sections 30 to 38 of the Act would flow if the following requirements are satisfied:-
(a) There is interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to resident or amounts payable to a contractor or sub-contractor being resident for carrying out any work.
(b) These amounts are such on which tax is deductible at source under XVIII-B.
(c) Such tax has not been deducted or after deduction has not been paid on or before due date specified in sub-Section (1) of Section 39.
For the purpose of current discussion reference to the proviso is not necessary.

24. What this Sub-Section, therefore, requires is that there should be an amount payable in the nature described above, which is such on which tax is deductible at source under Chapter XVII-B but such tax has not been deducted or if deducted not paid before the due date. This provision nowhere requires that the amount which is payable must remain so payable throughout during the year. To reiterate the provision has certain strict and stringent requirements before the unpleasant consequences envisaged therein can be applied. We are prepared to and we are duty bound to interpret such requirements strictly. Such requirements, however, cannot be enlarged by any addition or subtraction of words not used by the

legislature. The term used is interest, commission, brokerage etc. is payable to a resident or amounts payable to a contractor or sub-contractor for carrying out any work. The language used is not that such amount must continue to remain payable till the end of the accounting year. Any such interpretation would require reading words which the legislature has not used. No such interpretation would even otherwise be justified because in our opinion, the legislature could not have intended to bring about any such distinction nor the language used in the section brings about any such meaning. If the interpretation s advanced by the assessees is accepted, it would lead to a situation where the assessee though was required to deduct the tax at source but no such deduction was made or more flagrantly deduction though made is not paid to the Government, would escape the consequence only because the amount was already paid over before the end of the year in contrast to another assessee who would otherwise be in similar situation but in whose case the amount remained payable till the end of the year. We simply do not see any logic why the legislature would have desired to bring about such irreconcilable and diverse consequences. We hasten to add that this is not the prime basis on which we have adopted the interpretation which we have given. If the language used by the Parliament conveyed such a meaning, we would not have hesitated in adopting such an interpretation. We only highlight tht we would not readily accept that the legislature desired to bring about an incongruous and seemingly irreconcilable consequences. The decision of he Supreme Court in the case of Commissioner of Income-Tax, Gujarat vs. Ashokbhai Chimanbhai (supra), would no6t alter this situation. The said decision, of course, recognizes the concept of ascertaining the profit and loss from the business or profession with reference to a certain period i.e. the accounting year. In this context, last date of such accounting period would assume considerable significance. However, this decision nowhere indicates that the events which take place during the accounting period should be ignored and the ascertainment of fulfilling a certain condition provided under the statute must be judged with reference to last date of the accounting period. Particularly, in the context of requirements f Section 40(a)(ia) of the Act, we see no warrant in the said decision of the Supreme Court to apply the test of payability only as on 31st March of the year under consideration. Merely because, accounts are closed on that date and the

computation of profit and loss is to be judged with reference to such date, does not mean that whether an amount is payable or not must be ascertained on the strength of the position emerging on 31t March.

25. This brings us to the second aspect of this discussion, namely, whether this is a case of conscious omission and therefore, the legislature must be seen to have deliberately brought about a certain situation which does not require any further interpretation. This is the fundamental argument of the Tribunal in the case of M/s Merilyn Shipping & Transports vs. ACIT (supra) to adopt a particular view.

26. While interpreting a statutory provision the Courts have often applied Hyden's rule or the mischief rule and ascertained what was the position before the amendment, what the amendment sought to remedy and what was the effect of the changes.

27 to 36……..

37. In our opinion, the Tribunal committed an error in applying the principle of conscious omission in the present case. Firstly, as already observed, we have serious doubt whether such principle can be applied by comparing the draft presented in Parliament and ultimate legislation which may be passed. Secondly, the statutory provisions is amply clear.

38. In the result, w are of the opinion that Section 40(a)(ia) would cover not only to the amounts which are payable as on 20 ITA No. 63&64m 83-85&7-72/Coch/2014 31st March of a particular year but also which are payable at any time during the year. Of course, as long as the other requirement of the said provision exist. In that context, in our opinion the decision of the Special Bench of the Tribunal in the case of M/s Merilyn Shipping & Transports vs ACIT (supra), does not lay down correct law."

14. By following the judgments of the Calcutta High Court in Crescent Export Syndicate (supra) and the Gujarat High Court in Sikandarkhan N Tunvar (supra), this Tribunal is of the considered opinion that the decision of the Special Bench of this Tribunal in the case of M/s Merilyn Shipping & Transports (supra) and the judgment of the Allahabad High Court in Vector Shipping Services (P) Ltd (supra) are not applicable to the facts of the case under consideration whereas the judgments of the Calcutta High Court in Crescent Export Syndicate (supra) and the Gujarat High Court in Sikandarkhan N Tunvar (supra) are squarely applicable to the facts of the case. Respectfully following the judgments of the Calcutta High Court in Crescent Export Syndicate (supra) and the Gujarat High Court in Sikandarkhan N Tunvar (supra), we do not

see any infirmity in the orders of the lower authorities. Accordingly, the orders of the lower authorities are confirmed."

This decision of Cochin Bench of this Tribunal was confirmed by the Kerala High Court by judgment dated 3rd July, 2015 in Shri George Muthoot v. CIT in ITA.No.278 of 2014 as follows:-

"17. Another contention that was pressed into service was that the appellants had already paid the amount and therefore, the provisions of Section 40(a)(ia), applicable only in respect of the amount which remains to be payable on the last day of the financial year, is not attracted. Therefore, according to the appellants, disallowance cannot be sustained. This contention was sought to be substantiated by relying on the judgment of the Allahabad High Court in Commissioner of Income Tax v. Vector Shipping Services (P) [(2013) 357 ITR 642 (All)]. Primarily, this contention should be answered with reference to the language used in the statutory provision. Section 40(a)(ia) makes it clear that the consequence of disallowance is attracted when an individual, who is liable to deduct tax on any interest payable to a resident on which tax is deductible at source, commits default. The language of the Section does not warrant an interpretation that it is attracted only if the interest remains payable on the last day of the financial year. If this contention is to be accepted, this Court will have to alter the language of Section 40(a)(ia) and such an interpretation is not permissible. This view that we have taken is supported by judgments of the Calcutta High Court in Crescent Exports Syndicate and another [ITAT 20 of 2013] and the Gujarat High Court in the case of Commissioner of Income Tax v. Sikandadarkhan N. Tunvar [ITA Nos.905 of 2012 & connected cases], which have been relied on by the Tribunal."

6. In view of the above, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer. Therefore, this Tribunal do not find

any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. The next issue arises for consideration is with regard to the addition of ₹169,00,000/- made by the Assessing Officer under Section 68 of the Act.

8. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the Assessing Officer has made an addition of ₹3,00,00,000/- under Section 68 of the Act. The CIT(Appeals), by considering the facts of the case and remand report filed by the Assessing Officer, confirmed the addition to the extent of ₹169,00,000/-. However, he deleted the balance amount. The Revenue has filed appeal against the order of the CIT(Appeals) wherein part of the amount was deleted by the Commissioner. According to the Ld. counsel, the assessee has received a sum of ₹2.79 Crores from nine companies towards application money for allotment of shares. The shares were issued at premium of ₹990/- and the face value was ₹10/-. The Ld.counsel further submitted that the relationship among the investor companies was strained, therefore, the relevant material could not be furnished before the authorities below. According to the Ld. counsel, the share application money of the investors was

transferred to capital reserve account. Referring to the assessment order, which was extracted by the CIT(Appeals) at pages 13 and 14 of his order, the Ld.counsel submitted that the Assessing Officer has not found the deficiency in the affidavit filed by the assessee. The so-called nine companies were very much in existence and the Assessing Officer has sent the notice to different address. The claim of the assessee was that the letters addressed to nine companies were returned undelivered because the same were addressed to incorrect address. The Commissioner found that there was a glaring contradiction between the claim of the assessee and the evidence available on record for receipt of share application money. According to the Ld. counsel, all the companies are in existence and payments were made through banking channel, therefore, the observation of the Assessing Officer that the companies were not in existence and accommodation entries were made is not justified. According to the Ld. counsel, the entire addition of ₹3,00,00,000/- ought to have been deleted by the CIT(Appeals). Therefore, the CIT(Appeals) is not justified in confirming the addition to the extent of ₹169,00,000/-.

9. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that the assessee has not furnished any evidence to support the share application money said to be received to the extent of ₹3,00,00,000/-. Even copies of the forms of share application money were not filed. The face value of share money was ₹10/- and the assessee claims that the same was allotted at ₹990/- per share. The transaction clearly establishes the dubious nature. Even the companies said to have invested the funds are not traceable and not in existence. Therefore, according to the Ld. D.R., the Assessing Officer found that the investment of ₹3,00,00,000/- in the name of share application money is nothing but undisclosed income of the assessee. Referring to the bank statement filed by the assessee, copy of which is available in the paper-book, the Ld. D.R. pointed out that the money was deposited and immediately transferred to other companies. Therefore, it is nothing but providing accommodation entry. According to the Ld. D.R., the assessee is not doing any business other than providing accommodation entries to other companies.

10. Sh. A.B. Koli, the Ld. Departmental Representative further submitted that even the Minutes of the Board Meetings were not

furnished before the authorities below or before this Tribunal. Copies of the share purchase agreement entered into with private parties were not filed before the authorities below or before this Tribunal. The Ld. D.R. further submitted that one Shri Ajay Sharma was the authorized signatory for three companies, namely, M/s First Choice Buildwell P. Ltd., M/s Good Morning Buildwell Pvt. Ltd. and M/s Armaan Infoways Pvt. Ltd. Similarly, one Shri Anil Kumar Agarwal was the authorized signatory for M/s Tripurari Enterprises Pvt. Ltd., M/s Ankey Associates Pvt. Ltd. and M/s Intelecom Ltd. Therefore, all the authorized signatories are the common persons. In the absence of substantial evidence to support the claim of share application money, the Assessing Officer has rightly found that the assessee has introduced its own funds, hence, the amounts are to be treated as unexplained credit in the hands of the assessee. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in disallowing the claim of the assessee partly. According to the Ld. D.R., the CIT(Appeals) ought to have confirmed the entire addition of ₹3,00,00,000/-.

11. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee

claims that nine companies invested in the shares of the assessee. The face value of share was ₹10/-. The assessee has offered the same at ₹990/-. The assessee claims that the share application money was forfeitured and it was treated as capital reserve. It is clear from the orders of the authorities below that no shares were issued to anyone. The Assessing Officer addressed letters to the companies said to have invested in the share application. However, the same were returned unserved. The assessee now claims that the Assessing Officer has sent the letters to incorrect address. On perusal of the bank statement, it appears that the monies were deposited and the same were transferred or withdrawn within a short span of time. The Assessing Officer, however, found that the money withdrawn was used for purchase of fixed asset being residential plot in the name of the Directors and a car was also purchased in the name of the spouse of the Director. The Assessing Officer further found that a sum of ₹38,00,000/- was advanced to another group of company, namely, M/s Jolie Fashions India Pvt. Ltd. as share application money. Therefore, it is obvious that the money deposited in the bank account was used for the personal expenditure of the Directors.

12. We find that the CIT(Appeals) found that there was a contradiction between the claim of the assessee and the evidence available with regard to share application money received. Referring to the money received from M/s Intelecom Ltd., the assessee claims that a sum of ₹21,00,000/- said to have received. However, the affidavit shows a receipt of ₹25,00,000/-. From the order of the CIT(Appeals), it appears that the Government website of the Department of Corporate affairs shows a different address than the one to which the letters were sent by the Assessing Officer. Therefore, this Tribunal is of the considered opinion that the letters have to be sent to the address mentioned in the Government website of Department of Corporate Affairs to find out the existence or otherwise of the nine companies who said to have invested in the shares of the assessee-company. Since the assessee specifically claims that the letters were not sent to the correct address of the investors, this Tribunal is of the considered opinion that giving one more opportunity to the Assessing Officer to send the letters to correct address of nine companies may not prejudice the interest of the Revenue. This Tribunal is of the considered opinion that giving such an opportunity would definitely promote the cause of justice. Before concluding that the transactions are bogus or dubious in

nature, this Tribunal is of the considered opinion that the existence of the so-called nine companies need to be ascertained. Accordingly, the orders of the authorities below are set aside and the issue of addition of ₹3,00,00,000/- made under Section 68 of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall issue notice to the nine companies in the address mentioned in the website of Department of Corporate Affairs. It is open to the assessee to furnish correct address of nine companies so as to enable the Assessing Officer to issue letters / show cause notice with regard to investment made in the assessee-company. The Assessing Officer, after calling upon the so-called nine companies to explain the investment said to have made in the assessee-company in shares, shall decide the issue in accordance with law after giving reasonable opportunity to the assessee.

13. In the result, both the appeals of the assessee and Revenue are allowed for statistical purposes.

Order pronounced on 13th April, 2016 at Chennai.

sd/-	sd/-
(ए. मोहन अलंकामणी)	(एन.आर.एस. गणेशन)
(A. Mohan Alankamony)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 13th April, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-III, Chennai-34
4. आयकर आयुक्त/CIT, Chennai-III, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.