

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI G.S.PANNU, AM AND SHRI RAVISH SOOD, JM**

ITA No. 5754/Mum/2016

(निर्धारण वर्ष / Assessment Year:2009-10)

M/s Anusha Trading Private Limited, Nityanand Sadan, Plot-133, Bardwadi, Cross Lane, Andheri (West), Mumbai – 400 058.	बनाम/ Vs.	ITO 9(1)(3), Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN No. AAHCA5317L		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

ITA No. 5183/Mum/2016

(निर्धारण वर्ष / Assessment Year:2009-10)

ITO 9(1)(3), Room No. 206, 2 nd Floor, Aayakar Bhavan, M.K. Road Mumbai-400058	बनाम/ Vs.	M/s Anusha Trading Private Limited, Nityanand Sadan, Plot-133, Bardwadi, Cross Lane, Andheri (West), Mumbai – 400 058.
स्थायी लेखा सं./जीआइआर सं./PAN No. AAHCA5317L		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by	:	Shri Satish Mody, A.R
प्रत्यर्थी की ओर से/Revenue by	:	Shri Rajesh Kumar Yadav, D.R

सुनवाई की तारीख / Date of Hearing	:	06.06.2018
घोषणा की तारीख / Date of Pronouncement	:	29.06.2018

आदेश / **ORDER**

PER RAVISH SOOD, JUDICIAL MEMBER:

The cross appeals filed by the assessee and the revenue in the present case are directed against the order passed by the CIT(A)-16, Mumbai, dated 31.05.2016, which in itself arises from the order passed by the A.O under

Sec. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'Act'), dated 30.03.2015 for A.Y 2009-10. We shall first take up the appeal of the revenue which has assailed the order of the CIT(A) by raising before us the following grounds of appeal:

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 3.50 crores made u/s 68 on account of receipt of share capital and share premium when the genuineness of the investment was not proved as the same was received from companies which had no business activities?
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the investor companies had negligible income and had themselves received share premium which was in turn invested in the assessee company?
3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not examining whether the high premium of Rs.115/- on shares having fact value of Rs.10 was justified?
The appellant prays that the order the CIT(A) on the above ground be set aside and that of the A.O be restored.
The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”

2. Briefly stated, the assessee company which is engaged in the business of trading in commodities and dealing in shares had e-filed its return of income for A.Y 2009-10 on 26.08.2009, declaring total income of Rs.4,711/- . The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. On the basis of information received by the A.O that the assessee had during the year under consideration issued 2,90,000 equity shares of the face value of Rs.10/- each aggregating to Rs.29,00,000/- and further collected a share premium of Rs.3,22,00,000/- i.e @ Rs. 111/- per share, the case of the assessee was reopened under Sec. 147 of the Act. The assessee in compliance to the notice issued by the A.O under Sec. 148 of the Act, requested that its original return of income filed under Sec. 139(1) be treated as having been filed in response thereto. The copy of the reasons to believe on the basis of which the case of the assessee

was reopened for the year under consideration as made available to the assessee, read as under:

- “1. The assessee had filed return of income for A.Y.2009-10 on 26.08.2009 declaring total income at Rs.4711/- and the return was processed on 06.09.2010 u/s 143(1) of the IT Act accepting the returned income, declared by assessee.
2. Information was received that during the year under consideration, the assessee issued shares at a premium unreasonably higher than its intrinsic value of shares in the preceding year.
- 3.1 It is observed from the return of income of the assessee that the company was incorporated on 03.02.2009
- 3.2 During the year under consideration, i.e. ending 31.03.2009, the assessee issued 2,90,000 equity shares of Rs.10 each aggregating Rs,29,00,000/- and the securities premium collected thereon was Rs.3,22,00,000/-. The value of new shares issued by the assessee worked out to Rs.121/share (Rs.10 equity shares issued at a premium of Rs.111/- per share)
4. From the above, it is clear that during the year under consideration the assessee issued 2,90,000 shares at a premium, unreasonably higher considering the fact that this is the first year of operation wherein there was a meager income of Rs.23,000/- after deduction of expenses of Rs. 18,289/- there was net profit of Rs.4711/-.
5. Since the assessee has no income during the year and also this being the first year of operation, there is no record of profit earning of the assessee. As such, acceptance of substantial amount of share premium gives rise to the logical conclusion that the share premium shown by the assessee is not commensurate with the net-worth of the assessee company. Also the receipt of such high premium in the year under consideration and allotment of shares at a higher premium cast a serious doubt in respect of genuineness of the transactions. Therefore, the transactions reported for the year under consideration appears to be non-genuine within the meaning of section 68 of the Act.
6. The financial statements 2009-10 shows that its profitability per share was very small i.e. Rs.0.01/- . Hence, it could not have commanded such a high security premium per share. This view also find Support with the view of the jurisdictional High court decision in the case of Major Metals ltd. Vs. Union of India wherein it has been held that the past performance of the assessee company did not justify such huge premium and the purported transaction were not genuine.

7. Hence, amount received by issue of equity shares at unreasonably high securities premium, is nothing but unaccounted income of the assessee, which is otherwise chargeable to tax u/s. 68 of the I.T. Act, introduced into the business in the form of Share Capital and Securities Premium.
8. In view of the above, I have a reason to believe that in the case of the assessee income in form of unreasonable share premium chargeable to tax has escaped assessment for A.Y. 2009-10 within the meaning of sec. 147 of the I.T. Act and therefore, it is a fit case for issue of notice u/s.148 of the I.T. Act, 1961.”

The assessee filed his objections to the reopening of its case under Sec. 147 of the Act, which however were rejected by the A.O vide his letter dated 08.01.2015.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had during the year under consideration viz. A.Y 2009-10 issued 2,80,000 shares of a face value of Rs.10/- each at a premium of Rs.115/- per share, as under:

Name of the company	No. of Shares to be allotted	Total Amount payable and paid by parties (Rs.)	
		Face Value	Premium
Bangur Trading Pvt. Ltd.	80000	800000	9200000
Discord Exim Pvt. Ltd.	80000	800000	9200000
Mrinal Exim Pvt. Ltd.	120000	1200000	13800000
Total	2,80,000	28,00,000	3,22,00,000

The A.O on the basis of the aforesaid information called upon the assessee to furnish documentary evidence as regards the identity and creditworthiness of the aforementioned share applicants. The assessee in compliance to the directions of the A.O submitted with him the justification for share premium, copy of the valuation report, copy of share applications, names, addresses ,PAN numbers, copies of board resolutions, confirmations

alongwith the respective bank statements, balance sheets and returns of income of the investor companies. It was the claim of the assessee that issuing of shares at a premium was a commercial decision of the business of the assessee company and interference in its business decisions was outside the scope of law. The A.O after deliberating on the contentions advanced by the assessee before him was however not persuaded to be in agreement with the same. On the basis of the details made available on record by the assessee, it was observed by the A.O that the facts projected by the assessee could not be accepted for the following reasons:

- “i Assessee has not provided any justification and supporting showing promoter's relevant industry experience or any track record towards managing successful business(ess).*
- ii. No justification made available in record towards heavy premium comparable with industry.*
- iii. Further it may be noted that Company has not provided any projections in it valuation report for F.Y 2010-11 whereas they have issued shares in FY 2008-09.*
- iv. Its projection comparable with actual result for Assessment year 2012-13 and 2013-14 to support heavy premium.*
- v. Details of all the 3 parties submitted by the assessee on the same computer generated paper. All the 3 parties don't have the proper letterhead of the company.*
- vi. Assessee could not produce any of the members or authorized person of the above 3 parties who made investment at heavy premium. Though all those parties already had their own interest as they had their investment. Further, assessee fail to furnish the valuation and justification for high premium of shares.”*

The A.O after necessary deliberations was also not impressed with the creditworthiness of the aforesaid subscriber companies. The financial credentials of the said subscriber companies, as gathered by the A.O on a perusal of their respective balance sheets, emerged as under:

Particulars	Bangur Trading Pvt. Ltd.	Discord Exim Pvt. Ltd.	Mrinal Exim Pvt. Ltd.
Equity and Liabilities			
Share Capital	29,00,000	29,00,000	29,00,000

Profit and loss	3,711	3,884	3,211
Securities Premium	32200000	32200000	32200000
Current and non-current liabilities	3,309	3,309	3,309
Total	351,07,020	351,07,193	351,06,520
Assets			
Non-current assets	35000000	35000000	35000000
Current assets	47,100	47273	46600
Miss. Expenses	59,920	59920	59920
Total	35107020	35107193	35106520

It was further observed by the A.O that the investor companies had shown meagre income in their respective returns of income for the year under consideration viz. (i). M/s Bangur Trading Pvt. Ltd: Rs. 3,711/-; (ii). M/s Discord Exim Pvt. Ltd. : Rs. 3,884/-; and (iii). M/s Mrinal Exim Pvt. Ltd. : Rs. 3,211/-. On the basis of the facts made available on record by the assessee, it was further observed by the A.O that neither of the investor companies had their own funds and had made investments with the assessee company from borrowed funds or share capital received by them. Still further, the A.O was of the considered view that in the backdrop of the fact that the assessee company had neither in the year under consideration nor in the past years had any income, thus the issuance of the shares by it at a high premium was beyond comprehension. On the basis of the aforesaid facts, the A.O further observing that the investor companies were neither carrying on any business activities nor had any accumulated reserves, but rather had in itself received security premium, thus concluded

that they had merely acted as a conduit channel to pass on the unexplained money. The A.O on the basis of his aforesaid deliberations, holding a conviction that the assessee had failed to submit evidence to establish the nature and source of the funds of Rs.3,50,00,000/-, added the same to the total income of the assessee under Sec.68 of the Act.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee before him in the backdrop of the facts available on record, observed that the assessee had provided the PAN details, copies of the income tax returns, copies of bank accounts and other necessary details in respect of the subscribers of the equity shares. The CIT(A) further observing that as the A.O had not pointed out any discrepancy in the balance sheets of the investor companies, therefore was not persuaded to subscribe to his claim that the assessee had failed to substantiate the creditworthiness of the share applicants. On the basis of his aforesaid observations the CIT(A) deleted the addition of Rs.3,50,00,000/- and allowed the appeal of the assessee.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Departmental Representative (for short 'D.R') at the very outset of the hearing of the appeal submitted that the fact that the respective investor companies had made payments of the share application money and share premium by cheques could not be construed as sacrosanct evidence. The ld. D.R in support of his aforesaid contention relied on the order passed by the Hon'ble High Court of Calcutta in the case of CIT Vs. Precision Finance Pvt. Ltd (1994) 208 ITR 465 (Cal). It was further submitted by the ld. D.R that the assessee had also failed to substantiate the creditworthiness of the said respective companies. It was further averred by the ld. D.R that the assessee could not justify the basis for charging of the high share premium. On the basis of his aforesaid contentions, it was the claim of the ld. D.R that the CIT(A) erred in vacating the well reasoned order passed by the A.O and had wrongly deleted the addition of

Rs.3,50,00,000/- made by him. Per contra, the ld. Authorized Representative (for short 'A.R') for the assessee submitted that as the assessee had during the course of the assessment proceeding duly substantiated all the three ingredients contemplated under Sec. 68 of the Act, viz. (i) identity of the share subscribers; (ii) creditworthiness of the share subscribers; and (iii) genuineness of the transaction, therefore, the same could not be assessed as an unexplained cash credit in its hands. It was further submitted by the ld. A.R that all of the said respective investor companies had furnished their replies in response to the notices which were sent to them by the A.O under Sec. 133(6) of the Act. The ld. A.R further vehemently submitted that the A.O had wrongly observed that the assessee had failed to produce before him the members or the authorized person of the investor companies. It was submitted by the ld. A.R that at no stage during the course of the assessment proceedings the assessee was ever called upon by the A.O to produce the members or the authorized person of either of the aforesaid three investor companies. The ld. A.R further submitted that the assessee had during the course of the assessment proceedings placed on record a valuation report which duly justified the basis for charging of the share premium by the assessee company. It was submitted by the ld. A.R that the A.O had at no stage ever disputed the valuation report as was placed on his record. The ld. A.R vehemently submitted that the addition was clearly pre-empted and had no legs to stand upon. Alternatively, it was submitted by the ld. A.R that as the identity of the share applicant companies was established during the course of the assessment proceedings, therefore, if the said companies were still to be held by the revenue as bogus shareholders, then though it was open for the A.O to proceed with and reopen the assessment of the said shareholders and assess the amount to tax in accordance with law in their hands, however the same could not be assessed as an unexplained cash credit in the hands of the assessee company. The ld. A.R to drive home his aforesaid contention placed reliance on the judgment of the Hon'ble High Court of Bombay in the case of Commissioner of Income Tax-(1) Vs. M/s Gagandeep Infrastructure

Pvt. Ltd. (2017) 394 ITR 680 (Bom). The ld. A.R further submitted that as the assessee company had duly produced substantial documentary evidence to establish the identity and creditworthiness of the investor companies and the genuineness of the transactions, therefore, the burden shifted on the revenue authorities to disprove and dislodge the said claim of the assessee. The ld. A.R in support of his aforesaid contention took support of the judgment of the Hon'ble High Court of Bombay in the case of the Principal Commissioner of Income Tax, Panaji Vs. M/s Paradise Inland Shipping Pvt. Ltd. (2018) 400 ITR 439 (Bom). The ld. A.R also relied on the order of a coordinate bench of the Tribunal, viz. ITAT Mumbai Bench "H", Mumbai, in the case of Dy. CIT-1(1)(1) Mumbai Vs. M/s Alcon Bioscience Pvt. Ltd. (ITA No. 1946/Mum/2016, dated 28.02.2018). The ld. D.R in his rejoinder rebutted the case laws relied upon by the counsel for the assessee. The ld. D.R taking support of the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Sumati Dayal (1995) 214 ITR 801 (SC), submitted that the facts borne from the records in the case of the present assessee, on being viewed in the backdrop of the principle of preponderance of probability, clearly revealed the falsity of the claim of the assessee of having received the aforesaid amount by way of share application money and share premium from the aforementioned companies. The ld. D.R taking support of the order of the ITAT, Kolkata 'C' Bench, Kolkata in the case of Advance Power Infratech Limited Vs. Dy. CIT, Circle-8, Kolkata (ITA No. 605/Kol/2015, dated 23.08.2017) submitted that the assessee had not even attempted to justify the amount of share premium of Rs.115/- per share in respect of the shares of the face value of Rs.10/- each. It was further submitted by the ld. D.R that the assessee had also failed to place on record any documentary evidence which could reveal the activities of the aforementioned three investor companies. The ld. D.R on the basis of his aforesaid contentions submitted that the amount of Rs. 3,50,00,000/- projected by the assessee company as having been received by way of share application money and share premium from the aforementioned companies, in the totality of the facts was after necessary deliberations rightly assessed by the A.O as an

unexplained cash credit under Sec. 68 of the Act. It was averred by the Id. D.R that as the CIT(A) had erred in vacating the addition of Rs. 3,50,00,000/- made by the A.O on the basis of a well reasoned order, hence the order of the CIT(A) may be vacated and that of the A.O be restored.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that the revenue by filing the present appeal has sought our indulgence for adjudicating the validity of the deletion by the CIT(A) of the addition of Rs.3,50,00,000/- that was made by the A.O under Sec.68 of the Act. We find that the assessee by issuing 2,80,000 shares of a face value of Rs. 10/- each at a premium of Rs.115/- per share, had received an amount aggregating to Rs.3,50,00,000/-. The A.O being of the view that the assessee had failed to substantiate the identity and creditworthiness of the share applicants as well as the genuineness of the transactions under consideration, had thus brought the aforesaid amount of Rs.3,50,00,000/- to tax as an unexplained cash credit under Sec.68 in the hands of the assessee. However, the CIT(A) not being persuaded to be in agreement with the view taken by the A.O had deleted the addition of Rs.3,50,00,000/-

7. We have deliberated at length on the material available on record and find that the assessee during the year under consideration had received share capital and share premium from three investor companies, viz. (i) Bangur Trading Pvt. Ltd.(Rs.1,00,00,000/-); (ii) Discord Exim Pvt. Ltd. (Rs.1,00,00,000/-); and (iii) Mrinal Exim Pvt. Ltd. (Rs.1,50,00,000/-). The aforesaid amount aggregating to Rs.3,50,00,000/- was received by the assessee from the investor companies on account of application/allotment money for 2,80,000 fully paid up equity shares of a face value of Rs. 10/- each at a premium of Rs.115/- per share. We find that the assessee during the course of the proceedings before the lower authorities had produced the bank statements, which clearly substantiated the fact that the amounts from the investor companies were received through banking channels. Rather, a perusal of the order passed by the A.O reveals that the relevant

extracts of the bank statements were also procured by the A.O under Sec.133(6) from the aforementioned investor companies. We thus, find ourselves to be in agreement with the view taken by the CIT(A) that as the credit and debit entries were clearly reflected in the bank statements of both the parties and the transactions were carried out through cheques, therefore, the genuineness of transactions cannot be doubted and the onus as regards proving the same stood duly discharged by the assessee. We further find from a perusal of the orders of the lower authorities, that the aforesaid investor companies were regularly filing their returns of income. Rather, the case of one of the investor company viz. M/s Discord Exim Pvt. Ltd. for A.Y 2009-10 was selected for scrutiny assessment by the ITO-1(1)(2), Mumbai and an order under Sec. 143(3)/147 of the Act was passed on 28.03.2015. We find that the assessee had placed on record of the lower authorities the copy of the assessment order passed in the case of M/s Discord Exim Pvt. Ltd. for A.Y 2009-10, as well as the copies of the latest intimations issued under Sec. 143(1) of the Act in the case of the other two companies viz. (i) M/s Bangur Trading Pvt. Ltd. ; and (ii) M/s Mrinal Exim Pvt. Ltd. for A.Y 2013-14 and A.Y 2014-15. We further find that all of the aforesaid three investor companies were regularly filing their returns with the registrar of companies. On the basis of the aforesaid facts, we are of the considered view that the identity of the aforementioned investor companies viz. (i) M/s Bangur Trading Pvt. Ltd; (ii) M/s Discord Exim Pvt. Ltd; and (iii) M/s Mrinal Exim Pvt. Ltd. stands clearly proved beyond any scope of doubt.

8. We shall now advert to the adverse inferences drawn by the A.O as regards the creditworthiness of the aforesaid three investor companies. We find that the A.O had doubted the creditworthiness of the investor companies mainly on two grounds viz. (i) that a perusal of the income returned by the said companies for A.Y 2009-10 i.e. Bangur Trading Pvt. Ltd.: Rs.3,711/-; Discord Exim Pvt. Ltd. Rs.3,844/-; and Mrinal Exim Pvt Ltd. :Rs.3,211/-, did not inspire any confidence as regards their financial credibility; and (ii) the said investor companies did not have their own funds and had made the investments with the assessee company either on the

basis of borrowed funds or share premium received by them from other companies. We have deliberated on the aforesaid observations of the A.O, and are unable to persuade ourselves to be in agreement with the view arrived at by him as regards the creditworthiness of the investor companies. We find that during the course of the assessment proceedings not only the assessee had furnished with the A.O the complete names and addresses of the investor companies, but rather the said respective companies in compliance to notices issued to them by the A.O under Sec.133(6) of the Act, had placed on his record the copies of the acknowledgment slips of their returns of income for A.Y 2009-10, copies of computation of income, copies of audit report and audited balance sheet as on 31.03.2009, copies of relevant extract of their bank statements, copies of account of the assessee company in their books of account and the copies of board resolution alongwith offer and allotment letter. Rather, from a perusal of the order passed by the A.O, it emerges that he had while framing the assessment observed that the audited balance sheets of the aforementioned three investor companies did not reveal any borrowings as on 31.03.2010. We further find from a perusal of the assessment order that the A.O had categorically observed that the net worth of the each of the investor company was in excess of Rs.3,50,00,000/-, while for the corresponding investment in the assessee company by each of them was less than or equal to Rs.1,50,00,000/-. We thus, are of the considered view that in the backdrop of the aforesaid facts, it can safely be concluded that the aforementioned three investor companies had sufficient creditworthiness for making the respective investments in the assessee company.

9. We are further unable to find ourselves to subscribe to the adverse inferences drawn by the A.O, on the ground that the assessee had failed to produce before him any of the members or authorized persons of the aforementioned three investor companies. We find from a perusal of the order of the CIT(A) that the assessee company was never asked to produce either of the aforesaid investor companies before the A.O. During the course of the appellate proceedings, the CIT(A) in order to verify the factual

position, had called for and perused the assessment records in the presence of the A.O. On the basis of the aforesaid verifications, it was observed by the CIT(A) that the A.O had at no occasion during the course of the assessment proceedings, either by way of any order sheet entry or a letter ever directed the assessee to produce the members or authorized persons of either of the aforementioned three investor companies. We may herein observe, that the ld. A.R had during the course of the hearing of the appeal before us vehemently stressed on the said factual position to dislodge the said perverse observation of the A.O. The ld. D.R did neither controvert the said contention of the counsel for the assessee, nor produced before us any such material which could persuade us to hold otherwise. We thus, in the backdrop of the aforesaid facts are of the considered view that the assessee had duly substantiated the genuineness of the transaction as well as the identity and creditworthiness of the subscribers of the shares. We thus in terms of our aforesaid observations, are persuaded to be in agreement with the view taken by the CIT(A) that as all the three ingredients contemplated under Sec. 68 had duly been satisfied by the assessee, hence the amount of Rs.3,50,00,000/- received by the assessee company from the share subscriber could not have been brought to tax in its hands as an unexplained cash credit.

10. Alternatively, we are of the considered view that even otherwise as the assessee had duly substantiated the fact that it had received the share application money from the aforementioned three investor companies through banking channels, therefore, in case the A.O still was of the view that the same was received by the assessee from bogus shareholders, then though it was open for him to have proceeded with and assessed the said amount in the hands of the said respective shareholders in accordance with law, but he was not entitled to add the same as an unexplained cash credit in the hands of the assessee. We find that our aforesaid view stands fortified by the judgment of the Hon'ble high Court of Bombay in the case of CIT-(1) Vs. M/s Gagandeep Infrastructure Pvt. Ltd. (2017) 394 ITR 680 (Bom). We thus, in terms of our aforesaid observations, finding no infirmity in the order

of the CIT(A), therefore, uphold his order deleting the addition of Rs.3,50,00,000/- made by the A.O

11. The appeal filed by the revenue is dismissed in terms of our aforesaid observations.

ITA No. 5754/Mum/2016
AY. 2009-10

12. We shall now advert to the appeal filed by the assessee. The assessee has assailed the order of the CIT(A) by raising the following grounds of appeal before us:

- “1. *On the facts and in the circumstances of the case and in the law the Ld. AO has erred in reopening the assessment of the assessee company u/s 148 of the act, and CIT(A)-16, Mumbai has erred in confirming the reopening the assessment of the assessee company u/s 148 of the act.*
2. *The Appellant craves to add, amend, modify or subtract any ground of appeal at any stage of hearing.*

13. Briefly stated, as observed by us hereinabove, the return of income filed by the assessee was initially processed as such under Sec. 143(1) of the Act. The case was subsequently reopened under Sec. 147 and assessment was framed by the A.O under Sec.143(3) r.w.s. 147 of the Act, vide his order dated 30.03.2015.

14. That as observed by us hereinabove, the assessee had during the year under consideration issued 2,80,000 shares of a face value of Rs. 10/- at a premium of Rs. 115/- per share. We find from a perusal of the reasons to believe, that the genesis of reopening of the case of the assessee was the *bonafide* belief of the A.O that the acceptance of the substantial amount of share premium by the assessee company, which was incorporated at the *fag* end of the year under consideration itself i.e on 03.02.2009 and had no record profit earning, gave rise to a logical conclusion that the share premium shown was not commensurate with the net worth of the assessee company. Rather, the A.O fortified his aforesaid belief by relying on the judgment of the Hon'ble High Court of Bombay in the case of Major Metals Ltd. Vs. Union Of India (2013) 359 ITR 450 (Bom).

15. The ld. A.R assailing the validity of the reopening, had submitted before us that the 'reasons to believe' on the basis of which the case of the assessee was reopened did not make any mention of the source from which the aforesaid information prompting the reopening was received by him. It was averred by the ld. A.R that the complete details as regards issuance of 2,80,000 equity shares of the face value of Rs.10/- each at a share premium of Rs.115/- per share was already disclosed by the assessee, and was clearly discernible on a perusal of the balance sheet of the assessee company enclosed alongwith its return of income for the year under consideration viz. A.Y. 2009-10. It was the contention of the ld. A.R that now when the complete details had already been disclosed by the assessee in its return of income, therefore, it was not permissible for the A.O to have reopened the case of the assessee in order to facilitate carrying out of fishing and roving inquiries. The ld. A.R in support of his aforesaid contention relied on the judgment of the High Court of Gujarat in the case of Principal Commissioner of Income Tax-5 Vs. Manzil Dinesh Kumar Shah (Tax appeal No. 451 of 2018, dated 07.05.2018). Per contra, the ld. D.R submitted that as the A.O on the basis of information received by him had arrived at a *bonafide* belief that the income of the assessee chargeable to tax had escaped assessment, therefore, the reopening of its case was validly carried out by him and no infirmity did emerge from the same. The ld. D.R in support of his aforesaid contention, relied on the judgment of the Hon'ble Supreme Court in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd.(2007) 291 ITR 500 (SC) and the judgment of the Hon'ble High Court of Bombay in the case of Amin S. Pathology Laboratory Vs. P. N. Prasad, JCIT (2001) 252 ITR 673 (Bom).

16. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have perused the copy of the 'reasons to believe' on the basis of which the case of the assessee was reopened. We are of the considered view that as averred by the ld. A.R, the fact that the assessee company had issued 2,80,000 equity shares of the face value of Rs.10/- each at a premium of Rs.115/- per share, and received an amount of Rs.

3,50,00,000/- during the year under consideration, was duly disclosed and was discernible from the balance sheet of the assessee company enclosed along with its return of income for the year under consideration viz. A.Y. 2009-10. We have deliberated on the 'reasons to believe' and find from a perusal of the same that in sum and substance, the A.O holding a *bonafide* belief that the acceptance of the substantial amount of Rs. 3,50,00,000/- towards share application money and share premium by the assessee company, which was incorporated at the *fag* end of the year under consideration itself i.e on 03.02.2009 and had no record profit earning, gave rise to a logical conclusion that the same was not commensurate with the net worth of the assessee company. On the basis of the aforesaid deliberations, the A.O holding a *bonafide* belief that the income of the assessee chargeable to tax had escaped assessment, thus reopened the same under Sec. 147 of the Act.

17. We have given a thoughtful consideration to the facts before us and are of the considered view that as the formation of *belief* on the part of the A.O was clearly backed by the material available on record, therefore, the same cannot be faulted with. In this regard, it would be relevant to observe that the formation of a *bonafide* belief on the part of the A.O only presupposes the existences of an inextricable nexus with the material available on record, which would justify formation of the belief by the A.O that the income of the assessee chargeable to tax had escaped assessment. We may herein observe, that in no way the A.O is required to conclusively prove at the stage of reopening of the assessment that the income of the assessee chargeable to tax had escaped assessment. Rather, what all that is required is a *bonafide* belief on the part of the A.O arrived at on the basis of material available on record, justifying the formation of such belief. We may further observe, that though the existence of a nexus between the formation of belief and the material available on record is open for scrutiny by the appellate authority, however, qualitative aspect of the belief arrived at by the A.O cannot be looked into in the course of the appellate proceedings. We have perused the 'reasons to believe' and find that the A.O taking support of

the judgment of the Hon'ble High Court of Bombay in the case of Major Metal ltd. Vs. Union of India (2013) 359 ITR 450 (Bom), had a valid reason to believe that as the past performance of the assessee company did not justify the share premium of Rs.115/- per share received by the assessee company during the year under consideration, therefore, there was every reason to believe that the said transaction was not genuine. We thus, in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the claim of the ld. A.R that the A.O had wrongly assumed jurisdiction to reopen the case of the assessee under Sec.147 of the Act. We are of the considered view that the A.O remaining well within the realm of his jurisdiction, had rightly reopened the case of the assessee under Sec.147 of the Act.

18. We thus, not finding ourselves to be in agreement with the claim of the assessee that the A.O had wrongly assumed jurisdiction and reopened the case of the assessee under Sec. 147 of the Act, dismiss the appeal filed by the assessee.

19. That the appeal filed by the assessee i.e. ITA No. 5754/Mum/2016 and that filed by the revenue i.e. ITA No. 5183/Mum/2016 are dismissed.

Order pronounced in the open court on 29.06.2018

Sd/-

Sd/-

(G.S.PANNU)
ACCOUNTANT MEMBER

(RAVISH SOOD)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 29.06.2018

Ps. Rohit

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai