

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.5798/DEL/2014  
Assessment Year: 2009-10

Prabhatam Advertising Pvt. Ltd., Rashtriya Tower, 38, Rani Jhansi Road, Jhandewalan, Delhi.	vs.	Dy. Commissioner of Income Tax, Circle-14(1), New Delhi.
TAN/PAN:AAECP 0417B		
(Appellant)		(Respondent)

Appellant by:	Shri Gautam Jain, Piyush Kamal, Adv.& Shri Lalit Mohan, CA		
Respondent by:	Shri Surender Pal, Sr.D.R		
Date of hearing:	04	10	2018
Date of pronouncement:	19	12	2018

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the assessee against impugned order dated 29.08.2014, passed by Ld. Commissioner of Income Tax (Appeals)-XXVIII, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2009-10.

2. In the grounds of appeal, the assessee has raised the following grounds of appeal:-

- “1. That the impugned order is against the facts of the case, unjustified, against the principals of natural justice and bad in law.
2. On facts & in law, the CIT (A) has grossly erred in holding the addition of Rs. 1,20,56,085/- by the Ld. AO on account of sale of shares vide Para No. 3 of the assessment order in an envisaged manner without considering facts of the case and documents submitted by the appellant and without any cogent evidence.
3. On facts & in law, the CIT (A) has grossly erred in holding the addition of Rs. 1,29,91,587/- by the LD. AO on account of disallowance of 4/5th of the expenditure of Rs. 1,62,39,484/- being account incurred in respect of Bus Queue Shelters (BQS), by treating the same as “Deferred-Revenue in nature” vide Para No. 4 of the assessment order in an envisaged manner without considering facts of the case and documents submitted by the appellant and without any cogent evidence.
4. On facts & in law, the CIT (A) has grossly erred in holding the addition of Rs. 27,297/- by the LD AO on account of disallowance of expenditure in respect of charges for late filing of Service tax return vide Para No. 5 of the assessment order in an envisaged manner without considering facts of the case and documents submitted by the appellant and without any cogent evidence.
5. On facts & in law, the CIT (A) has grossly erred in holding the addition of Rs. 1,47,647/- by the LD AO on account of disallowance of expenditure in respect of Bihar Project Expenses vide Para No. 6 of the Assessment Order in an envisaged manner without considering facts of the case and documents submitted by the appellant and without any cogent evidence.
6. On facts & in law, the CIT (A) has grossly erred in holding the addition being disallowance of Rs. 28,94,472/- as notional interest on the amount of loans and advances of Rs. 4,82,41,209/- by the LD AO vide Para No. 7 of the assessment order in an envisaged manner

*without considering facts of the case and documents submitted by the appellant and without any cogent evidence.*

7. *On facts & in law, the CIT (A) has grossly erred in holding the addition being disallowance of Rs. 16,65,000/- as notional interest on investment of Rs. 1,38,75,013/- in a joint venture by the Ld AO vide Para No. 8 of the assessment order in an envisaged manner without considering facts of the case and documents submitted by the appellant and without any cogent evidence.*

8. *On facts & in law, the CIT (A) has grossly erred in holding the addition of Rs. 5,09,74,000/- by the LD AO on account of share capital/ share application money/ share premium raised during the year vide Para No. 9 of the assessment order in an envisaged manner without considering facts of the case and documents submitted by the appellant and without any cogent evidence.*

9. *On facts & in law, the CIT (A) has grossly erred in holding the addition of Rs. 20,908/- by the LD AO on account of disallowance u/s 14A of the Income Tax Act, 1961 read with Rule 8D vide Para No. 10 of the assessment order in an envisaged manner without considering facts of the case and documents submitted by the appellant and without any cogent evidence.*

10. *On facts & in law, the CIT (A) has grossly erred in holding the addition of Rs.27,57,000/- by the LD AO on account of disallowance u/s 40a(ia) vide Para No. 11 of the assessment order in an envisaged manner without considering facts of the case and documents submitted by the appellant and without any cogent evidence.*

11. *On facts & in law, the Ld. CIT (A) has grossly erred in law in disregarding the submissions made and documents submitted by the appellant and passed the order without providing reasonable opportunity of being heard.*

12. *On facts and in the circumstances of the case and in law, the Ld. CIT(A) has grossly erred in confirming order of the Assessing Officer arbitrarily and without any justification.*

13. *The appellant craves leave to add, amend, alter, delete, rescind, forego or withdraw any or all the grounds of appeal at anytime before or during the course of hearing.”*

3. At the outset, learned counsel has not pressed ground no.9 relating to disallowance made u/s.14A read with Rule 8D. Accordingly, the same is dismissed as not pressed. We will take up rest of the grounds as raised by the assessee before us.

4. The brief facts of the case are that assessee is engaged in the business of advertising in electronic media with various regional new channels and also provides whole range of services including Ad campaign, design, creative and strategy incubation and development, advertisement in print and electronic media. In so far as the addition of Rs.1,20,56,085/- on account of sale of shares, the Assessing Officer from the perusal of the annual account and report of auditors noted that transaction of sales of shares for Rs.1,20,56,085/- and profit of Rs.28,88,976/- earned thereon are not properly reflected in the affairs and in the profits of the company. The relevant extract of the auditors reads as under:

*"Except for the transaction of Sale of Shares booked in the Profit & loss account for a sum of Rs.1,20,56,085/-. It has been explained to us that the said shares have been sold by the Broker but the payment has not been made to the company. Demand Account statements have not been provided for verification. The company has filed a suit against the Broker for recovering of the said amount. The cost of shares sold, as*

*appearing in the books of accounts is Rs.91,67,109.93 and thus the profit works out to Rs.28,88,975.07.”*

5. The Id. Assessing Officer held that though the opening stock of share of Rs.91,67,110/- were duly debited in the Profit and Loss account as part of cost of production, but neither the sale amount nor the profit on sale of shares has been shown in the credit side of the Profit and Loss account. Accordingly, he made an addition of Rs.1,20,56,085/- as sale consideration not disclosed by the assessee company.

6. Before the Id. CIT (A), the assessee submitted that the sale value of these shares have been duly declared in the Profit and Loss account by the assessee company and also demonstrated this fact by way of various evidences in the form of profit and loss account, i.e., trial balance; client-wise details of sale of shares including stock summary of opening stock and sale summary; audited P& L account in balance sheet. Apart from that assessee has also filed following details which were in the form of additional evidences.

- a. Detail of Bill outward/sale account head
- b. The order of Mediation Centre
- c. Copy of agreement for settlement dated 12.05.2008
- d. Ledger Account of AG Shares and Securities Ltd.
- e. Copy of Profit and Loss Account.
- f. Quantity wise detail of sale of shares along with copy of ledger account of sale of shares and set of audited balance sheets.

6.1 Ld. CIT (A) confirmed the action of the Assessing Officer on the ground that assessee has not filed any confirmation in this regard or Demat account or the bank statement. The assessee even failed to file broker's contract note and mode of payment of the sale.

7. Before us the ld. counsel for the assessee, Mr. Gautam Jain after drawing our attention to the various documents filed before the authorities below submitted that the total credit on account of sale of shares was Rs.75,71,95,345/-; and the head wise break up as placed in the paper book were as under:

<b>Sr. No.</b>	<b>Particulars of sales account</b>	<b>Amount (Rs.)</b>
1	BILL Outward 1	10,63,00,203.07
2	Bill outward-10%	51,56,001.20
3	Bill outward 10% (Other than Channel)	1,05,56,423.04
4	Bill Outward 12%	1,65,23,566.77
5	Bill Outward (12%) Other Than Channel	2,34,66,498.33
6	Bill Outward 1.8%	28,13,47,797.12
7	Bill Outward BBY	1,63,52,171.94
8	Bill Outward Bby 1.8	7,49,98,083.51
9	Production Sale	16,500.00
10	Profit on Sale of Shares	28,88,975.07
11	Sales CST 2% (Against Form-C)	7,14,480.00
12	Sales of Shares - Deliveries	91,67,109.93
13	Sales Other	20,06,12,563.00
14	Sales-VAT 12.5%	73,45,424.00
15	Sales-VAT 4%	17,49,548.00
	<b>Total</b>	<b>75,71,95,344.98</b>

Thus, he submitted that sum of Rs.1,20,56,085/- stands duly credited in the P&L account in the following manner:

<b>Sr.No.</b>	<b>Head</b>	<b>Amount (Rs.)</b>
i)	Profit on Sale of Shares	28,88,975.07
ii)	Sales of Shares - Deliveries	91,67,109.93
	<b>Total</b>	<b>1,20,56,085</b>

7.1 He further submitted that even the auditor's note clearly states that the shares have been sold by the assessee. Thus, there is no question of any sale not being recorded in the P&L account. The dispute was with regard to the broker only and this is the reason why the auditors have given their remark.

8. On the other hand, learned DR strongly relied upon the order of the ld. CIT(A) and submitted that there was non-compliance by the assessee before the Assessing Officer and therefore, the addition has rightly been made.

9. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material referred to before us. The sole reason for making the addition by the Assessing Officer was that auditors have given a remark that payment has not been made by the company on the sale of the shares; and Demat account has not been provided for verification. From the perusal of the material placed on record and as referred to before us by the learned counsel, we find that it cannot be disputed that amount of Rs.1,20,56,085/- on account of sale of shares have been duly reflected in the P&L account which is fairly evident from the break up given by the learned counsel as incorporated above. The profit on the sale of shares amounting to Rs.28,88,975/- had already been disclosed in the accounts. Even from the bare perusal of the auditor's note it is seen that the amount has been shown by the assessee from sale of shares *albeit* it has been noted that there is some dispute against the broker for recovery of the amount. Once there is no dispute regarding sale of shares and profit on such shares duly

disclosed, then to treat that the whole amount of sale separately as income of the assessee once again would be absurd. It is not the case of the Assessing Officer and Id. CIT(A) that the transaction of sale of shares is not genuine. Whence, neither the auditor has disputed the sale nor the accounts otherwise show that the sale of shares has not been reflected, then to hold that the entire sale of shares should be added would be erroneous. In any case, the assessee has filed various documents to demonstrate the sale of shares which are as under:-

<b>No.</b>	
1	Copy of profit and loss account of M/s Rastriya Advertising Agency
2	Copy of stock summary as on 1.4.2008
3	Quantity wise details of sale of shares (stock summary opening stock as on 01.04.2008 sale summary for the period 01.04.2008 to 31.03.2009)
4	Copy of ledger account of sales of shares-Deliveries in the books of M/s Rashtriya Advertising Agency for the period 1.4.2008 to 31.3.2009
5	Copy of ledger account of profit on sale of shares in the books of M/s Rashtriya Advertising Agency for the period 1.4.2008 to 31.3.2008
6	Group summary in the books of appellant company
7	Copy of order of mediation in case of appellant and Anuranjan Pandey
8	Copy of agreement dated 12.5.2008 between Anu Shares and Securities (P) Ltd. and Mr. Dinesh Gupta
9	Copy of ledger account of AG Shares & Securities Ltd. in the books of appellant company in the books of M/s Rashtriya Advertising Agency for the period 5.9.2007 to 31.3.2009
10	Copy of ledger account of AG Shares & Securities Ltd. in the books of appellant company for 1.4.2010 to 3.13.2013

Thus, the addition of this amount in wake of aforesaid documents can be upheld and same is directed to be deleted.

10. Coming to the disallowance of Rs.1,29,91,587/- being 4/5<sup>th</sup> of the expenditure of Rs.1,62,39,484/- claimed by the

assessee being amount incurred in respect of Bus Queue Shelters which has been treated as Deferred Revenue Expenditure by the AO, it has been pointed out by the learned counsel that this issue stands covered by the decision of the Tribunal in assessee's own case for the Assessment Year 2011-12 in ITA No.1439/Del/2015, wherein this Tribunal following the decision of Hon'ble Delhi High Court in the case of **Citi Financial Consumer Finance Ltd., reported in 335 ITR 29 (Del.)** have deleted the same addition.

11. Learned Department Representative on the other hand strongly relied upon the order of the ld. CIT(A).

12. From the perusal of the impugned order, it is seen that assessee has incurred expenditure of Rs.1,62,39,484/- on construction of Bus Queue Shelter on BOT basis. The entire expenditure has been claimed as revenue by the assessee, whereas the Assessing Officer has held that 1/5<sup>th</sup> of the expenditure is allowable as deferred expenditure to be amortized over succeeding years. The issue, whether Department can treat a revenue expenditure claimed by the assessee as deferred revenue expenditure to be allowable over a period of time has been discussed threadbare by the Hon'ble Supreme Court in the case of Taparia Tools Ltd. vs. JCIT, 323 ITR 605. The relevant observation of the Hon'ble Court in this regard reads as under:

“18. What follows from the above is that normally the ordinary rule is to be applied, namely, revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure in that year, the IT Department cannot deny the same. However, in those cases where the assessee himself wants to spread

the expenditure over a period of ensuing years, it can be allowed only if the principle of 'Matching Concept' is satisfied, which upto now has been restricted to the cases of debentures.

19. In the instant case, as noticed above, the assessee did not want spread over of this expenditure over a period of five years as in the return filed by it, it had claimed the entire interest paid upfront as deductible expenditure in the same year. In such a situation, when this course of action was permissible in law to the assessee as it was in consonance with the provisions of the Act which permit the assessee to claim the expenditure in the year in which it was incurred, merely because a different treatment was given in the books of account cannot be a factor which would deprive the assessee from claiming the entire expenditure as a deduction. It has been held repeatedly by this Court that entries in the books of account are not determinative or conclusive and the matter is to be examined on the touchstone of provisions contained in the Act [See - *Kedarnath Jute Mfg. Co. Ltd. v. CIT* [1971] 82 ITR 363 fSC); *Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT* (1997) 227 ITR 172/93 Taxman 502 (SC); *Sutlej Cotton Mills Ltd. v. CIT* f 19791 116 ITR 1 (SC) and *United Commercial Bank v. CIT* [1999] 240 ITR 355/106 Taxman 601 (SC).

20. At the most, an inference can be drawn that by showing this expenditure in a spread over manner in the books of account, the assessee had initially intended to make such an option. However, it abandoned the same before reaching the crucial stage, inasmuch as, in the income tax return filed by the assessee, it chose to claim the entire expenditure in the year in which it was spent/paid by invoking the provisions of Section 36(1)(iii) of the Act.

Once a return in that manner was filed, the AO was bound to carry out the assessment by applying the provisions of that Act and not to go beyond the said return. There is no estoppel against the Statute and the Act enables and entitles the assessee to claim the entire expenditure in the manner it is claimed.”

13. In view of the ratio laid down by the Hon'ble Apex Court, that once the assessee has shown it as revenue expenditure, then revenue cannot disallow the same by spreading it over the years and allow only part of it. In any case, this issue stands decided in favour of the assessee in the succeeding years, therefore, respectfully following the order of the Tribunal, we decide this issue in favour of the assessee. Accordingly, this ground of the assessee is allowed.

14. Next issue relates to disallowance of expenditure in respect of charges for late filing of Service Tax return of Rs.27,297/-.

15. The Assessing Officer has treated the charges paid by the assessee for late filing of service tax return by invoking *Explanation* to Section 37(1) to be in the nature of offence.

16. After hearing both the parties and looking to the nature of disallowance made, it is seen that the payment has been made for delay in filing of return which is mere compensatory in nature and is not on account of any offence prohibited under any law. Hence such a payment cannot be disallowed by invoking *Explanation* to Section 37(1) and the same is hereby directed to be deleted.

17. In so far as disallowance of Rs.1,47,647/- on account of expenditure in respect of Bihar Project Expenses, the Assessing Officer has denied the claim on the ground that assessee could not prove the expenses nor any nexus with business activity was submitted. This finding has been upheld by the Id. CIT(A) also on

the ground that assessee had been unable to produce any evidence of proof of expenditure incurred by the assessee.

18. Even before us, the assessee has only furnished details and ledger account but no evidences of such expenses have been filed to show that the same has been incurred for the purpose of business. Accordingly, the action of the authorities below is upheld. Thus, this ground is dismissed.

19. In ground no.6, the assessee has challenged the addition of Rs.28,94,472/- on account of notional interest on the amount of loans and advances of Rs.4,82,41,209/- given to the following parties:-

<b>Sr. No.</b>	<b>Name of party</b>	<b>Amount (Rs.)</b>
i)	Vandance Poddar	2,00,00,000
ii)	Prabhatam Aviation (P) Ltd.	34,31,209
iii)	Prabhatam Developers (P) Ltd.	3,27,60,000
iv)	Prabhatam Parkash	50,000
V)	Smt. Santosh Devi	1,00,00,000
	<b>Total</b>	<b>4,82,41,209</b>

20. Learned Assessing Officer has made the disallowance of interest @1% per month for six months. The Assessing Officer noted that assessee has claimed sum of Rs.1,53,16,488/- on account of finance charges on the loans taken by it and accordingly, he made the disallowance on notional basis that there is diversion of interest bearing funds.

21. Before us, ld. counsel for the assessee submitted that assessee had utilized the loans purely for the business purpose

and in any case it had huge surplus funds in the form of share capital, share application money and reserves and surplus aggregating to Rs.15,75,16,837/-, which is evident from audited balance sheet which reflects the following figure:-

<i>Sr.No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
i)	Share capital & Share Application money	2,77,55,310
ii)	Reserves	12,97,61,527
	<b>Total</b>	<b>15,75,16,837</b>

22. After relying upon various decisions in his written synopsis, he submitted that once it has been found that assessee has surplus funds, then no disallowance can be made on advances given to the subsidiary/sister concern.

23. On the other hand, ld. DR has strongly relied upon the order of the authorities below and submitted that assessee has to prove the nexus between the interest bearing funds and the surplus funds which has not been given.

24. After hearing the rival submission and on perusal of the relevant material referred to before us, we find that assessee has given interest free advances aggregating to Rs.4,82,41,209/- to its related concerns/persons. At the outset, from the perusal of the financial statements it is quite evident that the assessee has huge surplus funds aggregating to Rs.15.75 crore and thus, when assessee has such huge interest free surplus funds then presumption is always there that these funds must have given out of surplus funds This proposition has been upheld by catena of judgment like, **CIT vs. Bharti Televentures Ltd.**, reported in

**331 ITR 502 (Del); CIT vs. Reliance Utilities and Power Ltd., 313 ITR 340 (Bom); CIT vs. HB Stock Holdings Ltd, 184 Taxman 352 (Del).** Apart from that learned counsel has brought on record that identical claim has been accepted by the Department right from Assessment Year 2010-11 to 2014-15 and no disallowance was ever made. In view of the aforesaid facts, we do not find any reason to sustain such a disallowance of notional interest and same is directed to be deleted.

25. Similarly with regard to disallowance of sum of Rs.16,65,000/- on account of notional interest on investment of Rs.1,38,75,013/- in a joint venture with a purpose to develop a residential plot belonging to Director the company, Shri Dinesh Gupta, learned Assessing Officer noted that Shri Dinesh Gupta has interest of more than 20% in the company, and therefore, this is an interest-bearing fund diverted to him. Accordingly, he disallowed interest on this amount, amounting to Rs.16,65,000/-

26. Before us, learned counsel reiterated the same submission that looking to the availability of such huge interest free surplus funds no disallowance should be made.

27. On the other hand, learned DR has strongly relied upon the order of the Assessing Officer.

28. Here in this case also the assessee has made investment in a joint venture for the purpose of developing a residential plot and disallowance of interest has been made on notional basis on the ground that the Director has more than 20% of interest in the company and interest-bearing funds have been diverted. Once

assessee's interest free surplus funds far exceeds the funds given to sister concern or to any joint venture company, then to hold that the said amount must have been given free interest-bearing funds would be farfetched so as to make any kind of disallowance of notional interest. Accordingly, following the same reasoning and the finding given in the foregoing paragraph, we direct the Assessing Officer to delete the said addition.

29. The next major issue is with regard to the addition on account of share capital/share premium raised by the assessee during the year from two shareholder companies, namely, (i) Prabhatm Investment Ltd. – Rs.5 crore; (ii) Anjaninandan Steel Pvt. Ltd. –Rs.9,74,000/-. Learned Assessing Officer has made the addition on the ground that assessee could not file any confirmation, copy of bank statement and return of income of the subscribers, except for Form no.2 which is filled for allotment of shares and assessee's own bank account. In absence of any details, the Assessing Officer added the entire amount u/s.68.

30. Before the ld. CIT(A), the assessee in support of the aforesaid transactions, filed confirmation from the parties; income tax return of the parties and the bank statement of the parties showing the creditworthiness of these companies. Further, assessee has also filed following documents:-

- (i) Confirmation letter dated 20.12.2011 from M/s Prabhatam Investment Pvt. Ltd. subscriber;

- (ii) Copy of E filing acknowledgement 1TR-V for the AY. 2009 10 showing filed on 31.03.2010. Income showing at zero and TDS claimed Rs. 12360/ and claimed refund;
- (iii) Copy of bank statement account no 30105802877 of the share subscriber company,
- (iv) Details of payments made by cheque.

31. Ld. CIT(A) has confirmed the said addition holding that;

- *Firstly*, the subscriber company was not showing any income, and therefore, it did not have any capacity to makesuch a huge investment in the share capital.
- *Secondly*, the subscriber company did not have any profit-making apparatus and has merely rotated the money through its bank account.
- He relied upon the decision of Hon'ble Delhi High Court in the case of N. Tarika Properties Pvt. Ltd., ITA No.2080/2010.
- The bank statement of M/s. Prabhatam shows transfer entries in its account on the day in which the cheque has been forwarded to the assessee company and the balance sheet for the year ending 31<sup>st</sup> March, 2009 shows that it had current liabilities of Rs. 8.25 crore.

After analyzing these facts he held that assessee has used its own unaccounted money to get in the form of share capital from these companies.

32. Before us, ld. counsel for the assessee submitted that assessee has discharge the prima facieonus by filing following documents in the case of M/s. Prabhatam Investment: -

- i. Copy of confirmation of purchase of shares dated 2012.2011.
- ii) Copy of bank statement of M/s Prabhatam Investments Ltd.
- iii) Payments details of M/s Prabhatam Advertising (P) Ltd. in the books of Prabhatam Investment (P) Ltd.
- iv) Copy of acknowledgement of return of income dated 313.2016 for Assessment year 2009-10 in the case of M/s Prabhatam Investment (P) Ltd.
- v) Copy of acknowledgement of return of income dated 27.2013 for Assessment year 2012-13 alongwith audited financial statement in the case of Prabhatam Investment (P) Ltd.
- vi) Copy of group summary of shares in the case of Prabhatam Investments (P) Ltd.
- vii) Copy of confirmation of accounts from Prabhatam Investments (P) Ltd.
- viii) Copy of ledger account of M/s Prabhatm Advertising (P) Ltd. in the books of M/s Prabhatam Investments (P) Ltd.
- ix) Shares capital account alongwith Form 2 filed by appellat company before ROC.
- x) Copy of credit facilities from State bank of Account.
- xi) Copy of ledger account of Prabhatam Advertising (P) Ltd. (shares ) in the books of Prabhatam Investments (P) Ltd.

- xii) Copy of audited financial statement as on 31.3.2009 in the case of M/s Prabhatam Investments (P) Ltd.
- xiii) Copy of confirmation of purchase of shares filed by M/s Prabhatam investments (P) Ltd. before DCIT alongwith bank statement.
- xiv) Copy of bank statement of appellant company.

In the case of M/s. Anjaninandan PVt. Ltd., he has referred to the following documents:-

- i) Copy of bank statement of M/s Anjani Nandan Steels Pvt. Ltd. and the appellant reflecting the relevant transaction.
- ii) Audited financial statement as on 31.3.2012 in the case of Anjani Nandan Steels (P) Ltd. Copy of confirmation from Anjani Nandan Steel (P) Ltd.
- v) Copy of acknowledgement of return of income dated 13.10.2011 alongwith audited financial statement for assessment year 2011-12 in the case of Anjani Nandan Steel (P) Ltd.
- vi) Copy confirmation from Anjani Nandan Steel (P) Ltd.
- vii) Copy of application for issue of shares by M/s Anjani Nandan Steels (P) Ltd. to appellant company.
- viii) Copy of ledger account of appellant company in the books of M/s Anjani Nandan Steels (P) Ltd.
- ix) Copy of acknowledgement of return of income dated 22.9.2009 alongwith computation of income and audited financial statement in the case of Anjani Nandan Steel (P) Ltd. for Assessment year 2009-10.

33. He further pointed out that in so far as M/s. Prabhatam Investment is concerned, the source stands proved from the fact that it had share capital and share application money

aggregating to Rs.93.75 crore which was far excess the investment made in share capital with the assessee company and he also drew our attention to the balance sheet of the said company which gives the following state of affairs as on 31.03.2009 and as on 31.03.2008 proving the net worth of the said company.

Net Worth of the company

PARTICULAR	As on 31.3.2009	As on 31.3.2009
Share Capital	20,000,000	20,000,000
Share Application	91,75,39,475	69,24,43,000
<b><u>Loan Fund</u></b>		
<b>Secured Loan</b>	--	<b>12,96,77,774</b>
<b>Unsecured Loan</b>	<b>5,00,000</b>	<b>4,75,000</b>
Grand Total	93,80,39,475	84,25,95,774
<b><u>Application of Funds</u></b>		
<b>Fixed Assets</b>		
Investment	24,47,73,120	29,02,73,120
Current Assets Loan & Advances		
Cash & Bank Balances	29212990	691474
<b>Loans &amp; Advances</b>	<b>67,31,34,262</b>	<b>62,80,72,217</b>
Less: Current liabilities		
Current Liabilities & provisions .	82505429	77940983
<b>Net Current Assets</b>	<b>59,06,28,833</b>	<b>55,01,31,234</b>
Miscellaneous expenditure	87,446	1,31,168
Profit & loss account	25,50,073	20,60,252
<b>Grand Total</b>	<b>938039475</b>	<b>84,25,95,774</b>

Similarly in the case of other company also the net worth of the company from the balance sheet was given in the following manner:

PARTICULARS	As on 31.3.2012	As on 31.03.2011
<b>Shareholders Fund</b>		
Share capital	<b>10,00,000</b>	<b>10,00,000</b>
Reserve and Surplus	<b>(63,209)</b>	<b>(56,190)</b>
Non Current Liability	<b>27,80,000</b>	<b>27,80,000</b>

Other current liability	<b>2800</b>	<b>2500</b>
<b>Grand Total</b>	37,19,591	37,26,310
<b>Non-Current Assets</b>		
Long term loan and Advances	<b>37,01,960</b>	<b>37,01,960</b>
<b>Current Assets</b>		
Cash & Bank Balance	<b>17,631</b>	<b>24,350</b>
Loans & Advances		
<b>Total</b>	37,19,591	37,26,310

34. Thus, from these evidences, he pointed out that not only the company has creditworthiness but also the entire transaction is genuine. Id. counsel also relied upon the catena of judgment. The detail of which have been given by him in his written synopsis.

35. On the other hand, Id. DR strongly relied upon the order of the Id. CIT(A) and submitted that Id. CIT(A) has threadbare discuss the financial status of these companies and also demonstrated as to how these companies were not generating any revenue but were routing money from their accounts for the purpose of investment.

36. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material referred to before us. From the stage of the Assessing Officer, addition has been made on the ground that the assessee could not file confirmation, balance sheet or income tax return of these companies. However, before the Id. CIT(A) all the evidences were filed as noted above which were also sent to the AO to submit his remand report. However, Id. CIT(A) has merely gone by the fact that these companies were not having substantial income and in their balance sheet there were having huge liabilities and

therefore, these companies have been used as a conduit for routing the assessee's own unaccounted money. First of all, it is not in dispute that the money received by the assessee company in the form of share application has come through these companies from their bank accounts on various dates through account payee cheques. These companies have also filed their confirmation, bank statement, details of payment duly reflected in their books of account, audited balance sheet, copy of return of income, details for allotment of share etc. Ergo, identity and genuineness of the transaction cannot be doubted. In so far as creditworthiness is concerned, we find that Prabhatam Investment Ltd has availability of huge funds in the form of share application money received by it which was more than Rs. 91.75 crores and it has shown investment in various companies at Rs.34.48 crores. The balance sheet filed before us reflects that it has huge funds from where it has made an investment. It has not been brought on record by any inquiry or by way of any information from some external source that the assessee might have taken any accommodation entry from these companies, *albeit* it is a group concern/group entity and all the transactions had been duly reflected in the books and audited accounts. The money again in their bank accounts have come by way of clearing. If AO or CIT(A) had any doubt about the sources of fund in their accounts, then same should have been inquired from them or examined in their hands, like the share application money received by them is genuine or not. In so far as assessee is concerned the onus which was cast upon it has been duly discharged and without there being any contrary material on

record no adverse view can be drawn. The assessee cannot prove the source of the source and if there was any dubious nature of transaction for routing any unaccounted money then onus was upon the revenue to prove it. Even at the remand stage also, no inquiry whatsoever has been made by the Assessing Officer to prove that assessee's own accounted money has been routed through these companies. Even if during the year, these companies did not have any revenue from operations, but if it is an investment company which has funds available with it in the form of share capital and share application money which has been made for the purpose of investment in other group companies, then it cannot be held that their source is not proved or these companies did not have any creditworthiness. Thus, in this case, nature and the source of the credit has been fully explained and without there being any contrary material brought on record by the department the addition cannot be sustained u/s 68; and consequently, same is directed to be deleted.

37. Lastly, coming to the issue of disallowance of Rs.27,57,000/- made u/s.40a(ia), the facts in brief are that, assessee has raised loan from NBFC and has paid interest of Rs.27,57,000/- which was claimed as an expenditure. However, the assessee has not deducted TDS on such a payment.

38. Before us the ld. counsel though admitted that TDS has not been deducted but now in view of 3<sup>rd</sup> proviso to section 40(a)(ia), brought by the Finance Act, 2014, w.e.f. 2014-2015, the disallowance if at all which could be made, would be 30% of the expenditure claimed, and therefore, the disallowance if at all

should be restricted to 30%. Such a *proviso* has to be given retrospective effect in view of various decisions, like in the case of CIT vs. Ansal Land Mark Township which was in respect of 2<sup>nd</sup> proviso to Section 40a(ia). He submitted that same principle would apply here also.

39. Accordingly, we direct the Assessing Officer that disallowance should be restricted to 30% in view of the newly inserted proviso. Thus, this ground is partly allowed.

40. In the result, the appeal of the assessee is partly allowed.

**Order Pronounced in the open Court on 19<sup>th</sup> December, 2018.**

Sd/-

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

Sd/-

**[AMIT SHUKLA]  
JUDICIAL MEMBER**

DATED: 19<sup>th</sup> December, 2018