

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI S. RIFAUR RAHMAN, AM**

1. आयकरअपीलसं./ I.T.A. No. 5970/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2009-10)
2. आयकरअपीलसं./ I.T.A. No. 634/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2010-11)
3. आयकरअपीलसं./ I.T.A. No. 6027/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2012-13)

DCIT Cen Cir-4(1), Central Range-4, Pr. CIT(C)-2 R. No. 1916, 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021	<u>बनाम/</u> Vs.	M/s Runwal Developers Pvt. Ltd. 5 th floor, Runwal & Omkar Square, Off-Eastern Express Highway Sion(E), Mumbai-400 022
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAECR1786P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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4. Cross Objection No. 348/Mum/2018
(Assessment Year: 2009-10)
5. Cross Objection No. 73/Mum/2018
(Assessment Year: 2010-11)

M/s Runwal Developers Pvt. Ltd. 5 th floor, Runwal & Omkar Square, Off-Eastern Express Highway Sion(E), Mumbai-400 022	<u>बनाम/</u> Vs.	DCIT Cen Cir-4(1), Central Range-4, Pr. CIT(C)-2 R. No. 1916, 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAECR1786P		

(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri Rishabh Shah, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Jayant Jhaveri, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	05.07.2022
घोषणाकीतारीख / Date of Pronouncement	:	30.08.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeals have been filed by the revenue for the AYs 2009-10, 2010-11 & 2012-13 and Cross Objections filed by the assessee for AYs 2009-10 & 2010-11, against separate impugned order of even date 19.06.2017, passed by Ld. CIT (Appeals)-52, Mumbai for the quantum of assessment passed u/s 143(3)/153A.

2. In all the revenue's appeal, one common issue relates to addition u/s 68 on account of introduction of share capital and share premium amount from M/s IRF Realty India IX Ltd. The additions involved in all the 3 assessment years are as under:-

- i) In AY – 2009-10 – Rs. 29,16,21,670/-
- i) In AY – 2010-11 – Rs. 87,48,59,930/-
- i) In AY – 2009-10 – Rs. 43,73,27,284/-

3. In both the Cross objections, the common issue raised by the assessee are that Ld. CIT(A) has erred in confirming the assessment made u/s 143(3) r.w.s. 153A, even if no incriminating material was found during the course of search relating to the addition despite assessment for AY 2009-10 and 2010-11 were not abated assessment.

4. Since the issue involved in all the appeals filed by the revenue as well as cross appeals filed by assessee are identical arising out of similar set of facts, therefore the same were heard together and are being disposed of by the way of this consolidated order.

5. The brief facts of the case are that assessee is engaged in the business of builders and property developers and had filed its regular return of income u/s 139 for all the assessment years involved. A search and seizure action u/s 132 was carried out on 17.11.2014 in the case of Runwal Group wherein the assessee company was covered under the same search. Ld. AO noted that assessee has received share capital aggregating to Rs. 160,30,08,886/- in various years, the details of which have been incorporated at page 2 & 3 of the assessment order. Ld. AO further

noted that in AY 2009-10, within one year of the formation of this company, Class-A and Class-C shares with a face value of Rs. 10 have been issue at a very high/ excessive premium of Rs. 116 to a Mauritius based, **M/s IIRF Realty India IX Ltd** on 29.04.2009 and on same date, 0.01% variable redeemable preference share of face value of shares have been allotted to the said Mauritian concern at an excessive high premium of Rs. 2252 per share. Similar finding has been given for AY 2010-11 and 2012-13 also. Thus, in these 3 years, assessee has raised share capital of Rs. 160,39,08,885/- from the Mauritius based concern and Rs. 4,60,91,114/- from IL & FS, Indian based entity in all aggregating to Rs. 165 crores. Ld. AO further noted that during the course of search, Assessee Company was required to justify the huge premium received against the issue of shares of M/s IIRF India Realty IX Ltd. The relevant reply given by Shri Sandeep Runwal is incorporated at page no. 5 & 6 in the assessment order. He explained about the share holder's agreement for the SPV between Runwal Projects Pvt. Ltd. where IL&FS had agreed to invest money based on certain FSI calculation. He further submitted that assessee also submitted forms filed with RBI for investment made under automatic route. One very important fact is

that, AO has referred this matter to FT&TR and AO also received report from FT&TR which has not been discussed with him in the assessment order. What the Ld. AO has doubted is not the genuineness of the share application money but the high premium received. The assessee had filed certain documents like Valuation report by CA and certificate by E&Y to justify the valuation of shares and premium but such valuation report has been rejected by the AO on the ground that E&Y had not conducted any valuation of the report and has simply relied on the valuation report placed before it from the chartered accountant.

6. Apart from that, one very important fact as seen from the records are that, the assessee before the AO had given the detail of the various investors including the source of funds in the hands of IL&FS India Realty Fund, which are as under:-

<i>Name of Investor</i>	<i>Shareholding</i>	<i>Address</i>	<i>Profile</i>
<i>California Public Employees' Retirement System</i>	<i>23.00%</i>	<i>400, Q Street, Suite E4800, Sacramento, CA, 95814, USA</i>	<i>This is a large US Pension Fund</i>
<i>The Oregon Public Employees' Retirement System</i>	<i>11.49%</i>	<i>350, Winter Street, N.E. Suite 100, Salem, Oregon, 97310, USA</i>	<i>This is a large US Pension Fund</i>

<i>HIP Company Limited</i>	11.49%	<i>Equity Trust Services Ltd., PO Box 548, 28-30 The Parade, StHelier, Jersey, JE4 8XY</i>	<i>Entity of Abu- Dhabi owned by the State</i>
<i>Reco Vaastu Pte. Ltd.</i>	8.63%	<i>168, Robinson Road, Capital Tower #37-01, Singapore 068912</i>	<i>Owned by the Govt of Singapore's Ministry of Finance (GIC)</i>
<i>California State Teachers' Retirement System</i>	5.75%	<i>7667, Folsom Blvd. Suite, 250, Sacramento, CA 95826, USA</i>	<i>This is a large US Pension Fund</i>
<i>OP Trust Realty Inc.</i>	5.75%	<i>1, Adelaide Street East, Suite 1200, Toronto, Ontario, M5C 3A7, Canada</i>	<i>Canada Based, Beneficial ownership is a trust under the law of Ontario, Canada</i>
<i>Orix Corporation</i>	5.75%	<i>World Trade Center Building 35F2-4-1 Hamamatsu- cho, Minatoku, Tokyo 105- 6135 Japan</i>	<i>A Publically Listed entity</i>
<i>State of Connecticut Retirement Plans and Trust Funds</i>	5.75%	<i>55 Elm Street, Hartford, Connecticut, 6106, USA</i>	<i>This is a large US Pension Fund</i>
<i>OHIM IL & FS India Investors, LLC</i>	3.68%	<i>201 Main Street, Suite 1440, Fort Worth, Texas 76102, USA</i>	<i>A Partnership for pooling funds managed by Oakhill (now known as Jasper Ridge) a fund manager</i>
<i>Partners Group /Access 53, L.P.</i>	2.87%	<i>c/o Partners Group (USA) Inc. 150 Spear Street, 18th Floor, San Francisco, CA, 94105, USA</i>	<i>A Partnership for pooling funds managed by Partners Group a large global fund manager</i>

<i>John D. And Catherine T. Mac Arthur Foundation</i>	2.30%	<i>140, South Dearborn Street, Suitel 200, Chicago IL60603-5285, USA</i>	<i>A Trust Fund based from USA</i>
<i>The Church Pension Fund</i>	2.30%	<i>445, 5th Avenue, New York, NY 10016</i>	<i>Statutory Pension Fund incorporated in US A</i>
<i>HCI Real Estate BRIO Pooling GmbH & Co. KG</i>	2.30%	<i>Bleichenbruecke 10, D-20345 Hambourg, Germany</i>	<i>A Partnership formed for pooling funds from a closed end fund managed by HCI</i>
<i>Compass Property Partners International, L.P.</i>	1.72%	<i>The Corporation Trust Company, 1209 Orange Street, Welmington, DE 19801, USA</i>	<i>A Partnership set up to pool investments managed by Compass Advisors</i>
<i>Nestle in USA Pension Trust</i>	1.15%	<i>777 West Putnam Avenue, Greenwich, 06830, USA</i>	<i>A USA based Pension Fund</i>
<i>Penn Square Global Real Estate Fund 1, L.P.</i>	1.15%	<i>1660 W. Second Street Ste 450, Cleveland, Ohio 44113, USA</i>	<i>Partnership for pooling funds for a global real estate multi strategy fund sponsored by Penn Square Real Estate Group</i>
<i>Municipal Employees' Retirement System of Michigan</i>	0.86%	<i>1 134, Municipal Way, Lansing, MI 48917 Michigan, USA</i>	<i>A USA based Statutory Pension Fund</i>
<i>Strategic Real Estate Fund III, LP.</i>	0.86%	<i>2711 Centerville Road, Suite No. 400, City of Wilmington, County of New Castle, State of Delaware, USA</i>	<i>Partnership for pooling funds currently managed by Townsend</i>

<i>Profimex Global Real Estate Fund 1, LP.</i>	0.80%	<i>The Corporation Trust Company, The Center, 1209 Orange Street, Wilmington, 19801, USA</i>	<i>Partnership set up for a fund of funds managed by Townsend</i>
<i>The Kochav Fund 1 LP</i>	0.80%	<i>C/o Partners Group (Guernsey) Ltd., PO Box 477, Tudor House, Le Bordage, St Peter Port, Guernsey, GY1 6BD, Channel Islands</i>	<i>Partnership - for a pooled investment fund -managed by Partners Group</i>
<i>JDPT Partners Group 1, LP.</i>	0.57%	<i>c/o Partners Group Real Estate, LLC, 18th Floor, 150 Spear Street, San Francisco, CA 94105, USA</i>	<i>Partnership for pooling funds from John Deere Pension Trust is a privately owned investment manager</i>
<i>The Union Pacific Master Retirement Trust</i>	0.57%	<i>50 S. LaSalle Street, Chicago, IL 60675, USA</i>	<i>This is a US based Trust Fund</i>
<i>San Antonio Fire & Police</i>	0.46%	<i>311, Roosevelt Avenue, San Antonio, Texas 78210, USA</i>	<i>This is a Statutory Pension Fund</i>
	100.00%		

7. Apart from that, it was also brought on record that this fund had also made investment with various real estate companies in India not only with the assessee company, the details of which have been given at page nos. 12 & 13 of the assessment order. However, Ld. AO has simply disbelieved the high premium and without reverting to the explanation given by the assessee as incorporated

in the impugned order has made addition u/s 68 in the 3 assessment years in the following manner:-

4.19. In view of the above discussion, the above mentioned amount of Rs. 160,00,00,000/- is treated as unexplained credits within the meaning of section 68 of the IT Act. The assessee has submitted the details of investments received in the form of share premium as under:-

AY	Date of receipt	Mauritius
2009-10	26.02.2009	29,16,21,671
2010-11	28.04.2009	87,48,59,931
2012-13	09.11.2011	43,74,27,284
Total		160,39,08,886

8. Ld. CIT(A) after incorporating the submissions made by the assessee which are appearing at page no. 14 to 31 of the appellate order and discussed in detail has accepted the assessee's explanation and deleted the addition. The relevant extractions of his findings which are entire edifice of his relief are as under:-

12. I have considered the facts of the case, submissions of the assessee as well as the order of the AO. From the perusal of the facts of the case, it appears that assessee has received total share

application money including share premium of Rs. 165 crs, from IIRF Realty India IX Ltd, including share premium of Rs. 160.39 cr as under :-

AY	Date of receipt	Mauritius Route, IIRF Ltd.
2009-10	26.02.2009	29,16,21,671/-
2010-11	28.04.2009	87,48,59,931/-
2012-13	09.11.2011	43,74,27,284/-
	Total	1,60,39,08,886/-

13. The share premium shown to have received during the year of Rs 43,74,27,284/- was treated as unexplained credits within the meaning of section 68 of the Act and the same was added to the total income of the assessee by the AO . Further, this share premium ranges from Rs. 116 to Rs. 6720 , which in the opinion of the AO was highly excessive and unreasonable . During the course of appellate proceedings, the Id.AR has argued that share capital received by it from IIRF Ltd. to the tune of Rs 160 cr. was in the form of foreign direct investment (FDI) from a fund set up by well-known IL & FS, which is India's first private sector developer of infrastructure projects and has a large presence in financial services space in India. The assessee has argued that this FDI was received in the SPY, to develop a specific project viz. Tony Project at Andheri (W) and therefore, such an investment could not be seen from the angle of share premium alone. The assessee has submitted that at the time of making investment, the investor was

only looking at the return and in fact, investment made by them to the extent of Rs. 40 cr. has been redeemed in A.Y. 2013-14. It is also been argued by the assessee that entire FDI was received as per the RBI guidelines and has been accrued by concerned government authorities. The assessee has argued that entire investment has come through automatic route through banking channels and therefore, the genuineness of the investment is not in doubt. The assessee has further argued that the company, IIRF Ltd. and IL & FS group are well known investors in realty market in India and have invested in more than 20 projects in India over the last several years and therefore, their identity is not in doubt.

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15. *The AO in this case has primarily placed reliance on the fact of merely the shares being issued at a premium which in his opinion is unjustifiable. AO has made the addition u/s.68 of the Act towards share capital received by the Appellant of Rs. 43,74,27,284/- from said party merely on the issue of unjustifiable premium being received by the appellant. However AO has not made any enquiry to corroborate his findings except for issuing the notice / summon for conducting enquiry. As mentioned in para4.16 of his assessment order, summons u/s.131 of the Act was served on Smt. Archana Hingorani, Non Executive Director of the said overseas investor by affixture since she was not present at that time at her stated address. The AO has taken this as apparently negative conclusion instead of*

appreciating that it was vacation time for investment bankers (Christmas Week) and she was accordingly travelling. Moreover, as informed by the appellant, the investor company's Indian counterpart has responded to the notice / summons issued to them and has duly complied with the same by attending before the AO. Despite the same, no specific reasoning has been given by the AO other than issue of alleged unjustifiable share premium for arriving at the said conclusion.

16. *A perusal of the background of the investor brought on record by the Appellant show that the onus of proving the genuineness of transaction, identity and capacity of the lenders and share applicant has been discharged by the Appellant. The same is evident from the antecedents of the investor submitted by the Appellant before AO with respect to money received from share applicant. From the details submitted it can be seen that the share applicant has made payments from regular banking channels, relevant disclosure of which as required by law has also been made to RBI, therefore these transactions cannot be treated as bogus. The AO has not been able to bring on record any valid material or evidence to discredit the evidences and explanation given by the appellant other than merely relying on a hunch of the shares being allotted at premium without himself making any other efforts to bring on record any valid or corroborative or concrete evidence against the appellant. The other reasons adduced by the AO have no real connection with the addition under section 68 of the Act made in case of the appellant.*

17. AO has also brought up the issue of 2 different valuation reports having been furnished, both being drawn at separate times in a gap of 7 years and arriving at different share values. This, while, being accepted by the Appellant has been justified by him by stating that the same would still not affect the genuineness of the funds received.

18. The AO has been unable to refute the clear cut and cogent evidence submitted by the appellant and available on the AO's record, testifying to the genuineness of the share capital. The source of the said money thus stands proven. As has been held in several decisions of superior judicial authorities {**MurlidharLahorimal v CIT [280 ITR 512 (Guj)**], **LabhchandBohra v ITO [219 ITR 571 (Raj)]** and **CIT v Dwarkadhish Investment Private Limited [299 ITR 268 (Del)]**, the assessee cannot be called upon to prove the source of the source of this money.

19. Regarding the issue of having charged very high premium, it has been brought to my notice by the AR that it is the potential in the development and in turn the profitability of the project that was the key in this case which got the investor to invest in the company. It has been further pointed out that out of their investment of Rs. 160 crores, **a sum of Rs.40 crores (cost to overseas investor company) has been bought back by the Runwal Group (a), Rs.84.39 crores thus yielding a very good ROI to the investor.**

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22. Further, following facts emerge out of the perusal of the assessment order as well as the submissions made by the Appellant:

(a). Source of funds to the investor fund viz. IL&FS India Realty Fund II LLC has been furnished by the Appellant. The investors are all overseas investors comprising of various pension and other real estate funds, to which no negative inference can be drawn.

(b). Appellant has also brought to my notice the various real estate exposures taken by IL&FS Group through their multiple overseas real estate funds.

(c). AO has mentioned having referred the transaction to FT&TR for investigation, however neither in the assessment order nor in the remand report subsequently furnished, has he mentioned any adverse finding or conclusion drawn as a result of the said reference.

(d). IL&FS is Indian Company promoted by a consortium of established and known Indian institutions comprising of LIC of India, HDFC Ltd., Central Bank of India, State Bank of India, etc alongwith known overseas investors including Orix Corporation, Japan and Abu Dhabi Investment Authority. This company in turn is promoter and majority shareholder in IL&FS Investment Managers Pvt. Ltd. who have also in fact invested in the appellant

company at same time and at same valuation as their overseas Fund. AO has not commented upon nor made any addition of the investment by the said Indian counterpart of the IL&FS Group.

(e). Copies of the financials for 3 years of the overseas investor have also been procured and furnished to the AO to substantiate its genuineness and creditworthiness.

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25. Thus, after careful considerations of the entire material on record, it is found that the appellant has indeed proven the genuineness of the parties referred above. Further, the ensuing enquiry by the AO has also not yielded any conclusive evidence to prove otherwise. I therefore believe that the AO has not fulfilled his duty to show how the share capital received is bogus, and accordingly, addition u/s.68 of the Act cannot be justified in hands of the appellant.

26. In view of the above and based on the facts in the case on hand, I find that the appellant has indeed proven the genuineness of the share applicant. Accordingly the addition made by the AO u/s.68 of the Act on that count to the tune of Rs.43,74,27,284/- cannot be sustained.

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31. *Another aspect to be seen here is that the said case before me is merely since the shares were issued at premium. There is no barring really if the shares are issued at a premium in the case of a corporate entity. The information received by the AO or the limited enquiry conducted by the AO has not made out any specific allegation that the said party had provided any entry to the appellant company either in form of share capital. In the present case the appellant had produced before AO all the relevant details to justify that share capital was received from the known, existing identifiable parties, the transactions were done through banking channel and the relevant party had own sufficient funds to invest money in the appellant which was not controverted by the AO by reliable evidences.*

32. *Thus, it has to be said that the appellant had done everything in its power to prove the 3 ingredients required to prove the satisfactory nature of the said share application transactions. In these circumstances, the onus had shifted to the AO. If the AO was still not satisfied, he had the option of making further inquiries from available sources. He has opted not to comment on the reply furnished by the parties who were summoned nor has he relied on the same. He has also opted not to comment on the contents of the report of the FT&TR reference. However, in my opinion this is not right since such credible material was available*

with him and which was in fact filed at his insistence since he issued the notices seeking relevant information. Further, if the AO was not satisfied with what had been given to him by the appellant, he was duty bound to specify what more material he wanted the appellant to furnish. The AO never asked for any further material, though time and again the appellant asked in their submissions. This leads to the inescapable conclusion that the AO could not think of any further material to ask for and proceeded to reject the appellant's claims. The only adverse remark / observation that the AO has been able to gather is the fact of 2 varied valuation reports being submitted by the appellant. However, as discussed above already, this aspect cannot be enough to treat the share capital received as unexplained. The pros in the present case outweigh the only con identified by the AO. Thus, the unequivocal conclusion is that all the 3 ingredients having been satisfied, the impugned share capital has to be treated as explained satisfactorily and the AO was not justified in having disregarded overwhelmingly supportive evidence. No cogent material was adduced by the AO to show that share capital was unexplained. Therefore, the impugned additions, made in the assessment order, has to fail on several counts - (1) reliance on evidence that is totally inadequate; (2) failure to make available any credible incriminating material (reports, statements etc.) forming basis for action by the AO; (3) failure to recognize the satisfactory nature of the explanation /evidence tendered by the appellant to explain identity of said

party, creditworthiness and the genuineness of the share capital transactions.

33. It is gathered that the issue of share premium was referred by the AO to the Foreign Taxation division (FT & TR) of the CBDT and they did not find any anomaly in the share premium charged by the assessee or investment made by the foreign investor. Besides, it is noticed that the assessee has submitted full and complete details in respect of the above FDI investment which includes the following :-

- i. Copy of the shareholder's agreement entered into with the investor was provided,*
- ii. Copy of the valuation report obtained from the approved valuer prior to allotment of the shares was furnished,*
- iii. The detailed working for arriving at the basis of the share premium which in fact is based directly on the potential of the project which in turn was based on the total area possible to be developed in the said project,*
- iv. The financial projections of the said project are as per the valuation report obtained, were also furnished in reply to item No. (ii) above,*
- v. The proof of compliance with all statutory norms/conditions for taking FDI was clarified to be in the form of no action /enquiry initiated till date. Further,*

copy of the relevant RBI correspondence as regards the receipt of the said FDI was also furnished,

vi. It was stated that all compliance has been done with applicable Indian Statutory Laws prior to receiving the funds under FDI.

vii. It was further clarified that to the best of the knowledge of the appellant, there were no compliances required with Mauritian Statutory Laws prior to the incoming investment and that in case of any such compliance, the same may have been done at the end of IL&FS.

viii. It was also clarified that to the best of the knowledge of the appellant, they were compliant as regards the minimum capital investment and minimum area to be developed under investments received through FDI route.

ix. Copies of the Financials of the Overseas investor as available with the appellant were shared with the Id.AO.

x. The details of the beneficiaries shareholders of the said overseas investors have also been subsequently shared (though the same were not available initially with the appellant)

xi. The proof of the payment received through FDI from time to time in the form of the relevant bank account extract duly highlighting the said payments was provided, xii. Complete details the project from the time of acquisition of the land upto

date (being still under WIP state as on date) were also furnished.

34. *In view of the above discussion, it may be said that the share capital and share premium received by the assessee to the tune of Rs. 160 cr. including Rs. 87.48 cr. in the current year, has come from explained sources. This investment has come in the form of FDI from a Mauritius based company, IIRF Ltd. and the investment has been duly approved by the RBI. Therefore, there are no doubts about the genuineness of the share capital nor any doubts about the identity of the creditor. In fact, this issue was referred to by the AO to FT & TR, a foreign taxation division of the CBDT and apparently, nothing against the assessee has been reported. In the circumstances, addition made by the AO to the tune of Rs. 87.48 cr. in the hands of the assessee appears to be without any reasonable basis. The same is therefore directed to be deleted. **Consequently, ground no. 2 taken by the assessee is allowed.***

9. We have heard the rival submissions and on perusal of the relevant material placed on record and the findings of AO and Ld. CIT (A), we find that Ld. AO has not doubted the identity or creditworthiness of the Mauritius based investor company, IIRF Realty India IX Ltd for subscribing to the share capital of the assessee company, albeit has casted his doubt basically on the

ground that the assessee has received premium from the foreign investors without any credentials and the valuation report. One very important fact to be noted here is that, the assessee had furnished the source of the funds and who are investors on behalf IL&FS India Realty which are mainly US based funds and other entities owned and control by the respective state governments of Abu Dhabi, Singapore, etc. These entities are not based in any of the tax heavens. This IL&FS India Realty fund has also invested in other real estate companies and not alone in Assessee Company, the details of which has been given in the assessment order as well as in the appellate order and all the formalities of complying with the RBI requirement has been fulfilled. Another important fact is that IL&FS is a company promoted by a consortium of established and known Indian institutions comprising of LIC of India, HDFC Ltd, Central Bank of India, SBI, Orix Corporation, Japan and Abu Dhabi Investment Authority and others. The assessee had also provided copies of the financials for all the 3 years of the overseas investors before the AO to substantiate its genuineness and creditworthiness. Thus, it is not a case where identity, creditworthiness or genuineness could have been doubted or rather

it is not the case of the AO also. He has invoked deeming provision of section 68 on the premise of receiving of high premium on shares which according to him is without much credentials of the assessee company. In order to cover a situation where a company receives any consideration for issue of shares exceeding the face value, the statute has brought section 56(2)(viib) by Finance Act 2012, w.e.f. 1.04.2013, i.e., from AY 2103-14 and such deeming provision cannot be applied in AY 2009-10 to AY 2012-13. Thus, merely because Assessee Company has received high premium cannot be subject to tax under section 68, unless the genuineness of the transaction or creditworthiness of the subscriber is doubted, which is not case here at all.

10. Another very important fact is that the report from FT& TR division of CBDT did not find any anomaly in the share premium charged by the assessee or investment made by the foreign investor. There has been no adverse report doubting the genuineness of the fund or the source which fact has also been noted by the Ld. CIT(A) in para 32 of the said order. Thus, all the ingredients to prove the nature and source of credit as required under section 68 stands

discharged by the assessee and consequently no addition can be made.

11. In so far as charging of premium, the assessee has filed the copy of valuation report obtained from the Approved Valuer prior to allotment of shares and also certificate from E&Y. The Ld. AO has simply rejected the same to disbelieve the premium charged without bringing any material on record. In fact it has been brought on record that the investment which has been made by IL&FS in the assessee company had yielded huge dividend /profit from such investment, which shows that the premium on the shares stands justified and the valuation done on the DCF method by the Approved Valuer was correct. Accordingly, the aforesaid finding incorporated by the Ld. CIT(A) is confirmed as same is not only correct appreciation of fact and material on the fact and also in law and AO's case is simply based his hypothesis without any inquiry or material. Accordingly, the additions in all the 3 assessment years deleted by Ld. CIT (A) are confirmed and the grounds raised by the revenue are **dismissed**.

12. In so far as grounds raised in COs filed by assessee, the same are purely academic in nature in view of the additions made by the AO. Accordingly, the both the CO's filed by the assessee are **dismissed** as infructuous.

13. In the net result, all the appeals filed by revenue and both the COs filed by assessee are **dismissed**.

Orders pronounced in the open court on 30th August, 2022.

Sd/-

(S. Rifaur Rahman)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 30/08/2022
Sr.PS. Dhananjay

Sd/-

(Amit Shukla)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai