

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" BENCH, MUMBAI**

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1430/MUM/2022  
(Assessment Year: 2014-15)**

The Deputy Commissioner of Income Tax,  
Central Circle – 6(4), Mumbai,  
Room No. 1925,, 19<sup>th</sup> Floor,  
Air India Building, Nariman Point,  
Mumbai - 400021

..... Appellant

Westend Propmart Private Limited,  
1404, 14<sup>th</sup> Floor, 'A' Wing,  
Naman Midtown, Near Indiabulls Finance  
Centre, Senapati Bapat Marg,  
Prabhadevi (West), Mumbai - 400013  
[PAN: AABCW3463B]

Vs

..... Respondent

**Appearances**

For the Appellant/Department : Shri Dr. Kishor Dhule  
For the Respondent/Assessee : Shri Sidharth Kothari

Date of conclusion of hearing : 21.02.2023  
Date of pronouncement of order : 27.02.2023

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 17.12.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-54, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had partly allowed the appeal filed by the Appellant against the Assessment Order, dated 30.12.2019, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Revenue has raised following grounds of appeal:

- "1) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in quashing the order u/s 143(3) r.w.s. 147 of the Income tax Act, 1961, holding the same as invalid and illegal, without considering the pre-amended provisions of Explanation 1 to the Second Proviso to Section 147 of the Income tax Act, 1961, wherein it has been explained that production of books of account or other evidence before the Assessing Officer from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure."*
- (2) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not appreciating the fact that the assessee company got incorporated on 26.09.2012 and had low financials, and it failed to justify during the assessment proceedings receipt of such huge share premium, which was received in August' 2013,"*
3. In addition, the Revenue has, vide letter dated 30/11/2022, raised the following additional ground of appeal.
- a) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring that there is material on record to show that there has been over-valuation of shares and therefore, in presence of fresh material, the doctrine of "change of opinion" does not arise..*
- b) On the facts and in the circumstances of the case, the Ld CIT(A) has erred in quashing the assessment made u/s 147 of the I.T. Act by ignoring the fact that the statement recorded on oath of Shri Amit Sarin during the course of survey action u/s 133A and the new evidences referred to in the reasons recorded constitutes new material evidence which is sufficient for the issue of notice u/s 148.*
- c) On the facts and in the circumstances of the case, the Ld CIT(A) has erred in quashing of assessment u/s 147 of the I.T. Act and in not deciding the issue of addition u/s 56(2)(vii) without appreciating the fact that in the original*

*assessment proceedings, there has not been full and true disclosure of all facts regarding the valuation of shares.*

4. The relevant facts in brief are that the Assessee filed original return of income for the Assessment Year 2014–15 on 30/09/2014 declaring 'Nil' income. The case of the Assessee was selected for scrutiny and regular scrutiny assessment under Section 143(3) of the Act was framed on the Assessee vide order dated 23/11/2016. A search action under Section 132 of the Act was carried out in the case of Indiabulls Group on 13/07/2016 which was followed up by a survey action under Section 133A of the Act at the premises of Anantraj Estates Ltd. Statement of Mr. Amit Sarin, former director/shareholder of the Assessee, was recorded during the survey proceedings.
5. On the basis of statement of Mr. Amit Sarin, the case of the Assessee was reopened after recording reasons for reopening the assessment for the Assessment Year 2014–15 in writing, and notice under Section 148 of the Act was issued on 30/03/2019. In response to the aforesaid notice the Assessee filed return of income on 12/04/2019 declaring 'Nil' income. Objections against reopening the assessment were filed by the Assessee vide letter, dated 20/11/2019, contending, inter alia, that there was no fresh tangible material beyond what was available with the Assessing Officer while framing the regular scrutiny assessment under section 143(3) of the Act. Re-assessment proceedings were initiated on account of mere change of opinion and therefore, the reassessment proceedings were bad in law. The Assessing Officer rejected the objections raised by the Assessee by way of an order dated 26/11/2019 and proceeded with the reassessment proceedings. The Assessing Officer noted that that the Assessee-company

was incorporated on 26/09/2012 and had not carried out any activity during the relevant previous year which ended on 31/03/2013. Despite this, Albasta Infrastructure Ltd, and Rapid Estate Private Limited had acquired showing cumulative redeemable preference shares at a premium of INR 90 per share. The Assessee-company did not have any track record to justify the receipt of such a high premium. Therefore, the Assessing Officer rejected the share valuation done by following discounted cash flow method by stating that the projections made for obtaining valuation report were unrealistic without any basis and justification. The Assessing Officer took note of the fact that Mr. Amit Sarin had sold his shares in the Assessee-company at face value of INR 10/- on 05/08/2013. However, in the month of August itself, the equity/preference shares of the Assessee-company were issued at a premium of INR 90/- per share to Albasta Infrastructure Limited and Rapid Estate Private Limited. There was no event in between that could have resulted in huge variation in the projected profitability and valuation of the shares of the Assessee-company. The Assessing Officer concluded that Income to the extent of share premium of INR 42,75,00,000/- had escaped assessment as the Assessee had failed to disclose true and full particulars of income. Therefore, the Assessing Officer completed assessment under Section 143(3) read with Section 147 of the Act vide order dated, 30/12/2019, after making addition of INR 43,65,00,000/- holding the same to be Income from Other Sources taxable in terms of provisions of Section 56(2)(viib) of the Act.

6. Being aggrieved, the Assessee preferred appeal before CIT(A). Accepting the contention of the Assessee that the

reassessment proceedings have been initiated on account of mere change of opinion as there was no fresh tangible material available with the Assessing Officer for reopening the assessment, the CIT(A), vide order dated 17/12/2021, quashed the reassessment proceedings holding that the Assessing Officer was not justified in issuing notice under Section 148 of the Act.

7. Being aggrieved, the Revenue has preferred the present appeal against the above order passed by the CIT(A).
8. Learned Departmental Representative appearing before us submitted that CIT(A) erred in quashing the Assessment Order. He submitted that during the survey proceedings relating to Ananthraj Group statement of Mr. Amit Sarin, a director of Ananthraj Group, was recorded. He was a shareholder in the Assessee company till 05.08.20013 when he sold his shareholding in the Assessee-company at face value of INR 10/- per share. During the survey proceedings as well as during the post-survey proceedings he was unable to provide any satisfactory explanation as to why cumulative redeemable preference shares of the Assessee-company were issued to the Albasta Infrastructure Ltd and Rapid Estate Private Limited at premium of INR 90/- per share. Learned Departmental Representative submitted that the Assessee-company was incorporated on 26/09/2012 and did not have any track record to justify huge premium. The Assessee-company belonged to Indiabulls Group. The appraisal report prepared pursuant to search action carried out on Indiabulls group suggested that this group had carried out many accommodation related activities and the premium charged was nothing but merely

adjustment/accommodation entries. The Assessee-company did not have financial strength to justify premium of INR 90/- per share. The valuation carried out under Section 56(2)(viib) of the Act was based upon unrealistic projections. Referring to the reasons recorded he submitted that the Assessing Officer had fresh tangible material to form a belief that entire amount of INR 43,65,00,000/-, being premium received on issue of equity/preference shares, was income liable to tax under the head income from other sources in terms of Section 56(2)(viib) of the Act had escaped assessment.

9. In response, the Learned Authorised Representative for the Assessee submitted that regular scrutiny assessment was framed on the Assessee under Section 143(3) of the Act wherein the issue relating to allotment of equity/preference shares at a premium was examined in detail. All the relevant facts about share premium were placed before the Assessing Officer during assessment proceedings. The Assessing Officer after examining the relevant details and documents concluded that no addition in this regard was warranted. There was no new tangible material before the Assessing Officer for reopening assessment. At the relevant time when the statement of Mr. Amit Sarin was recorded, he was neither director nor shareholder of the Assessee-company and therefore, could not have provided explanation regarding issuance of equity/preference shares at a premium. He further submitted that the copy of statement of Mr. Amit Sarin was never furnished to the Assessee. Further, he submitted that the Assessee-company did not belong to Indiabulls Group. The transaction of sale of equity shares by Mr. Amit Sarin had no correlation with allotment of equity/preference shares after

change shareholding and management. He submitted that the reassessment proceedings were initiated merely on account of change of opinion as there was no fresh tangible material. Supporting the order passed by the CIT(A), he submitted that the CIT(A) was justified in quashing the reassessment proceedings.

10. We have considered the rival submissions perused the material on record. During the regular scrutiny assessment notice under section 142(1) of the Act was issued to the Assessee on 12/04/2016 wherein the Assessee was directed to submit (a) complete name and address of the applicants for shares along with their permanent account number, (b) file a copy of ledger account along with documents filed with the registrar of companies and (c) justify the large share premium received during the year. In response, the Assessee filed reply dated, 05/08/2016, giving complete details of Applicant of shares along with documents filed with the Registrar of Companies. Thereafter, vide notice dated 20/10/2016, the Assessee was asked to provide further the clarification and documents. The Assessee was asked to explain whether the provisions of section 56(2)(vii) of the Act were applicable to the issue shares. Further, the Assessee was asked to provide Share Valuation Report and the computation of value of shares as per Rule 11UA of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules'). In relation to share capital, the Assessee was expressed specifically asked to provide the source of credit in the books of accounts of the Assessee and also the source of credit in the books of accounts of the lender/investor, established genuineness of the transaction and creditworthiness of the parties involved. Vide reply letter dated

21/11/2016, the Assessee provided justification on large share premium received during the year when was stated that the Assessee had plans to invest in high yield real estate projects and to meet the requirement of funds the Assessee company opted makes of debt and equity to get better returns. The shares were issued on the basis of independent valuation done by a chartered accountant as per the provisions of the Act. A copy of the valuation report was also furnished by the Assessee along with the aforesaid reply. Being satisfied with the details, documents and explanation furnished by the Assessee, the Assessing Officer completed the assessment under Section 143(3) of the Act vide assessment order, dated 21/11/2016. Thus, we find merit in the contention of the Assessee that based upon the material/information placed before the Assessing Officer during assessment proceedings, the Assessing Officer had formed an opinion that no additions were warranted in the hands of the Assessee despite the fact high premium of INR 90/- per share was charged on issuance of equity/preference shares, and while forming the aforesaid opinion Assessing Officer had taken into account the provisions contained in Section 56(2)(vii) of the Act and Rule 11UA of the Rules. Since the notice under Section 148 of the Act was issued on 31/03/2019 which fell within a period of 4 years from the end of Assessment Year 2014-15, the Assessing Officer could have initiated reassessment proceedings even if there was no default on the part of the Assessee in making full and to disclosure. However, since the regular assessment was framed under Section 143(3) of the Act, the existence of fresh tangible material having nexus with escaped of income was prerequisite for initiating reassessment proceedings. We have perused of the reasons recorded in writing for initiating reassessment

proceedings [placed at page 47-50 of the paper-book] which read as under:

*"...2. From the statement on oath recorded on 17/11/2016 of Shri Amit Sarin during the survey proceedings it has been revealed that the assessee company has received 33,50,00,000 as share premium on issue of cumulative redeemable preference shares from Albasta Infrastructure Limited. These shares were issued at a premium of Rs.90/- per share. Satisfactory explanation was not ge offered during the survey proceeding and also during post survey proceeding. The assessee company has not carried out any activities in the year ended 31.03.2013. The company was incorporated on 26.09.2012 and is a newly incorporated company and also does not have any track record which justifies such a huge premium. From the financial of the company it is seen that the following cumulative redeemable preference shares were issued:-*

<i>Sr. No.</i>	<i>Name of the subscriber</i>	<i>No. of Shares</i>	<i>Amount</i>	<i>Share Capital</i>	<i>Share Premium</i>
<i>1</i>	<i>Albasta Infrastructure Limited</i>	<i>33,50,000</i>	<i>33,50,00,000</i>	<i>3,35,00,000</i>	<i>30,15,00,000</i>
<i>2.</i>	<i>Rapid Estate Private Limited</i>	<i>14,00,000</i>	<i>14,00,00,000</i>	<i>1,40,00,000</i>	<i>12,60,00,000</i>

*Further, it is also noted that these aforesaid companies are entities of Indiabulls Group. From the perusal of the appraisal report of the group it is also seen that this group has carried out many such accommodation related activities, which also suggest that the aforesaid premium is nothing but merely adjustment/ accommodation entries. Any prudent businessman will not investment in the newly incorporated company without having any financial strength and business venture in pipeline at such a high*

*price more specifically when there are many other investment opportunities are available in the market in the similar business activities. This also proves beyond doubt that these shares premium receipts are nothing but accommodation entries and or bogus premium receipts.*

*Though the assessment in the instant case has taken place U/s 143 (3) on 23.11.2016, but the assessee has not come forward with the particulars of these transactions with supporting evidences to prove genuineness and creditworthiness of the subscriber. The assessee also failed to substantiate the huge premium more specifically in the absence of the lucrative financials of the company. The financial strength of the company as at 31.03.2013 was as under:*

**SOURCE**

*Share Capital: 1,00,000/-  
Reserve & Surplus (-)27,400/-  
Current Liabilities 20,700/- Total 93,300/-*

**APPLICATION**

*Current Assets 93,300/-  
Total 93,300/-*

*Turnover NIL*

*Net Worth is 72600/-*

*and shares 10000 shares of Rs. 10/-issued at par Book value of the shares Rs.7.26*

*From the above it establishes beyond doubt that such a huge premium is not justified and also the assessee failed to submit justified documentary evidences for the valuation so carried out U/s Sec 56(2)(viib). It is also seen that valuation was based on unrealistic projections. Hence, it may be stated here that the assessee has not disclosed truly and fully all the material facts necessary for its assessment. I have, therefore, reason to believe that*

*amount to the tune of Rs.42,75,00,000/- has escaped assessment..."*

11. We concur with the CIT(A) that from the reasons recorded in writing, it can be seen that that the Assessing Officer did not have any information or details to initiate the reassessment proceedings. The same set of facts, being financial position of the Assessee – company as reflected in the audited financials, factum of issuance of equity/preference shares at a premium of INR 90/- per share, and the basis of valuation as captured in the valuation report, were all in existence during the regular course of assessment proceedings and were considered by the Assessing Officer. Thus, the reassessment proceedings are initiated on account of mere change of opinion on reconsideration of same set of facts though, this time, placed before the Assessing Officer as a consequence of search/survey proceedings. During the course of hearing, the Learned Departmental Representative had tried to impress upon the fact that Mr. Amit Sarin had during the survey proceedings failed to provide satisfaction explanation regarding the high premium of INR 90/- per share and that the Assessee-company did not have any financial strength to support the aforesaid premium. However, this very aspect was examined by the Assessing Officer during the regular assessment proceedings. It was explained by the Assessee that the shares were issued on value determined through independent valuation using discounted cash flow technique. A copy of valuation report was also furnished. Further, the only additional fact that the Mr. Amit Sarin had sold his shareholding to Rapid Estates Private Limited at par value of INR 10/- was not mentioned in the reasons recorded. Therefore, the same could be taken as the

basis for reopening the assessment. The CIT(A) was justified in concluding that the reassessment proceedings have been initiated only on account of mere change of opinion and in absence of any fresh tangible material. Accordingly we decline to interfere with the order, dated 17.02.2021, passed by CIT(A) quashing the reassessment proceedings. Ground No. 1 and 2 raised by the Revenue are dismissed.

In the present appeal by the Revenue is dismissed.

Order pronounced on 27.02.2023.

*Sd/-*  
(B.R. Baskaran)  
Accountant Member

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.02.2023  
*Alindra, PS*

**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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai