IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.4312/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2012-13)

DCIT-6(2)(1) R. No. 504, 5th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	**बनाम** / Vs.	M/s. Cyquator Media Services Pvt. Ltd. 135, Continental Building, Dr. A. B. Road, Worli, Mumbai-400018.

Cross Objection No. 302/Mum/2018
Arising out of I.T.A. No.4312/Mum/2017
(**निर्धारण वर्ष** / Assessment Years: 2012-13)

Cyquator Media Services Pvt. Ltd. 18th Floor, A Wing, Marathon Futurex, N. M. Joshi Marg, Lower Parel, Mumbai-400013.	**बनाम** / Vs.	DCIT-6(2)(1) Aayakar Bhavan, Mumbai-400020.

आयकर अपील सं/ I.T.A. No.4478/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2012-13)

M/s. Cyquator Media Services Pvt. Ltd. 135, Continental Building, Dr. A. B. Road, Worli, Mumbai-400018.	**बनाम** / Vs.	DCIT-6(2)(1) R. No. 504, 5th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020 DCIT-6(2)(1) R. No. 504, 5th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECP0069P		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Jay Bhansali/Ms. Slachi Jain
Revenue by:	Shri H. N. Singh (DR) & Mr. R. A. Dhyani (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 12/12/2022
घोषणा की तारीख /Date of Pronouncement: 06/03/2023

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These appeals preferred by the Revenue and the assessee along with the Cross Objections ('CO') filed by the assessee, for Assessment Year [in short 'AY'] 2012-13, arise out of the order passed by the Ld. Commissioner of Income Tax (Appeals)-12, Mumbai [in short 'Ld. CIT(A)'] dated 31-03-2017, against the assessment order passed u/s 143(3) of the Income-tax Act, 1961 [in short 'the Act'] dated 30-03-2016 by the Deputy Commissioner of Income-tax, Circle 6(2)(1), Mumbai [in short 'the AO'].

2. The grounds of appeal raised by the Revenue are as under: -

> "1. On the facts and circumstances of case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.1466.60 crores made u/s 56(1) of the Act, on account of shares of Zee Entertainment Enterprises Ltd. received by the assessee company from M/s Essel Business Process Ltd. at the time of amalgamation, without appreciating the fact that the shares issued to M/s Essel Business Process Ltd. consequent to amalgamation was bought back by the assessee company for a consideration of Rs. 1.20 crores whereas, the value of shares of Zee Entertainment Enterprises Ltd. received at the time of amalgamation was at Rs.1466.60 crores.
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> 2. On the facts and circumstances of case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.1466.60 crores made u/s 56(1) of the Act on account of shares of Zee

Entertainment Enterprises Ltd. received by the assessee company from Ms Essel Business Process Ltd. at the time of amalgamation, without appreciating the fact that there was no substantial increase in the revenue of the assessee company and the increase attributable was only on account of amalgamation of M/s Essel Business Process Ltd. only.

3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1466.60 crores made u/s 56(1) of the Act, holding that a direction was given in the case of M/s Jayneer Capital Pvt. Ltd. to work out the capital gains and the addition of face value in the assessee's case tantamount to double addition without appreciating the fact that the issue in the case of M/s Jayneer Capital Pvt. Ltd. has not come of finality.

4. On the facts and in the circumstances of the case Ld. CIT(A) though has held that the intent of Transferor Company is appearing to not conduct any business activity but only Transfer of Shares of ZEEL to the appellant in the garb of Amalgamation, yet the CIT (A) has deleted the addition made u/s 56 on the ground that it amounts to double addition in the Group Concern, when under the Income Tax Act each company is a separate entity hence, taxing of Capital Gains in the hands of another entity, Jayneer Capital Pvt. Ltd. does not lead to double taxation

5. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on account

of treatment of share capital / share premium/share application to the tune of Rs. 29.30 crores received from M/s. Essel Media & Entertainment Ltd. as unexplained cash credit u/s 68 of the Act, without appreciating the fact that the assessee company has failed to furnish the details of source of funds in the hands of EMEL and also of funds in the hands of PPIL.

6. On the facts and of the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.29.30 Crores on account of Share Premium by upholding the discounted Cash flow (OCF) method adopted by the assessee instead of Net Asset value (NAV) method adapted by the A.O. for determining the value of shares received from M/s Essel Media, & Entertainment Ltd.

7.On the facts and in the circumstances of the case) and in law, the Ld. CIT(A) erred in deleting the addition of Rs.29.30 Crores on account of share capital / share premium / share application without appreciating the fact that 'the assessee has not furnished the details of DCF valuation at the time of assessment proceedings, as recorded by the A.O. in para 20 of the Assessment order.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance made u/s 14A r.w.r 8D(2)(ii) & 8D(2)(iii) of Rs.12,47,28,867/- and Rs.4,08,52,175/-, respectively, without appreciating the fact that assessee's own fund was only Rs. 98149.37 Lakh whereas investment was of Rs.164308.70 Lakh."

3. Against the above, the cross-objections (CO) of by the assessee are as under: -

> "1. The CIT(A) / Assessing Officer (hereinafter referred to as "the AO") erred in holding that the transfer of shares of Zee Entertainment Enterprises Limited on account of amalgamation between Essel Business Process Limited and the assessee was a part and parcel of a colorable device intended to avoid tax. The reasons given by her are wrong and contrary to the facts and circumstances of the case and in law,
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> 2. The CIT(A) erred in relying on CIT(A)'s observations in Jayneer Capital Private Limited case though these bore no connection with the assessee's case, that too without confronting the assessee with the same. The CIT(A) failed to appreciate that the amalgamation between the assessee and Essel Business Process Limited, resulting in receipts of shares of Zee Entertainment Enterprises Limited, bears no link with the transactions entered into by Jayneer Capital Private Limited with other parties;
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> 3. The AO / CIT(A) failed to appreciate that, on the facts and circumstances of the case and in law, the provisions of section 14A read with Rule 8D could not be invoked;
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> 4. The AO/ CIT(A) failed to appreciate that the disallowance under section 14A read with Rule 8D could not be added while computing book profit under section 115JB of the Act

5. The above cross objections are without prejudice to each other,

6. The Respondent craves leave to add, amend or alter all or any of the objections raised thereto."

4. Thereafter, the assessee has raised the following grounds in its cross-appeal, which are as under: -

"1. Assessment Order under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") is bad in law

a. The Commissioner of Income-tax (Appeals) (hereinafter referred to as "the Ld. CIT(A) / the Assessing Officer (hereinafter referred to as "the AO") failed to appreciate that an assessment order passed beyond the expiry of time limit prescribed under section 153 of the Act is bad in law and liable to be quashed

2. Disallowance of carry forward / set off of losses under section 79 of the Act.

a. The Ld. CIT(A) / AO erred in upholding disallowance of carry forward / set off of losses under section 79 of the Act. The reasons given by her for doing so are wrong, contrary to the facts of the case and provisions of law.

b. The Ld. CIT(A) / AO failed to appreciate that in order to invoke provisions of section 79 of the Act, voting power is

relevant and not the shareholding pattern and therefore in a case where 51% or more of the ultimate voting remained unchanged, the Appellant was entitled to carry forward and set off the losses

3. Disallowance of 14A of the Act read with Rule 8D of the Income-tax Rule, 1962

a. The Ld. CIT(A) erred in law and facts in confirming the addition of Rs. 4,10,77,175/- u.s 14A of the Act r.w. Rule 8D to book profit computed u/s 115JB of the Act. The reasons given by her are contrary to the facts of the case and provisions of the Act."

5. The assessee has also raised the following additional grounds before us :-

(i) Whether on the facts and circumstances Ld. CIT(A) was justified in upholding the disallowance of Rs.4,10,77,175/- of expenses u/s 14A r.w. Rule 8D."

6. It is noted that the issue raised in this additional ground is legal in nature and the facts relating to this additional ground are available on record, and is therefore admitted.

7. Ground Nos. 1 to 4 of the Revenue's appeal and the Ground nos. 1 & 2 of the C.O. being inter-connected is being taken up together.

8. Brief facts are that, the assessee company which is engaged in the business of selling advertisement space and rendering subscription management services had filed its return of income for the relevant AY 2012-13 on 30-09-2012 declaring total loss of Rs.7,91,18,428/-. Later, the case of the assessee was selected for scrutiny. The AO noted that, in the year under consideration, a group company, M/s. Essel Business Process Limited [in short 'EBPL'] was amalgamated with the assessee company, M/s. Cyquator Media Services Private Limited [in short 'Cyquator' or 'assessee'] w.e.f. 15-10-2011, as per the scheme of arrangement which was sanctioned by the Hon'ble Bombay High Court vide order dated 02-12-2011. In terms of the scheme as approved by the Hon'ble High Court, all the assets & liability of EBPL stood transferred and vested in the assessee company. Acting in compliance with Clause 6 of the Scheme of Arrangement, the assets & liabilities were accounted in the books by the transferee company at fair value. The AO noted that, the assessee had inter alia received 13,09,88,822 equity shares of M/s. Zee Entertainment Enterprises Limited [in short 'ZEEL'] from EBPL pursuant to the amalgamation. The AO observed that these shares of ZEEL which were held by EBL at cost of Rs.27/- was accounted by the assessee in the books at fair value of Rs.1466.60 crores.

9. According to the AO, the assessee had failed to furnish the rationale and business prudence in terms of which 13,09,88,822 equity shares of ZEEL, which were acquired by EBPL for Rs.27/-, now stood

transferred to the assessee in terms of the scheme of amalgamation. The AO was of the view that the transfer of shares of ZEEL from EBPL to the assessee was done in the garb of amalgamation with the sole intent to avoid incidence of tax. To this, the assessee furnished detailed explanation wherein it explained the factual position and the rationale behind the scheme of arrangement and also pointed out that the restructuring exercise was undertaken within the four corners of law and was given effect to only upon obtaining the approval of the Hon'ble High Court. The AO, however, did not agree with the contention of the assessee for the reasons elaborately discussed at Paras 4 to 17 of the assessment order. In brief, the AO was of the view that the scheme of amalgamation was a 'colourable device', carried out with no business intent and meant to avoid tax. According to the AO, the transfer of shares at NIL consideration ought to be held as 'colourable device', and thus he brought the same to tax u/s 56(1) of the Act. Thus, the AO inter alia disregarded the subsidiary-holding relationship and also denied the benefit of Section 47(vi) of the Act. He held that there was a 'transfer' of shares, which resulted in the generation of income in the hands of the assessee. He, accordingly, taxed a sum equivalent to the fair value/market value of 13,08,88,822 equity shares of M/s. ZEEL, as appearing in the books of the assessee, i.e. Rs.1466,60,00,000/-, as "*Income from other sources*" u/s 56(1) of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A).

10. According to the Ld. CIT(A), the AO had rightly disregarded the scheme of amalgamation. The Ld. CIT(A) was of the view that, the transfer of the shares of ZEEL in the garb of gift/amalgamation etc., was not a case of corporate restructuring. Instead, according to the Ld. CIT(A), it was a tool to accommodate exchange of shares between M/s Jayneer Capital Pvt Ltd [in short 'Jayneer'] and Essel Corporate Resources Pvt Ltd [in short 'ECRPL'] without payment of tax. The Ld. CIT(A) thereafter proceeded to discuss the relevant findings recorded by him in the appeal decided in the matters of another company, Jayneer. According to the Ld. CIT(A), the case of Jayneer was directly connected with the instant case. In brief, according to the Ld. CIT(A), shares of Wire & Wireless India Ltd [in short 'WWIL'] had been transferred by Jayneer & its associates to ECRPL & its associates in the garb of gift /acquisition of holding/ amalgamation etc.; in exchange for receiving shares of ZEEL in the garb of gift/acquisition of holding/ amalgamation etc. The Ld. CIT(A) noted that, these shares of ZEEL were first received from ECRPL by Essel Media Entertainment Ltd [in short 'EEML'] which then amalgamated with ZEEL, and thereafter through scheme of gift/amalgamation etc. between EBPL and Cyquator, the shares stood ultimately transferred to Jayneer. The Ld. CIT(A), accordingly, held that Jayneer did not actually gift the shares of WWIL, but that Jayneer had exchanged the shares of WWIL for receiving the shares of ZEEL, and therefore directed the AO to tax such 'exchange' of shares by way of 'capital gains'. Relying on the aforesaid decision taken by him in the matters of Jayneer, the Ld.

CIT(A) observed that, he had already disregarded the entire act of gift/acquisition of holding/amalgamation and the AO of Jayneer was directed to work out & assess capital gains in relation to exchange of shares of WWIL with ECRPL for shares of ZEEL. According to Ld. CIT(A) therefore, the addition of the fair value of shares of ZEEL received by the assessee would amount to double taxation of the same sum, once in the hands of Jayneer and again in the hands of the assessee. On this score alone, the Ld. CIT(A) deleted the addition made u/s 56(1) of the Act.

11. Aggrieved by the aforesaid action of the Ld. CIT(A), the Revenue is in appeal before us by preferring the ground nos. 1 to 4. The assessee has also filed their cross-objection in Ground Nos. 1 & 2 challenging the observations made by the Ld. CIT(A) disregarding the scheme of amalgamation and holding it to be a 'colourable device'.

12. Assailing the action of the Ld. CIT(A) deleting the addition of Rs.1466.60 crores which was added by the AO u/s 56(1) of the Act, the Ld. CIT-DR has submitted a report from the AO wherein the facts justifying the addition has been brought to our notice vide letter dated 09.09.2022, which is reproduced as under: -

> "Background:
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> In this case, appeal was filed by the Department against the order of the CIT(A) who had deleted the addition of Rs. 1466.60 crores made u/s 56(1) of the IT Act, 1961 by the AO as well as deletion of Rs. 29.30 crores on account of share capital/premium

received by the assessee and disallowance u/s 14A of Rs. 12.47 crores & Rs. 4.08 crores.

The requisite details of written submission as to how the addition of Rs. 1466.60 crores can be made u/s 56(1) of the IT Act and how receipt of share of M/s ZEEL Ltd under the scheme of Amalgamation comes under the definition of income u/s 2(24) of the IT Act, are as under:

1. Addition of Rs. 1466.60 crore u/s 56(1) of the Act:

i) The brief facts of the case are that there was -n amalgamation of M/s Essel Business Process Ltd. (EBPL) with the assessee. During the course of amalgamation, all assets and liabilities of EBPL were taken over by the assessee company including 13,09,88822 shares of Zee Entertainment Enterprise Ltd. (ZEEL), Pursuant to the amalgamation, the assessee company has issued 4 equity shares of its company to the shareholders of EBPL. In this context, the AO noted that as and when a particular asset in the form of shareholding in group concerns is to be transferred, the modus adopted was always the same. First, the transferor company becomes the holding company

Hence, In the valuation report, the share price of Zee Limited should also have been incorporated. As per Rule 11UB of J.T, Rules,

(1) The fair market value of asset, tangible or intangible, as on the specified date, held directly or indirectly by a company or an entity registered or incorporated outside India (hereafter referred to as "foreign company or entity”), for the purposes of clause (i)

of sub-section (1) of section 9, shall be computed in accordance with the provisions of this rule.

(2) Where the asset is a share of an Indian company listed on a recognized stock exchange on the specified date, the fair market value of the share shall be the observable price of such share on the stock exchange:

ii) On the date of valuation i.e. September 21, 2011, the value of each share of Zee Limited as per recognized stock exchange was Rs. 116.5. Hence the total value of shares of Zee was Rs. 15,24 85,47,763. However, as per valuation report of EBPL, the value of EBPL -s Rs. 20,00,000 and value per share was Rs. 145.48/-. Hence, it is evident that the share valuation of EBPL as carried out on September 21, 2011 did not include Zee shares. Hence, the valuation report is based on incorrect facts and needs to be rejected.

iii) The share exchange ratio between EBPL and Cyquator Media Services Private Limited was determined on the basis of the valuation report dated 21 September 2011. As per facts mentioned above, the valuation report itself is faulty and it is concluded that the whole merger of EBPL with CMSPL has been done for avoidance of tax and gains in the hands of the assessee company has to be treated as income from other sources u/s 56(1) of the I.T Act.

Yours faithfully,
(Jayantika Singh)
Asst. Commissioner of Income Tax-6(1)(1), Mumbai.

13. Placing reliance on the above report, the Ld. CIT-DR submitted that the AO had clearly brought out on facts and from the valuation report that, the scheme of amalgamation was envisaged only to transfer

the shares of ZEEL with the sole intent to evade tax, which was leviable had the shares been transferred otherwise. He thus urged that the AO has rightly brought to tax the amount of Rs.1466.60 crores u/s 56(1) of the Act and that the Ld. CIT(A) erred in deleting the same. He also assailed the basis on which the Ld. CIT(A) deleted the impugned addition viz., the directions given by him in the case of Jayneer. According to Ld. CIT, DR, the facts involved and the decision taken in the case of Jayneer was completely independent of the assessee and therefore had no bearing or relevance in the present case. He urged that any addition made in the hands of Jayneer Capital Pvt Ltd is separate and independent of the assessee and therefore cannot be said to amount to double taxation. He thus prayed that the action of the Ld. CIT(A) be reversed and the order of the AO be upheld.

14. Per contra, the Ld. AR of the assessee, Shri Jay Bhansali, assisted by Ms. Slachi Jain, submitted that once the scheme of amalgamation is sanctioned by the Hon'ble High Court, and to which the Union of India is also a party, the AO cannot disregard the same while alleging it to be a 'colourable device'. The Ld. AR brought to our notice that the Revenue had been put to notice regarding the scheme of arrangement and its terms by the assessee company vide letter dated 02.09.2011. He has placed before us copy of the relevant letter filed before the Regional Director, Department of Company Affairs along with the letter addressed to the Income-tax Department (Annexure K-1 & K-2 of that letter). He submitted that, the Revenue

did not object to the scheme of arrangement at that material time when it could have before the Hon'ble High Court. According to him, therefore, post the sanction of the scheme of arrangement for amalgamation of EBPL with Cyquator by the Hon'ble High Court, the AO cannot term the same as a 'colourable device'. For this, he cited the decision of the Hon'ble Bombay High Court in the case of **Sadanand S. Varde Vs. State of Maharashtra (115 Taxman 407)** wherein it was held as under: -

> "We are of the view that the amalgamation, which has become final and binding, cannot be permitted to be challenged by the petitioners, without locus standi, in a collateral proceeding in the present writ petition. An amalgamation order can only be challenged under the Companies Act by an appeal under Section 391(7) by any one of the parties, but no such appeal was ever filed. From 1993 onwards, no one (except the writ petitioners by the present writ petition) has complained that the amalgamation order was vitiated for any reason whatsoever. It is also of interest to note that the appropriate authority under Chapter XX-C of the Income-tax Act (i.e., the fifth respondent) had also sought clarifications from the ninth respondent which were forwarded by the letters dated June 2, 1994, June 9, 1994 and June 14, 1994, written by K. K. Ramani and Co., chartered accountants, on behalf of the ninth respondent. The appropriate authority had also called the ninth respondent for a hearing which was held some time in June, 1994. Even in the affidavit of Prayag Jha dated October 17, 1994, in which the omission in Clause (11) of the amalgamation scheme has been highlighted

> and detailed reference has been made to the order of the company court, issuance of shares by the ninth respondent and so on, there is no prayer made that the order of amalgamation be set aside or reviewed or recalled, nor were any steps taken by the fifth respondent to set aside the amalgamation order on the ground of misrepresentation, suppression of facts or fraud, as contended before this court.
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> It is contended by learned counsel for the sixth and the ninth respondents that neither the appropriate authority (fifth respondent) nor any one else could challenge the order dated February 3, 1993, at this point of time. In the alternative, it is contended that the appropriate authority is estopped from doing so since it had taken no step at any point earlier and allowed the shareholders to alter their position to their detriment. The reliance placed on the judgment of this court in J. K. (Bombay) Pvt. Ltd. v. New Kaiser-J-Hind Spinning and Weaving Co. Ltd. [1967] 2 Comp LJ 272 appears justified."

15. Thereafter, the Ld. AR also drew our attention to the Hon'ble Supreme Court's decision in the case of **Dalmia Power Ltd. Vs. CIT (112 taxmann.com 252)** wherein the Hon'ble Supreme Court held that a scheme of amalgamation once approved attains statutory force and operates not only between transferor and transferee but also *in rem*. The Ld. AR further drew our attention to several other judicial precedents in the same context, which we shall discuss in the succeeding paragraphs. The Ld. AR accordingly asserted that the AO erred in terming the amalgamation as a colourable device, particularly

when the scheme bore the stamp of approval of the Hon'ble Bombay High Court.

16. The Ld. AR also objected to the observations made by the Ld. CIT(A) while deleting the addition. According to the Ld. AR, the Ld. CIT(A) erred in relying on the observations that were made by him in the case of Jayneer, which according to the Ld. AR, had no connection with the assessee's case. Taking us through the observations of the Ld. CIT(A), he pointed out that the transaction entered into by Jayneer with other parties did not have any relevance in the present case. The Ld. AR emphasized that, even the Revenue did not agree with these observations of the Ld. CIT(A) and therefore reliance placed by the Ld. CIT(A) on the findings rendered in the matters of Jayneer being factually erroneous deserves to be expunged. The Ld. AR, in the alternate, brought to our notice that the adverse findings recorded by the Ld. CIT(A) in the matters of Jayneer had since been deleted by this Tribunal in ITA No. 4477/Mum/2017 dated 28-02-2019, copy of which was placed on our record.

17. Countering the report of the AO placed before us by the Ld. CIT, DR, the Ld. AR pointed out that the AO had cited the valuation methodology laid down in Rule 11UB to doubt the correctness of the valuation report prepared at the time of amalgamation. He brought to our notice that Rule 11UB was inserted by the IT (Fifteenth Amendment) Rules, 2016 with effect from 28-06-2016 and therefore

was not applicable in the relevant AY 2012-13. The Ld. AR further submitted that the acceptability of the valuation report and the ratio of exchange of shares was the subject-matter qua the shareholders of the transferor and transferee company in as much as it did not have any impact on the assets/liabilities being received pursuant to amalgamation by the transferee company. He took us through the provisions of Section 2(1B) read with Section 47(iv) of the Act to show that the valuation report and the ratio of exchange of shares was of no relevance to ascertain tax consequence in the hands of the resulting company. He, accordingly, urged that the validity of scheme of amalgamation be upheld and the benefit of Section 47(vi) of the Act ought to be allowed to the assessee. The Ld. AR thus claimed that the addition made u/s 56(1) of the Act be deleted.

18. We have heard both the parties, perused the records and the written submissions filed by the Revenue and the assessee. The issue to be decided in this appeal for AY 2012-13 is, whether the scheme of amalgamation undertaken between EBPL and the assessee, was a 'colourable device', entered into with the sole intent to evade taxes or not; and if so held, whether the AO was correct in assessing the fair value of shares of ZEEL received by the assessee pursuant to the said scheme as income from other sources u/s. 56(1) of the Act.

19. From the facts placed before us, it is noted that the assessee had acquired the Advertisement Space Sales Division from M/s Diligent

Media Corporation Ltd [in short 'DMCL'] on a going concern basis, vide Business Transfer Agreement dated 01.07.2011 for a net consideration of Rs.2595.27 lacs. The details thereof are noted to be available in Note no. 33 [Page 22 of the Paperbook] of the Financial Statements, which is placed at Pages 1 to 26 of the Paper book. We observe that the lower authorities have not disputed the acquisition of the business division of Advertisement Space Sales from DMCL. Thus, the undisputed fact noted by us is that, the assessee was engaged in the business of selling of advertisement space prior to entering into the scheme of amalgamation having a valuable asset base. The Ld. AR pointed out that, the assessee being engaged in the business of selling advertisement space had sought to take over the EBPL's business of running call centres vide scheme of amalgamation, which was filed before the Hon'ble Bombay High Court on 02.12.2011 with the Appointed Date as 15.10.2011. This according to the Ld. AR was a prudent commercial decision of the Group to generate synergies by integrating both these businesses and achieve economies of scale. We therefore find merit in the submissions of the Ld. AR that, the assessee had indeed explained the object behind the scheme of amalgamation and the observation of the lower authorities that the assessee was not engaged in any business activity prior to the scheme of amalgamation is factually untenable. The lower authorities are thus noted to have factually erred in holding that the assessee was previously a shell entity and that, the scheme was undertaken between EBPL and

assessee with the sole intent to transfer shares of ZEEL so as to avoid tax.

20. It is noted that, the AO had made reference to several other schemes of arrangement entered into by different entities/ companies to allege that all these schemes, including the scheme of arrangement entered into between the assessee and EBPL, was arranged so as to give effect to a bigger scheme of family arrangement inter-se the promoters. According to the AO, all these schemes/acts were undertaken in a synchronized manner to bifurcate & transfer holdings of different verticals amongst different promoter groups without any incidence of income taxes. As rightly pointed out by the Ld. AR, these references/remarks made by the AO were *sans* any material or corroborative evidence. Although the AO is noted to have discussed certain modus operandi and the year-wise changes in the shareholding pattern of different entities, but no tangible material was brought on record to demonstrate a live link or nexus between the other schemes of arrangement and the present scheme of arrangement, which would have gone on to demonstrate that the latter was a subterfuge. Having not undertaken this exercise, we are unable to entertain or examine the allegations levelled by the AO, particularly when the complete facts concerning the other schemes & terms therein are not placed before us. In absence of there being any tangible evidence linking the terms of other schemes of arrangements between different entities with the present case, they cannot be straightaway read into or relied upon to

draw any inference, adverse or not, in the hands of assessee. On these given facts, we are therefore of the considered view that, the present scheme of arrangement has to be viewed independently.

21. Likewise, we find that even the Ld. CIT(A) has factually erred in having relied on the observations/ findings made by him in the appeal matters of Jayneer in Appeal No. CIT(A)-12/ITO6(3)(1)/256/2015-16 to adjudicate the addition made in the hands of the assessee u/s 56(1) of the Act is also held to be untenable. Both the Revenue & the assessee in their grounds of appeal deprecating the action of the Ld. CIT(A) have claimed that when the scheme of amalgamation in question did not involve Jayneer directly or indirectly, the findings/conclusions drawn in its income-tax assessment cannot serve as a basis to ascertain the incidence of tax in the case of the assessee. We are also unable to countenance this action of the Ld. CIT(A). To that extent, the contention of the Revenue as well as the assessee is accepted.

22. Now coming to the scheme of amalgamation between the assessee and EBPL, it is noted that the same was approved and sanctioned by the Hon'ble Bombay High Court vide order dated 02.12.2011. The Ld. AR brought to our notice that the assessee had intimated the terms of the Scheme to the Income-tax Department, and they had not objected to the same before the Hon'ble High Court nor did they claim then that the scheme was prejudicial to the interests of

the Revenue. We therefore find merit in the Ld. AR's contention that, once the jurisdictional High Court had approved the terms of the scheme of amalgamation, the allegation of the use of a 'colourable device' stands precluded. For this, we refer to the CBDT Letter in **F.NO.279/MISC./M-171/2013-ITJ, dated 11-4-2014.** In this letter, the CBDT had communicated to the field officers that, when the terms of a scheme of arrangement are intimated to the Income-tax Department, then that is the only opportunity afforded to the Department to object to the scheme of arrangement. If something is found prejudicial to the interest of Revenue, then necessary comments/ objections ought to be sent to the concerned CIT or the Regional Director, MCA for incorporating them in their response to the Court pending approval of the scheme of amalgamation. The relevant extracts of the CBDT's letter are as follows:

> "..In this connection Circular No 1/2014 dated 15.01.2014 has been issued by MCA to Regional Directors which lays down that while furnishing any report regarding reconstruction or amalgamation of companies under the Companies Act, comments and inputs from the Income Tax Department may invariably be obtained so as to ensure that the proposed scheme of reconstruction or amalgamation has not been designed in such a way as to defraud the Revenue and consequently being prejudicial to public interest. It has further been said that the Regional Directors would invite specific comments from the Income Tax Department within 15 days of receipt of notice before filing response to the Court. It is emphasised that this is

> the only opportunity with the Department to object to the scheme of amalgamation if the some is found prejudicial to the interest of Revenue and therefore, it is desired that the comments/objections of the Department are sent by the concerned CIT to Regional Director, MCA for incorporating them in its response to the Court, immediately after receiving information about any scheme of amalgamation or reconstruction etc."

23. The Ld. AR has also rightly relied on the following findings of the coordinate Bench of this Tribunal at Kolkata in the case of **ITO Vs. Purbanchal Power Co. Ltd. (ITA. No. 201/Kol/2010)** wherein it was held as under: -

> "From the above provisions of section 394A of the Companies Act, 1956, legal position enunciated in the decisions of Hon'ble Gujarat High Court in the case of Wood Polymer Ltd., in re and Bengal Hotels Pvt. Ltd. in re, supra and Vodafone Essar Gujarat Ltd., supra, evidently makes the purpose clear that if the revenue wants to object to the proposed scheme of amalgamation, it has to do so in the course of proceedings before the High Court but before the final order is passed. Whenever such objections have been raised, these have been considered on merits by the concerned High Court and also incorporated the condition for safeguarding the interest of revenue in the very scheme. As a matter of public policy, once a scheme of amalgamation is approved by Hon'ble High Court no authority should be allowed to tinker with the scheme. In the present case of the assessee,

neither the official liquidator nor the Regional Director nor Central Government raised any objection to the scheme of amalgamation. In such circumstances, we are of the view that the revenue has nothing to say at the time of approval of scheme by Hon'ble High Court in the present case."

24. The above decision of this Tribunal is noted to have been upheld by the Hon'ble Calcutta High Court in the case of **CIT Vs Purbanchal Power Company Ltd (145 taxmann.com 215).** Before the Hon'ble High Court, the Revenue posed the following questions of law :-

"(i) Whether on the facts and in the circumstances of the case the Learned Income-tax Appellate Tribunal, "B" Bench, Kolkata erred in law in upholding the order of the CIT (Appeals)-VIII, Kolkata by deleting the addition of Rs. 69,64,34,089/- made by the Assessing Officer on the ground that jurisdictional High Court has approved the scheme of Amalgamation without considering the ratio laid down by Hon'ble Apex Court in the case of Marshall & Sons as the Department has initiated separate proceedings considering the violation of section 2(1B) of the Income-tax Act, 1961?

(ii) Whether on the facts and in the circumstances of the case the Learned Income-tax Appellate Tribunal, "B" Bench, Kolkata erred in law in holding that the Department cannot examine the taxability of income under section 68 of the Income-tax Act only because the Hon'ble High Court has approved a scheme of amalgamation ?"

25. The Hon'ble High Court is noted to have held that, once the jurisdictional High Court has approved the terms of the scheme of amalgamation, then even if the Scheme sanctioned results in tax benefit or savings of tax, it cannot be said that the Scheme was floated with the sole object of tax avoidance. To arrive at this conclusion, the Hon'ble Calcutta High Court followed the decision of the Hon'ble Gujarat High Court in the case of **Department of Income-tax Vs Vodafone Essar Gujarat Ltd (353 ITR 222)** which has since been affirmed by the Hon'ble Supreme Court as reported in **373 ITR 525**. The relevant findings of the Hon'ble High Court are as follows:-

> "4. The issue involved in the instant case is whether the scheme of amalgamation which was approved by this Court could be stated to be a scheme which was floated by the assessee with the sole object of avoidance of income tax. The assessing officer held so. Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income-tax (Appeals)-VIII, Kolkata. By order dated 19th November, 2009, the appeal was allowed. The finding rendered by the appellate authority is as follows:
>
> *** *** ***
>
> However, once the Hon'ble jurisdictional High Court approves the scheme of amalgamation, it is a natural corollary to presume that these issues were in the knowledge of the Hon'ble High Court and, also, that such an order has been passed after due deliberations of all concerned issues. The AO has relied on a few case

laws in support of his stand. These have been perused. I do not discern any latitude in these decisions which can empower any AO to challenge the jurisdictional High Court's order in this regard. Moreover, once the jurisdictional High Court approves of a scheme of Amalgamation, the suspicion of a colourable device therein is preclude. The AO has mentioned in his order that a ‘a huge amount of money has been transferred to the serve by way of some transaction which is nothing but a colourable devise to put the reserve by way of some transaction which is nothing but a colourable devise to put into undisclosed and unaccounted income of the assessee company through the transferor companies. . .’. The assessment order itself is silent about the process of generation of such 'undisclosed and unaccounted income'. There is no material therein to indicate that the appellant has earned any such income as mentioned by the AO.

Furthermore, as has been repeatedly stressed in various judicial decisions, the tests for an addition under Sec. 68 of the Income-tax Act to be sustained are those of identity of the creditor, its creditworthiness and genuinity of the transactions. If the AO's addition is measured against these, then it is seen that, there is no dispute as to the identity of these amalgamating companies, their creditworthiness is attested by their balance-sheet which, have been accepted by the AO and there is no imputation in the order that these monies have been actually paid to the appellant, in

whatever manner. Thus the question of genuinity also becomes redundant. Accordingly, I direct that the addition made under Sec. 68 of the Income-tax Act, 1961 on account of Amalgamation Reserve credit in the books be deleted. These grounds of appeal are allowed".

…

6. With regard to whether the scheme of amalgamation is a colourable device, the tribunal elaborately considered the facts and also took note of various decisions and in particular, this Court approved the scheme of amalgamation and held the said issue against the revenue. Aggrieved by the same, the revenue is before us by way of this appeal.

7. The Hon'ble Gujarat High Court in Vodafone Essar Gujarat Ltd. case (supra) held as follows:

"46. *** *** ***

Keeping the said object in mind if the Scheme has been framed and is approved by the shareholders in their wisdom, in our view, it cannot be said that the Scheme itself is floated with the sole criteria of tax avoidance simply because it may have effect and result into avoidance tax. If the Scheme is evolved by way of an arrangement and with an object of converting the PI assets from non-revenue generating assets; improved network quality and greater coverage etc.

*** *** ***

It may be relevant to note that even the Central Government has not raised any objection to the Scheme

and even the Department has not contended that the aforesaid objectives are imaginary. Therefore, it cannot be said that the Scheme has no purpose or object and that it is a mere device/subterfuge with the sole intention to evade taxes, particularly when even the incidence of tax purportedly sought to be evaded is not established on facts. Further, similar scheme of arrangement proposed by other telecommunication companies to achieve the aforesaid objective have been sanctioned by different High Courts. In our considered view, this Court cannot refuse the sanction on the aforesaid ground by coming to the conclusion that the only object of the Scheme is to avoid taxes.

47. It is, no doubt, true as argued by Mr. Thakor that in case the Scheme is sanctioned, it may result into tax avoidance on the part of the appellant, but it is required to be noted that even if the ultimate effect of the Scheme may result into some tax benefit or even if it is framed with an object of saving tax or it may result into tax avoidance, it cannot be said that the only object of the Scheme is 'tax avoidance'. Considering the various clauses of the Scheme, it is not possible for us to come to a conclusion that the Scheme is floated with the sole object of tax avoidance."

8. The above decision was affirmed by the Hon'ble Supreme Court as reported in the case of Department of Income-tax v. Vodafone Essar Gujarat Ltd. [2016] 66 taxmann.com 374/[2015] 373 ITR 525. In the light of the factual position

> arrived at by the tribunal, we find that no question of law much less substantial question of law arising for consideration."

26. We also gainfully refer to the decision rendered by the coordinate bench of this Tribunal at Delhi in case of **Priapus Developers (P.) Ltd. Vs. ACIT (104 taxmann.com 298)**. In the instant case, two subsidiary companies of the assessee were amalgamated with the assessee company, which was the holding company, vide judgment of High court, wherein the Court has sanctioned the scheme of amalgamation. In terms of the Scheme, the assessee was required to account for the assets & liabilities received pursuant to the scheme of amalgamation under the 'purchase method' i.e. all assets and liabilities of the transferor companies would be recorded at their respective fair values and the gain/excess, if any, would be credited to a Capital Reserve. The AO noted that, upon revaluation and recording of assets at their fair values, the assessee had derived significant gain, which was credited to the Capital Reserve. According to him, the assessee had undertaken the scheme of amalgamation as a tool for evading tax on such revaluation gain. The order of the AO was upheld by the Ld. CIT(A). On appeal this Tribunal decided the issue against the Revenue and in favour of the assessee, by holding as under:

> "Thus, when amalgamation scheme has been approved by the Court, it is not open for the Assessing Officer and CIT (A) to hold that amalgamation has been used by the assessee company

> as a tool for tax evasion. The amalgamation order passed by the High Court is a judicial order and has statutory force and in case, the department had any objection, then same should have been given before the Hon'ble High Court for which sufficient time was allowed. Now, the department cannot clamour that such an amalgamation have been used by the assessee as a tool for tax evasion or as colourable device.

27. In view of the above decisions (supra), we therefore reverse the order of the lower authorities disregarding the scheme of amalgamation and holding it to be a tool for evasion of tax. We note that, the Hon'ble High Court had approved the scheme of amalgamation and the terms contained therein. The Department did not raise any objection at that time before the Hon'ble High Court and therefore for the reasons already discussed earlier, the Revenue cannot now claim that the scheme was a 'colourable device'.

28. Having held so, we, at the same time, agree that the Revenue is not precluded from ascertaining as to whether the scheme of amalgamation was in compliance with the provisions of the Act so as to avail the benefit of Section 47(vi) of the Act. The provisions of Section 2(1B) of the Act, which defines the term amalgamation reads as follows:

> "(1B) "amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of

two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;

(iii) shareholders holding not less than 20[three-fourths] in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company;"

29. From the facts placed before us, it is noted that the terms of the scheme of amalgamation was in consonance with Section 2(1B) of the Act and the assessee had complied with the conditions laid down

therein upon giving effect to the scheme of amalgamation. We therefore do not see any reason for the lower authorities to deny the benefit of exemption set out in Section 47(vi) of the Act. Before us, the Revenue has laid much emphasis on the valuation report and the consequent exchange ratio of shares agreed between the shareholders of the transferor and the transferee companies to justify the addition made u/s 56(1) of the Act in the hands of the assessee company. The Ld. AR has rightly pointed out that, the valuation report or exchange ratio were of no relevance in the context of the conditions laid down in Section 2(1B) read with Section 47(vi) of the Act, as noted above. Also, the reliance placed by the Revenue on Rule 11UB to discredit the valuation report is misplaced for the reason that, neither is this Rule applicable or relevant in a scheme of amalgamation under Section 2(1B) or Section 47(vi) of the Act and also this Rule was inserted with effect 28-06-2016 and was thus not applicable in AY 2011-12. The Ld. AR also pointed out that, the valuation report and the exchange ratio was placed before the relevant authorities and the Hon'ble High Court. He showed us that, none of these statutory authorities objected to the same and the Hon'ble High Court approved the exchange ratio determined in accordance with the valuation report. Moreover, even otherwise, the valuation report & exchange ratio, if so, could have a bearing only in the hands of the shareholders of both the transferor and transferee companies, as only these shareholders would have gained or lost having agreed to the same. We therefore do not find merit in the report of the AO challenging the correctness of the

valuation report & exchange ratio of shares between shareholders of the transferor and transferee companies to justify the addition u/s 56(1) of the Act.

30. The Ld. AR also brought to our notice that, apart from the shares of ZEEL, the assessee had received other assets (net) aggregating to Rs.96,798.49 lacs from EBPL upon scheme of amalgamation. He pointed out that, none of the lower authorities had denied the benefit of exemption u/s 47(vi) or assessed the receipt of these assets u/s 56(1) in the hands of the assessee. We find ourselves in agreement with the Ld. AR that, when qua these assets of Rs.96,798.49 lacs, the lower authorities did not disregard the scheme of amalgamation or hold it to a 'colourable device' to evade tax, then it was incorrect on the Revenue's part to cherry pick only the receipt of shares of ZEEL and assess it as a taxable event, denying the benefit of exemption set out in Section 47(vi) of the Act.

31. In view of the above, we hold that the scheme of amalgamation of EBPL with the assessee company cannot be disregarded nor can it be held to be a 'colourable device'. Consequent thereto, the transfer of shares of ZEEL pursuant to the scheme of amalgamation was entitled for benefit of exemption u/s 47(vi) of the Act and therefore the addition made u/s. 56(1) of the Act in the hands of the assessee was unsustainable. The AO is according directed to delete the impugned addition of Rs.1466.60 crores.

32. Before parting, we may briefly mention that, while alternatively arguing on the applicability of provisions of Section 56(1) of the Act to the receipt of shares of ZEEL by the assessee, the decisions in the cases of **CIT v. Texspin Engg. & Mfg. Works (129 Taxman 1)** & **Forbes Campbell & Co. Ltd. v. CIT (15 Taxman 473)** have been referred to. It was submitted that there is no transfer as understood in general law because as a consequence of merger, EBPL does not survive and is dissolved. According to Ld. AR, therefore, the provisions of Section 56(1) of the Act are anyways rendered otiose. Also, as a result of amalgamation, the assessee, being the transferee company, will increase its assets and liabilities, and, even if there be any benefit in the process, such a benefit can only be in the capital field because it is relatable to the non-trading assets and capital. According to Ld. AR thus, the provisions of Section 56(1) could not have been invoked under any circumstances. However, as we have upheld the validity of the scheme of amalgamation and reversed the findings of the AO in holding the scheme to be a colourable device to tax the receipt of shares u/s 56(1) of the Act, we do not find it necessary to adjudicate this alternate contention of the assessee.

33. For the above reasons, Ground Nos. 1 to 4 raised by the revenue are hereby partly allowed and the Cross Objections Nos. 1 & 2 of assessee stands allowed.

34. Ground Nos. 5 to 7 of the Revenue's appeal are against the Ld. CIT(A)'s action of deleting the share capital/premium of Rs.29.30 crores received by the assessee from M/s Essel Media & Entertainment Ltd [in short 'EMEL'], which was added u/s 68 of the Act.

35. Brief facts of the case as noted by the AO are that, EMEL had acquired 100% shareholding of the assessee pursuant to which 94,00,000 shares (Face value Rs.1/share) were allotted at a premium of Rs.30/- each. In relation thereto, EMEL had paid sum of Rs.29,25,89,512/-, out of which Rs.94,00,000/- was towards equity share capital and Rs.28,20,00,000/- was towards share premium. The remaining excess balance of Rs.11,89,512/- was refunded back by the assessee to EMEL. When enquired in the course of assessment, the assessee had furnished the copy of the incorporation details, the financial statements of the shareholders of EMEL, their inward proof of remittance, its source of making investments along with CA certificate, valuation report, etc. The AO, thereafter, had made reference to FT&TR division to verify the source of investments, and it is noted by the AO that part reply was received from FT&TR in the course of assessment. According to the AO, the assessee failed to discharge its onus of establishing the creditworthiness of the investor u/s 68 of the Act as the source of the funds of the investor remained unexplained. The AO further held that the valuation report furnished by the assessee was untenable. According to him, the assessee was a loss-making company and therefore it was improbable as to how the

valuer could value the company at a price of Rs.31/- per share using DCF Method. Thus, the AO doubted the genuineness of the transaction as well. He accordingly added share capital of Rs.29,30,90,000/- received from EMEL by way of unexplained cash credit u/s 68 of the Act. Aggrieved by this action of the AO, the assessee preferred appeal before the Ld. CIT(A) who is noted to have deleted the addition by holding as under:

> "7.2 I have carefully perused the assessment order and the submission of the appellant. During the appellate proceeding, the appellant submitted the copy of share valuation report of the appellant's shares, copy of incorporation of M/s Essel Media Entertainment, sources of investment by M/s Essel Media Entertainment Limited, copy of inward proof alongwith the appellant's bank statement reflecting the inflow of share issue proceeds along with the refund of share application money. Form 2 for allotment of shares. It is seen that the investor company was incorporated in Republic of Mauritius on 3rd June 2011. The certificate issued by Shri Jeewala Kanhiya, CA, reveals that the source of investment in the appellant's company is funding by way of contribution from the shareholders of the investor company. Further, from the assessment order it is seen that the AO has referred the matter to the FT & TR and part reply was received during the assessment proceedings but the AO has not given any adverse finding with respect to the source of investment of the investor company, ie, Essel Media & Entertainment Limited in the assessment order or after completion of the assessment no adverse finding, if any, has been intimated to this office.

> Also, it is seen that the AO has objected to the method of valuation of shares and held that the appellant's company does not have intrinsic value / intrinsic value in negative, therefore, AO held that sum received in the form of share issue consideration is not what it is being shown as. Accordingly, A.O. held that the appellant has not discharged the onus lying on it to prove the genuineness of the transaction. Here, also, it is seen that the appellant company has investment is holder of shares of Zee Entertainment Enterprises Limited. The AO, himself, has considered the valuation of these public limited companies shares at Rs 1466.60 cr for making addition u/s 56 of the Act. This itself indicates that the NAV method adopted by the AO for arriving the valuation of shares of the appellant company to arrive its intrinsic value is not the correct method. But, in my opinion, the valuation is much more which would fetch more premium than as adopted by the appellant. Hence, I do not find any merit in such valuation of shares either by DCF or NAV as adopted by the AO. This method does not consider the actual valuation of shares in the given circumstances. Therefore, AO is directed to delete the addition made u/s 68 of the Act. Accordingly, ground no 2 of the appeal is allowed."

36. Aggrieved by the above order, the Revenue in now in appeal before us.

37. Assailing the action of the Ld. CIT(A), the Ld. CIT DR submitted that the valuation exercise undertaken by the Chartered Accountant using DCF Method was flawed in as much as the assessee was a loss-making entity and therefore it was highly unusual for a

foreign entity to invest in its share capital at a premium. Referring to the AO's findings, the Ld. CIT, DR submitted that the investor, EMEL had underwent a restructuring exercise, in terms of which M/s. Packaging Products Investment Ltd [in short 'PPIL'] amalgamated with the investor, EMEL on 28.03.2012. The Ld. CIT DR contended that PPIL also failed to provide the source of monies out of which the investments were made. He argued that there were layers of conduit entities and the act of amalgamation was done only with the intent to hide the source of the monies. He thus urged that the order of Ld. CIT(A) be reversed and the order of AO be restored.

38. Per contra, the Ld. AR brought to our notice that the assessee had placed on record the evidences to show the identity & creditworthiness of M/s. EMEL and the genuineness of the transaction. He drew our attention to the fact that the foreign investor had subscribed to the share capital of the assessee in conformity with the valuation report obtained from Chartered Accountant under the DCF Method. He showed us that the inward remittance proof, name of investor, certificate of incorporation, CA certificate regarding source of funds, etc. were also furnished before the AO, which are available at Pages 83, 100, 101 of the Paper Book. He also drew our attention to the bank statement of the assessee (Pages 81 & 82 of paper book) to show that the funds were received through proper banking channel. He also brought to our notice the relevant board resolution passed by the company approving the issuance of shares to EMEL (Page 92 of

Paperbook) and the copy of Form 2 filed with the ROC upon issuance of shares (Pages 87-91 of Paperbook). The Ld. AR submitted that, the AO had laid much emphasis on the valuation exercise undertaken by the Chartered Accountant under DCF Method and the issuance of shares at premium to justify the impugned addition. To this, he submitted that even if the share premium is excessive, the same cannot be taxed under the provisions of Section 68 of the Act since the nature and source of the same stood fully explained. He further submitted that, the provisions of Section 56(2)(viib) of the Act which seeks to tax the excess share premium received by any company is applicable only when share subscription monies is received from resident investor, and that too from Assessment Year 2013-14 and onwards.

39. We have heard the rival submissions and perused the material placed before us. It is by now well understood in the context of Section 68 of the Act that, the initial burden is on the assessee to discharge that the credit received by it is from the sources whose identity can be proved, the genuineness of the transaction and the creditworthiness of the investor is also established by supporting relevant material/ documentary evidences. If the assessee presents all these details during the assessment proceeding before the AO, the onus shifts onto the AO to prove otherwise. If the AO accepts such evidences without finding anything wrong after enquiry, it can be said that the assessee has discharged its onus. On the other hand, only if the AO presents some contrary evidences or finds fault with the evidence submitted by the

assessee, then the onus again shifts upon the assessee to rebut such contrary evidences.

40. In the present case, the Ld. CIT(A) had noted that the assessee had furnished the details of EMEL including copy of certificate of incorporation in Mauritius, certificate regarding source of funds, copy of inward remittance proof along with assessee's bank statement evidencing both receipt of funds and refund of excess balance. The documents placed on record revealed that EMEL was incorporated on 3rd June 2011 and that the source of their investment in assessee was the contribution received from its shareholders, as certified by the local Chartered Accountant. The Ld. CIT(A) had further observed that, the AO had referred the matter to FT&TR Division to make independent enquiries in Mauritius and the AO had noted in the impugned order that part reply was also received from FT&TR. The Ld. CIT(A) rightly pointed out that the AO had not cited any adverse finding or remark of the FT&TR with respect of the source of investment either in the assessment order or post completion of the assessment. Even before us the Revenue was unable to furnish any adverse finding or contrary report of FT&TR doubting the genuineness of the investment made by EMEL in the assessee.

41. The next allegation of the Revenue is that there were layer of entities behind the investment, which according to them, was intended to hide the real source of money. In our considered view, merely

because multiple corporate bodies may have been involved in the entire process of collecting funds in EMEL and then investing the same in the assessee company, by itself would not be sufficient to establish a sham transaction or the use of a colourable device. In this regard, we may gainfully refer to the decision of the Hon'ble Bombay High Court in the case of **Pr. CIT Vs Aditya Birla Telecom Ltd (105 taxmann.com 206)**. In the decided case also the assessee had received share capital infusion from a Mauritius based company after complying with all relevant statutory regulations & compliances. However, because the value of investment was large and the shares were issued at high premium, the AO doubted the genuineness of the transactions and added it u/s 68 on the Act. The AO further noted that there were several layers of entities involved behind the source of investment of the Mauritius based company and thus doubted the creditworthiness of the share subscriber as well. On appeal, both the Ld. CIT(A) & this Tribunal had deleted the additions made by the AO u/s 68 of the Act. The Hon'ble High Court upheld the orders of these appellate authorities by observing as under:

> "9. It can, thus be seen that at every stage, the full inquiry of source of funds and other relevant factors in relation to the investment in question was carried out. The Assessing Officer himself carried out a detailed inquiry. His initial suspicion or in other words starting point of inquiry on the basis that apparently the investor was investing huge amount which may prima facie appear to be without adequate possible returns, may be fully justified. However, when all the relevant factors are properly

explained, including the fact that the payment of dividend was not the sole attraction for the investor and that the investor could expect a fair return on the investment, of course, subject to vagaries of the any business decision, the Assessing Officer had to advert to all such materials on record in proper perspective. As noted by the Tribunal, all necessary permissions and clearances were granted by the Government of India and other government authorities for such investment. The source of the funds in the hands of P5AHIML was also verified. Merely because multiple corporate bodies may have been involved in the entire process of collecting funds in P5AHIML and then investing the same in the assessee company, by itself would not be sufficient to establish a sham transaction or colourable device.

10. We further notice that when the Commissioner (Appeals) had permitted additional evidence to be produced on record during the appellate proceedings, he had called for remand report from the Assessing Officer. Such report was made by him on 27.5.2013. In such report, his remarks were as under:—

> "7. On going through the documentary evidence, prima facie it appears that the identify of P5 Asia Holdings is established through residency certificate issued by the Mauritius Government. Assessee has filed documentary evidence of funds transfer vide letter dated 27th May 2013 by filing of copy of bank extracts. Copies of the said letter along with annexures are enclosed. Prima facie these prove the

genuineness and the financial capacity of the persons making investment in preference shares. (Zerox Copy of the said reference enclsoed as Annexure -E)."

11. Thus, the Assessing Officer himself was also prima facie of the belief that the materials on record prove genuineness and financial capacity of the persons making investment. The Commissioner (Appeals) was under the directive of the High Court of Bombay to dispose of the appeal within a short time. It was for this reason that in his appellate order, he had recorded that further investigation into the additional documents was pending and therefore, in compliance with the order of the High Court, he was disposing of the appeal. Thus, the order of the Appellate Commissioner cannot be seen as the decision on merits of the matter for which he found inadequate time available with him. As noted, the Tribunal carried out the detailed inquiry into all aspects of the matter and noticed no suspicious movement of the funds. Merely because the investment was considerably large and as noted, several corporate structures were either created or came into play in routing the investment in the assessee through P5AHIML would not be sufficient to brand the transaction as colourable device."

42. It is noted that the SLP preferred by the Revenue against the above order of the Hon'ble Bombay High Court has since been dismissed by the Hon'ble Supreme Court vide its order dated 07.01.2021 which is reported in **125 taxmann.com 85 (SC).**

43. Coming to the Ld. CIT, DR's argument that the source of funds in the hands of investor company, EMEL stood unproved, we have already noted that the AO had made reference to FT&TR division to make enquiry into its source of funds and no adverse report/finding of FT&TR has been brought on record before us. Accordingly, this contention of the Revenue does not hold good. Nonetheless, the proviso to Section 68 of the Act, which was inserted by the Finance Act, 2012, fastened further burden upon the assessees to substantiate the "source of source" of funds. We note that the proviso to Section 68 of the Act was inserted by the Finance Act, 2012 and it was made effective from 01-04-2013 i.e. AY 2013-14 and onwards. For this, reference may be made to the Memorandum as well as the Notes to Clauses of the Finance Bill, 2012 which makes it explicitly clear that the Parliament had introduced the proviso to Section 68 of the Act prospectively and the same was made applicable only from AY 2013-14 and onwards. We may also gainfully refer to the following decisions wherein the Hon'ble Constitutional Courts have held that the proviso to Section 68 of the Act, introduced by the Finance Act, 2012 with effect from 01-04-2013 will not have retrospective effect.

(i) CIT Vs Gagandeep Infrastructure Private Limited (394 ITR 680) [Bom HC]:

> "We find that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year

2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso...."

(ii) Pr. CIT vs. Apeak Infotech (88 Taxmann.com 695) [Bom HC]:

"Similarly, the amendment to section 68 of the Act by addition of proviso was made subsequent to previous year relevant to the subject assessment year 2012-13 and cannot be invoked. It may be pointed out that this court in CIT v. Gagandeep Infrastructure (P.) Ltd. [2017] 80 taxmann.com 272/247 Taxman 245/394 ITR 680 (Bom.) has while refusing to entertain a question with regard to section 68 of the Act has held that the proviso to section 68 of the Act introduced with effect from April 1, 2013 will not have retrospective effect and would be effective only from the assessment year 2013-14."

44. We thus find merit in the submissions of the Ld. AR that, the proviso to Section 68 of the Act, introduced by the Finance Act, 2012,

was applicable only from AY 2013-14 and onwards, and therefore the said proviso cannot be held applicable in AY 2012-13. Meaning thereby, the assessee was under no obligation to substantiate the source of funds of its shareholder, EMEL in AY 2012-13 and to that extent, the AO's reasoning justifying the addition u/s 68 of the Act in the relevant AY for want of explanation regarding "source of source" of funds is held to be erroneous.

45. The last aspect for our consideration is the justification of share premium charged by the assessee upon the issuance of shares. It is noted that the assessee has supported the valuation with a certificate issued by a chartered accountant using DCF method, which is one of approved methods prescribed by the RBI. The tax-payer while issuing shares to the non-resident investors creates a foreign obligation for India in favour of another country. Accordingly, in terms of the RBI/FEMA requirements, the tax-payers are required to issue shares for a consideration which has to necessarily be equal to or higher than the fair value, arrived at by an approved method. Reason being, the tax-payer should not create a foreign obligation for India in favour of another country at a consideration which is below fair value of shares. Thus, to plug this loss to India, FEMA/RBI have stipulated that the issue price of shares should be equal to or more than fair value arrived at by approved method viz. DCF. Hence, even going by the AO's analogy that the price at which shares were issued to foreign investors was higher than fair value of shares, according to us, such issuance of

shares at a value higher than the intrinsic fair value was in compliance with the FEMA/RBI regulations. It is noted that, the RBI has not disputed the fair value of shares, which was supported by the CA Certificate using DCF method. Even the AO, apart from making certain remarks, was unable to point out any specific defect or inaccuracy in the valuation report issued by the Chartered Accountant.

46. It is also relevant to take note that, the provisions of Section 56(2)(viib) of the Act which brings to tax excess share premium charged over the fair market value of shares, had been introduced only with effect from AY 2013-14 and onwards, and was therefore not applicable in the relevant year. Moreover, even this provision is made relevant only in circumstances where the issuance of shares is made to residents, while in the instant case, undisputedly these shares were issued by the assessee to a non-resident. The Legislature in its wisdom had not made the said Section 56(2)(viib) of the Act applicable to the shares issued to non-residents, mainly to encourage foreign investments into the country.

47. Moreover, the Ld. AR has rightly brought to our notice that, based on the law as it stood then in AY 2012-13, the quantum of share premium had no connection or relation to justify the three ingredients prescribed in Section 68 of the Act. Gainful reference may be made in this regard to the following findings recorded by the Hon'ble Delhi High Court in its judgment in the case of **CIT Vs Anshika**

Consultants Pvt Ltd (62 taxmann.com 192) wherein it was held as follows:

> "Whether the assessee-company charged a higher premium or not, should not have been the subject matter of the enquiry in the first instance. Instead, the issue was whether the amount invested by the share applicants were from legitimate sources. The objective of section 68 is to avoid inclusion of amount which are suspect. Therefore, the emphasis on genuineness of all the three aspects, identity, creditworthiness and the transaction. What is disquieting in the present case is when the assessment was completed, the investigation report which was specifically called from the concerned department was available but not discussed by the Assessing Officer. Had he cared to do so, the identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants would have been apparent. Even otherwise, the share applicants' particulars were available with the Assessing Officer in the form of balance sheets income-tax returns, PAN details etc. While arriving at the conclusion that he did, the Assessing Officer did not consider it worthwhile to make any further enquiry but based his order on the high nature of the premium and certain features which appeared to be suspect, to determine that the amount had been routed from the assessee's account to the share applicants' account. As held concurrently by the Commissioner (Appeals) and the Tribunal, these conclusions were clearly baseless and false."

48. The Hon'ble Bombay High Court in the case of **Pr. CIT vs. Apeak Infotech (supra)** also held as under:—

> "….In any view of the matter the three essential tests while confirming the pre-proviso section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders, i.e., they are bogus. The apex court in Lovely exports P Ltd (supra) in the context to the pre-amended section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit."

49. Similar view was also expressed by this Tribunal in their decision rendered in the case of **Green Infra Ltd Vs ITO (145 ITD 240)**. In the decided case, the assessee which was a newly formed company had charged premium of Rs.490/- against face value of Rs.10/- per share. The AO had doubted the genuineness of the transaction due to issuance of shares at such high premium and therefore added the same u/s 68 of the Act. Before the ITAT, the Revenue inter alia argued that such issuance of shares at high premium

had raised serious doubt on the genuineness of transaction and therefore contended that the addition was rightly made under the provisions of Section 68 of the Act. We find that the following observations made by this Tribunal with regard to share premium charged in the context of applicability of Section 68 of the Act, are also relevant to the issue involved in the present case:

> "No doubt a non est company or a zero balance company asking for a share premium of Rs. 490 per share defies all commercial prudence, but at the same time one cannot ignore the fact that it is a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of the shareholders whether they want to subscribe to such a heavy premium. The revenue authorities cannot question the charging of such of huge premium without any bar from any legislated law of the land. Details of subscribers were before the revenue authorities. The Assessing Officer has also confirmed the transaction from the subscribers by issuing notice under section 133(6)."

50. In view of our above discussions and findings, and having regard to the entire conspectus of the facts of the case, we therefore do not see any reason to interfere with the order of the Ld. CIT(A) in deleting the addition of Rs.29,30,90,000/- made by the AO u/s 68 of the Act. Ground Nos. 5 to 7 of the Revenue's appeal therefore stand dismissed.

51. Ground No. 8 of the Revenue's appeal, Ground Nos. 3 & 4 of the Cross Objections as well as Ground No. 3 & the Additional ground of the assessee's appeal, all pertain to the disallowance made by the AO u/s 14A of the Act read with Rule 8D, both under normal computational provisions and under MAT provisions u/s 115JB of the Act. Since all these grounds involve a common issue and are inter-related, they are taken up together for adjudication.

52. Brief facts qua the issue are that, the average value of investments held in shares/securities by the assessee was Rs.817,04,35,000/-. It is noted that, the assessee did not earn any exempt income during the year from these investments. The assessee, however, had suo moto computed and disallowed a sum of Rs.4,10,77,175/- under Section 14A read with Rule 8D(2)(iii). In the course of assessment proceedings, the AO required the assessee to explain as to why disallowance should not be made u/s 14A read with Rule 8D to which the assessee furnished a detailed explanation, which was placed at Pages 58 to 70 of the Paper Book before us. The AO, however, did not agree with the submissions of the assessee. He worked out the disallowance as per Rule 8D of the Income Tax Rules viz., (a) proportionate interest of Rs.12,47,28,867/- under Rule 8D(2)(ii) and (b) administrative expenditure of Rs.4,08,52,175/- under Rule 8D(2)(iii), both of which were added back both under the normal provisions as well as while assessing book profit u/s 115JB of the Act.

53. Aggrieved by the above action of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A) who is noted to have deleted the disallowance of Rs.12,47,28,867/- made under Rule 8D(2)(ii). Aggrieved by this action of the Ld. CIT(A), both the Revenue and assessee are in appeal before us.

54. We have considered the rival submissions and perused the material on record. With regard to the disallowance of interest of Rs.12,47,28,867/- made under Rule 8D(2)(ii), the Ld. CIT(A) noted that the investments only comprised of shares of ZEEL. He observed that, the erstwhile transferor company, EBPL originally received these shares by way of gift (at NIL consideration). The Ld. CIT(A) accordingly noted that the assessee did not pay any sum for acquisition of these shares and that, upon amalgamation, the assessee had only recorded these investments at its fair value by way of book entry. The Ld. CIT(A) thus held that, as there was no utilization of borrowed funds for acquiring these shares, the disallowance of Rs.12,47,28,867/- made under Rule 8D(2)(ii) ought not to have been made. The Ld. CIT, DR appearing before us was unable to countenance these facts. We therefore do not see any reason to interfere with the order of Ld. CIT(A) deleting the interest disallowance made by the AO under Rule 8D(2)(ii).

55. Now we proceed to examine the disallowance of Rs.4,10,77,175/- *(computed by the AO at Rs.4,08,52,175/-)* which had

suo moto been offered by the assessee in the return of income under Rule 8D(2)(iii). The Ld. AR of the assessee, brought to our notice that the assessee did not earn any exempt income during the year and therefore, according to him, the question of making any disallowance u/s 14A r.w. Rule 8D(2)(iii) did not arise. For this, he relied on the decision of the jurisdictional Hon'ble Bombay High Court in the cases of **PCIT Vs. Rivian International (P) Ltd. (ITA. No. 693 of 2015) dated 21-11-2017** wherein it has been held that, if the assessee during the relevant year has not earned any tax-free income, corresponding disallowance of expenditure u/s 14A of the Act was not permissible. The relevant findings of the Hon'ble High Court is noted to be as follows:

> "3. We have given careful consideration to the submissions. On facts, it appears from the impugned judgment that the assessee had made investment in shares of closely held companies which did not declare any dividend. On fact, there is no dispute that the assessee has not earned any exempt income during the year under consideration. After consideration of Section 14A, the Delhi High Court followed decisions of certain other High Courts. Section 14A of the said Act provides that for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the said Act. In other words, Section 14A provides that if there is an income which does not form a part of the total income under the said Act, the expenditure which is incurred for

> earning the income is not an allowable deduction. Therefore, during the relevant year, if the assessee has not earned any tax free income, the corresponding expenditure incurred cannot be taken into consideration for dis-allowance.

56. The above judgment is noted to have been followed with approval by another coordinate Bench of the Hon'ble Bombay High Court in the case of **Pr. CIT Vs. Huntsman International (India) Pvt. Ltd. (ITA 1619 of 2016) dated 30-01-2019**. The Ld. AR submitted, though, the assessee under misconception of law voluntarily made the disallowance under Section 14A of the Act, however, as per the settled legal principle no disallowance is to be made in the absence of any exempt income. The Ld. CIT, DR, on the other hand, objected to the admission of this new claim at the stage of the appellate proceedings.

57. It is noted by us that, a similar issue had come up for consideration before the coordinate bench of this Tribunal in the case of **Finquest Securities Pvt Ltd (ITA No. 2540/Mum/2017) dated 23.08.2018**. In the instant case also, the assessee did not earn any exempt income during the year but had suo moto offered disallowance u/s 14A of the Act. Before the Tribunal, the assessee, having regard to the several judgments of High Courts holding that, in absence of exempt income, no disallowance u/s 14A of the Act is warranted; had raised an additional ground seeking deletion of the voluntarily disallowance wrongly offered u/s 14A of the Act in the return of

income. This Tribunal admitting this additional claim answered the question in favour of the assessee, by holding as under:

> "9. We have considered rival submissions and perused the material on record. No doubt, assessee has voluntarily disallowed an amount of `.12,98,664/- under section.14A of the Act r.w.r. 8D. However, before ld. Commissioner (Appeals) the assessee has furnished modified grounds in respect of disallowance made under section.14A specifically raising the issue of no disallowance under section.14A r.w.r. 8D in absence of any exempt income earned during the year. Further, the assessee has also urged that the entire investment made was out of interest free funds, hence, no disallowance of interest expenditure under section.14A. r.w.r. 8D(ii) can be made. As could be seen, ld. CIT(A) has refused to entertain the modified grounds made by the assessee by raising technical objections. Article 265 of the Constitution of India mandates that no tax can be collected without authority of law. Now, it is well settled by a number of judgments of different High Courts as well as the Special Bench of the Tribunal that in absence of any exempt income earned in a particular assessment year, no disallowance under section. 14A r.w.r. 8D can be made. In view of such settled legal principle it becomes imperative to examine assessee's claim that during the relevant previous assessment year assessee having not earned any exempt income, no disallowance could have been made under section.14A r.w.r. 8D irrespective of the fact that assessee has itself made disallowance under section. 14A. In our view, the reading of the provision of section 14A makes it clear that disallowance to be

made under the said provision is with respect to the exempt income earned by the assessee in the particular assessment year. Therefore, what follows is, if there is no exempt income earned during a particular assessment year, no disallowance under section.14A can be made. This view has been expressed by different High Courts including the Hon'ble Delhi High Court in case of Cheminvest v/s. CIT (supra) as well as the Special Bench of the Tribunal in case of ACIT v/s Vireet Investment Pvt. Ltd., [2017] 165 ITD 26 (Del.). Thus as per the settled principle of law as it stands now, ITA No.2540/Mum/2017 M/s. Finquest Securities P. Ltd., in absence of any exempt income earned in a particular assessment year, no disallowance u/s.14A can be made. Therefore, only because the assessee itself has made some disallowance under section.14A of the Act, it cannot be utilized to his detriment as there is no estoppel against law."

58. Following the above decisions (supra) and having noted from the financial statements and computation of income that the assessee did not earn any exempt income during the relevant year, the AO is directed to delete the disallowance of Rs.4,10,77,175/- *(computed by the AO at Rs.4,08,52,175/-)* made under Section 14A read with Rule 8D(2)(iii).

59. Now we come to the issue of disallowance u/s 14A r.w. Rule 8D made while computing book profit u/s 115JB of the Act. Since we have already held that no disallowance u/s 14A read with Rule 8D is warranted in the given facts of the case, consequentially no disallowance is sustainable in the MAT computation under section

115JB of the Act as well. Also, the Special Bench of this Tribunal in the case of **ACIT vs. Vireet Investment Pvt. Ltd. (165 ITD 27)** has held that the computation mechanism provided under Rule 8D of the Rules cannot be applied for computing addition in terms of clause (f) of Explanation 1, for arriving at the book profit u/s 115JB of the Act. Hence, the impugned disallowance made by the AO while computing book profit u/s 115JB is held to be unsustainable in law.

60. For the aforesaid reasons, Ground No. 8 of the Revenue's appeal is dismissed and Ground No. 3 & 4 of the CO and Ground No. 3 & Additional ground of the assessee's appeal stands allowed.

61. Now we take up the appeal of the assessee. The first ground of the assessee's appeal challenges the legal validity of the AO's assessment order dated 30.03.2016 on the ground that it was barred by limitation. At the time of hearing, the Ld. AR appearing on behalf of the assessee did not seriously contest this ground and therefore, this ground is dismissed as not pressed.

62. The second ground of assessee's appeal relates to the denial of carry forward of losses brought forward upto AY 2011-12 on account of change in shareholding pattern u/s 79 of the Act. The AO had noted that there was a change in shareholding pattern in the relevant year and therefore he disallowed the carry forward of losses brought forward upto AY 2011-12 in terms of provisions of Section 79 of the Act. On

appeal before the Ld. CIT(A), the assessee claimed that the provisions of Section 72A override the provisions of Section 79 of the Act and therefore argued that any change in shareholding pattern due to amalgamation cannot be subjected to rigors of Section 79 of the Act. The Ld. CIT(A) however did not find any force in the argument put forth by the assessee and rejected the same. Before us also, the Ld. AR of the assessee was unable to counter the findings of the Ld. CIT(A). Accordingly, this ground of appeal is dismissed.

63. In the result, overall, the appeal of the Revenue in ITA No. 4312/Mum/2017 is dismissed, while the Cross Objections in CO No.302/Mum/2018 raised by the assessee is allowed. Further, the appeal of the assessee in ITA No. 4478/Mum/2017 is partly allowed.

Order pronounced in the open court on this 06/03/2023.

Sd/-	Sd/-
(GAGAN GOYAL) **ACCOUNTANT MEMBER**	**(ABY T. VARKEY)** **JUDICIAL MEMBER**

Mumbai; Dated 06/03/2023.
Vijay Pal Singh, (Sr. 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//

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