

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोडपिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

(ITA No. 93/RPR/2018)
(Assessment Year:2014-15)

Income Tax Officer, Ward-1(1), Bilaspur	V s	M/s Jayem Holdings Pvt. Ltd., BF-1, First Floor, Rajeev Plaza, Old Bus Stand Road, Bilaspur, (C.G.) 496001
PAN: AACCCJ8069M		

Cross Objection No. 08/RPR/2018
(Assessment Year: 2014-15)
Arising out of **ITA No. 93/RPR/2018**

Income Tax Officer, Ward-1(1), Bilaspur	V s	M/s Jayem Holdings Pvt. Ltd., BF-1, First Floor, Rajeev Plaza, Old Bus Stand Road, Bilaspur, (C.G.) 496001
PAN: AACCCJ8069M		

(अपीलार्थी /Applicant)	:	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri G.S. Agrawal, CA
राजस्व की ओर से /Revenue by	:	Shri S.K. Meena, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	02.11.2023
घोषणा की तारीख/ Date of Pronouncement	:	29.11.2023

आदेश / O R D E R

Per Arun Khodpia, AM:

The captioned appeal filed by the revenue and cross objections to the impugned appeal filed by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-1, Jabalpur (camp at Bilaspur) for the assessment year 2014-15, dated 26.03.2018, which in turn has

arisen out of order dated 28.12.2016 passed u/s 143(3) by Income Tax Officer, Ward-1(1), Bilaspur.

2. The grounds of appeal raised by the department in ITA No. 93/RPR/2018 are as under:

1. Whether on the facts and circumstances of the case and the points of the law Ld. CIT(A) was justified in deleting the addition of Rs. 5,07,50,000/- made by the AO on account of disallowance u/s 68 of the Act?
2. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the addition of Rs. 5,07,50,000/- made by the AO while genuineness of the transaction and credit worthiness of the investor company was not proved?
3. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the addition or Rs. 5,07,50,000/- made by the AO while genuineness of source of source of share application money/premium was not proved as mandated in section 68 of the Act?
4. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the addition of Rs. 5,07,50,000/- made by the AO relying upon the decision in cases which are distinguishable in facts from the case of the assessee?
5. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the addition of Rs. 5,07,50,000/- made by the AO without duly considering the Remand Report submitted by the AO?
6. Whether the Ld. CIT(A) has erred in law in drawing a conclusion which cannot be drawn by any reasonable person or authority, on the material and facts placed before it?

7. The order of the Ld. CIT(A) is erroneous both in law and on facts.
8. Any other ground that may be adduced at the time of hearing of appeal.

3. Grounds of appeal raised by the assessee in its Cross objection no. 08/RPR/2018 are as under:

1. That under the facts and the law the learned CIT(Appeals), after considering the facts and law of the case, has rightly deleted the addition of Rs. 5,07,50,000/-

4. In brief, facts of the case culled out from records are that the assessee company has filed its return of income for the A.Y. 2014-15 on 18.03.2015 showing a total income of Nil. The case of the assessee was subsequently selected for scrutiny under 'CASS'. Necessary statutory notices were issued and in response the counsel of the assessee have attended the assessment proceedings from time to time. The books of accounts have been examined on test check basis and return submission filed by the assessee are placed on records. During the assessment proceedings Ld. AO observed that the assessee company has raised its share capital by Rs. 5,07,50,000/- during the relevant assessment year. Regarding increase in share capital of the company during the year under consideration, it is noticed by the Ld. AO that the share applicant companies from whom the share capital has been received during the year are found to be closely held companies i.e., directors of the investor

companies (i) M/s Third Eye Vinimay Pvt. Ltd., (ii) M/s Moonshine Pvt. Ltd. are found to be the family members of the directors of the assessee company. It is further observed that, the share subscriber companies have their registered office at Kolkata but recently, they have been transferred to Bilaspur. Ld. AO, in order to check the basic parameters required to be examined for satisfaction of provisions of section 68, viz. identity, creditworthiness of the shareholders and genuineness of the transactions, have proceeded with enquiries, and arrived at the conclusion that the share applicants are found to be shell companies / paper companies, engaged in the business of providing accommodation entries to their closely held companies with virtual net worth and assets. The explanations in this respect have been called for from the assessee which were submitted before the AO, but AO was not convinced with such clarifications, therefore, has observed that the assessee company failed to explain source of the subscriber companies as envisaged in the first proviso of section 68 of the Act, which is applicable w.e.f. AY 2013-14. The issue pertaining to receipt of bogus share capital from the briefcase companies have been discussed at length by the Ld. AO, wherein it is observed that the financial statement of the share applicant companies and computation of income and return of income were examined and it is found that there is no genuineness in transaction, but it is clear that the share application money received by the assessee company is nothing but circulation of its own money through Kolkata base brief case companies in the garb of share application. Ld. AO also noted that the creditworthiness of two share application companies is

also doubtful. With such remarks, Ld. AO had finally completed assessment by adding Rs. 5,07,50,000/- in the assessed income of the assessee, treating the receipt of share capital as bogus / unexplained cash credit / income within the provisions of section 68 read with 1st proviso to section 68 of the Act. Aggrieved by the impugned order of Ld. AO, assessee preferred an appeal before the Ld. CIT(A), wherein the Ld. CIT(A) has observed that the assessee company has discharged its onus in respect of Identity, Capacity, Genuineness, and source of investment of the share subscribers and therefore the addition made by Ld. AO was vacated.

5. The order of the Ld. CIT(A) was not considered as satisfactory by the department and, therefore, they had preferred the present appeal before us.

6. The controversy raised by department by raising 8 grounds, are with regard to a single controversy with respect to receipt of share capital from shell / brief case companies by the assessee company and therefore the same should be considered as bogus income of the assessee company for the AY 2014-15 applying the provisions of section 68 of the Act.

7. At the outset Ld. AR on behalf of the assessee has submitted that the assessee has received share capital from two companies namely M/s Third Eye Vinimay Pvt. Ltd. for Rs. 4,84,50,000/- and M/s Moonshine Mercantile Pvt. Ltd. for Rs. 23,00,000/-. It was the submission of Ld. AR

that the assessee has duly submitted all the necessary information, evidence before the lower authorities, such evidence includes confirmations of accounts, Bank statements of the share applicants, Bank statement of the assessee company, Annual Report and an Audit Report of the Share subscribers, company master data etc. Ld. AR also submitted and furnished before us a chart showing compilation of source of source and matching of entries in the Bank A/c pertaining to share application money receipt by the assessee chart has been placed at Page No. 58 and 58A of the paper book, wherein it has been tried to explain the source of the share subscribers from where the money has come in their account and finally they have invested the money in the account of assessee company. Ld. AR also furnished before us details of source of investment in shares of the share applicants by different companies which were placed before us at Page no. 61 to 257A and again at page no. 258 to 265, these document includes copy of Bank statements, Acknowledgement of ITR, certificate of incorporation, Master data from the MCA website, Directors report, independent auditors report, Audit Balance-sheet and final accounts including notes to the same and memorandum & article of association etc. Thus, it was the submission of the Ld. AR that the onus cast upon the assessee as per the provision of section 68 have been duly discharged and the additions made by the Ld. AO are rightly vacated by the Ld. CIT(A). the observations of Ld CIT(A) are extracted here under for completeness of facts:

6.2.3 Decision :- I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO both in the impugned assessment order, remand report & rejoinder thereon and other material evidences brought on record and these grounds of appeal relating to the addition of Rs.4,13,41,500/- made on account of unexplained share application money and premium received are decided as under:-

1. Admittance of Additional evidences -

The assessee has filed the bank statement of M/S Overtop Vanijya Pvt Ltd and Swarna Mahal Commodities Pvt. Ltd. as additional evidences to explain the source of the share application money given by Third Eye Vanijya Pvt Ltd. This additional evidence were forwarded to the AO vide this office letter F. No. CIT(A)/BSP/ Remand Report/ 17-18 dated 20.02.2018. In the para 7 of the remand report dated 08.03.2018 has not objected to the admission of the additional evidence. Accordingly, the additional evidence filed by the assessee are admitted and appeal is decided after considering the additional evidence. The appellant has also submitted further application u/r 46A requesting for admittance of the additional evidences to explain the sources of the source.

2. In GOA No. 4, the addition made for share application money and share premium of Rs. 5,07,50,000/- is decided as under: -

- (i) *The assessee has issued at par 50,75,000 equity shares of Rs. 10 each and has received Rs. 5,07,50,000/- Out of this amount share application money of Rs. 4,84,50,000/- was received from Third Eye Vinimay Pvt Ltd and amount of Rs.23,00,000/- was received from M/S Moon Shine Mercantile Pvt Ltd. The AO was not satisfied with the explanation of the assessee about source of amount invested by share applicant company hence he treated share application of Rs. 5,07,50,000/- as unexplained cash credit and added under section 68.*
- (ii) *The AO has made the addition because the assessee company was not carrying on any business activity during the previous year relevant to assessment year 2014-15 and the AO found that the share applicant companies are closely held company of the assessee company. Further, the director of Third Eye Vinimay Pvt Ltd and Moon Shine Mercantile Pvt Ltd are family members of the directors of assessee company. In the opinion of the AO, both the share applicant companies are having no worth and*

asset. The AO further observed that the assessee company has failed to explain the source of the subscriber companies and hence he has treated the share capital of Rs. 5,07,50,000/- received by the assessee company as unexplained and added the same to the income.

- (iii) *During the assessment proceeding, the assessee has filed confirmation letter, copy of PAN, copy of bank account of share applicant company, copy of the bank account of assessee company in which the cheques received from share applicant company were deposited, audit report of share applicant company and memorandum of association of share applicant company. Further, Shri Aman Agrawal who is director of the assessee company as well as both the share applicant company appeared before the AO and in his statement, he has admitted the investment of share applicant company in the assessee company. The assessee company has also filed copy of bank statement, ITR, Registration of Certificate, audited accounts etc of the firm / companies to whom the share applicant company has sold its old investment.*
- (iv) *During the assessment proceeding, the AO has issued notice under section 133(6) to M/S Third Eye Vinimay Pvt and M/S Moon Shine Mercantile Pvt Ltd Bilaspur both these notices were served. The AO, passing the assessment order or submitting the remand report, has not disputed the correctness of the submission of the assessee that no fresh capital was received by the share applicant company namely M/S Third Eye Vinimay Pvt Ltd and M/S Moon Shine Mercantile Pvt Ltd, during the previous year relevant to assessment year 2014-15.*
- (v) *As regard the source of investment of Rs. 5,07,50,000/- in the assessee company by share applicant M/S Third Eye Vinimay Pvt Ltd and M/S Moon Shine Mercantile Pvt Ltd , the assessee and share applicant company submitted that the investment by these companies made in earlier assessment year, were sold during the previous year relevant to assessment year 2014-15 and sale proceeds of these old investment was invested by the share applicant company as share application money in the assessee company. In support of this contention, the assessee filed the copy of bank statement etc of firm / company to whom M/s Third Eye Vinimay Pvt Ltd and M/S Moon Shine Mercantile Pvt. Ltd. the old investment of share was sold. The assessment*

order nor in the remand out any defect or deficiency in the assessee and bank statement, balance person to whom share applicant company shares or in the bank statement of share which suggest the non-genuineness application money transaction.

- (vi) *Further both the share applicant companies Third Eye Vinimay Pvt Ltd. and M/S Moon Shine Mercantile Pvt Ltd are regular assessee of income tax and it is not the case of the AO of the assessee company that the AO of M/S Third Eye Vinimay Pvt Ltd and M/S Moon Shine Mercantile Pvt Ltd has not accepted these companies' explanation about Source of investment in the assessee company. The amount invested by M/S Third Eye Vinimay Pvt Ltd and M/S Moon Shine Mercantile Pvt Ltd in the assessee company is appearing in their audited balance sheet.*
- (vii) ***In the case of CIT vs. Abdul Aziz (2012) 251 CTR 0058 the hon'ble Chhattisgarh High Court has held as under: -***

Cash credits—Genuineness of transaction and creditworthiness of creditors—Proof of—AO made addition under s. 68 on the ground that 27 creditors had not proved creditworthiness of creditors—CIT(A) and Tribunal deleted addition made by AO—Held, CIT(A) has examined all statements and depositions made by the creditors including their source of income—AO has not made any independent enquiry to disprove creditworthiness of . creditors—CIT(A) rightly held that observation of AO was on basis of surmises and conjectures—Findings recorded by CIT(A) and affirmed by tribunal are based on proper appreciation of facts and are not perverse being correlated with each and every transaction —Further issue is purely . question of facts—No question of law, more so substantial question of law, arises for consideration of High Court.

- (viii) ***In the case of CIT vs. PithampurConzima (P) LTD. (2000) 244 ITR 0442 the hon'ble MP High Court has held as under: -***

2. It emerges that assessee introduced unsecured loan of Rs. 5, 12,417.90 in the name of its

directors and wife of one of its directors. A part of the unsecured loan was accepted by the Revenue and a part of it is disallowed. Assessee took an appeal to the Tribunal and explained that forums below had overlooked the record placed before them which showed that credits given to the assessee company were duly declared by the creditors in the new returns. Upon this Tribunal concluded that the investment in the assessee-firm was duly explained and no addition is called for in the hands of the assessee and deleted the addition. Revenue sought reference which was rejected. Hence, this application.

3. It becomes clear that Tribunal had accepted the explanation of assessee which showed that credit given was duly declared by the creditors in the new return, and therefore, deletion of addition was on the basis of the satisfaction reached by the Tribunal and on appreciation of material before it. The matter accordingly does not give rise to any question of law warranting dismissal of this application which is accordingly dismissed.

(ix) *Considering the above factual and legal position, I am the view that the assessee company has discharged its onus in respect of identity, capacity, genuineness, and source of investment of M/s Third Eye Vinimay Pvt Ltd and M/S Moon Shine Mercantile Pvt Ltd. Accordingly, the AO was not justified in treating share capital of Rs. 5,07,50,000/- received by the assessee during the previous year relevant to assessment year 2014-15 as unexplained adding the same to the income of the assessee.*

(x) *In result, the addition of Rs. 5,07,50,000/- is directed to be deleted.*

8. Apropos, the share capital receives from M/s Third Eye Vinimay Pvt. Ltd., Ld. AR has further apprised before us that, the case of the Third Eye Vinimay Pvt. Ltd. for the AY 2012-13 was taken-up for scrutiny assessment, wherein the funds raised during the year in the form of Share capital and share premium has been entirely added to the income of Third Eye Vinimay amounting to Rs. 12,77,50,000/-, treating the same as unexplained income u/s 68 of the I.T. Act. Aggrieved by the said assessment order passed u/s 143(3) dated 25.03.2015, Third Eye Vinimay has preferred an appeal before the Ld. Jurisdictional CIT(A), however while the appeal with the 1st appellate authority was pending, the total demand raised by the Assessing Officer for Rs. 5,63,69,948/- for the AY 2012-13, which was disputed by the assessee, has been offered to be settled under the Vivad se Vishwas Scheme brought by the income Tax Department. The application of the Third Eye Vinimay was accepted by the department and filed was issued on 27.05.2002 by Principal CIT. Accordingly, Third Eye Vinimay has also deposited an amount of Rs. 4,14,17,988/- in terms of its application for Vivad se Vishwas Scheme on 09.10.2021, which was duly acknowledged, considered and accepted by the department by issuing form No. 5 dated 27.05.2002. Copies of documents showing settlement of the addition challenged by the assessee in first appeal are furnished before us, the same are extracted as under:

PAN : AADCT9393F

Acknowledgement Number : 978275820311220

FORM-3

[See rule 3]

FORM FOR CERTIFICATE UNDER SUB-SECTION (1) OF SECTION 5 OF THE DIRECT TAX
VIVAD SE VISHWAS ACT, 2020 (3 of 2020)
THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020

PART A - General Information

Whereas Mr./Mrs./M/s THIRDEYE VINIMAY PRIVATE LIMITED (hereinafter referred to as the declarant) having PAN / TAN AADCT9393F Aadhaar No. has filed a declaration under section 4 of the Act; Now, therefore, in exercise of the powers conferred by sub-section (1) of section 5 of the Act and after consideration of relevant material, the following amounts are hereby determined to be payable by the declarant towards full and final settlement of the tax arrear covered by the said declaration under the Act:

Details of order by which tax arrear determined from Form 1 part B										
1.	Assessment year/Financial year								2012-13	
2.	Whether search case ?								NO	
3.	Whether search case with disputed tax less than Rs. 5 crores in the assessment year? (information flag relevant for rate at which amount payable is to be computed)								NO	
S. No.	Nature of tax arrear	Reference number / Acknowledgement Number (Filed by assessee)	Reference number / Acknowledgement Number (Filed by Department)	If declaration is with respect to appeal, writ, SLP, arbitration, conciliation or mediation for disputed tax including disputed TDS/ TCS appeal, is there pending appeal, writ or SLP for interest or penalty imposed in relation to such disputed tax	For Penalty Appeal reference number / Acknowledgement Number	Appellate authority where appeal is pending	Amount of Penalty	For Interest Appeal reference number / Acknowledgement Number	Appellate authority where appeal is pending	Amount of Interest
1	Disputed Tax	MANUALLY FILED		No						
Details of pending appeal as per schedules (A, B, C) as applicable as per Form 1										
S. No.	Schedule Number	Appeal reference number	As per taxpayer			As per Income tax authority				
			Tax arrear (Rs.)	Amount payable under DTVSV on or before 31.03.2021	Amount payable under DTVSV after 31.03.2021	Tax arrear (Rs.)	Amount payable under DTVSV on or before 31.03.2021	Amount payable under DTVSV after 31.03.2021		
1	Schedule A(I). To be filed in case appeal of assessee is pending before CIT(A) as on 31.01.2020 or the time for filing appeal by the assessee before CIT(A) has not expired as on 31.01.2020	MANUALLY FILED	56369948	41448488	0	56369948	41448488	45593337		
INFORMATION RELATED TO PAYMENTS AGAINST TAX ARREAR as per Part E(i) of Form 1										
S. No.	BSR Code	Date of payment	Serial Number of Challan		Amount	Match/Mismatch				

1	0000001	05/04/2019	00036	18500	Match
2	0000001	15/01/2016	00018	12000	Match
Refund reduced in assessment as per part E(iv) of Form I					0
Balance amount payable / refundable after adjusting amount already paid					
	On or before 31.03.2021				4141 7988
	After 31.03.2021				45562837
Remarks					

"The declarant is hereby directed to make the payment of sum payable, if any, as per Balance amount payable / refundable after adjusting amount already paid as per the form."

In case of non-payment of amount payable as per the form, then the declaration under Form-I shall be treated as void and shall be deemed never to have been made.

Certificate No. 978275820311220

Place : KOLKATA

Name of the Designated Authority : ATHIKHO OBOU

MAO

Date : 31/12/2020

Designation of designated authority : PCIT, Kolkata-5

Note- Submission of DTVSV Form 4 online in e-Filing portal is mandatorily required.



taxpayers counterfoil

Date: 29/09/2021 11:34:33 AM

Taxpayers Counterfoil - CHALLAN NO./ITNS 280		For use in Receiving Bank
PAN	AADCT9393F	Debit to a/c on: 29/09/2021
Received from (Name)	THIXXXE VINIMAY PRIVATE LIMITED	Bank of Baroda Law Garden Branch, Ahmedabad
Address	kolkata WB 700001	BSR CODE:0202976
Payment using E-Banking	For INR 4,14,17,988.00	Date Of Tender:29/09/2021
Tax	INR 4,14,17,988.00	Challan Serial No:00273
Charge	INR 0.00	Challan Identification No:02029762909202100273
Education Cess	INR 0.00	Rupees Four Crore Fourteen Lakh Seventeen Thousand Nine Hundred and Eighty Eight only
Fee under sec. 234E	INR 0.00	
Fee	INR 0.00	
Interest	INR 0.00	
Penalty	INR 0.00	
Others	INR 0.00	
Total Amount	INR 4,14,17,988.00	
Rs.(in words)	Rupees Four Crore Fourteen Lakh Seventeen	
Payment Mode	Internet	
Debit Account Number	7857050000271	
On account of	(0020)INCOME- TAX ON COMPANIES(CORPORATION TAX)	
Reason of Payment	(400)TAX ON REGULAR ASSESSMENT	
Nature of Payment	-NA-	
For the Assesement Year	2012-13	
Transaction Date and Time	29-09-2021 11:34:01	

FORM NO. 4 [See rule 5]Intimation Of Payment Under Sub-Section (2) Of Section 50F The Direct
Tax Vivad Se Vishwas Act, 2020 (3 of 2020)

To,
The Designated Authority
Sir/Madam,

1. Pursuant to the certificate received from designated authority in Form-3 vide certificate no. 978275820311220 dated 31-Dec-2020 in respect of THIRDEYE VINIMAY PRIVATE LIMITED PAN/ TAN AADCT9393F Aadhaar Number for A.Y./ F.Y. 2012-13 the detail of payments made is as under:

S.No	BSR Code of Bank	Date of Deposit (DD- MMM-YYYY)	Serial Number of Challan	Amount (Rs)
1	0202976	29-Sep-2021	00273	41417988

2. Whether the appeal, objections, application, writ petition, special leave petition, arbitration, conciliation, mediation or claim has been filed? (Please select NA if not filed) **Yes**
3. The appeal, objections, application, writ petition, special leave petition, arbitration, conciliation, mediation or claim has been withdrawn if already filed (please upload proof of withdrawal with number and forum thereof)

IP/Place 106.214.46.4

Date 09-Oct-2021

**Acknowledgement Receipt of
Income Tax Forms**

(Other Than Income Tax Return)

e-Filing Acknowledgement Number / Quarterly Statement Receipt Number
728123120251021Date of e-Filing
25-Oct-2021

Name	: THIRDEYE VINIMAY PRIVATE LIMITED
PAN/TAN	: AADCT9393F
Address	: 103AGARPARA NORTH STATION RO, KOLKATA, BY LANE AGARPARA, , , -
Form No.	: Form 4DTVSV
Form Description	: Intimation of Payment under Sub-Section (2) of Section 5 of The Direct Tax Vivad Se Vishwas Act, 2020 (3 Of 2020) The Direct Tax Vivad Se Vishwas Rules, 2020. This form is in compliance with rule 5.
Assessment Year	: 2012-13
Financial Year	: -
Quarter	: -
Filing Type	: Original
Capacity	: director
Verified By	: AMAPC0033D

(This is a computer generated Acknowledgement Receipt and needs no signature)

PAN : AADCT9393F

Acknowledgement Number: 634754651270522

FORM-5
[See rule 7]ORDER FOR FULL AND FINAL SETTLEMENT OF TAX ARREAR UNDER SECTION 5 (2)
READ WITH SECTION 6 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 (3 of 2020)
THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020

Part A - General Information

Whereas THIRDEYE VINIMAY PRIVATE LIMITED having PAN/TAN AADCT9393F Aadhaar No. (hereinafter referred to as the declarant) had made a declaration under section 4 of the Act;

And whereas the designated authority by Certificate No. 978275820311220 dated 31-Dec-2020 determined the amount of Rs. 41417988 payable by / refundable to the declarant in accordance with the provisions of the Act and granted a certificate setting forth therein the particulars of the tax arrear and the amount payable / refundable after such determination towards full and final settlement of tax arrear;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 5 read with section 6 of the Act, It is hereby certified that -

(a) a sum of Rs. 41417988 has been paid by the declarant towards full and final settlement of tax arrear determined in the order No 978275820311220 dated 31-Dec-2020 and

(b) the immunity is granted subject to the provisions contained in the Act, from instituting any proceeding for prosecution for any offence under the Income-tax Act or from the imposition of penalty under the said enactment (as per section 6 of the Act), in respect of the tax arrear as detailed in the table below:

Sl. No.	Assessment Year / Financial Year	Details of disputes settled (Appeal reference number)	Nature of tax arrear (disputed tax / disputed penalty / disputed interest / disputed tax)	Amount of tax arrear
1	2012-13	MANUALLY FILED	Disputed Tax	53369948

It is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

Signature: 

Place / IP Address: 10.176.27.243

Name of the Designated Authority: SAMAR BHADRA

Date: 27-May-2022

Designation of Designated Authority: PR CIT

To

- (1) The declarant
- (2) Assessing Officer
- (3) Concerned Principal Commissioner of Income-Tax
- (4) Concerned Appellate Forum

समर भद्रा, भा.पा.से.
SAMAR BHADRA, I.R.S.
प्रधान आयकर आयुक्त-8, कोलकाता
Pr. Commissioner of Income Tax-8
Kolkata

9. Ld. AR submitted that, based on aforesaid documents pertaining to Assessee's declarations under Vivad se Vishwas scheme (VSVS) which has been duly accepted by the department and requisite taxes were also paid by the assessee, thus, the amounts so declared under VSVS should have been categorized as tax paid and explained funds in the hands of share applicant company i.e., Third Eye Vinimay Pvt. Ltd. Ld. AR of the assessee further submitted that it is also an undisputed fact that the amount invested by Third Eye Vinimay in the assessee company's share capital was out of the same fund for which taxes were paid by the assessee under

the Vivad se Vishwas scheme in AY 2012-13 therefore, those funds should not be treated as not explained or from unknown sources. To establish this fact, Ld. AR of the assessee has submitted before us a 3 years summary chart of Balance Sheet of the Third Eye Vinimay Pvt Ltd. for AY 2012-13 and 2014-15, the same is extracted as under:

THIRDEYE VINIMAY PVT. LTD. - BALANCE SHEET FROM AY 2012-13 TO 2014-15							
	Particulars	Assessment Year					
		2014-15		2013-14		2012-13	
		Amount	Amount	Amount	Amount	Amount	Amount
I	Equity & Liabilities						
I	Shareholders Funds						
a	Share Capital		65,86,600		65,86,600		65,86,600
b	Reserves & Surplus						
	Security Premium	12,11,63,400		12,11,63,400		12,11,63,400	
	Profit & Loss Account	-1,03,793	12,10,59,607	-69,977	12,10,93,423	-32,615	12,11,30,785
2	Current Liabilities						
a	Short Term Borrowings		51,00,000				
b	Other Current Liabilities				40,85,000		41,24,500
	Total		13,27,51,207		13,17,65,023		13,18,41,885
II	Assets						
I	Non Current Assets						
a	Non Current Investments						
	- Apex TradeLink Pvt. Ltd.						96,00,000
	- Lifetime Mercantile Pvt. Ltd.						97,00,000
	- Linkpoint Merchandise Pvt. Ltd.						94,00,000
	- Passion Sales Pvt. Ltd.						98,00,000
	- Ratio Vincom Pvt. Ltd.	30,00,000		70,00,000			1,16,00,000
	- Smoothly Vintrade Pvt. Ltd.			1,39,50,000			1,39,50,000
	- Timely Merchants Pvt. Ltd.	70,000		95,00,000			95,00,000
	- Titanic Distributors Pvt. Ltd.	11,00,000		1,90,00,000			1,90,00,000
	- Truthful Tradecom Pvt. Ltd.	1,47,00,000		1,95,00,000			1,95,00,000
	- Vision Commerce Pvt. Ltd.	20,00,000		96,00,000			96,00,000
	- Madrid Traders Pvt. Ltd.		2,08,70,000		9,01,50,000		50,00,000
	Total						12,66,50,000
b	Other Non Current Assets		25,800		51,600		77,400
2	Current Assets						
a	Short Term Loans & Advances						
	- Jayem Holding Pvt. Ltd.	7,31,50,000		2,95,00,000			
	- R R Energy Ltd.	50,00,000					
	- Bilaspur Infrastructure Pvt. Ltd.	2,85,50,000					
	- Madrid Traders Pvt. Ltd.			50,00,000			
	- Share Application Given			50,00,000	3,95,00,000		50,00,000
	Total		10,67,00,000		50,00,000		50,00,000
b	Cash & Cash Equivalents		51,29,607		20,37,623		88,685
c	Other Current Investments		25,800		25,800		25,800
	Total		13,27,51,207		13,17,65,023		13,18,41,885

10. Referring to the aforesaid summary statement of the Balance sheet of the Third eye Vinimay Pvt. Ltd., Ld. AR submitted that the entire share capital and share premium receipt of the Third Eye Vinimay Pvt. Ltd. in the AY 2012-13 amounting to Rs. 65,86,600/- and Rs.12,11,63,400/- respectively, in aggregate Rs. 12,77,50,000/-, which was disallowed by the Assessing Officer in the scrutiny assessment order u/s 143(3) dated 25.03.2015, but the same was conceded by the share applicant i.e., Third Eye Vinimay Pvt. Ltd., thus has preferred an appeal before the CIT(A), however while the matter was sub-judice before the Ld. CIT(A), the assessee preferred to opt for the scheme announce by CBDT under the

Vivad se Vishwas Act, 2020, accordingly, the entire amount was offered under Vivad se Vishwas Scheme (VSVS), thus, it was the submission that the tax paid funds of the share applicant considered under VSVS should be treated as explained funds received by the assessee company in the present case. Ld. AR drew our attention to the share capital and share premium figures in the aforesaid summary of balance sheet for 3 Assessment years and has shown that there was no change in the share capital and funds of the Third Eye Vinimay Pvt. Ltd., therefore, it is evident that the funds invested in the assessee company are sourced out of the share capital receipt of the investor company in the AY 2012-13, which has already been offered for tax under the VSVS, resultantly the same became the income of the investor company and as such are to be treated as explained funds, thus, without any further dispute the funds invested are characterized as explained. There is no scope to consider such funds as bogus within the provisions of section 68.

11. With regard to the remaining share capital received by the assessee company from another share subscriber company M/s Moon Shine Mercantile Pvt. Ltd. for Rs. 23/- lacs, Ld. AR has strongly trusted upon the documents of the share applicant and the amount received by the share applicant from its source M/s Rudramukhi Vintrade Pvt. Ltd. It was thus the prayer that in view of aforesaid submissions the amounts received from the said company in the form of share capital should be treated as duly

explained and no adverse inference is called for under the provisions of section 68.

12. To support the contentions raised by Ld AR, following judgments were placed before us:

<u>M/s. Javem Holdings Private Limited, Bilaspur (C.G.)</u>		
<u>Case Laws relied & judgements - Share Capital - Sec. 68</u>		
No.	Particulars	Page No.
1	ACIT v. Venkateshwar Ispat P. Ltd. (2009) 319 ITR 393 CG	1
2	Pawan Kumar Agrawal v. ITO Ward 2(2) Bilaspur Hon'ble Chhattisgarh High Court, Tax Case No.24 of 2011, Dt. 04.04.2017	2 - 5
3	CIT v. Abdul Aziz (2012) 251 CTR 0058 CG	6 - 7
4	ITO v. Koushal Agrawal (2013) 22 ITJ 233 Raipur ITAT	8 - 12
5	PCIT V/s Ami Industries (India) (P.) Ltd (2020) 116 taxmann.com 34 (Bombay)	13
6	PCIT V/s Realvalue Realtors (P.) Ltd (2020) 113 taxmann.com 62 (Bombay)	14
7	PCIT V/s Shree Rajlakshmi Textile Park (.) Ltd (2020) 113 taxmann.com 2 (Bombay)	15
8	M/s Great Galleon Ventures Ltd vs. DCIT ITA No. 67 to 70/Ind/2021 Dt. 23/12/2021 Hon'ble Indore Bench	16 - 18
9	DCIT Central circle vs. R. R. Energy Ltd. ITA Nos. 225 to 231/RPR/2014 Dt. 18/01/2018 Hon'ble ITAT Raipur Bench	19 - 49
10	DCIT vs. Gandhi Capital (P.) Ltd (2022) 137 taxmann.com 75 (Surat-Trib.)	50
11	Ancon Chemplast (P.) Ltd V/s ITO (2021) 127 taxmann.com 156 (Delhi-Trib.)	51
12	Satyam Smertex (P.) Ltd V/s DCIT (2020) 117 taxmann.com 93 (Kolkata-Trib.)	52
13	ITO V/s Smt. Pratima Ashar (2019) 107 taxmann.com 135 (Mumbai-Trib.)	53
14	DCIT V/s M/s Udaipur Properties & Finance ITA No. 6449/Mum/2017 A.Y. 2010-11 "F" Bench, Mumbai Dated 09.11.2018 Hon'ble Members Shri B.R.Baskaran & Shri Ravish Sood	54 - 62
15	CIT V/s Gagandeep Infrastructure P. Ltd. (2017) 394 ITR 680 (Bom HC)	63 - 64
16	CIT V/s Gangeshwari Metal Private Limited. (2014) 361 ITR 10 (Delhi)	65 - 69
17	CIT V/s P.K. Noorjahan 237 ITR 570 SC	70 - 72
18	CIT V/s Orchid Industries P. Ltd. (2017) 397 ITR 0136 (Bom)	
19	Orissa Corporation (P) Ltd. - 159 ITR 78	
20	CIT V/s Stellar Investment Ltd. - 251 ITR 263	
21	CIT V/s Metachem Industries - 245 ITR 160 (MP)	
22	DCIT V/s Rohini Builders - 256 ITR 360 (Guj)	
23	Nemi Chand Kothari V/s CIT - 264 ITR 254 (Guahati)	

13. Ld. CIT DR on the other hand has vehemently supported the order of Ld. AO and has submitted that looking to the modus operandi, financials and the nature of transactions in the account of share applicants and source companies the amount received as share capital by the assessee company

should be treated as bogus share capital and the addition made under section 68 in terms of first proviso, which is effective from AY 2013-14, the addition should be sustained by setting aside the order of the Ld. CIT(A), which was against the principle of law and on the basis of erroneous appreciation of the facts.

14. We have considered the rival submissions perused the material available on record and case laws relied upon by the parties. Admittedly, in the present case, contentions of the Ld. AR that in the case of the first share applicant, i.e., M/s Third Eye Vinimay Pvt. Ltd. (TEVPL), the share applicant has duly surrendered its income by adopting to pay taxes under the Vivad Se Vishwas Scheme therefore, the amount received by the assessee company from TEVPL for Rs. 4,84,50,000/- cannot be treated as unexplained amount since the taxes pertaining to the source of such funds have already been offered and settled by the share applicant, when such addition was made in the case of share applicant by the Jurisdictional AO. The same funds which are already taxed in the hands of share applicant cannot be treated as unexplained income in the hands of assessee and to be taxed, if it is directed to do so, the same will be equal to double taxation. Under such facts and circumstances, since it is explicitly proved that the amount so received by the assessee company from M/s TEVPL was already taxed in the hands of investor company, the same has an explained source, thus, it can be safely held that the impugned amount is duly explained, thus, out of the scope of provisions of section 68. The conditions

of the Ld AR, backed by the facts in the form of financials of the TEVPL, thus, sounds to be worth concurrence, thus, in terms of aforesaid observations, we are of the considered opinion that, the amount of share capital received by the assessee from TEVPL of Rs. 4,84,50,000/- are tax paid funds thus in the nature of explained sources, the same can't be taxed again by bringing the same in the sweep of provisions section 68 of the I.T. Act. Thus, on account of declaration by the investor company under VSVS and payment of taxes on the disputed addition, the funds raised under the head share capital and premium by it in AY 2012-13 are explained in the hands of TEVPL, consequently, we find it appropriate to affirm the decision of Ld CIT(A) to vacate the addition to the extent of Rs. 4,84,50,000/- received as share capital from M/s TEVPL.

15. Regarding share applicants' money received from the second share applicant, M/s Moon Shine Mercantile Pvt. Ltd. (MSMPL) for Rs. 23,00,000/-, Ld. AR furnished all the necessary documents *Qua* the source and also pertaining to source of source to establish that the funds received by the assessee company are duly explained, but, the same were not found satisfactory for the reason that the financials of the Share subscriber i.e., M/s Moon shine Mercantile Pvt. Ltd. and its source company i.e., M/s Rudra Mukhi Financials Pvt. Ltd. have shown merger / negative income in their ITR also audited financials of the source of source M/s Rule Mukhi Financials Pvt. Ltd. are not found furnished before us. From the records available it is evident that such information was not furnished before the

revenue authorities too, thus the onus cast upon the assessee in terms of 1st proviso to section 68 was not satisfied at any stage of assessment proceedings or appellate proceedings. Thus, it can be concluded that, the Ld. AO has justifiably invoked the provisions of Section 68 and accordingly, the addition of Rs. 23 Lacs made by the AO found to be on right footing, thus, the same qualifies to be confirmed. We, Accordingly, set aside the order of Ld. CIT(A) to the extent of Rs. 23/- Lacs received from M/s Moon Shine Mercantile Pvt. Ltd. and restore the addition made by the Ld AO to that extent.

16. Consequently, the grounds of appeal raised by the department in the present appeal are disposed-off, as discussed herein above.

17. Since the appeal of the department in ITA no. 93/RPR/2018 is partly allowed by sustaining the part addition made by Ld. AO, but, vacated by Ld. CIT(A), our aforesaid decision shall be *mutatis mutandis* applicable in the CO No. 08/RPR/2018 which is in support of the order of Ld. CIT(A). Accordingly, the CO filed by the assessee stands partly allowed.

18. In the result, appeal filed by the department in ITA no. 93/RPR/2018 and CO filed by the assessee bearing CO No. 08/RPR/2018 are partly allowed, in terms of our aforesaid observations.

Order pronounced in the open court on 29/11/2023.

**Sd/-
(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 29/11/2023
Vaibhav Shrivastav

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, रायपुर/ DR, ITAT,
Raipur
6. गार्ड फाईल / Guard file.

// सत्यापित प्रति True Copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur