

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.4642/Mum/2017  
(Assessment Year :2007-08)**

ACIT-5(1)(2) R. No.568, 5 <sup>th</sup> Floor, Aayakar Bhavan M.K.Road Mumbai – 400 020	Vs.	M/s. Flagship Housing Development Pvt. Ltd. (Formerly known as M/s. Absolute Building Co. Pvt. Ltd.) 1 <sup>st</sup> Floor, Vaibhav Chambers, Bandra Kurla Complex, Bandra East, Mumbai – 400 051
<b>PAN/GIR No.AAGCA3853L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Hariom Tulsian & Shri Suchek Anchaliya
Revenue by	Shri Manoj Sinha
<b>Date of Hearing</b>	<b>03/11/2023</b>
<b>Date of Pronouncement</b>	<b>11/12/2023</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the Revenue against order dated 17/03/2017 passed by CIT (A)-10, Mumbai for the quantum of assessment passed u/s.143(3) r.w.s. 147 for the A.Y.2007-08.

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

1. *"On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.475 lacs u/s.68 of the Income Tax Act on a / c of unexplained cash credit in the form of share capital with premium."*

2. *"On the facts and circumstances of the case and in law, the Ld. CIT (A) failed to appreciate the fact that the assessee failed to produce any subscriber for examination by the AO."*

3. *"On the facts and circumstances of the case and in law, the Ld. CIT (A) failed to appreciate the fact that Shri Pravin Kumar Jain was indulged in issuing bogus accommodation entries in different forms including share capital."*

4. *"On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition u / s . 68 on account of non-genuine share capital and premium received through the entities engaged in providing accommodation entries on commission basis on the basis of documentary evidence such as PAN, IT return, confirmation, Bank Statement etc without considering the facts that subscriber was a paper company and not a genuine investor."*

5. *"On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition u/s 68 on account of non-genuine share capital with premium received through the entities engaged in providing accommodation entries on the basis of documentary evidence such as PAN, IT return, confirmation, Bank Statement etc without considering the ratio of the decision of Supreme Court in the case of Sumati Dayal and Modowell relied upon by the AO in the assessment order."*

6. *"On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in accounting the plea of the assessee that repayment to subscribers of preferential shares justify the genuineness of credit entries from these entities when the main*

*person of these entities namely Shri Pravin Jain had categorically admitted that these entities were involved in providing accommodation entries.."*

*For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the AO be restored."*

3. The brief facts of the case are that Assessee Company is engaged in the business of trading and it had filed its return of income on 31/03/2009 declaring total income at Rs.Nil. During the year under consideration assessee had issued 8,90,000 optionally convertible non-cumulative preference shares at Rs.10/- at a premium of Rs.90/- to 15 parties which included 14 companies. These shares were subsequently redeemed by all the parties in A.Y.2009-10, i.e., after two years after the issue. The said return was duly processed and was accepted u/s. 143(1).

4. Later on assessee's case was reopened u/s.147 and notice u/s.148 was issued on 28/03/2014 on the basis of following reasons recorded as incorporated in the assessment order:-

*"2. Information available on record shown that during the course of search and seizure proceedings in the case of Shri Praveen Kumar Jain group, evidences collected and statements recorded of various persons including that of Shri Praveen Kumar Jain have lead to detection of accommodation entries of approximately 8897 crore.*

*A list of beneficiaries has been complied who have taken accommodation entries in the nature companies have been given the accommodation entries of bogus share capital from various entry providers including the concerns managed and controlled by Shri Praveen Kumar Jain. In the case of the*

assessee company, it has been reported that it has taken accommodation entries in the form of Investment/share application money from various parties. A list of such parties has been furnished vide above referred letter. The relevant details are reproduced hereunder:

Sr. No.	F.Y.	Name of Concern controlled and Managed by Prawn Kumar Jain	Beneficiary (Investee) Company name	PAN of beneficiary company
1.	2006-07	Nakshatra businesss P. Ltd(Hema Trading. Co. P. Ltd)	Absolute Buildings Co. Pvt Ltd.	AAGCA3853L
2.	2006-07	OliveOverseas P. Ltd (Realgold Tr.P.Ltd)	Absolute Buildings Co. Pvt. Ltd.	AAGCA3853L
3.	2006-07	Kush Hindustan Entertainment Ltd	Absolute Buildings Co. Pvt. Ltd.	AAGCA3853L
4	2006-07	Alka Diamond Industries Ltd.	Absolute Buildings Co. Pvt. Ltd.	AAGCA3853L
5.	2006-07	Javda India Impex Ltd	Absolute Buildings Co. Pvt. Ltd.	AAGCA3853L
6	2006-07	Lexus Infotech Ltd	Absolute Buildings Co. Pvt. Ltd.	AAGCA3853L
7	2006-07	Vangaud Jewels Ltd	Absolute Buildings Co. Pvt. Ltd.	AAGCA3853L
8	2006-07	Yash V- Jewels Ltd	Absolute Buildings Co. Pvt. Ltd.	AAGCA3853L

<i>Amount of investment</i>	<i>Date of payment</i>	<i>Name of the Praveen Kumar Jain bank through which transaction made</i>	<i>Ban Branch</i>
25,00,000/-	24/04/2006	Canara Bank	Khetwadi, Mumbai
25, 00, 000/-	24/04/2006	Canara Bank	Khetwadi, Mumbai
25, 00, 000/-	24/04/2006	Canara Bank	Khetwadi, Mumbai
25, 00, 000/-	24/04/2006	Canara Bank	Khetwadi, Mumbai
25, 00, 000/-	11/07/2006	Canara Bank	Khetwadi, Mumbai
25, 00, 000/-	11/07/2006	Canara Bank	Khetwadi, Mumbai
25, 00, 000/-	11/07/2006	Canara Bank	Khetwadi, Mumbai
25,00,000/-	11/07/2006	Canara Bank	Khetwadi, Mumbai

*3. The total amount of accommodation entry in the nature of investment/share application money is Rs.2,00,00,000/-. Therefore, it is clear that the assessee has taken accommodation entries through this person to regularize investment which were made out of books of account. The source of funds in such investment remains unexplained and, requires to be taxed as unexplained investment u/s 69B of the I. T. Act, 1961.*

5. Thus, the main allegation is that, out of 15 parties, 8 of the companies to whom shares were issued were controlled / managed by Shri Praveen Kumar Jain, who was engaged in providing accommodation entries. Thus, the reason to belief was

entertained that amount of Rs.2 Crores from such parties were subscribed optionally convertible non-cumulative preference shares had escaped assessment.

6. In response to show-cause notice, assessee submitted the details of share application money received during the year from the following parties:-

Date	Name	Amount in Rs.
26/04/2006	<i>Sotcknet International Ltd.</i>	25,00,000/-
26/04/2006	<i>Alka Diamond Industries Ltd</i>	25,00,000/-
26/04/2006	<i>Kush Hindustan Entertainment Ltd</i>	25,00,000/-
26/04/2006	<i>Hema Trading. Co. P. Ltd</i>	25,00,000/-
26/04/2006	<i>Real gold Tr.P.Ltd</i>	25,00,000/-
26/04/2006	<i>Artillagece Bio-Innovations Ltd.</i>	25,00,000/-
26/04/2006	<i>Artillagece Bio-Innovations Ltd.</i>	25,00,000/-
29/06/2006	<i>Sotcknet International Ltd.</i>	25,00,000/-
29/06/2006	<i>Engineering Professional Company Pvt. Ltd,</i>	25,00,000/-
29/06/2006	<i>Engineering Professional Company Pvt- Ltd.</i>	25,00,000/-
29/06/2006	<i>Kalpana Steelcon Pvt. Ltd.</i>	25,00,000/-
29/06/2006	<i>Reynolds Petro Chems Ltd.</i>	25,00,000/-

29/06/2006	<i>Reynolds Petro Chems Ltd.</i>	25,00,000/-
14/07/2006	<i>Kalpana Steelcon Pvt. Ltd.</i>	25,00,000/-
14/07/2006	<i>Yash V- Jewels Ltd</i>	25,00,000/-
14/07/2006	<i>Lexus Infotech Ltd</i>	25,00,000/-
14/07/2006	<i>Vangaud Jewels Ltd</i>	25.00.000/-
14/07/2006	<i>Volplast Ltd.</i>	25,00,000/-
14/07/2006	<i>Javda India Impex Ltd</i>	25,00,000/-
14/11/2006	<i>Mr. Kunal Shroff</i>	1,00,00,000/-
15/11/2006	<i>Mr. Kunal Shroff</i>	1,00,00, 000/-
16/11/2006	<i>Mr Kunal Shroff</i>	1,00,00,000/-
1 7/11/2006	<i>Mr. Kunal Shroff</i>	90,00,000/-

7. Out of the above, the allotment of preference shares to Mr. Kunal Shroff for sums aggregating to Rs.3.90 Crores have been accepted by the ld. AO. The ld. AO in order to verify the genuineness of these parties had issued notice u/s. 133(6), however, notices from seven parties returned back and out of which three parties related to Shri Praveenn Kumar Jain. The details of compliance notice have been mentioned in the assessment order at page 4. Thereafter, assessee was asked to produce parties which according to ld. AO, assessee failed to produce the parties. He then referred to the information received from DGIT (Investigation) Mumbai and the findings of DGIT

which has been reproduced in detail from pages 5-6 of the assessment order. Thereafter, ld. AO based on this information and that the parties have not responded to the notice u/s. 133(6) had added the sum of Rs.2 Crores from the preference shares allotted to companies belonging to Shri Praveen Kumar Jain u/s. 68. Apart from that he has also added further sum of Rs. 2,25,00,000/- received from other companies. Thus, total addition made u/s.68 was Rs.4,75,00,000/-. Before the ld. CIT (A), assessee had made following submissions:-

*(i) The appellant company had issued Optionally Convertible Non- cumulative Preference Shares and the same were redeemed at premium in the subsequent years and no amount is now outstanding with the appellant.*

*ii) the companies being corporate entities could not produce the parties in person but the appellant has filed various documents before the AO, like that of share applications, PAN numbers, copies of memorandum of association and articles of association, confirmations from the parties, and also bank statements, IT return details, annual reports of the parties and discharged the onus of proving identity and creditworthiness of the creditors and the genuineness of the transaction*

*iii)The share subscriber is under no legal obligation to deliver/divulge any information to the appellant beyond this in terms of laws of the land Accordingly it is beyond the legal rights of the appellants to seek any further information from share subscribers*

*iv) all the transactions were through banking channels by paying cheques.*

*v) the AO has made the disallowances from the 3 parties belonging to Praveen Jain group to whom notices were issued but returned back with a postal remark as "left" even after the*

*amount was repaid along with premium of Rs 10/- over and above the subscription of Rs 100/- by the parties and after lapse of about 5 years from the date of repayment.*

*vi) the AO has noted that he received replies from 5 subscribers from Praveen Jain group to whom notices u/s 133(6) were served and replies were also received Despite having received replies from the parties the AO has made the addition in the case of those 5 parties also which shows the pre-determined mind of the AO against the appellant.*

*vii) the AO has made the disallowance without noting how the details filed by the appellant and the details received from the parties directly in response to his notice u/s 133(6), are insufficient or there is discrepancy/ Inconsistency in such information.*

*viii) the appellant was denied natural justice by not supplying the information received by the AO from DGIT(Inv), Mumbai on which the AO has relied and made the addition, not allowing the appellant to cross-examine such information/persons and not providing sufficient time to furnish details.*

*ix) the AO cannot make any disallowances on the basis of not discharging burden of proof to be discharged by the appellant in view of the amendment to section 68 for the year under consideration since this amendment is effective from 1st April 2013 and applicable from A.Y 2013-14. [56(2)(viib).*

*x) if the AO finds that the share investment is proved non-genuine, the addition needs to be made in the hands of the subscriber but not in the hands of the appellant company. Reliance was placed on the decisions of the Honorable Supreme Court in the case of Divine Leasing and Finance Ltd 299 ITR 268 and Lovely Exports P Ltd. 216 CTR 195.*

8. The ld. CIT(A) held that in so far as share premium is concerned, same is not taxable in view of the judgment of the Hon'ble High Court in the case of Vodafone India Services Pvt.

Ltd reported in [2014] 368 ITR 1 (Bombay) and held that the premium received is a capital receipt which is not taxable as income and the amendment has been brought in the statute by the Finance Act 2012, when it has become taxable u/s.56(2)(viib) as income from other sources, if the shares exceed the fair market value. However, he held that the amendment is applicable from A.Y.2013-14 onwards. In so far as merits are concerned, his relevant finding reads as under:-

*5.2.4 In view of the above background let us examined the case of the appellant. The appellant has received the share application money with a face value of Rs. 10/- and with a premium of Rs. 90 from 15 concerns. The AO has made a disallowance of entire share application money ie premium value as well as value on par since the appellant has not satisfactorily proved the identity and creditworthiness of the creditors and the genuineness of the transaction. I do not agree with the decision of the AO for the following reasons-*

*Firstly, the appellant has submitted various details like confirmations, bank statements, IT particulars, annual reports etc. of the investors to prove the identity and creditworthiness of the creditors and the genuineness of transaction. However, the AO has not taken them into cognizance without proving how these documents are insufficient and cannot be relied on*

*Secondly, the shares issued were Redeemable Preference Shares and were redeemed within 2 years of the date of allotment. It is also noted that these shares were redeemed much before the AO has noticed such allotment of shares to the so-called bogus entities in the FY 2013-14 ie much before the search and seizure operation in Praveen Jain group which was on 1/10/2013 and well before the notice for reopening the assessment was issued by the AO on 24/3/2014.*

*Thirdly, the shares were redeemed along with an additional premium of Rs. 10 on each share When shares were issued at*

*face value of Rs. 10 and a premium of Rs 90, totaling to Rs. 100, there were bought back at Rs. 100+ Rs. 10. Therefore, the leakage of revenue either from the investments taken from Praveen Jain group or others cannot be thought of There is every possibility of manipulation if shares were issued with premium but bought back at face value, thereby converting premium amount into white. There is no such possibility in the instant case*

*Fourthly, as seen from the bank statements filed, the investors are having sufficient balances to invest in the appellant company*

*Fifthly, the AO was not justified in adding the investments made by certain parties to whom notices u/s 133(6) were issued and replies were received without giving any justification for doing so Such type of prejudice should have been avoided.*

*Lastly, the AO has given excessive reliance to the statements given by Praveen Jain group disregarding the positive evidence available with regard to the replies received in response to notices issued by the AO u/s 133(6) of the Act.*

*5.2.5. In view of the above discussion, I hold that the appellant has submitted all the evidences to prove their identity and creditworthiness of the parties and genuineness of the transaction. Therefore, the disallowance made by the AO under section 68 is held not proper The ground is allowed*

9. Before us, ld. DR referred to various observations of the Assessing Officer and submitted that here in this case, first of all 8 of the entities who subscribed to preference shares belong to Shri Praveen Kumar Jain group which were established entry operator and not only that, even the notices sent through post to the companies u/s. 133(6) remain uncomplied with. Further, assessee did not provide any detail or supporting documents to prove the identity, genuineness and creditworthiness of the

investors and also failed to produce parties during the course of the assessment proceedings. Though money was received from banking channel but that does not prove the genuineness of their transaction. Merely producing information / details on the investors, their copies of return, bank statements, share application letter is not sufficient and is not conclusive and determinative factor to prove that under these circumstances, the transaction of share application money is correct. He further submitted that it is not the issue of taxability of premium but the issue of genuineness of the whole credit appearing in the books of accounts and thus, the observation of the ld. CIT (A) is incorrect.

10. On the other hand, ld. Counsel for the assessee submitted that assessee before the AO had filed following documents:-

- a. Copy of share applications.
- b. PAN of the investors.
- c. Copies of Memorandum of Association of Articles of Association.
- d. Confirmations from the parties, and
- e. Bank statements, IT Returns, annual reports of the parties.

None of these documents have been considered by the ld. AO. One very important fact is that here it is not a simple case of share application money, albeit, it is a case of redeemable preference shares which have been redeemed within two years of date of allotment. Therefore, it cannot be any leakage of Revenue or anything shady transaction which ld. AO has perceived. He

drew our attention to the bank statements of the investors which had huge sufficient fund invest in the assessee company. He further submitted that assessee was never confronted with the material or the statement of Shri Praveen Kumar Jain, therefore, such material without any specific information that these transactions are bogus cannot be relied upon. Thus, order of Id. CIT (A) should be confirmed.

11. During the course of hearing, we had asked the Ld. Counsel to furnish the details of all the 14 companies, whether they are still active till date and doing business and complying with statutory requirements. In response, assessee had submitted the details of all the companies wherein out of 14 companies, 12 companies were active as on date, one company namely, Lexus Infotech Ltd was under voluntary liquidation and only Kalpana Steelcon Pvt. Ltd was strike off at much later stage. Thus, he submitted that it cannot be said that these companies are mere paper companies or bogus. The details as submitted are as under:-

Sr. No	Name of the Party	Status of Company	MCA Details in Paperbook	Profit before Tax	133(6)	133(6) Status	Date of allotment	Redeem on	Alleged to be Praveen Jain Group
	Heina Trading Company Private Limited y	Active	266	8,74,231	Yes	Left Out	31/01/2007	20.02.2009	Yes
2	Real Gold Trading Private	Active		9,01,383	Yes	Left Out	31/01/2007	20.09.2009	Yes

	Limited								
3	Yash V Jewels Limited	Active	274	8,92,825	Yes	Left Out	31/01/2007	27.01.2009	Yes
4	Alka Diamond Industries Limited	Active	262	7,04,78 1	Yes	Replied	31/01/2007	12.01.2009	Yes
5	Kush Hindustan Entertainment Limited	Active	269	9,41,041	Yes	Replied	31/01/2007	12.01.2009	Yes
fi	Lexus Infolech Limited (TRIANGULAR INFOCOM LIMITED)	Under Voluntary Liquidation		9,74,381	Yes	Replied	31/01/2007	27.01.2009	Yes
i	Vanpuard Jewels Limited	Active	272	5,55,237	Yes	Replied	31/01/2007	27.01.2009	Yes
8	Javda India Impex Limited	Active	267	19,99,371	Yes	Replied	31/01/2007	27.01.2009	Yes
9	Stocknet International Limited	Active	271	-	Yes	Left Out	31/01/2007	23.12.2008	No
10	Artillcgence Bio Innovation Limited	Active	263	-	Yes	Left Out	31/01/2007	23.12.2008	No
11	Engineering Professional Company Private Limited	Active	264	45,18,927	Yes	Left Out	31/01/2007	02.01.2009	No
12	Kalpana Seelcon Private Limited	Strike off	268	-	Yes	Left Out	31/01/2007	02.01.2009	No

13	Reynolds Pctro Chems Limited	Active	270	-	Yes	No reply	31/01/2007	1 2.0 1 .2009	No
14	Voipast Limited	Active	273	-5,31.871	Yes	No reply	31/01/2007	20.02.2009	No

12. Thereafter, we had also enquired about to prove the creditworthiness and asked for the details from the balance sheet as to how much was the funds and income from operations from the annual reports and whether they are mere paper companies. In response, ld. Counsel has filed the details of the companies, for the sake of ready reference the same are reproduced hereunder:-

**Kush Hindustan Entertainment Limited**

Sr. No.	Financial / Business Parameters	Amount in F.Y. 2005-06	Amount in F.Y. 2006-07	Year-on-Year Growth (in %)
1	Equity Share Capital	2,52,90,000.00	3,00,00,000.00	18.62
2	Reserves & Surplus	4,09,802.00	58,30,148.00	1,322.67
3	Sales / Revenue from Operations	8,35,195.00	15,16,009.00	81.52
4	Profit Before Tax	3,51,624.00	9,41,041.00	167.63
5	Profit After Tax	2,23,624.00	7,18,664.00	221.37

**Hema Trading Company Pvt. Ltd.**

Sr. No.	Financial / Business Parameters	Amount in F.Y. 2005-06	Amount in F.Y. 2006-07	Year-on-Year Growth (in %)
1	Equity Share Capital	1,76,00,000.00	2,00,00,000.00	13.64
2	Reserves & Surplus	3,33,155.00	33,26,373.00	898.45

3	Sales / Revenue from Operations	6,17,737.00	13,85,686.00	124.32
4	Profit Before Tax	2,81,263.00	8,74,231.00	210.82
5	Profit After Tax	1,73,263.00	5,90,649.00	240.90

**Real Gold Trading Company Pvt. Ltd.**

Sr. No.	Financial / Business Parameters	Amount in F.Y. 2005-06	Amount in F.Y. 2006-07	Year-on-Year Growth (in %)
1	Equity Share Capital	1,75,92,000.00	1,96,37,000.00	11.62
2	Reserves & Surplus	2,25,989.00	29,85,501.00	1,221.08
3	Sales / Revenue from Operations	3,80,510.00	12,47,900.00	227.95
4	Profit Before Tax	1,78,018.00	9,01,383.00	406.34
5	Profit After Tax	1,06,018.00	7,13,358.00	572.86

**Stocknet Internationa! Ltd.**

Sr. No.	Financial / Business Parameters	Amount in F.Y. 2005-06	Amount in F.Y. 2006-07	Year-on-Year Growth (in %)
1	Equity Share Capital	5,50,03,500.00	5,50,03,500.00	-
2	Reserves & Surplus	4,06,51,657.00	4,05,72,235.00	-0.20
3	Sales / Revenue from Operations	NA	NA	NA
4	Profit Before Tax	NA	NA	NA
5	Profit After Tax	NA	NA	NA

**Alka Diamond Industries Ltd.**

Sr. No.	Financial / Business Parameters	Amount in F.Y. 2005-06	Amount in F.Y. 2006-07	Year-on-Year Growth (in %)
I	Equity Share Capital	NA	NA	NA

2	Reserves & Surplus	NA	NA	NA
3	Sales / Revenue from Operations	-2,63,647.00	30,44,659.00	1,254.82
4	Profit Before Tax	-11,31,649.00	7,04,781.00	162.28
5	Profit After Tax	-11,31,649.00	7,04,781.00	162.28

**Lexus Info tech Limited**

Sr. No.	Financial / Business Parameters	Amount in F.Y. 2005-06	Amount in F.Y. 2006-07	Year-on-Year Growth (in %)
i	Equity Share Capital	2,02,20,000.00	2,48,22,000.00	22.76
2	Reserves & Surplus	1,19,339.00	55,83,264.00	4,578.49
3	Sales / Revenue from Operations	10,52,176.00	27,73,785.00	163.62
4	Profit Before Tax	26,499.00	9,74,381.00	3,577.05
5	Profit After Tax	-12,458.00	7,57,037.00	6,176.71

**Volplast Limited**

Sr. No.	Financial / Business Parameters	Amount in F.Y. 2005-06	Amount in F.Y. 2006-07	Year-on-Year Growth (in %)
1	Equity Share Capital	9,00,00,000.00	9,00,00,000.00	-
2	Reserves & Surplus	12,39,000.00	12,39,000.00	-
3	Sales / Revenue from Operations	13,25,000.00	1,81,800.00	-86.28
4	Profit Before Tax	7,40,395.00	-5,31,871.00	-171.84
5	Profit After Tax	7,40,395.00	-5,09,268.00	-168.78

**Yash-V-Jewels Limited**

Sr.	Financial / Business	Amount in F.Y.	Amount in F.Y.	Year-on-Year Growth
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No.	Parameters	2005-06	2006-07	(in %)
1	Equity Share Capital	2,75,20,000.00	3,25,17,500.00	18.16
2	Reserves & Surplus	4,35,324.00	60,61,748.00	1,292.47
3	Sales / Revenue from Operations	8,95,534.00	18,50,554.00	106.64
4	Profit Before Tax	2,77,091.00	8,92,825.00	222.21
5	Profit After Tax	2,55,091.00	7,30,825.00	186.50

**Artintelligence Bio-Innovations Limited**

Sr. No.	Financial / Business Parameters	Amount in F.Y. 2005-06	Amount in F.Y. 2006-07	Year-on-Year Growth (in %)
1	Equity Share Capital	7,32,32,100.00	7,32,32,100.00	-
2	Reserves & Surplus	19,28,89,199.00	19,29,04,185.00	0.01
3	Sales / Revenue from Operations	NA	NA	NA
4	Profit Before Tax	NA	NA	NA
5	Profit After Tax	NA	NA	NA

13. Based on these documents it was submitted that these parties are not only genuine but had also shown creditworthiness for subscribing the shares.

14. We have heard the rival submissions and perused the relevant finding given in the impugned order as well as materials referred to before us and the details we had sought for from the records. Here one very important fact is that it is not a case of share application money simplicitor, albeit, assessee had issued optionally convertible non-cumulative preference shares at face

value of Rs.10/- and premium of Rs.90/- to 15 parties. All these shares have been redeemed within two years after the date of issuance. Out of these 15 parties, the maximum amount of preference shares allotted to one person namely Mr. Kunal Shroff for sums aggregating to Rs. 3.90 Crores which have been accepted. However, for the balance amount of Rs.4,75,00,000/- received from 14 parties have been added u/s.68. Here, in this case the date of issuance of preference shares was 31/01/2007 and all the shares were redeemed between November 2008 to February 2009. The re-assessment proceedings conducted almost after six years after the money was returned to the investors' alongwith the premium. Nowhere, ld. Assessing Officer has pointed out that at the time when the preference shares were allotted and same has been redeemed by all the parties much before the reopening, was purely a paper transaction or have been found to be non-genuine. He has simply gone by the fact that, firstly, there was information from DGIT that out of these 15 entities, 8 belong to Shri Praveen Kumar Jain and secondly, few of these companies have not responded to notice u/s. 133(6) which included the company of Shri Praveen Kumar Jain also. In so far as parties who have responded to notice u/s.133(6) giving all the details have not been commented upon him but have simply added by him. Though, to prove the genuineness, assessee had submitted copies of income tax returns, copies of annual reports and balance sheets, bank statements, confirmation letters etc. from all the investor companies. In order to verify whether these companies are genuine or not we had

asked for the details of these companies whether these companies who had subscribed non-cumulative preference shares in 2007 and are still active in the year 2023, out of which 12 were active, one was under liquidation and only one company has been strike off from much later date. When most of these companies are still existent and complying with all the statutory requirements, then, it cannot be held that these companies are bogus and were formed only for the purpose of providing accommodation entries and later on have pointed out that they are existing. Even though some of the parties may not have responded to notice u/s. 133(6) that does not prove that the entire transactions are bogus especially when all other documents to prove the identity and creditworthiness of the parties have been submitted and same has not been examined or enquired by the AO. We also tried to enquire upon the funds available with these parties which we have already incorporated above, and found that all the parties had huge funds including profit and they continue their operations and activities till date. How such corporate entities which are still existing and running their business activities and complying with the statutory requirements can be said to be bogus.

15. Once these parties were allotted redeemable preference shares and have been redeemed much before any search taken place in the case of Shri Pravin Kumar Jain, then we are unable to agree with the contention of the department that simply because, some of the entities belong to Shri Praveen Kumar Jain,

the transaction itself is bogus. Is there any evidence or material found qua this transaction showing that right from subscription to redemption something has been found to mere paper formality or some kind of bogus or accommodation entry. At the time of redemption, these parties have redeemed at Rs.100 + Rs.10/- and in such case it cannot be held that there was any manipulation at the investment stage by these companies that preference shares were issued with premium by taking cash then assessee bought back by paying extra Rs. 10 which is otherwise taxable in the hands of the investors.

16. Thus, in the peculiar facts when all these corporate entities are still existing and doing business and have credentials till date, then it cannot be held that they are sham and bogus entities. Here it is a case of issuance of preference shares which has been redeemed on premium by the subscribers and it is not that any kind of share application received and shares have not been allotted or after allotment shares have been sold at face value or less price. Thus, on facts of the present case, Ld. CIT (A) rightly held that the identity and creditworthiness has been established and genuineness of the transaction cannot be doubted, simply based on information from Praveen Jain Group unless something specific material has been found. Accordingly, the order of the Id. CIT (A) in so far as merits are concerned as incorporated above is confirmed. However, in so far as his observation and finding that premium is capital hence not taxable is not accepted as here the issue is taxability of entire

credit received including premium. But his findings on merits are confirmed and consequently the appeal of the Revenue is dismissed.

**16. In the result, appeal of the Revenue is dismissed.**

Order pronounced on 11<sup>th</sup> Dec, 2023.

**Sd/-**  
**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 11/12/2023  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**