IN THE INCOME TAX APPELLATE TRIBUNAL
"C'' BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.747/Bang/2023
Assessment Year: 2020-21

M/s. Zash Traders 134, Next to Wipro Corporate Office Sarjapur road Doddakannelli Bangalore 560 035 Karnataka. **PAN NO : AACTS7624Q**	**Vs.**	ACIT Circle-4(1)(1) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Sri Sandeep Huilgol, A.R.
Respondent by	:	Sri Sunil Kumar Agarwal, D.R.

Date of Hearing	:	15.04.2024
Date of Pronouncement	:	29.04.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2020-21 dated 3.10.2023. The assessee has raised following grounds of appeal:

1. *That the of the authorities below are liable to be quashed for being contrary to the express provisions of law and failing to follow binding precedents relevant in the facts and circumstances of the case.*
2. *That t e Orders of the authorities below are erroneous having varied the returned income under the head "capital gains" by an amount of Rs. 2373,26,55,269/- and computing an income of Rs. 547,62,86,232/- in respect of transfer of shares, being the subject matter of the case.*
3. *That the Order dated 03.10.2023 passed u/s 250 of the Income-tax Act, 1961 ("the Act") vide DIN & Order No: ITBA/NFAC/S/250/2023-24/1056728180(1), ("the impugned Order") is ex facie unjust, arbitrary, and based on conjectures and surmises and circumvents the grounds and the precise submissions of the Appellant.*
4. *That the impugned Order, while not disputing any of the facts in the case of the Appellant all of which were submitted during the regular assessment*

proceedings and in fact endorsing those by tabulating in the impugned Order the manner in which the bonus shares became the property of the Appellant prior to 01.04.2001, ought not have recorded that there is "indetection of undisclosed long term capital gains", more so, when the same is pursuant to an incorrect reading of express legal provisions.

5. *That the impugned Order is erroneous in as much as it has failed to read that the provisions of Section 55(2)(aa) with all its sub-clauses have been made subject to the provisions of Section 55(2)(b)(i) of the Act, and thus proceeded to assign a nil cost to bonus shares which became the property of the Appellant before 01.04.2001 and thus denying what the law has granted to the Appellant.*
6. *That the impugned Order fails to appreciate the applicability of the express provisions of Section 55(2)(b)(i) of the Act, in view of the unequivocal facts in the case of the Appellant that the listed equity shares of Wipro Limited being 281,450*
7. *in number of original shares and 1,77,32,150 in number of bonus shares, all of which became the property of the Appellant before 01.04.2001 and that the transfer of all these shares was pursuant to a SEBI approved share buyback scheme.*
8. *That the impugned Order has failed to appreciate that the judicial decisions cited by the authorities below hold no relevance at all post insertion of clause (iiia) in Section 55(2)(aa) of the Act vide the Finance Act, 1995 w.e.f 1-4-1996 and at the same time tite authorities below have omitted to objectively consider those which the Appellant had referred to, which are binding precedents in the facts and circumstances of the Appellant.*
9. *That the impugned Order is erroneous in placing reliance on the decision of the Hon'ble Hyderabad Bench of the Tribunal in the case of Shashi Parvatha Reddy [2017] 87 Taxmann.com 227 to buttress the conclusion of assigning nil value to bonus shares.*
10. *Without prejudice, the impugned Order has failed to address the prayer for alternate relief as per Section 55(2)(ac) of the Act which allows substitution of fair market value as at 31.01.2018 for being extended to bonus shares allotted prior to 01.04.2001 which is also clarified in F No. 370149/20/2018-TPL dated 04.02.2018.*

11. *All the grounds are without prejudice to each other.*

2. The crux of above grounds is with regard to the cost of acquisition of bonus shares numbering 1,77,32,150, which became the property of assessee before 1.4.2001. In other words, the issue is as to whether the cost of these bonus shares which satisfy the specified condition set out in sub-clause (i) of the Section 55(2b) of the Income Tax Act, 1961 (in short “The Act”) should be as per this

provision or as per sub-clause (iiia) of section 55(2)(aa)(B) of the Act, given that the later, i.e. sub-clause (iiia) of section 55(2)(aa)(B) of the Act has bee made subject to the former i.e. sub-clause (i) of section 55(2b) of the Act.

3. Facts of the case are that during the relevant previous year, the assessee had transferred 6,12,01,078 Wipro shares. The computation of capital gains on such transfer of Wipro shares is summarized hereunder:

Particulars	Section Reference	Total Sale consideration	Total Cost of acquisition	Long term capital gain/(loss)
180,13,600 Wipro shares – FMV as at 01.04.2001 is applied for "cost of acquisition"	55(2)(b)(i)	5,85,30,33,205	24,10,94,02,240	(18,25,63,69,035)
418,70,169 Wipro shares – FMV as at 31.01.2018 is applied for "cost of acquisition"	55(2)(ac)	13,60,45,81,507	12,93,57,88,713	66,87,92,794
13,17,309 Wipro shares – Original cost of acquisition is applied	55(2)(ac)	42,80,24,010	47,92,84,626	(5,12,60,616)
Total – 612,01,078 Wipro shares		**19,88,56,38,722**	**37,52,44,75,579**	**(17,63,88,36,857)**

Thus, a long term capital loss of Rs.17,63,88,36,857/- from sale of Wipro shares was computed in the prescribed manner as per Section 48 of the Act, forming part of the returned long term capital loss.

3.1 Out of the total 1,80,13,600 Wipro shares that became the property of the assessee prior to 01.04.2001, the original number of Wipro shares acquired by the assessee were 2,81,450 and shares allotted to-the assessee as bonus shares were 1,77,32,150. Further, all the 4,18,70,169 Wipro shares acquired by the assessee on or after 01.04.2001 and before 01.02.2018 were bonus shares allotted by Wipro Limited. After calling for information and details, which were duly furnished, Show Cause Notices ('SCN') dated 16.09.2022 and 19.09.2022 were issued with propositions that —

i In respect of Wipro shares that became property of the assessee before 01.04.2001, FMV of each Wipro share of Rs.1338.40/- as at 01.04.2001, which is the Section 55(2)(b)(i) statutory cost per share, should be averaged in the ratio of 1:63 (original number of shares to bonus shares) and thus the average price per share of Rs.20.91 [i.e., Rs.1338.40/64J should be taken as the cost of acquisition.

ii In respect of Wipro shares that became property of the assessee on or after 01.04.2001 and before 01.02.2018, being bonus shares, the cost of acquisition should be taken as Nil as per the provisions of Section 55(2)(aa)(B)(iiia) of the Act.

3.2 As regards ascertaining the cost of acquisition of Wipro shares, the assessee submitted as follows -

i Wipro shares that became the property of the Appellant before 01.04.2001: Section 55(2)(b)(i) requires the FMV as on 01.04.2001 at Rs.1338.40 per Wipro share to be reckoned as the cost of acquisition and the same should be applied to the entire holding of 1,80,13,600 Wipro shares. This is the statutory cost available to the assessee and cannot be subject to any averaging. It was also

submitted that the principle of averaging for listed shares is automatically carried out in the quoted price of such share at the stock exchange at every allotment of bonus shares, thus already meeting with the proposition of the SCN.

ii Wipro shares acquired between 01.04.2001 and before 01.02.2018: Section 55(2)(ac) of the Act requires the FMV as on 31.01.2018 at Rs.308.95 per Wipro share to be reckoned as the cost of acquisition. This is the statutory cost available to the assessee and it cannot be taken as Nil.

3.3 The Ld. AO accepted the submission as stated in point 3.2(ii) above. However, the AO declined to accept the submission of the assessee in point 3.2(i) above thereby denying the substitution of the statutory cost of Rs. 1338.40 on the statutory date i.e., 01-04-2001 specified in Section 55(2)(b)(i) for bonus shares that became property of the assessee before 01.04.2001.

3.4 The Ld. AO proceeded to direct the computation by averaging the FMV of Rs.1338.40 (the statutory cost per share) in the ratio of 1:63, being the ratio of the number of original shares to the number of bonus shares, placing reliance on the judgment of the Hon'ble Supreme Court in Escorts Farms (Ramgarh) Ltd vs CIT [19961 222 ITR 509 (SC) and other judgements in concluding.

3.5 The Ld. AO concluded the regular assessment proceedings on 29-09-2022 by passing the Assessment Order resulting in assessing a total income of Rs.744,96,55,656/- and thereby disallowing the claim of carried forward loss. The ld. AO raised a demand of Rs.125,87,94,625/- as amount payable by the assessee.

3.6 Aggrieved by the assessment order, assessee went in appeal before NFAC to grant relief.

4. NFAC observed that the cost of bonus shares shall be taken to be “Nil” and the entire sale consideration received on the transfer of bonus shares shall be treated as capital gain. Further, it was observed that there are four categories of capital assets enumerated in clauses (a), (aa), (ab) and (b) of sub-section (2) of section 55 of the Act. Clause (b) is a residuary provision governing “any other capital asset”. Here, NFAC was concerned with the capital asset falling within the scope of sub-clause (aa) and category (B) thereof. The bonus shares allotted without payment of consideration is an additional financial asset that falls within part (B) of clause (aa) and, therefore in the normal course, the cost of acquisition shall be taken to be 'nil' in view of stipulations in sub-clause (iiia) of sub-section (2) of section 55 of the Act. In other words, the fact that section 55(2)(aa)(iiia) of the Act applies only when Financial Asset is received without consideration and that too contingent upon holding of another Financial Asset, can never be overlooked.

4.1 NFAC further observed that while taking aid of the observations of Craies on Statute Law and the maxim "Generaliaspecialiabus non derogant", the Hon'ble Apex Court in the case of Commissioner of Income Tax, Patiala v. Shahzada Nand and Sons and Ors., 1966 AIR 1342, has observed as under:

> *8. ...Another rule of construction which is relevant to the present enquiry is expressed in the maxim generaliaspecialiabus non derogant, which means that when there is a conflict between a general and a special provision the latter shall prevail. The said principle has been stated in Craies on Statute Law, 5th Edition, at pg 205, thus:*
>
> *The rule is, that Whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.*

4.2 NFAC observed that, here there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, one is not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.

4.3 NFAC further observed that time and again the courts have expressed their coordinated views on the fact that in a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. Thus, while section 55(2)(aa)(iiia) of the Act clearly provides valuation of bonus shares, one can never look beyond for its interpretation.

4.4 This argument is buttressed by the CBDT Circular No. 06/2014, which has clarified that bonus units at the time of issue would not be subjected to additional income tax under section 115R of the Act [relating to tax on distributed income to unit holders], since issue of bonus units was not akin to distribution of income by way of dividend. This was inferred from the provisions of section 55(2) of the Act, which prescribes that cost of acquisition of bonus units would be 'Nil' for the purpose of computation of capital gains.

4.5 Further, NFAC relied on the judgement of Hon'ble Madras High Court in the case of H.F. Craig Harvey reported in (2000) 112 Taxman 633 (Mad.), wherein held as follows:

> *"21. Insofar as the question referred at the instance of the assessee is concerned, we are of the view that once the fair market value of the shares as on 1-1-1964, is determined, it remains an unalterable figure and any issue of bonus shares subsequent to that date is wholly*

extraneous and irrelevant and cannot be taken into consideration. This Court in Mala Ramesh v. CIT [1995] 214 ITR 223 has taken the view that the value of the bonus shares is not to be separately ascertained when an entire block of shares including bonus shares held by the assessee were sold or transferred, and in such a situation, it is not necessary to ascertain the individual cost of each share. The position was reiterated by this Court in S. Ram v. CIT [1998] 230 ITR 353/96 Taxman 156, wherein this COUtt held that in case where the original shares were obtained before 1-1-1954, and the bonus shares were obtained after 1-1-1954 and where the assessee has exercised his option adopting the fair market value as prevalent as on 1-1-1954, it is not possible to adopt one value for the original shares, namely, the value as on 1-1-1954, and another value for the bonus shares which was prevalent after 1-1-1954. This court held that once the value of the original shares was determined in accordance with the statutory provisions, then, the said value remains an unalterable figure and the said value should be adopted for the purpose of dividing the same by bonus shares as well as the original shares and any alteration to the above method would be hit by the provisions of section 55(2). This Court held that once the value has been determined under section 55(2), that value should be taken into account and both the original shares and bonus shares should be clubbed together and the average value should be found by dividing the fair market value opted on 1-1-1954, by the total number of shares. The Same view was taken in CIT v. Dalmia Investment Co. Ltd. [1964] 52 1 TR 567 (SC); Shekhawati General Traders Ltd. v. ITO [1971] 82 ITR 788 (SC); CIT v. Prema Ramanujam [19911 192 ITR 692 (Mad.), CIT v. G.N. Venkatapathy [19971 225 ITR 952/92 Taxman 401 (Mad.) and CIT v. T.V.S. & Sons Ltd. [1983] 143 ITR 644 (Mad.).

22. The Supreme Court in Escorts Farms (Ramgarh) Ltd. v. CIT [1996] 222 ITR 509/88 Taxman 453 has also accepted the principle that the subsequent issue of bonus shares does not have the effect of altering the original cost of acquisition of shares. The same view is reiterated by a decision of this Court in R. Naresh v. CIT [19981 145 CTR (Mad.) 327. Therefore, when all the shares including bonus shares were sold and transferred, it is not necessary to ascertain the value of bonus shares separately and the cost of all shares being a known figure, it would be deducted to compute the capital gains. The view arrived at by the Tribunal is in consonance with various decisions, cited supra. Accordingly, we find no infirmity in the order of the Tribunal in holding that the assessee is not entitled to deduct the sum of Rs. 1,53, 128 as cost of bonus shares in addition to the cost of acquisition of original shares in the two amalgamated companies."

4.6 Further, NFAC relied on the judgement in the case of Shashi Parvatha Reddy, (2017) 87 taxmann.com 227 (Hyderabad-Trib) wherein the Tribunal held as follows:

'9. Having regard to the rival contentions and the material on record, the undisputed facts are that the assessee has acquired the original shares from AppLabs Technologies Private Ltd by inward remittance of foreign exchange, while some other shares were acquired by overseas investors also by inward remittance of foreign exchange. It is also not in dispute that the Company, AppLabs Technologies Pvt Ltd had allotted bonus shares in the ratio of 1:9 to all the shareholders including the assessee and the overseas investors and that due to non fulfilment of certain conditions, the overseas investors had to transfer their shares along with the bonus shares to the assessee without any cost. It is also undisputed that the assessee has transferred maximum number of original shares to various parties over a period of six years and the assessee has sold the bonus shares and shares transferred by overseas investors during the relevant financial year and offered to tax the capital gains arising therefrom. The dispute is only with regard to the rate of tax on such capita/ gains. To decide this issue, we have to first adjudicate whether the bonus shares can also be considered as foreign exchange asset. In order to get the benefit of rate concession u/s. 115E of the Act, the asset will have to fall under the definition of foreign exchange asset which means that the asset should have been purchased or acquired by way of inward remittance of foreign exchange. The assessee could not have acquired the bonus shares unless and until he owns the original shares and fulfills the conditions for allotment of bonus shares. The original shares definitely have a cost of in foreign exchange. The Hon'ble Supreme Coutt in the case of Dalmia Investment Co. Ltd. (supra) has considered the issue as to whether the bonus shares can be said to have been acquired without any consideration. After considering the judicial precedents and various aspects of the bonus shares, the Hon'ble Supreme ***Court has held as under.***

Where bonus shares are issued in respect of ordinary shares held in a company by an assessee who is a dealer in shares, their real cost to the assessee cannot be taken to be Nil or their face value. —They have to be valued by spreading the cost of the old shares over the old shares and the new issue (viz., the bonus shares) taken together if they rank pari passu, and if they do not, the price may have to be adjusted either is proportion of the face value they bear (if there is no other circumstance to differentiate them) or on equitable considerations based on the market price before and after issue. They have to be valued at the market value on the date when they were acquired

Can we then say that the bonus shares are a gift and are acquired for nothing? At first sight, it looks as if they are so, but the impact of the issue of bonus shares has to be seen to realise that there is an immediate detriment to the shareholder in respect of his original holding. The Income tax Officer, in this case, has shown that in 1945 when the price of shares became stable it was Rs. 9 per share, while the value of the shares before the issue of bonus s res was Rs. 18 per share. In other words, by the issue of bonus shares pro ra , which ranked pari passu with the existing shares, the market price was exactly halved, and divided between the old and the bonus shares. This will ordinarily be the case but not when the shares do not rank pari passu and we shall deal with that case separately. When the shares rankspari passu the result may be stated by saying that what the shareholder held as a whole rupee coin is held by him, after the issue of bonus shares, in two 50 nP. coins. The total value remains the same, but the evidence of that value is not in one certificate but in two"

Thus, it is clear that where the original shares are purchased/acquired in foreign exchange, then the same shall also be attributed to the bonus shares which have been allotted subsequently. The Coordinate Bench of this Tribunal in the case of Sanjay Gala and Smt. Deivanayagam Maruthi (cited supra) also followed the above decision to hold that the bonus shares issued on original shares by investing convertible foreign exchange are —also foreign exchange asset u/s. 115E of the Act Therefore, in our opinion, the bonus shares acquire the nature of the original shares, though the cost of acquisition shall be "nil" u/s. 55(2)(aa) of the l. T. Act. The clause (iii)(a) thereunder which has been inserted by the Finance Act of 1995 to clarify that where the bonus shares have been allotted, the cost of acquisition can be taken at Rs. Nil. From the computation of income of the assessee, it is seen that the assessee has not claimed any cost of acquisition while computing the long term capital gain from sale of bonus shares. Therefore, in our opinion, the bonus shares are also foreign exchange assets u/s. 115E of the l. T. Act."

In view of the above judgement, NFAC concluded that valuation of bonus shares to be considered as “Nil cost” and accordingly dismissed the ground of the assessee. Aggrieved, assessee came in appeal before us.

5. The ld. A.R. submitted that the Assessee is a partnership firm belonging to the promoter group of Wipro Limited. Pursuant to a SEBI approved share buyback scheme of Wipro Limited, the Assessee tendered listed equity shares of Wipro Limited of face

value of Rs.2/- each for a net buyback price of Rs.324.92/- per equity share. The cost of acquisition for computing income under the head "capital gain" arising from the said transfer of the capital asset was arrived at by the Assessee in the manner stated hereinbelow:

Type	Period	Number of shares	Section	Section Remarks	Implication	Cost of Acquisition per Equity Share	Total Cost of Acquisition
Original	Before 01.04.2001	2,81,450	55(2)(b)(i)	Cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of April, 2001, at the option of the assessee	FMV as on 01.04.2001 = Rs.1,338.40	1,338.40	37,66,92,680
Bonus	Before 01.04.2001	1,77,32,150	55(2)(b)(i)			1,338.40	23,73,27,09,560
	Total	**1,80,13,600**					**24,10,94,02,240**
Bonus	On or after 01.04.2001 but before 01.02.2018	4,18,70,169	55(2)(ac)	Higher of (i) & (ii) (i) = Cost of acquisition (ii) = Lower of FMV on 31.01.2018 and Sale consideration	Higher of (i) & (ii) (i) = Nil (ii) = Lower of Rs.308.95 and Rs.324.92	308.95	12,93,57,88,713
Bonus	On or after 01.02.2018	13,17,309		Original cost of acquisition	Actual cost to the assessee	363.84	47,92,84,626
		6,12,01,078					**37,52,44,75,578**

5.1 He submitted that Section 55(2) of the Act provides the meaning of the expression of acquisition" for capital assets through four clauses. It is apparent that out of the four, only clauses (aa) and (ac) are made subject to, inter-alia, sub-clause (i) of clause (b). In this regard, it is to be noted that the cost of acquisition of bonus shares was sought to be dealt with by the Parliament for the first time by way of insertion of sub-clause (iiia) in Section 55(2)(aa)(B) vide the Finance Act, 1995, stating it as "shall be taken to be Nil'.

5.2 However, he submitted that what is of utmost importance to note is that there was no amendment made to the governing portion of this sub-clause (iiia) in Section 55(2)(aa)(B) which provides that the said sub-clause (iiia) is subject to the provisions of sub-clauses (i) and (ii) of clause (b) of Section 55(2), and thus the sub-clause (iiia) in Section 55(2)(aa)(B) continues to be "subject to" Section 55(2)(b)(i) and (ii). In other words, the Parliament, while inserting sub-clause (iiia) in Section 55(2)(aa), consciously chose to retain the phrase "subject to" at the initial or threshold portion under which the said sub-clause (iiia) is inserted demonstrating

that in the event the conditions laid out in S.55(2)(b)(i) are satisfied even in the case of bonus shares, the cost of acquisition thereof must be determined as per this provision in S.55(2)(b)(i) and not as per the subservient / subordinate provisions contained in S.55(2)(aa)(B)(iiia).

5.3 For ease of reference, he reproduced the sub-clause (i) of clause (b) as below —

> *"(i) in relation to any other capital asset,—*
>
> *(ii) where the capital asset became the property of the assessee before the 1st day of April, 2001, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of Apil, 2001, at the option of the assessee; "*

5.4 Thus, he submitted that it is wholly apparent that if the conditions in Section 55(2)(b)(i) to which sub-clause (iiia) has been expressly made subject to are satisfied, i.e. if the capital asset (in this case, the bonus shares) became the property of the assessee before 01.04.2001, then the only legal and logical corollary to be drawn is that the provisions in sub-clause (iiia) of S.55(2)(aa)(B) must yield to sub-clause (i) of Section 55(2)(b).

5.5 Moreover, he submitted that it is also vital to note that the intention of the Parliament in this regard is made even clearer by the fact that while substituting "1981" with "2001" in Section 55(2)(b)(i) vide the Finance Act, 2017, there was no amendment whatsoever to the provisions of Section 55(2)(aa)(B)(iiia). Hence, not just once, but twice, the Parliament has expressly and unambiguously decided to provide that the provisions of Section 55(2)(b)(i) shall prevail over the provisions contained in Section 55(2)(aa)(B)(iiia). That is to say, the latter was and continues to be subject to the former, i.e. S.55(2)(b)(i). In this regard, the interpretation of the expression "subject to" has been dealt with by the Hon'ble Supreme Court in South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum, AIR 1964 SC 207 in the following words —

The expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. "

5.6 He further submitted that the Hon'ble Supreme Court in K. T. Plantation (P) Ltd. vs. State of Karnataka, (2011) 9 SCC 1, has reaffirmed the same as under words:

"Section 107 itself has been made "subject to" Section 110 of the Act. The words subject to' conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. In Black Law Dictionary, 5th Edn. At p. 1278, the expression "subject to" has been defined as under:

"Liable, subordinate, subservient, inferior, obedient to; governed or effected by; provided that; provided; answerable for. "

Since Section 107 is made subject to Section 110, the former section conveys the idea of yielding to the provision to which it is made subject that is Section 110 which is the will of legislature. "

5.7 Thus, he submitted that in the light of the above, the sub-clause (iiia) of Section 55(2)(aa)(B) shall yield to subclause (i) of Section 55(2)(b) to which the former have been made subject to.

5.8 Moreover, he submitted that when an assessee avails the legislatively granted option of substituting the fair market value as on the first day of April 2001, such option for substitution does not discriminate between original shares and bonus shares, with the only condition that those must have become the property of the assessee before 01.04.2001. This is what has been held by this Tribunal in Heinrich de Fries GmbH v. JCIT, which has thereafter been followed by this Hon'ble Tribunal at the decisions in Sl. Nos.3 and 4 of the said compilation. None of these orders have been assailed before the Hon'ble Bombay High Court, to the Assessee's knowledge. In addition to the above, the Pune Bench of this Tribunal in Kirloskar Oil Engines Ltd. in ITA No. 45/PN/2001 dated 30.06.2011 has followed the aforesaid decision in Heinrich de Fries and thereby went on to extract and quote with approval the illustration that was stated in that order on the effect of bonus shares as under:—

"Take for example a hypothetical situation in which the assessee owns as on 1st Jan 1981, 10,000 shares in X & Co. Ltd. which is 1 percent of the entire capital, base of the company. Let us also assume that the market value of these shares is Rs.1,00,00,000 as the entire company is valued at Rs.1,00,00,00,000. Let us further assume that on 1st Jap., 1981, the X & Co. Ltd allots bonus shares in the ratio of 1: 1. In such a situation, the assessee will get 10,000 shares more and his holding will become 20,000 shares. However, the entire capital base will also go up in the same proportion and the market value of assessee's shareholding, which will continue to be 1 per cent of the entire share capital, will also continue to remain the same, i.e. Rs.1,00,00,000. The reason is this. The allotment of bonus shares will not affect overall valuation of company which will however, be spread over more number of shares. But then, if FMV is to be taken in respect of original shares only, the assessee will be at a clear disadvantage in the sense that post bonus issue market value of 10,000 shares will only be Rs. whereas pre bonus issue, the market value of those 10,000 shares would have been Rs. That clearly is incongruous, and quite appropriately not supported by the scheme of computation of capital gains under scheme of the Act. "

5.9 He submitted that through this illustration, the Tribunal concluded as under:—

"In any event, for the reasons set out above, even from the point of view of plain logic and reasoning, the option of FMV cannot be restricted only to the original shares and must also extend to the bonus shares. The provisions of the statute are quite clear, unambiguous and hardly capable of being interpreted in any other manner. To sum up, the legal position is like this. So far as bonus shares allotted before 1st April, 1981 are concerned, and even after the insertion of s. 55(2)(aa)(iiia), for the purpose of computing capital gains on transfer of the said bonus shares, the assessee has an option to take their fair market value as on 1st April, 1981 as the cost acquisition. "

5.10 The ld. A.R. further submitted that the Finance Act, 2017 w.e.f. 1-4-2018 substituted the date of 01.04.2001 for 01.04.1981 and therefore, the aforesaid decision is clearly applicable to the instant case. Thus, the Act explicitly provides for substituting the fair market value as at 01.04.2001 for both the original shares and the bonus shares that became the property of the Assessee before 01.04.2001, at the option of the Assessee.

5.11 He submitted that the learned Assessing Officer in the assessment order has alternatively applied the following two methods for working out the "cost of acquisition" for computing capital gains from the transfer of 2,81,450 number of original

shares and 1,77,32,150 number of bonus shares, both of which became the property of the Assessee before 01.04.2001:

a) Averaging the FMV of each Wipro share of Rs. 1338.40/- as at 01.04.2001, which is statutory cost per share as per Section 55(2)(b)(i), in the ratio of 1 [i.e. number of Original shares to bonus shares) and thus arriving at Rs.20.91 [i.e., Rs. 1333.40/64] per share.

b) Restricting the FMV of Rs. 1338.40 per share to the original number of shares and assigning nil to the bonus number of shares. Nil cost of acquisition has been assigned citing the provisions of Section 55(2)(aa)(iiia) and Circular No. 717 dated 14.08.1995.

5.12 While the arithmetical result of capital gains computed under both the methods is the same, he respectfully submitted that there is no provision under the Act endorsing either method. In the light of the above, the ld. A.R. for the Assessee humbly prayed that the present appeal may be allowed by this Tribunal, in the interests of equity and justice.

5.13 He relied on the following judgements:

a) Hon'ble High Court of Mysore's judgement in Pathikonda Balasubba Setty V. CIT (1967) 65 ITR 252 (Mysore)
b) Hon'ble High Court of Karnataka's judgement in West Palm Developments LLP v. ACIT (order dated 19.11.2021 in ITA No.598 of 2016)
c) Hon'ble High Court of Gauhati's judgement in Assam Co-operative Apex Bank Ltd. v. CIT (1978) (112 ITR 257)
d) Hon'ble High Court of Gujarat's judgement in Deepak Nitrite Ltd. v. CIT (2008) (307 ITR 289)
e) Hon'ble High Court of Calcutta's judgement in ITO v. R.L. Rajghoria (1979) (119 ITR 872)

f) Hon'ble Allahabad High Court's judgement in Smt. Sarika Jain v. CIT (2018) (407 ITR 254).

g) Hon'ble Bombay High Court's judgement in Motor Union Insurance Co. Ltd. v. CIT 91945) (13 ITR 272)

h) Hon'ble Calcutta High Court's order dated 19.7.1982 in Mrs. A. Ghosh vs. CIT (1983) 141 ITR 45 (Cal.)

i) ITAT Mumbai's decision in the case of Heinrich de Fries GmbH Vs. JCIT Special Range 12 (2005) 96 TTJ 864

j) ITAT Mumbai's decision in the case of Alcan Inc Vs. DCIT (IT) Range 1(1) Mumbai (2008) 110 ITD 15

k) ITAT Mumbai's decision in the case of DDIT 3(1) Vs. H&R Johnson (Overseas) Ltd. (ITA No.1314/Mum/2013)

6. The ld. D.R. relied on the order of lower authorities.

7. We have heard the rival submissions and perused the materials available on record. Now the issue before us is with regard to whether provisions of section 55(2(aa)(B)(iiia) of the Act is directly applied or it is to be applied subject to the provisions of sub-clause (i) & (ii) of clause (b) of Section 55(2) of the Act. For clarify, we reproduce section 55(2) of the Act in its entirety.

> *"55(2) [For the purposes of sections 48 and 49, "cost of acquisition",--*
> *[(a) in relation to a capital asset, being goodwill of a business [or a trade mark or brand name associated with a business] [or a right to manufacture, produce or process any article or thing] [or right to carry on any business [or profession]], tenancy rights, stage carriage permits or loom hours,--*
>
> *i. in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and*
>
> *ii. in any other case [not being a case falling under sub-clauses (i) to (iv) of subsection (1) of section 49], shall be taken to be nil;*
>
> *(aa)[in a case where, by virtue of holding a capital asset, being a share or any other security, within the meaning of clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter in this clause referred to as the financial asset), the assessee—*
>
> *A. becomes entitled to subscribe to any additional financial asset; or*
> *B. is allotted any additional financial asset without any payment,*
>
> *then, subject to the provisions of sub-clauses (i) and (ii) of clause (b)],--*

i. in relation to the original financial asset, on the basis of which the assessee becomes entitled to any additional financial asset, means the amount actually paid for acquiring the original financial asset;

ii. in relation to any right to renounce the said entitlement to subscribe to the financial asset, when such right is renounced by the assessee in favour of any person, shall be taken to be nil in the case of such assessee;

iii. in relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, means the amount actually paid by him for acquiring such asset;

[(iiia) in relation to the financial asset allotted to the assessee without any payment and on the basis of holding of any other financial asset, shall be taken to be nil in the case of such assessee;] and

iv. in relation to any financial asset purchased by any person in whose favour the right to subscribe to such asset has been renounced, means the aggregate of the amount of the purchase price paid by him to the person renouncing such right and the amount paid by him to the company or institution, as the case ay be, for acquiring such financial asset;]

[(ab) in relation to a capital asset, being equity share or shares allotted to a shareholder of a recognized stock exchange in India under a scheme for [demutualization or] corporatization approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Bord of India Act, 1992 (15 of 1992), shall be the cost of acquisition of his original membership of the exchange;]

*[**Provided** that the cost of a capital asset, being trading or clearing rights of the recognized stock exchange acquired by a shareholder who has been allotted equity share or shares under such scheme of demutualization or corporatization, shall be deemed to be nil;]*

***[(ac)** subject to the provisions of sub-clauses (i) ad (ii) of clause (b), in relation to a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust referred to in section 112A, acquired before the 1st day of February, 2018, shall be higher of –*

i. the cost of acquisition of such asset; and

ii. lower of –

A. the fair market value of such asset; and

B. the full value of consideration received or accruing as a result of the transfer of the capital asset.

Explanation – For the purposes of this clause, --

(a) "fair market value" means,--

(i) in a case where the capital asset is listed on any recognized stock exchange as on the 31st day of January, 2018, the highest price of the capital asset quoted on such exchange on the said date:

***Provided** that where there is no trading in such asset on such exchange on the 31st day of January, 2018, the highest price of such asset on such exchange on a date immediately preceding the 31st day of January, 2018 when such asset was traded on such exchange shall be the fair market value;*

(ii) in a case where the capital asset is a unit which is not listed on a recognized stock exchange as on the 31st day of January, 2018, the net asset value of such unit as on the said date;

(iii)in a case where the capital asset is an equity share in a company which is –

A. Not listed on a recognized stock exchange as on the 31st day of January, 2018 but listed on such exchange on the date of transfer;

B. Listed on a recognized stock exchange on the date of transfer and which became the property of the assessee in consideration of share which is not listed on such exchange as on the 31st January, 2018 by way of transaction not regarded as transfer under section 47,

An amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the financial year 2017-18 bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the first day of Apri, 2001, whichever is later;

(b) "Cost Inflation Index" shall have the meaning assigned to it in clause (v) of the Explanation to section 48;

(c) "recognized stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43;]

(b) in relation to any other capital asset,--]

i. where the capital asset became the property of the assessee before the [1st day of April, [2001]], means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the [1st day of April, [2001]], at the option of the assessee;

ii. where the capital asset became the property of the assessee by any of the modes specified in [sub-section (1) of] section 49, and the capital asset became the property of the previous owner before the [1st day of April, [2001]], means the cost of the capital asset to the previous owner or the fair market value of the asset on the [1st day of April, [2001]], at the option of the assessee;

Following proviso and the Explanation thereto shall be inserted after sub-clause (ii) of clause (b) of sub-section (2) of section 55 by the Finance Act, 2020 w.e.f. 1.4.2021:

Provided: *that in case of a capital asset referred to in sub-clauses (i) and (ii), being land or building or both, the fair market value of such asset on the 1st day of April, 2001 for the purposes of the said sub-clauses shall not exceed the stamp duty value, wherever available, of such asset as on the 1st day of April, 2001.*

Explanation – For the purposes of this proviso, "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

(iii) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on it liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution;

(iv) [***]

[(v) where the capital asset, being a share or a stock of a company, became the property of the assessee on ---

a) the consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares,
b) the conversion of any shares of the company into stock,
c) the re-conversion of any stock of the company into shares,
d) the sub-division of any of the shares of the company into shares of smaller amount, or
e) the conversion of one kind of shares of the company into another kind.

Means the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asst is derived.]."

7.1 The contention of the ld. A.R. is that provisions of section 55(2)(aa)(B)(iiia) of the Act to be applied subject to the provisions of sub-clause (i) & (ii) of clause (b) of section 55(2) of the Act. Accordingly, he placed reliance on various judgements to support his arguments. It is to be noted that section 55 of the Act defines inter-alia, the term "cost of acquisition". Prior insertion of sub-clause (iiia), there was no statutory provision in the Act defining the "cost of acquisition" in respect of bonus shares and hence, the "cost of acquisition" of bonus shares was being calculated, in terms of decision of Hon'ble Supreme Court in the case of CIT Vs. Dalmia Investment Company Ltd. (52 ITR 567) by the averaging method by spreading the total cost of original shares over the original shares plus the bonus shares received thereon. Same view was taken by Hon'ble Supreme Court in the case of Escorts Farms (Ramgarh) Ltd. Vs. CIT, wherein observed that the bonus shares have valued by spreading the cost of old shares and the new issues namely bonus shares taken together if they rank pari passu. Later, the legislature has specifically provided, through sub-clause (iiia), a statutory

mode by which the cost of bonus shares allotted to a person without payment shall be taken to be "Nil" while computing that capital gains w.e.f. assessment year 19.6.19967. Thus, under the pre-amended law, it was section 48 of the Act that required the "cost of acquisition" of bonus shares to be adopted for determining the capital gains on bonus shares till assessment year 1995-96 while, under the amended law effective from the assessment year 1996-97, the cost of acquisition of bonus shares is statutory required, under sub-clause (iiia), to be taken to be "Nil", if they had been allotted to an assessee without payment. Thus, there is a great shift in the statutory mode for the computation of capital gains in respect of bonus shares w.e.f. assessment year 1996-97. The cost of class of onus shares has to be statutory taken to be "Nil" if the conditions of sub clause (iiia) are fulfilled in case involving computation of capital gain w.e.f. assessment year 1996-97.

7.2 Sub-clause (iiia) has been made specifically applicable with effect from the assessment year 1996-97 which means that the computation of capital gains in respect of securities including bonus shares transferred on or after 1-4-1995 (i.e., during the previous year relevant to the assessment year 1996-97) will have to be made in accordance with the provisions of the said sub-clause. Therefore, the crucial factor for applicability of sub-clause (iiia) is not as to when the bonus shares were received by the assessee on allotment. Crucial factor that attracts the applicability of sub-clause (iiia) is that the transfer of securities including bonus shares must have taken place during the previous year relevant to assessment year 1996-97, i.e., on or after 1-4-1995 giving rise to the computation of capital gains in assessment year 1996-97. If they have been transferred on or after 1.4.1995, the provisions of sub-clause (iiia) as also the legal effect created by it cannot be avoided. This aspect of the matter has also been clarified in para 30.4 of the Departmental Circular No. 717 dated 14-8-1995 issued

by the Central Board of Direct Taxes which provides: "These amendments will take effect from 1-4-1996 and will, accordingly, apply to the securities transferred on or after 1-4-1995". Following the ratio laid down in Karnataka Small Scale Industries Development Corporation Ltd v. CIT [2003] 7 SCC 224, the said circular has the effect of explaining the provisions of sub-clause (iiia). The legal effect mandated by the aforesaid sub-clause cannot therefore be avoided in Assessment year 1996-97 if the bonus shares are transferred on or after 1-4-1995. The language of sub-clause (iiia) is absolutely plain and clear that it is applicable from assessment year 1996-97 in respect of all the bonus shares that are transferred during the previous year relevant to assessment year 1996-97. In the present case, the assessee transferred the bonus shares during the previous year relevant to the assessment year under consideration and therefore what is required to be seen is whether the case of the assessee falls within the ambit of sub-clause (iiia). It is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly by necessary implication (Reliance Jute & Industries Ltd v. CIT [1979] 120 ITR 921 (SC). In the matter before us, the Department claims that both the Assessing Officer and the CIT(A) have applied the law as in force as on the first day of the relevant assessment year, i.e., assessment year 1996-97 and hence their orders need not be interfered with.

7.3 This brings us to the question as to what was the law in force in assessment year 2020-21 and whether the impugned assessment is in conformity with that law. Sub-clause (iiia) mandates that, for the purposes of sections 48 and 49, the cost of acquisition of any additional financial asset as bonus shares or security or otherwise which is 'allotted to the assessee without any payment and on the basis of holding any other financial asset' shall

be taken to be nil. The fact that the bonus shares were allotted to the assessee without payment. It is also not in dispute that the bonus shares were allotted to the assessee on the basis of his holding the original shares. The assessee also admits that bonus shares giving rise to the capital gains were transferred during the previous year 2019-20 relevant to the assessment year 2020-21.

7.4 The issue that arises for consideration is whether, on the facts and in the circumstances of the case, it can be said that bonus shares were 'allotted to the assessee without payment' and on the basis of his holding the original shares so as to bring the case of the assessee within the ambit of sub-clause (iiia). At the outset, it may be mentioned that it has never been the case of the assessee, at any stage of the proceedings either before the authorities below or before us, that he has made any payment to the company for allotment of bonus shares. He has also not led any evidence or filed details to show that any payment as such was made to the company for allotment of bonus shares. The term 'payment' as occurring in sub-clause (iiia) is not defined in the Act. However, it is defined at p. 1150 in Black's Law Dictionary (Seventh Ed.) as follows: "Payment 1. Performance of an obligation, usually by the delivery of money. Performance may occur by delivery and acceptance of things other than money, but there is payment only if money other valuable things are given and accepted in partial or full discharge of an obligation 2. The money or valuable thing so delivered in satisfaction of an obligation." According to P. Ramanatha Aiyer's “The Law Lexicon' (Reprint 2002 -General Editor: Hon'ble Justice Y.V- Chandrachud p. 1426), ‘payment', in legal contemplation, "is the discharge of an obligation by the delivery of money or its equivalent, and is generally made with the assent of both parties to the contract". Thus. in order to constitute ‘payment’ within the meaning of sub-clause (iiia) there should

be an obligation to make the payment and that obligation should then be discharged by payment of money or other valuable things and further that the payment so made should be accepted 'by the payee in satisfaction of the obligation. A Shareholder neither carries any obligation to make payment in lieu of the allotment of bonus shares nor does he make any payment to secure the allotment nor are the bonus shares issued against payment by the shareholders.

7.5 At this stage, it deserves to be mentioned that bonus shares represent capitalized profits which the company has accumulated over the years in the form of free reserves. Section 'M(iii)' of the Revised Guidelines issued by SEBI vide RMB (DIP Series) Circular No.2/94-95, dated 15-04-1994 provides: "The bonus issue is made out of free reserves built out of the genuine profits of share premium collected in cash only." The idea behind the issue of bonus shares is to bring the nominal share capital into line with the true excess of assets over liabilities. The necessary money is already available with the company in the form of free reserves. It is this money which is converted into bonus shares with the result that the undistributed profits lying with the company in the form of free reserves get permanently ploughed back into the business and converted into share capital. Neither the shareholders to whom the shares are allotted have to pay anything nor does anything go out of the coffers of the company upon allotment of bonus shares. Allotment of bonus shares is not dependent on payment by a shareholder to the company but accrues to him, as of right and by way of bonus, on the basis of his shareholding as and when the company decides to issue the bonus shares. Bonus shares are treated in commercial world as free distribution of shares on the basis of the shares already held. On perusal of "British Master Tx Guide" (1988-89) under the head "Bonus and Rights Issues" at p. 598, as quoted, with approval, in Escorts Farms (Ramgarh) Ltd. v.

CIT (1996) 222 ITR 509 (SC), in which it is stated that "Bonus issue are free distribution of shares (e.g. two new shares for each share already held)". Thus, the issue as also the allotment of bonus shares does neither give rise to any obligation on the part of the shareholder to make payment therefor nor is any payment made by the shareholder to the company against such allotment. These aspects are inbuilt in the very nature of bonus issues. In the Departmental Circular also, the position is stated in the following words: "Bonus shares are issued to an existing shareholder without making a payment in cash. This also explains the rational behind the emphasis in sub-clause (iiia) on bonus shares being 'allotted without any payment and on the basis of holding any other financial asset'.

7.6 However, before us ld. A.R. submitted that provisions of section 55(2)(aa)(B)(iiia) of the Act to be applied subject to the provisions of explanation (b)(i) in section 55(2)(a)(iv)(ac) of the Act.

7.7 We have carefully gone through the above provisions. The provision u/s 55(2)(aa)(B)(iiia) of the Act was introduced w.e.f. 1.4.1996 by Finance Act, 1995. Section 55(2)(aa)(B)(iv)(ac) of explanation (b) was introduced w.e.f. 1.4.1998 by Finance Act, 2018. The assessee wants to press the assistance of this explanation so as to ascertain the fair market value of the asset as on 1.4.2001 when this bonus shares have became property of the assessee before 1.4.2001.

7.8. We have carefully gone through the provisions of sub-clause (iiia). We do not find any word used therein which can be said to be vague or ambiguous or failing to convey clearly the legislative intent. The legislative intent is clear that the capital gains arising on transfer of bonus shares on or after 1-4-1995 i.e., assessment year

1996-97 should be computed by taking the cost of bonus shares to be nil if the conditions of clause (iiia) are satisfied. It is not disputed by the assessee that bonus shares were allotted to him without payment and on the basis of original shares held by him. The plain and natural meaning of the term "allotted" (a past tense) as occurring in sub-clause (iiia) is that the factum of allotment of bonus shares should have taken place in the past. The said term is neither restricted nor qualified nor followed by any date and hence we are not inclined to insert or read any date after the aforesaid term, as contended by the assessee. We do not think that the plain words of sub-clause (iiia) are capable of any such interpretation as suggested by the learned counsel for the assessee. In CESC Ltd v. Dy. CIT (No. 2) [2003] 263 ITR 402 (Cal.), p.416, the Hon'ble Kolkata High Court has held: "In the absence of any restrictions provided within the scheme of Chapter XV, the court is not supposed to read something, which is otherwise not permissible. While interpreting a provision, the High Court is not supposed to legislate indirectly. The court has to read the statute, as it is when the statute is capable of conveying clear and unambiguous simple grammatical meaning.' We are therefore unable to agree with the submission of the Ld. Counsel for the assessee that sub-clause (iiia) would apply in those cases only where bonus shares are 'allotted on or after 1-4-1995' as such a construction requires for its support, addition of words or rejection of words which is not permissible in the face of clear provisions of sub-clause (iiia). In taking this view, we are supported by several judicial authorities, some of which are cited below.

7.8.1 In A. V. Fernandez v. State of Kerala 1957 AIR SC 657, the Hon'ble Supreme Court observed:

> *"As Lord Cairns said many years ago in Partington v. The Attorney General [(1869) 4 H.L 100, 122] :- "As I understand the principle of all fiscal legislation it is this : if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of*

the law, the subject is free, however, however apparently within the spirit of the law the case might otherwise appear to be."

7.8.2 In Canadian Eagle Oil Co. v. R. [1946] AC 119, 140, Viscount Simon, LC said:

"In the words of Rowlatt J (in Cape Brandy Syndicate v. IRC [1921] 1 KB 64, 71) whose outstanding knowledge of this subject was coupled with a happy conciseness of the phrase "in a taxing Act one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

7.8.3 In CWT v. Smt. Hashmatunnisa Begum [1989] 176 ITR 982 (SC) the Court held :

"One of the pillars of statutory interpretation viz., the literal rule, demands that if the meaning of the statutory interpretation is plain the courts must apply regardless of the result."

7.8.4 In Orissa State Warehousing Corporation v. CIT [1999] 237 ITR 589, the Hon'ble Supreme Court held:

"A fiscal statute has to be interpreted on the basis of the language used therein and not de hors the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislation. The Court is to ascribe natural and ordinary meaning to the words used by the Legislature and ought not, under any circumstances, substitute its own impression and ideas in place of the Legislature's intent as is available from a plain reading of the statutory provisions. Individual cases of hardship and injustice do not and cannot have any bearing for rejecting the natural construction."

7.8.5 In Shiv Shakti Co-op. Housing Society v. Swaraj Developers [2003] 6 SCC 659, pp. 669-70, the Hon'ble Supreme Court held:

"19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. [see Institute of Chartered Accountants of India (1997)-6 SCC 312; AIR 1998 SC 74]. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or

which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner (1846) 7 Moo PCC 1: 4 MIA 179, courts cannot aid the legislatures defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. [See State Of Gujarat v. Dilipbhai Nathjibhai Patel [1998] 3 SCC 234: 1998 SCC (Cri) 737: JT (1998) 2 SC 253]. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tipton) Ltd [1978) 1 ALL ER 948: (1978) 1 WLR 231 (HL). Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful- meaning Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, LC in Vickers Sons and Maxim Ltd. v. Evans [1910] AC 444: 1910 WN 161 (HL), quoted in Jumma Masjid v. Kodimaniandra Deviah, AIR 1962 SC 847.)"

7.8.6 At this stage, reference may be made to the Departmental Circular No. 717 dated 14th August, 1995 which reads as under:

"*Simplified procedure for computation of capital gain on transfer of bonus shares.—*

30.1 Bonus shares are issued to an existing shareholder without making a payment in cash. Presently, cost of acquisition of these shares is taken on the basis of principles laid down by the Supreme Court. It has been held that after a bonus issue, the cost of each of the bonus shares as also each of the original shares is to be determined by spreading the cost of the original shares over the number of the original and bonus shares. There are no provisions under the Income-tax Act to deal with the computation of the cost of acquisition in such cases.

30.2 Computation of the cost of bonus shares on the principle of averaging however, is not simple. It is very difficult to correlate bonus shares to corresponding original shares purchased on different dates and at different costs. Necessarily, separate streams of calculations have to follow for each set of original shares purchased on a particular date and every time a sale of shares takes place. In order to overcome the problem of complexity, a simple method has been laid down for computing the cost of acquisition of bonus shares. For the sake of clarity and simplicity, the cost of bonus shares is to be taken as nil while the cost of original shares is to be taken as the amount paid to acquire them. This procedure will also be applicable to any other security where a bonus issue has been made. Here the expression "security" will take its meaning from the definition in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

30.3 The period of holding of the bonus asset will be reckoned from the date of allotment of such an asset.

30.4 These amendments will take effect from 1st April, 1996 and will, accordingly. apply to the securities transferred on or after 1st April, 1995.'

7.9. The Board's Circular (supra) highlights that sub-clause (iiia) has been inserted with effect from 1-4-1996 in order to overcome certain difficulties and the problem of complexity in working out the cost of bonus shares and consequential computation of capital gain as a result of judicial decisions. The aforesaid amendment, therefore, is required to be construed in a manner so as to promote the purpose and object of the amendment. The Legislature wants to adopt a simple method for computation of capital gains with effect from the assessment year 1996-97 by providing that the cost of acquisition shall be taken to be nil in cases falling under sub-clause (iiia). Sub-clause (iiia) has been made specifically applicable with effect from the assessment year 1996-97 requiring thereby that income from capital gains would be computed, with effect from assessment year 1996-97, by taking the cost of acquisition of bonus shares to be nil.

7.10 Further, as rightly pointed by the ld. D.R., while taking aid of the maxim "Generaliaspecialiabus non derogant", the Hon'ble Apex Court in the case of Commissioner of Income Tax, Patiala v. Shahzada Nand and Sons and Ors 1966 AIR 1342, has observed as under:

> *"8. ...Another rule of construction which is relevant to the present enquiry is expressed in the maxim generaliaspecialiabus non derogant, which means that when there is a conflict between a general and a special provision the latter shall prevail. The said principle has been stated in Craies on Statute Law, 5th Edition, at pg 205, thus:*
>
> *The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular' enactment must be operative, and the general enactment must be taken to affect only the other pads of the statute to which it may properly apply."*

7.11. This is to say, here there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, one is not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.

7.12. Time and again the courts have expressed their coordinated views on the fact that in a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. Thus, while section 55(2)(aa)(iiia) of the Act clearly provides valuation of bonus shares, one can never look beyond for its interpretation.

7.13. This argument is buttressed by the CBDT Circular No. 06/2014, which has clarified that bonus units at the time of issue would not be subjected to additional income tax under section 115R of the Act [relating to tax on distributed income to unit holders], since issue of bonus units was not akin to distribution of income by way of dividend. This was inferred from the provisions of section 55(2) of the Act, which prescribes the cost of acquisition of bonus units would be "Nil" for the purpose of computation of capital gains.

7.14 Further, consideration of argument of ld. A.R. would defeat the express provisions of sub-clause (iiia) of 55(2)(aa) of the Act when it is being prospectively applied after it has come into force and in accordance with the provisions contained therein. As already observed above, the provisions of sub-clause (iiia) of 55(2)(aa) of the Act are clear and unambiguous and hence any other rule of construction cannot be imported to alter the plain meaning

of the said provisions. In Pandian Chemicals Ltd. v. CIT [2003] 262 ITR 278 p. 281 (SC) the Hon'ble Supreme Court has held that there was no scope for importing any rule of interpretation when the words used in the provision were unequivocal. The Court held: "The rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal, there is no scope for importing any rule of interpretation as submitted by the appellant."

7.15 It is well-settled that even existing rights can be impaired by express enactment or by necessary implication from the language employed in the statute. In the present case, sub-clause (iiia) enacts that the cost of bonus shares would be taken to be nil if they were allotted to the assessee without payment and on the basis of his holding the original shares.

7.16 The provision of sub-clause (i) of clause (b) in section 55(2)(b) of the Act is in respect of financial asset, where a purchase price has been paid by an assessee for acquiring such financial asset. Whereas, in present facts, the assessee has admittedly not paid any price for acquiring the bonus shares. Under such circumstances, the specific provision relating to acquisition of financial asset under section 55(2)(aa)B(iiia) of the Act, without any cost would be applicable. As the legislature has expressly provided for cost of acquisition to be at 'Nil', in a situation where the financial asset is allotted to an assessee without any payment, upholding the argument of the assessee to apply sub-clause (i) of clause (b) to section 55(2)(b) of the Act will make sub-clause (iiia) to section 55(2)(aa)B of the Act redundant.

7.17 Further, it is to be noted that section 55(2)(b) of the Act talks of other capital asst, which segregates from sub-clause (iiia) to section 55(2)(aa)B of the Act, that talks about Bonus shares specifically. The decisions relied by the ld. A.R. has not considered being this distinguishing feature between these two provisions.

Thus, we find no merits in the arguments of ld. A.R. and all the grounds of appeal raised by the assessee herein are dismissed.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 29th Apr, 2024

Sd/-	**Sd/-**
(Soundararajan K.)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 29th Apr, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.