

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 2719/MUM/2023  
Assessment Year: 2012-13**

DCIT, 14(1)(1),  
Room No. 432, 4<sup>th</sup> floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Appellant**

**Vs.** M/s Jaymala Infrastructure P. Ltd.,  
B-8/9, Ground Floor, Gurudev  
Apartment, R.C. Marg, Chembur  
Naka, Chembur  
Mumbai-400071  
**PAN NO. AACCCJ 3470 G**  
**Respondent**

Assessee by : Mr. Ajay Singh  
Revenue by : Mr. Ankush Kapoor, CIT-DR

Date of Hearing : 24/04/2024  
Date of pronouncement : 13/05/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the Revenue is directed against order dated 03.06.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-13, raising following grounds:

- 1. On the facts and in the circumstances of the case and in law the la. CIT(A) erred in deleting the entire addition of Rs 20.74 crores made*



- u/s. 68 of the Act ignoring the fact that the credit worthiness of shareholders is not proved considering the low income of applicants.*
- 2. On the facts and in the circumstances of the case and in law the La. CIT(A) erred in deleting the entire addition of Rs:20.74 crores made u/s 68 of the Act ignoring the fact that assessee has not given any documentary evidences for valuation of its shares, thus creating doubt regarding the valuation, of shares as well as subscription of shares.*
  - 3. 3. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

2. Briefly stated facts of the case are that the assessee is engaged in the civil construction and renting of immovable properties. For the year under consideration, the assessee filed return of income on 30/09/2012 declaring total income of Rs. 2,95,57,061/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment completed u/s 143(3) of the Act dated 27.03.2015, the Assessing Officer made addition for the share capital allotted amounting to Rs.20.74 crores treating the same as unexplained cash credit in terms of section 68 of the Act. Before the Ld. CIT(A), the assessee filed complete details of the share subscribers which were forwarded by the Ld. CIT(A) to the Assessing Officer but no comments were sent by the Assessing Officer despite specific reminders ,therefore, the Ld. CIT(A) after analyzing the details and documentary evidences on record , deleted the additions made by the Assessing Officer u/s 68 of the Act. Aggrieved, the Revenue is in appeal before the Tribunal by way of raising grounds as reproduced above.



3. Before us, the Ld. counsel for the assessee has filed a Paper Book containing paged 1 to 501 which *interalia* include documents filed by the assessee before the lower authorities in support of identity, creditworthiness of the share subscribers and genuineness of the transaction of share capital.

4. Before us, the Ld. Departmental Representative (DR) submitted that assessee has failed to discharge its onus u/s 68 of the Act for justifying identity, creditworthiness and genuineness of the transaction. He further submitted that though the assessment year involved is 2012-13, which is prior to the assessment year 2013-14 i.e. the year when amendment has been brought into the Act for justifying 'source of source' in case of share capital received, still there are decisions of courts wherein assessment years prior to the AY 2013-14, also the assessee was required to justify source of source. He referred to following decisions:

**(i) Hon'ble High Court in the case of Commissioner of Income v. Biju Patnaik [1986] 160 ITR 674 (SC)**

**(ii) Co-ordinate Bench of the ITAT Lucknow Bench in the case of M/s Gaurav Pigments Pvt. Ltd. v. Commissioner of Income Tax (Appeals)-II ITA No. 61/LUC/2000 for assessment year 1991-92.**

**(iii) Hon'ble High Court of Kerala in Income-tax Officer v. Diza Holdings (P.) Ltd. reported in (2002) 255 ITR 573 (Kerala).**



**(iv) Hon'ble High Court of Delhi in the case of Indus Valley Promoters Ltd. v. Commissioner of Income-tax (2008) 305 ITR 202 (Delhi)**

**(v) Hon'ble High Court of Bombay in the case of Commissioner of Income-tax, Karnataka (Central) Bangalore v. Sadiq Sheikh [2020] 429 ITR 163 (Bombay)**

4.1 The Ld. DR further submitted that the share subscribers were either having very low or nil income in the relevant assessment year therefore, their creditworthiness to acquire shares with high premium is not justified. In view of the above submissions, the Ld. DR submitted that order of the Ld. CIT(A) might be set aside and order of the Assessing Officer might be restored.

5. On the contrary, the Ld. counsel for the assessee submitted that the specific provision for establishing source of source for introduction of share capital has been made effective only from assessment year 2013-14 by way proviso to section 68 of the Act. The relevant proviso is reproduced as under:

***“Provided further*** that] where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:”*



5.1 The Ld. counsel for the assessee relied on the decision of the Tribunal Co-ordinate Bench of the Tribunal in the case of **M/s Tanish Homes & Construction Pvt. Ltd. in** ITA No. 113/Mum/2021 and CO No. 144/Mum/2021 for AY 2011-12, wherein it has been decided that in assessment years prior to assessment year 2013-14, the assessee is not required to demonstrate 'source of the source' in respect of credit received. The Ld. counsel also relied on the decision in the case of **Income-tax Officer v. Winstar Ecom (P.) Ltd. [2024] 159 taxmann.com 1531 (Mumbai-Trib.)**.

6. We have heard rival submission of the parties and perused the relevant material on record. As far as addition in dispute is concerned, we find that the Ld. CIT(A) has divided the entire addition of Rs.20.74 crores into three categories. The **first category** is addition of Rs.11,25,00,000/-, where the share application money was received in financial year 2010-11 i.e. corresponding to assessment year 2011-12, which was duly verified by the Assessing Officer in the scrutiny proceedings u/s 143(3) for assessment year 2011-12 and no addition has been made. The **second category** addition is of Rs. 1,58,50,000/- , where share application money has been received from the same parties from whom share application money was received in the assessment year 2011-12 and which has been verified by the Assessing Officer and no addition was made . The **third category** addition is amounting to



Rs.7,90,00,000/-, where fresh share application money has been received in the year under consideration . The arguments of both parties in respect of these categories have been considered and issue in dispute is adjudicated as under:

6.1 As far as addition of Rs.11,25,00,000/- is concerned , the money for share application was received in assessment year 2011-12. The Ld. CIT(A) in para 5h(ii) of the impugned order has reproduced the list of parties from whom said amount was received. The finding of ld CIT(A) in respect of the addition is extracted as under:

*“5.h. (ii) It has been shown from records that out of an addition of Rs. 20,74,00,000 made by the Assessing Officer, the following amounts and the following entities pertain to previous financial year:*

<b>Sr. No.</b>	<b>Share Applicant</b>	<b>Amount received in FY 2010-11</b>
1.	Jaymala M Vitkar	20,50,000
2.	Gaurav M Vitkar	18,50,000
3.	Mukund K Vitkar	6,50,000
4.	Empower India Limited	5,00,00,000
5.	Assam Trading Private Limited	50,00,000
6.	Arjit Securities Private Limited	50,00,000
7.	Better Buildcon Private Limited	50,00,000
8.	Henna Textile Limited	50,00,000
9.	Ronit Capital management Limited	1,50,00,000
10.	Unike Word export Limited	1,50,00,000
11.	Nanshi Exports private Limited	50,00,000
12.	Arishta Infotech Limited (One Spec Infotech Ltd)	1,50,00,000
13.	Pundits Business Private Limited	75,00,000
14.	Ronit Mercantile private Limited TAX DEPAR	50,00,000
15.	Ronit Textile private Limited	1,00,00,000
16.	Vishesh infotechnics Limited	1,00,00,000
17.	SNB mercantile private Limited	50,00,000
18.	Yamroosh investment private Limited	50,00,000
19.	Terry Towel Industries Limited	
20.	Anagi Trading Private Limited	
21.	Anurodh Commodities private Limited	
22.	Devasenapati sales Agency Private Limited	
23.	Flutron marketing and advertisement private limited	
24.	Shandhiya marketing and advertising private limited	
25.	Speciality papers Limited	



<b>Reconciliation</b>		
	Jayamala M Vitkar	20,50,000
	Gaurav M Vitkar	18,50,000
	Mukund K Vitkar	6,50,000
	Empower India Limited	5,00,00,000
<b>Total</b>	<b>Share application money as per BS</b>	<b>11,25,00,000</b>

*I have examined the balance sheet as on 31/03/2012, part of records, and have seen that the figure 1125000 (In Rs. 00) is mentioned as Share application money pending allotment, as on 31/03/2011. Opening balances cannot be considered as deemed income under section 68 of the IT Act. Further, these share-applicants have been accepted as genuine during assessment proceedings u/s 143(3) of the IT Act in the AY 2011-12. As such, the amount of Rs. 11,25,00,000 out of Rs. 20,74,00,000/- is ordered to be deleted from the addition made under Sec. 68 of the IT Act in the assessment order.”*

6.2 Regarding the above addition, the Ld. DR also could not controvert as share application money was received in the earlier year, which was duly examined by the Assessing Officer in assessment year 2011-12 in order passed u/s 143(3) of the Act. In our opinion, this addition is beyond the scope of the assessment for the year under consideration, therefore, the Ld. CIT(A) is justified in deleting the same.

6.3 Regarding the addition of Rs.1,58,50,000/- the Ld. CIT(A) has reproduced the list of the parties in para 5h(i) of the impugned order, which is extracted as under:

*“5.h.(i) Continuing with the factual examination, as per chart of receipt of share application money, following share-applicants are common between AY 2011-12 and AY 2012-13:*

<b>Sr. No.</b>	<b>Share Applicant</b>	<b>Amount received in FY 2010-11</b>	<b>Amount received in FY 2011-12</b>
1.	Share Applicant	20,50,000	6,00,000
2.	Jaymala M Vitkar	18,50,000	8,00,000
3.	Gaurav M Vitkar	6,50,000	19,50,000
9	Ronit Capital management Limited	1,50,00,000	50,00,000



12	Arishta Infotech Limited (One Spec Infotech Ltd)	1,50,00,000	50,00,000
15	Ronit Textile private Limited	1,00,00,000	25,00,000
		<b>Total</b>	<b>1,58,50,000</b>

*Evidence of assessment proceedings and final order of AY 2011-12 has been submitted wherein the department has accepted these share-applicants as genuine. As such, without any credible evidence against these applicants, the department cannot hold them as being bogus share applicants. Since Id. AO has not brought any material on record to suggest that these share-applicants were bogus, the addition made on account of such share-applicants, amounting to Rs. 1,58,50,000/- is ordered to be deleted from the total addition of Rs. 20,74,00,000 under Sec. 68.”*

6.4 In respect of these parties, the Assessing Officer has duly accepted all the documents in respect of identity, creditworthiness and genuineness of the transaction in the assessment year 2011-12 and identical documents have been filed in the year under consideration by the assessee, but have been rejected by the Ld. Assessing Officer. We do not find any reason for rejection of the same documents which have been accepted by the Assessing Officer in the earlier assessment year. Further, no inquiry of any kind including issue of notice u/s 133(6) of the Act or issue of summon u/s 131 of the Act was carried out by the Assessing Officer for verification ,therefore, addition merely on the conjuncture and surmises is not permitted. Accordingly, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and we uphold the same.

6.5 The third category of addition is amounting to Rs.7,90,00,000/-. The relevant finding of the Ld. CIT(A) is reproduced as under:



*“5.h.iii. The adjudication with respect to the balance amount of Rs. 7,90,00,000 (derived from 20.74-11.25-1.58) is as follows:*

*Ld. AO has not cared to bifurcate this amount. As such, ratio laid down in the Hon. ITAT order in ITA No 33/Kol/2020 is directly applicable on this case. Without any bifurcation, it is difficult to uphold the addition by Id AO, as it is not possible to come to any definite conclusion regarding specific share-applicants.*

*In addition, Ld. AO has not examined the material on record submitted by the applicant with respect to these share-applicants. **There is no mention of any enquiry carried out by the Ld AO.** As such, without any evidence, the conclusions can be said to be based only on conjectures and surmises.*

*Lastly, but importantly, the legal position of Sec. 68 during the AY 2012-13 did not require the appellant to delve into the source of the source and seek further information from the creditors. It was however, open for the AO to do any and all such enquiries. Ld. AO has miserably failed in the discharge of such onus. The appellant has submitted necessary details, including PAN, Confirmation and extracts from the Books of accounts as well as Bank statements of the Share-applicants. The AO has been unsuccessful in holding that the Share-applicants were bogus. This is true for the entire amount of share-application money of 20.74 Crores held as deemed income by the AO. As such, the case of the applicant is squarely covered by the ratio laid by Hon. Apex Court in the matter of *Lovely Exports vs CIT*, 216 CTR 195. It is held that as per the ratio, the onus was successfully discharged by the appellant and the AO failed to make any case for consideration of such share-applicants as bogus. Respectfully adhering to the ratio of this judgement, and also the multiple judgements cited by the appellant in support of their grounds of appeal, the factual matrix and material on record, the entire addition of Rs. 20,74,00,000 made under Sec. 68 is ordered to be deleted. The grounds of appeal succeed in entirety.”*

6.6 The Ld. CIT(A) on page 47 to 49 of the impugned order has reproduced entire list of the share application money of Rs.20,74,00,000/- which has been bifurcated by him as amount received in financial year 2010-11 i.e. corresponding to assessment year 2011-12 and amount receiving in financial year 2011-12 i.e. amount corresponding to the assessment year under consideration. The Ld. CIT(A) during the appellate proceedings forwarded the documents in respect of amount received of Rs.7.9 crores to the



Assessing Officer calling for comments regarding the source of money in the hands of those share subscribers. The Ld. CIT(A) noted that money was received in their hands from another concerns. Before the Ld. CIT(A), the assessee filed detailed submission regarding identity, creditworthiness which the Ld. CIT(A) has reproduced as under:

*6. The appellant has made detailed submissions and provided all necessary details, including extracts from books of accounts and Bank statements of the share-applicants.*

*1.1 It is stated that appellant company has duly submitted the Audited Annual accounts of all the companies to whom the share capital has been issued. Further the schedules of Profit & Loss account are forming part of the Audited Annual Accounts and the same has been duly submitted to your honour vide our submission dated 20.11.2019. It is submitted that each of the Annual account has Profit and loss account alongwith the relevant schedules. Further your honour is kindly requested to refer the pages of the paperbook submitted with our submission dated 20.11.2019 as under :-*

Sr. No.	Share applicant company	Paperbook pages No.
1.	Anagi Trading Private Limited	55-67
2.	Anurodh Commodities Private Limited	74 - 88
3.	Devasenapati Sales Agency Private Limited	108 - 109
4.	Flutron Marketing & Advertising Private Limited	131 - 142
5.	Onspec Infotech Limited	175 - 186
6.	Ronit Capital Management Limited	195 - 207
7.	Ronit Textiles Private Limited	217 - 233
8.	Shandhiya Marketing & Advertising Private Limited 242 - 254	242-281
9.	Speciality Paper Limited	258 - 281
10.	Terry Towel Industries Limited	282-311

*1.2 Further it is submitted that the documents submitted by the appellant company majorly*

*consists of Audited Annual Accounts, Confirmation, Share*

*Certificates, Bank Statements and Acknowledgement of Income Tax Return in order to prove the identity, genuineness and source of transaction regarding the share capital and share premium. Further all*



*the documents submitted are proper and legible which can be seen from naked eyes.*

*3.3 Further we are submitting the details of share capital and Reserves and Surplus of the share applicants to further justify the credit worthiness:*

<i>Name of the company</i>	<i>Share capital</i>	<i>Reserve and surplus</i>	<i>Shareholders fund</i>	<i>Balance sheet Size (Total Asset side)</i>
<i>Anagi Trading Private Limited</i>	<i>1,00,000</i>	<i>84,444</i>	<i>1,84,444</i>	<i>10,61,61,856</i>
<i>Anurodh Commodities Private Limited (As at 31<sup>st</sup> March 2011)</i>	<i>25,57,080</i>	<i>12,03,96,920</i>	<i>12,29,54,000</i>	<i>14,29,62,266</i>
<i>Devasenapati Sales Agency Private Limited</i>	<i>1,00,000</i>	<i>1,29,838</i>	<i>2,29,838</i>	<i>16,21,69,230</i>
<i>Flutron Marketing &amp; Advertising Private Limited</i>	<i>1,00,000</i>	<i>25,138</i>	<i>1,25,138</i>	<i>4,04,98,791</i>
<i>Onspec Infotech Limited (As at 31<sup>st</sup> March 2011)</i>	<i>7,48,12,500</i>	<i>-</i>	<i>7,48,12,500</i>	<i>10,27,23,893</i>
<i>Ronit Capital Management Limited (formerly known as Hiteshi Capital Management Limited)</i>	<i>50,00,000</i>	<i>8,75,20,400</i>	<i>9,25,20,400</i>	<i>24,84,14,289</i>
<i>Ronit Textiles Private Limited (As at 31<sup>st</sup> March 2013)</i>	<i>1,44,50,500</i>	<i>14,17,49,644</i>	<i>15,61,99,644</i>	<i>30,18,10,950</i>
<i>Shandhiya Marketing &amp; Advertising Private Limited 242 - 254</i>	<i>1,00,000</i>	<i>71,293</i>	<i>1,71,293</i>	<i>2,77,12,293</i>
<i>Speciality Paper Limited</i>	<i>7,68,16,760</i>	<i>1,72,08,14,208</i>	<i>1,79,76,30,968</i>	<i>1,91,50,53,995</i>
<i>Terry Towel Industries Limited</i>	<i>1,00,00,000</i>	<i>8,71,68,075</i>	<i>9,71,68,075</i>	<i>1,90,099,702</i>

6.7 Despite specific report called for by the Ld. CIT(A) for verification of the source of source, no such report was sent by the Assessing Officer. The relevant observation of the Ld. CIT(A) are reproduced as under:



*“5.e. Efforts were made by this office to obtain necessary information with respect to creditworthiness of the Share-applicants. Since the assessment order has not even reproduced the names of the Share-applicants from whom an amount of Rs. 20,74,00,000 has been said to have been received and no factual enquiry was present in the order of assessment, this office, in accordance with the powers granted under the IT Act, issued specific query vide remand report dated 23/12/2022. Repeated reminders were issued, as per note sheet. However, no response has been received from the office of Assessing Officer. Considering that necessary material on record is available to adjudicate the matter, a final order is being issued accordingly as per law. An effort was further made to question the appellant on the financial aspects of the share-applicants and the fact that they display the characteristics of shell companies; however, the appellant ha strongly refuted the contentions and has submitted a chart showing asset position of such companies. This coupled with the facts that a majority of share-applicants have been accepted during the previous AY 2011-12, after enquiry, I am of the opinion that final order in this case needs to be issued after considering entirety of material and the legal position of pre-amended Sec. 68, to meet the ends of justice.*

*5.f. The Assessing Officer is an empowered authority who can make all possible enquiries as per Act in order to determine a true and correct income of the assessee. An AO is required to issue a speaking order. Unfortunately, in this case, the order is cryptic. It does not even mention the names of the Share-applicants. It is faulty as it does not consider the factual aspects of the case, most importantly that it also considers opening balance as the current year investment in shares and instead of concentrating on the Share-application money received during the year, goes on to add the entire amount received in FY 2010-11 (previous AY) and the FY 2011-12 (impugned AY). There is no whisper of an effort to understand as to what happened in the assessment proceedings during the previous AY. The fact that there are common share-applicants, and the department has already accepted the identity, creditworthiness and genuineness of transactions in the assessment proceedings of the erstwhile AY has not been considered. There is an absolute lack of effort in specifying as to what were the defects in the submissions made by the assessee which have lead the Id AO to form a belief that the onus under Sec. 68 of the It Act has not been discharged by the assessee.”*

6.8 Further, the Ld. CIT(A) has noted that in the assessment order, the Assessing Officer has neither produced the list of the shareholders nor even mentioned the name of the subscribers companies or the ground on which the transaction of share subscription was held to be not genuine.



6.9 The coordinate bench of Tribunal in the case of M/s **Tanish Homes & Construction Pvt. Ltd. (supra)** after considering the decision of the Hon'ble Jurisdictional High Court in the case of **PCIT v. Veedhata Tower Pvt. Ltd. (supra)** held that prior to adding proviso to section 68 requiring verification of the source of source introduced by the Finance Act, 2012 w.e.f. 01.04.2013, the Assessing Officer was not authorized to examine source of source. The relevant finding of the Co-ordinate Bench is reproduced as under:

*“4.5. We further hold that for the year under consideration, the assessee is not legally bound to prove the source of source of share applicants. We find that assessee had given direct evidences to prove that there was no cash deposits in the bank statements of share applicants immediately before making investments in assessee company. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of **PCIT vs. Veedhata Tower Pvt. Ltd., reported in 403 ITR 415 (Bom)** wherein it was held that once the payer had confirmed the transaction of making investment in a company towards share capital and share premium, the revenue cannot invoke the provisions of Section 68 of the Act in the hands of the recipient even if the monies were received from bogus shareholders. The assessee had duly discharged the onus which is cast upon it in terms of pre-amended Section 68 of the Act by filing the necessary confirmation letters of the share applicants, their affidavits, their full address with their PAN etc. **The said decision also held that the proviso to Section 68 of the Act which was introduced by the Finance Act 2012 w.e.f. 01/04/2013 would be effective only from A.Y.2013-14 onwards and not for the earlier assessment years.** We hold that in any case, the receipt of share capital and share premium would only have to be construed as capital receipt not chargeable to tax as has been held by the Hon'ble Jurisdictional High Court in the case of *Vodafone India Services Pvt. Ltd., vs. Addl. CIT* reported in 368 ITR 1 (Bom). It was held specifically that the share capital / share premium is not of the Revenue field and would not partake the character of income as defined u/s 2(24) of the Act. The relevant operative portion of the said decision is reproduced hereunder:-*

*24. A plain reading of Section 92(1) of the Act very clearly brings out that income arising from a International Transaction is a condition precedent for application of Chapter X of the Act. This has already been so held by the order dated 29 November 2013*



of this Court in Vodafone-III. We could have straight way held that the issue of examining the jurisdiction to apply Chapter X of the Act stands concluded by the order in Vodafone-III.

25. But we have examined the issue afresh. The word income for the purpose of the Act has a well understood meaning as defined in Section 2(24) of the Act. This even when the definition in Section 2(24) of the Act is an inclusive definition. It cannot be disputed that income will not in its normal meaning include capital receipts unless it is so specified, as in Section 2(24) (vi) of the Act. In such a case, Capital Gains chargeable to tax under Section 45 of the Act are, defined to be income. The amounts received on issue of share capital including the premium is undoubtedly on capital account. Share premium have been made taxable by a legal fiction under Section 56(2)(viib) of the Act and the same is enumerated as Income in Section 2(24)(xvi) of the Act. However, what is brought into the ambit of income is the premium received from a resident in excess of the fair market value of the shares. In this case what is being sought to be taxed is capital not received from a non-resident i.e. premium allegedly not received on application of ALP. Therefore, absent express legislation, no amount received, accrued or arising on capital account transaction can be subjected to tax as Income. This is settled by the decision of this Court in *Cadell Weaving Mill Co. v. CIT* [2011] 249 ITR 265/116 Taxman 77 was upheld by the Apex Court in *CIT v. D.P Sandu Bros. Chember (P.) Ltd.* [2005] 273 ITR 1/142 Taxman 713. This Court has in *Cadell Weaving Mills Co. (supra)* *inter alia*, observed as under:—

*'It is well settled that all receipts are not taxable under the Income tax Act. Section 2(24) defines "income". It is no doubt an inclusive definition. However, a capital receipt is not income under section 2(24) unless it is chargeable to tax as capital gains under Section 45. It is for this reason that under section 2(24)(vi) that the Legislature has expressly stated, inter alia, that income shall include any capital gains chargeable under section 45. Under Section 2(24)(vi), the Legislature has not included all capital gains as income. It is only capital gains chargeable under Section 45 which has been treated as income under Section 2(24). If the argument of the Department is accepted then all capital gains whether chargeable under section 45 of not, would come within the definition of the word "income" under section 2(24). Further, under section 2(24)(vi) the Legislature has not stated that "any capital gains" will be covered under the word income. On the contrary, the Legislature has advisedly stated that only capital gains which are chargeable under Section 45 of the Act could be treated as income. In other words, capital gains not chargeable to tax under section 45 fall outside the definition of the word "income" in section 2(24) of the Act. It is true that section 2(24) of the Act is an inclusive*



*definition However, in this case, we are required to ascertain the scope of Section 2(24)(vi) and for that purpose we have to read the sub section strictly. We cannot widen the scope of sub section by saying that the definition as a whole is inclusive and not exhaustive. In the present case, the words "chargeable under section 45" are very important. They are not being read by the Department. These words cannot be omitted. In fact, the prior history shows that capital gains were not chargeable before 1946. They were not chargeable between 1948 and 1956. Therefore, whenever an amount which is other wise a capital receipt is to be charged to tax, section 2(24) specifically so provides.'*

*In view of the above, we find considerable substance in the Petitioner's case that neither the capital receipts received by the Petitioner on issue of equity shares to its holding company, a non-resident entity, nor the alleged short-fall between the so called fair market price of its equity shares and the issue price of the equity shares can be considered as income within the meaning of the expression as defined under the Act."*

6.10. The Hon'ble Bombay High Court in the case of **Mr Gaurav Triyugi Singh in Income-tax Appeal No. 1750 of 2017** relying on the finding in the case of **Veedhata Tower P Ltd (supra)** held that assessee was not required to explain 'source of source' for discharging its onus under section 68 of the Act. Relevant finding of the Hon'ble Court is reproduced as under:

*"14 In Principal Commissioner of Income Tax vs. Veedhata Tower Pvt. Ltd., (2018) 403 ITR 415 (Bom), this court has held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart, the creditor has explained as to how the credit was given to the assessee. Thus assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur.*

*15 In view of discharge of burden by the assessee, burden shifted to the revenue; but revenue could not prove or bring any material*



*to impeach the source of the credit. Though Mr. Walve, learned standing counsel, has pointed out that the creditor had no regular source of income to justify the advancement of the credit to the assessee, we are of the view that the assessee had discharged the onus which was on him to explain the three requirements, as noted above. It was not required for the assessee to explain the sources of the source. In other words, he was not required to explain the sources of the money provided by the creditor Smt. Savitri Thakur i.e. Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur.”*

6.11 In view of the decisions of jurisdictional high court that proviso to section 68 authorising verification of source of source of share capital is effective only from AY 2013-14 , the decisions relied upon by the ld DR are not applicable over the facts of the case.

6.12 In view of above discussion, the argument of the Ld. DR that assessee was required to justify the source of source are not found to be applicable and same are rejected. Moreover, the Ld. CIT(A) provided due opportunity to the Assessing Officer, however he did not avail such opportunity and given any adverse remark regarding source of source. The assessee has already discharged its onus under section 68 of the Act by way producing required documents before the AO but the AO neither issued any notice u/s 133(6) nor summon u/s 131 of the Act for verification of the parties or documents filed in respect of those parties. The Ld CIT(A) duly verified the documents and concluded that those subscribers were having sufficient creditworthiness to invest in the share capital of the assessee company. The Revenue has failed to rebut the finding of ld CIT(A) before us. In the facts and circumstance, we do not find



any infirmity in the order of the Ld. CIT(A) in respect of addition of Rs.7.9 crores.

7. Accordingly, we uphold the finding of the Ld. CIT(A) in respect of deletion of the addition of Rs.20.74 crores, which was made by the Assessing Officer u/s 68 of the Act. The grounds raised by the Revenue are accordingly dismissed.

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

**Order pronounced in the open Court on 13/05/2024.**

**Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated:13/05/2024  
Rahul Sharma, Sr. P.S.

**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,  
(Assistant Registrar)  
**ITAT, Mumbai**