

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA Nos. 510 & 511/MUM/2024
Assessment Years: 2008-09 & 2009-10

Multiventure Estates Pvt. Ltd., Shop No.21, Anuradha Society, Near Fire Brigade Station, Irla Bridge, S.V. road, Andheri West, Mumbai 400 058 (PAN : AAFCM0264N)	Vs.	Income Tax Officer, Ward – 10(2)(4), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Vishnu Aggarwal, CA
Revenue : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 30.05.2024
Date of Pronouncement : 31.07.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order nos. ITBA/NFAC/S/250/2023-24/1059904562(1) and ITBA/NFAC/S/250/2023-24/1059904718(1) both dated 18.01.2024 passed against the assessment orders by the Income Tax Officer, Ward-10(2)(4), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act (hereinafter referred to as the “Act”), dated 15.03.2016 for Assessment Year 2008-09 and dated 27.03.2015 for Assessment Year 2009-10.

2. Grounds taken by the assessee are reproduced as under:

ITA No. 510/MUM/2024

1: *On the facts and circumstances of the case and in law, the order passed by the Ld. A.O. u/s 143(3) r.w.s. 147 is arbitrary, unjustified and bad-in-law.*

2: *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in law by not considering the judicial decision given by Hon'ble ITAT, Mumbai bench in the matter of Geetamrut Agro Estate Pvt. Ltd. Agro Estate Pvt. Ltd. (group concern of the appellant company) for issue of shares of Geetamrut Agro Estate Pvt. Ltd. Agro Estate Pvt. Ltd. to Vinamra Universal Traders Pvt. Ltd. Universal Traders Pvt. Ltd. The ITAT has considered the creditworthiness of the investor and genuineness of the transaction. (cover matter)*

3: *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in law by not considering the facts of the case and submission filed by the appellant. The Ld. CIT (A) has erred in law by confirming the addition made by the Ld. AO in respect of share application money received from Vinamra Universal Traders Pvt. Ltd. Universal Traders Pvt. Ltd. by treating the same as unexplained cash credit of Rs. 2 Crore u/s 68 of the Income Tax Act, 1961 by the Ld. AO.*

4: *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in law by not considering the facts that detailed submission has also been filed by the investor i.e. Vinamra Universal Traders Pvt. Ltd. Universal Traders Pvt. Ltd at the time of assessment proceedings as asked by the Ld. AO.*

5: *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law by not considering the genuineness of the transaction and creditworthiness of the genuine investor i.e. Vinamra Universal Traders Pvt. Ltd. Universal Traders Pvt. Ltd. after submitting all the relevant documents by the appellant as well as by the investor.*

6: *The Ld. CIT(A) erred in rejecting DCF report issued by Chartered Accountant in respect of determination of share premium for fresh issue of shares under Rule 11BB/S. 56(viib) of IT Rules, when that method is recognized as valid method under said Rule.*

7: *The Ld. CIT(A) erred in rejecting various documentary evidences submitted by said Vinamra Universal Traders Pvt. Ltd. including confirmation for investments, bank confirmation for investments, bank confirmation for payment by cheque made to your appellant, source of making such payment, being funds obtained on redemption of mutual funds, copy of income tax return filed for AY 2008-09 etc as a compliance submitted by said Vinamra Universal Traders Pvt. Ltd. to notice issued u/s 133(6).*

8: *The Ld. CIT(A) erred, based on surmises and presumptions, in concluding that said Vinamra Universal Traders Pvt. Ltd. has not substantiated its creditworthiness when it has submitted all the documents in possession like its audited accounts, copy of its income tax returns, copy of bank statements extract, copy of resolutions for investments made and nothing more left to be done.*

ITA No. 511/MUM/2024

1. *On the facts and circumstances of the case and in law, the order passed by the Ld. A.O. u/s 143(3) r.w.s. 147 is arbitrary, unjustified and bad-in-law.*

2. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in law by not considering the judicial decision given by Hon'ble ITAT, Mumbai bench in the matter of Geetamrut Agro Estate Pvt. Ltd. Agro Estate Pvt. Ltd. (group concern of the appellant company) for issue of shares of Geetamrut Agro Estate Pvt. Ltd. Agro Estate Pvt. Ltd. to Greenary SEZ Infrastructure Pvt. Ltd. SEZ Infrastructure Pvt. Ltd. The ITAT has considered the creditworthiness of the investor and genuineness of the transaction (cover mater)*

3. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in law by not considering the facts of the case and submission filed by the appellant. The Ld. CIT(A) has eared in law by confirming the addition made by the Ld. AO in respect of share application money received from Greenary SEZ Infrastructure Pvt. Ltd. SEZ Infrastructure Pvt. Ltd. by treating the same as unexplained cash credit of Rs. 18,48,688/- u/s 68 of the Income Tax Act, 1961 by the Ld. AO.*

4. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in law by not considering the facts that detailed submission has also been filed by the investor i.e. Greenary SEZ Infrastructure Pvt. Ltd. SEZ Infrastructure Pvt. Ltd at the time of assessment proceedings as asked by the Ld. Assessing Officer*

5. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in law by not considering the genuineness of the transaction and creditworthiness of the genuine investor ie. Greenary SEZ Infrastructure Pvt. Ltd. SEZ Infrastructure Pvt. Ltd. after submitting all the relevant documents by the appellant as well as by the investor.*

3. From the above it is noted that the issue raised in both the appeals are common which are in respect of share capital raised by the assessee by issuing its equity shares to the two companies namely Vinamra Universal Traders Pvt. Ltd. and Greenary SEZ Infrastructure Pvt. Ltd., which have been treated as unexplained cash credit u/s. 68 of the Act. In respect of Vinamra Universal Traders Pvt. Ltd., addition is made of Rs.2 Crores in AY 2008-09, when the assessee had received share application money from the said company though the shares were allotted to it in subsequent year, i.e., AY 2009-10. In the case of Greenary, addition is of Rs.18,48,688/- in AY 2009-10 when the said sum was received during the said year and allotment of shares was also done in the same year. Assessee has also contested in both the years on the legal issue of assessment done by invoking provisions of Section 147 for passing impugned assessment orders.

4. We first take up the appeal in ITA No.510/Mum/2024 for AY 2008-09 for which the brief facts are that assessee filed its return of income on 19.03.2019 reporting its total income at Rs.1,01,758/-. Case of the assessee was re-opened by issuing notice u/s. 148 on the basis of information received from the Investigation Wing of the Department that assessee has received unsecured loan of Rs.2 Crores from Vinamra Universal Traders Pvt. Ltd. during the year. Assessee is stated to be engaged in the business of purchase, sale, develop, re-develop land and buildings and undertake construction activities in the real estate. Ld. Assessing Officer had called for the details relating to the transaction of Rs.2 Crores undertaken by the assessee with Vinamra Universal Traders Pvt. Ltd. In this respect it was submitted that 9390 shares were issued at the rate of Rs.1816/- per share totalling to Rs.1,70,52,240/-. The balance amount out of the total of Rs.2 Crores was refunded to Vinamra Universal Traders Pvt. Ltd.

These shares were issued in the AY 2009-10 though the amount was received in AY 2008-09 which was duly reflected in the balance sheet of the assessee. Ld. Assessing Officer had issued notice u/s. 133(6) of the Act to Vinamra Universal Traders Pvt. Ltd. for confirming the said transaction. The investor company duly responded to the said notice and furnished all the required details, confirming the transaction so undertaken. Ld. Assessing Officer has confirmed the furnishing of details by Vinamra Universal Traders Pvt. Ltd. in the impugned order in para 6.6 which is extracted below:

“6.6 In response to letter issued to M/s Vinamra Universal Traders Pvt. Limited, calling for information u/s 133(6) of the Act, has furnished following details:

1 The company has made payment of Rs. 2,00,00,000/- (Rupees Two Crore Only) as Share Application money towards subscription of Equity shares of "Multiventure Estates Pvt. Limited".

2. The ledger account of M/s Multiventure Estates Pvt. Limited.

3. We hereby submit the following information/documents in respect of share application:

(1) The company has subscribed towards equity in Multiventure Estates Pvt. Limited at premium of Rs. 1806/- per share.

(ii) The equity shares of M/s Multiventure Estates Pvt. Limited was allotted to the Company on 19th September 2008.

(iii) Confirmation from HDFC Bank Limited towards issuance of cheque to M/s Multiventure Estates Pvt. Limited towards share application money during the period from 01.04.07 to 31.03.08.

(iv) Copy of Income tax return for AY 2008-09.

(v) The company has sourced its subscription in equity shares of Multiventure Estate Pvt. Limited through redemption of units of mutual fund.

(vi) The company was incorporated on 17/07/2007 Page Multiventure Estate Pvt. Ltd.”

5. Ld. Assessing Officer had also issued summon u/s. 131 on the investor company which remained un-complied. In the course of assessment, assessee furnished the details of share applicant, i.e.

Vinamra Universal Traders Pvt. Ltd., which also forms part of the paper book placed before us. To corroborate the same, the following details were furnished by the assessee in respect of the documents:

- a) Name, address and PAN No, of the shareholder:*
 - b) Copy of Income Tax acknowledgement of the shareholder.*
 - c) CIN Master data of the shareholder obtained from the Registrar of Companies. The said company is disclosed as an 'active' company.*
 - d) Return filed in ROC (Form No.2) by the appellant in Registrar of Companies displaying the name, address, equity shares at premium allotted to such share holder*
 - e) I.T. acknowledgement receipt and Balance sheet of the shareholder disclosing its capacity and reflection of their investment made in the appellant company.*
 - f) Bank statements of the shareholder evidencing the payments through banking channel and its source of funds. The source of shareholder funds is not out of cash deposits, but is out of their accounted money duly disclosed in audited balance sheet and bank statements filed on record.*
- Vinamra Universal traders Pvt. Ltd, has invested Rs.2 Cr out of Rs.100 Cr. received from Edelweiss Capital Security on maturity of Mutual funds. Which can be verified and justified from the bank statement of the Vinamra Universal traders Pvt. Ltd*
- g) Valuation report issued by Chartered Accountant under Income Tax Rule 11BB/Section 56(viib). Under DCF Method.*
 - h) Copy of Share Application form*
 - (i) Copy of Board resolution and letter of offer for Investment in the company issued by the appellant company*
 - j) Ledger copy of amount refunded by M/s. Vinarma Universal Pvt. Ltd. in the AY 2009-10*

6. Ld. Assessing Officer not being convinced by the details and documentary evidence furnished by the assessee, applied the test of human probabilities and held that identity and creditworthiness of the shareholder is not proved, nor the genuineness of the transaction for introduction of share capital by the assessee is established. According to him, existence of the share subscribing company and source of its funds for making investment in the assessee could not be established.

Accordingly, he completed the assessment by making an addition of ₹ 2,00,00,000/- towards share application money received during the year by treating it as unexplained cash credit u/s. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A) who confirmed the same. Aggrieved, assessee is in appeal before the Tribunal.

7. Ld. Sr. DR placed reliance on the order of Ld. Assessing Officer. The arguments put forth before us are broadly the repetition of stand taken by the Ld. Assessing Officer in the impugned assessment order. Ld. Sr. DR had made a submission containing order of Securities Exchange Board of India (SEBI) vide order No. WTM/GM/EFD/18/MAR/2017, dated 24.03.2017. The said order is in the case of Reliance Petroleum Ltd., wherein one of the noticees is Vinamra Universal Traders Ltd. Ld. Sr. DR submitted that penal action was directed by SEBI in the case of Vinamra Universal Traders Ltd. and therefore addition made by the Assessing Officer in this respect, is justified.

8. Per contra, ld. Counsel for the assessee submitted that to establish the identity and creditworthiness of the shareholders and genuineness of the transaction, assessee had submitted all the relevant details and documents in the course of assessment as well as at the first appellate stage, details of which is already listed above.

9. Ld. Counsel submitted that the share subscriber is a body corporate, registered with ROC and assessed to income-tax. He, further stated that investor company had confirmed the transaction, filed relevant papers and documents and also explained the source of its funds for making investment in the assessee company which was

by way of redemption of its mutual funds. He thus, emphasised that assessee had discharged its primary onus casted upon it, u/s. 68 of the Act. According to him, the onus thus shifted to the Ld. Assessing Officer to disprove the material placed before him. Without doing so, the addition made by the Ld. Assessing Officer is based on conjectures and surmises and, therefore, cannot be sustained.

9.1. Ld. Counsel also emphasised on the fact that in the submissions made by the assessee which included ITRs, audit reports, share application details, etc., as listed above, ld. Assessing Officer has not found fault in any of the details so submitted and has simply proceeded to make addition in respect of the amount of share capital and share premium. According to him, documents furnished are to be prima facie considered as correct unless evidences brought on record to falsify the claim made therein.

9.2. On the three basic ingredients for section 68 relating to cash credit viz, identity, creditworthiness of the subscribers and the genuineness of transactions, ld. Counsel submitted that all of these are fulfilled by the assessee. In this respect he submitted as under:

- (i) On identity:- Investor company is a regular income-tax assessee and has filed its income tax return. Its PAN details along with copy of ITR was furnished. It was also submitted that investor company had responded directly to the ld. Assessing Officer by furnishing its details in response to summon u/s.133(6) by giving all the required details as desired by him.
- (ii) On creditworthiness:- to establish the creditworthiness of the subscriber, details relating to source of fund in the hands of

the investor company represented by its net worth was furnished along with its bank statement and audited financial statements. It was thus, submitted that details furnished by the assessee unequivocally testifies and proves that the subscriber had sufficient funds for making investment in the share capital of the assessee. Financial details furnished by the assessee are reproduced in the table below:

<i>Particulars</i>	<i>FY 2008-09</i>	<i>FY 2007-08</i>
<i>Share Capital</i>	<i>1,00,000</i>	<i>1,00,000</i>
<i>Reserve & Surplus</i>	<i>Nil</i>	<i>Nil</i>
<i>Unsecured Loan</i>	<i>33409,12,350</i>	<i>3592,23,42,420</i>
<i>Investments</i>	<i>742,89,92,600</i>	<i>1100,41,08,580</i>
<i>Trade Receivables</i>	<i>Nil</i>	<i>44,73,33,100</i>
<i>Loans & advances</i>	<i>1996, 86,60,640</i>	<i>1999.89.04,890</i>
<i>Revenue from operations</i>	<i>Nil</i>	<i>9,29,34,530</i>
<i>Other Income</i>	<i>179,71,63,910</i>	<i>88,03,99,640</i>
<i>PBT</i>	<i>(54,73,578530)</i>	<i>(11,73,02,320)</i>

- (i) On genuineness of the transaction: - it was submitted that the amount was invested by the subscriber through proper banking channel which is duly reflected in the respective financial statements of the subscriber. Since the investment reflected in its financial statements has been duly reported in its return with the Department, it is genuine transaction which cannot be doubted.

9.3. Before the Id. CIT(A), it was strongly contended that in a similar case of sister concern of the assessee, i.e., Geetamrut Agro Estate Pvt. Ltd. identical issue had arisen whereby the same investor company, i.e. Vinamra Universal Traders Pvt. Ltd. had made the investment in the share capital and share premium of Geetamrut Agro Estate Pvt.

Ltd. in the same assessment year in equal number of shares i.e. 9390 shares at the rate of Rs.1800/- per share. This issue travelled up to the Coordinate Bench of ITAT, Mumbai in ITA No. 1158/Mum/2020, dated 06.02.2023. In the said appeal it was the Revenue which was contesting the issue of addition of share capital and share premium for investment made by Vinamra Universal Traders Pvt. Ltd. in Geetamrut Agro Estate Pvt. Ltd. which was deleted by Id. CIT(A). The findings arrived at by the Coordinate Bench upheld the order of Id. CIT(A), deleting the addition. It was held that investor company, i.e. Vinamra Universal Traders Pvt. Ltd. had responded to notices u/s. 133(6), it had valid PAN and thus identity could not be doubted. Further, it was observed that the source of investment was explained which was out of mutual funds. The amount of share premium was justified by way of filing of valuation report of a Chartered Accountant in which Discounted Cash Flow (DCF) method was followed. The relevant extract from the said order in para 5 is reproduced as under:

“5. We have heard rival submission of the parties on the issue-in- dispute and perused the relevant material on record. In the ground raised, the Revenue has challenged the finding of the Ld. CIT(A) mainly on the ground that source of investment and no creditworthiness or genuineness has been established. From the M/s Geetamrut Agro Estate Pvt. Ltd. ITA No. 1158/M/2020

order of the lower authorities and the submissions filed, we find that both the investor parties are having valid PAN Number and notice issued u/s 133(6) of the Act have been duly responded by both the investors and therefore, identity of those two investors is not in doubt. As far as source of money invested in the shares of the assessee-company is concerned both the parties have intimated that same was out of principal mutual funds. The Assessing Officer has not found anything wrong in the said source explained by those share investors. The assessee has justified the amount of the share premium by way of filing valuation report of a Chartered Accountant, a copy which is available on paperbook page No. 54 to 56. The valuer has made valuation following the discounted cash flow method. Both the share investors have filed their financial statement, the AO however observed that balance sheet and profit and loss account along with audited report was not filed in the case of the Greenary Sez Infrastructure Pvt. Ltd. However, he find that same were again filed before the Ld. CIT(A). In the remand report, the Assessing Officer has accepted that all the documents were duly filed during the course of assessment proceedings and therefore, the basis of the Assessing Officer in the assessment order for justifying the addition due to non-filing of balance sheet; profit and loss account of investor is not correct. In view of the above, in our opinion, the finding of the Ld. CIT(A) on the issue-in-dispute do not require any interference. Accordingly, we uphold the same. The grounds of appeal of the Revenue are accordingly dismissed.

6. In the result, the appeal of the Revenue is dismissed.”

9.4. Assessee had tabulated the similar factual details in the decision of the Coordinate Bench in the case of Geetamrut Agro Estate Pvt. Ltd. (Supra) with the case of assessee which is as under:

<i>Particulars</i>	<i>Geetamrut Agro Estate Pvt. Ltd.</i>	<i>Multiventure Estate Pvt Ltd.</i>
<i>Name of Shareholder</i>	<i>Vinamra Universal Trader Pvt. Ltd.</i>	<i>Vinamra Universal Trader Pvt Ltd</i>
<i>No. of Shares issued</i>	<i>9,390 Shares</i>	<i>9,390 Shares</i>
<i>Issue Price</i>	<i>Rs. 1,800/- per share</i>	<i>Rs 1,816/- per share</i>
<i>C/T(A) Order</i>	<i>in favour of appellant (Annexure 10)</i>	<i>Pending before your honour</i>
<i>ITAT Order</i>	<i>In favour of appellant (Annexure 11)</i>	<i>Not applicable</i>

10. We have heard the rival contentions and perused the material available on record and have given our thoughtful consideration to the submissions made.

11. From the perusal of the paper book and documents placed therein, it is noted that the investor company is:

- (i) income tax assessee
- (ii) it is filing its income tax returns
- (iii) share application form and allotment letter is available on record
- (iv) share application money was paid by account payee cheque
- (v) details of the bank accounts belonging to share applicant and its bank statement was furnished
- (vi) in the said transaction, there is no allegation by the ld. Assessing Officer about deposit of cash before issuing cheque to the assessee
- (vii) investor company is having substantial creditworthiness represented by its capital and reserves

12. We further note that Ld. AO without even going through and discussing the details submitted by the investor company, insisted for personal appearance of its director and of the assessee to prove the identity, creditworthiness and the genuineness of the transaction. To our mind, Ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details furnished in his office and also as to what further investigation was needed by him by way of having physical presence of the directors of the investor company and the assessee. We draw our force from the decision of the Hon'ble jurisdictional High Court of Bombay in the case of PCIT v. Paradise Inland Shipping Pvt. Ltd. [2017] 84 taxmann.com 58 (Pan) wherein it was held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. We also draw our force from the decision of Hon'ble Jurisdictional High Court of Bombay in the case of CIT vs. Orchid Industries Pvt. Ltd. 397 ITR 136 (Bom) wherein it was held that mere non-compliance of summon under section 131 would not disprove the transaction and other documents filed on record cannot be brushed aside by the Ld. Assessing Officer. The relevant extract from the said decision is reproduced as under:

"The Assessing Officer added Rs.95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares ie allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous

documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case."

13. Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents of the investor company, furnished by the assessee as well as by the investor company directly to the Ld. Assessing Officer in response to his summons/notices under section 133(6) of the Act. These evidences furnished have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. Ld. AO has added the amount of share application money on the ground that assessee has not produced the directors. Thus, going by the records placed by the assessee of the investor company, it can be safely held that the assessee has discharged its initial burden and the burden shifted on the Ld. AO to enquire further into the matter which he failed to do so. It is also noted from their audited financial statement that the investing company has sufficient funds available with it to make investment in the assessee.

14. It is relevant to quote the decision of Hon'ble jurisdictional High Court of Bombay in the case of *CIT v. Creative World Telefilms P. Ltd. (2011) 333 ITR 100 (Bom)* wherein it was held as under:

"In the case in hand, it was not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable". The Assessing Officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the Assessing Officer. In the above circumstances, the view taken by the Tribunal could not be faulted. No substantial question of law was involved in the appeal."

14.1. Similar view was taken by the Hon'ble High Court of Madras in the case of Pranav foundations Ltd. (2015) 229 Taxman 58 (Mad) wherein it was held as under:

“In view of the fact that all the four parties, who are subscribers of the shares, are limited companies and enquiries were made and received from the four companies and all the companies accepted their investment. Thus, the assessee has categorically established the nature and source of the said sum and discharged the onus that lies on it in terms of section 68. When the nature and source of the amount so invested is known, it cannot be said to undisclosed income. Therefore, the addition of such subscriptions as unexplained credit under section 68 is unwarranted.”

15. Further, reliance is placed on the decision of Hon'ble Supreme Court in the case of CIT v. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC) wherein it was held as under:

“In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.

The High Court was, therefore, right in refusing to refer the questions sought for. Decision of the High Court affirmed.”

16. On the allegation of the Ld. Assessing Officer in respect of share premium, we note that provision of section 56(2)(viib) has been inserted with effect from 01.04.2013 and applies from assessment year 2013 – 14 onwards and cannot be applied retrospectively to bring to charge the excess share premium as alleged by the Ld. Assessing Officer. For this, we derive force from the decision of Hon'ble jurisdictional High Court of Bombay in the case of Gagandeep Infrastructure Pvt. Ltd. in ITA 1613 of 2014 wherein it was held that it is the prerogative of the board of directors of the company to decide

the share premium and it is at the wisdom of the shareholders to subscribe to the share premium and further that section 56(2)(viib) inserted with effect from 01.04.2013 cannot be applied retrospectively.

17. In respect of order of SEBI relied upon by Ld. Sr. DR, it is noted that it pertains to of Reliance Petroleum Ltd. and not to the assessee. Also, ld. Counsel had furnished the company information from the website of Ministry of Corporate Affairs extracted on 25.05.2024 to demonstrate that it is an active company.

18. Considering the facts and circumstances narrated and analysed above, all the details and documents placed on record corroborating the claim of the assessee and the judicial precedents referred above, we delete the addition made by ld. AO towards share application money of Rs.2,00,00,000/-. Grounds taken by the assessee in this regard are allowed.

19. In the result, appeal of the assessee is allowed.

20. Now we take up appeal in ITA No.511/Mum/2024 which is also on identical set of facts as in the case of appeal in ITA No.510/Mum/2024 dealt above, except for change in the investor company which is Greenery, who had invested Rs.18,48,688/- towards share capital and share premium in AY 2009-10. The said investor company is also a sister concern of the group to which assessee belongs to. The submissions and explanations furnished by the assessee are similar to those made by it in respect of Vinamra Universal Traders Pvt. Ltd. Assessee had issued 1018 equity shares of face value of Rs.10/- each on a premium of Rs.1806/- per share totalling to Rs.18,48,688/-. The Coordinate Bench of ITAT, Mumbai in

the case of Geetamrut Agro Estate Pvt. Ltd. (Supra) had also dealt with the investment made by the Greenery in share capital of Geetamrut Agro Estate Pvt. Ltd. whereby the addition made towards share capital and share premium was deleted. Since the facts and the observations as well as the findings made in ITA No.510/Mum/2024 above, squarely covers the case of the appeal in ITA No.511/Mum/2024, the finding arrived therein will apply *mutatis mutandis* to this appeal also. Accordingly, addition of Rs.18,48,688/- made towards share capital and share premium invested by Greenary is deleted. Grounds taken by the assessee in respect are allowed.

21. In the result appeal of the assessee is allowed.

22. We have allowed the appeal of the assessee in both the cases by dealing with the merits of the case. Accordingly, the legal issue raised by the assessee in both the appeals need no separate adjudication.

23. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 31 July, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 July, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai