

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A ' Bench, Hyderabad**

**Before Shri Manjunatha, G. Accountant Member and**  
**Shri Prakash Chand Yadav, Judicial Member**

आ.अपी.सं / **ITA No. 208/Hyd/2023**  
(निर्धारण वर्ष/Assessment Year: 2011-12)

Deputy Commissioner of Income Tax, Central Circle 3(1) Hyderabad	Vs.	Varsity Education Management (P) Ltd Hyderabad PAN:AADCV6100E
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by: Advocate A.V. Raghuram		
राजस्व द्वारा/Revenue by: Shri B. Balakrishna, CIT(DR)		
सुनवाई की तारीख/Date of hearing: 18/09/2024		
घोषणा की तारीख/Pronouncement: 20/09/2024		

**आदेश/ORDER**

**Per Manjunatha, G. A.M**

This appeal filed by the Revenue is directed against the order dated 23/01/2023 of the learned CIT (A)-11, Hyderabad, relating to A.Y.2011-12.

2. The Revenue raised the following grounds:

*"1. The learned CIT (A) erred both in law and on facts of the case in granting relief to the assessee.*

*2. In the facts and circumstances of the case, whether the learned CIT (A) is correct in deleting the penalty u/s 271(1)(c) of the Act, levied by the Assessing Officer without appreciating the fact that the assessee has furnished inaccurate particulars of income and hence penalty provisions u/s 271(1)(c) of the Act, are attracted and the quantum addition was upheld by the Hon'ble ITAT.*

*3. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary”.*

3. The brief facts of the case are that the assessee filed its return of income for the A.Y 2011-12 on 5/3/2013 declaring loss of Rs.1,03,05,708/- . The case was selected for scrutiny under CASS to verify share premium. During the course of assesment proceedings, the Assessing Officer noticed that during the financial year relevant to A.Y under consideration, the appellant has allotted 12,01,923 Compulsory Convertible preferences Shares (CCPS) to M/s. NSR PR Mauritius LLC at a premium of Rs.1030/- per share and received total share premium of Rs.123,79,80,690/-. The Assessing Officer further noted that the assessee company had allotted the shares to the existing shareholders at face value, whereas it had allotted to non-resident entities at a premium of Rs.1030/- per share. The Assessing Officer called upon the assessee to justify allotment of CCPS with a huge premium of Rs.1030/- per share and after considering the relevant facts and also the valuation report submitted by the assessee, has accepted share capital received from said entity as genuine in nature, however, accepted share premium received by the assessee to the extent of Rs.672/- per share and the excess

premium received over and above Rs.672/- has been treated as unexplained cash credits and added u/s 68 of the I.T. Act, 1961.

4. The assessee carried the matter in appeal before the first appellate authority and the learned CIT (A) deleted the addition made by the Assessing Officer towards share premium u/s 68 of the I.T. Act, 1961.

5. The Revenue preferred further appeal before the Tribunal, against the order of the learned CIT (A) and the ITAT 'F' Bench of the Mumbai Benches in ITA No.6991/Mum/2016 dated 24.10.2018 reversed the order of the learned CIT (A) and sustained the addition made towards share premium. The appellant filed appeal against the order of the Tribunal before the Hon'ble Bombay High Court and the appeal filed by the assessee has been admitted and it is pending for adjudication.

6. Thereafter, proceedings u/s 271(1)(c) of the I.T. Act, 1961 was initiated and accordingly notice u/s 274 r.w.s. 271(1)(c) of the Act, was issued and called upon the assessee to explain as to why penalty shall not be levied for furnishing inaccurate particulars of income. In response, the assessee submitted that it has not furnished inaccurate particulars of income and that all the facts relating to the issue has been disclosed in the return of income filed for the relevant A.Y towards allotment of CCPS to non-resident entities. The appellant further contended that when the Assessing Officer accepted the transaction between the

appellant and non-resident entities is genuine in nature, then he cannot initiate penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961, merely for the reason that the Assessing Officer has not accepted the explanation of the assessee and addition was made. The Assessing Officer after considering the relevant facts and also taken note of certain judicial precedents observed that the assessee has furnished inaccurate particulars of its total income in respect of share premium received for allotment of CCPS to non-resident entities and therefore, opined that it is a fit case for imposing penalty u/s 271(1)(c) and thus, levied penalty of Rs.14,34,29,478/- which is equal to tax sought to be evaded.

7. Being aggrieved by the penalty order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee challenged the penalty levied u/s 271(1)(c) of the I.T. Act, 1961 on the ground that addition made by the Assessing Officer towards partial share premium u/s 68 of the I.T. Act, 1961 is unsustainable in law for the simple reason that when the appellant receives share capital from a venture capital fund, the same is outside the scope of section 68 of the I.T. Act, 1961. The appellant further contended that the said addition even cannot be made u/s 56(2)(vii)(b) of the Act, because the said provision does not applicable to a case where share capital is received from a venture capital fund or from venture capital company. Although, the ITAT upheld the addition made by the Assessing Officer, but fact remains that merely for the reason addition made by the Assessing Officer is sustained cannot be a

reason for imposing penalty for furnishing of inaccurate particulars of income, more particularly, when addition is sought to be made by invoking the deeming provision.

8. The learned CIT (A) after considering relevant submission of the assessee and also taken note of the fact that the ITAT for the subsequent A.Y 2012-13 in assessee's own case has deleted similar addition made by the Assessing Officer towards share premium received from non-resident venture capital company, deleted the penalty levied by the Assessing Officer u/s 271(1)(c) of the Act, on the ground that the basis of the addition that the Assessing Officer has made is on the premise that the appellant has introduced unexplained gain as share premium is not established. Further, the appellant has received funds from a venture capital fund and the transaction is duly reported and there is a difference in the perspective of valuation of the shares and the same cannot be guiding factor merely for the reason that the shares has been allotted to existing shareholders at face value and shares has been issued to non-resident investors at higher premium. The addition made by the Assessing Officer itself is bizarre in toto as receipt of the funds from M/s. NSR PR Mauritius LLC has been treated as unexplained only to the extent of excess share premium, because the share premium was higher. Since the addition made by the Assessing Officer is not sustainable either u/s 68 or u/s 56(2)(viib) of the Act, merely for the reason that the addition made by the Assessing Officer is sustained by the Tribunal, it cannot be a reason for sustaining

penalty. Therefore, directed the Assessing Officer to delete the penalty levied u/s 271(1)(c) of the I.T. Act, 1961.

9. Being aggrieved by the order of the learned CIT (A), the Revenue is in appeal before the Tribunal.

10. The learned DR, submitted that the learned CIT (A) is erred in deleting penalty u/s 271(1)(c) of the Act, without appreciating the fact that the assessee has furnished inaccurate particulars of income and hence penalty provisions u/s 271(1)(c) of the Act, are attracted and more so when the quantum addition was upheld by the Tribunal. Therefore, he submitted that the order of the learned CIT (A) should be set aside and the penalty levied by the Assessing Officer should be upheld.

11. The learned Counsel for the assessee, on the other hand, supporting the orders of the learned CIT (A) submitted that the penalty levied by the Assessing Officer u/s 271(1)(c) of the Act, is unsustainable in law for the simple reason that the Assessing Officer has made addition on part of share premium received by the assessee for allotment of CCPS to a non-resident venture capital company even though the provisions of section 68 has no application. The learned Counsel for the assessee further submitted that although the Tribunal has confirmed addition made by the Assessing Officer, but the appeal filed by the assessee before the Hon'ble Bombay High Court on a question of law has been admitted and once the question of law has been

admitted by the Hon'ble High Court, then penalty u/s 271(1)(c) cannot be levied. Therefore, he submitted that the order of the learned CIT (A) should be upheld.

12. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant company has allotted shares to existing shareholders at a face value, whereas the CCPS has been allotted to non-resident venture capital company at a premium of Rs.1030/- per share. The appellant has filed relevant evidences including necessary approval obtained from concerned authorities for receipt of share capital from non-resident entities and also necessary valuation report in support of share price. In fact, the Assessing Officer never disputed the identity, genuineness of the transaction and creditworthiness of the shareholders which is evident from the addition made by the Assessing Officer, where the Assessing Officer has accepted share premium in part to the extent which is based on valuation report, however, made addition towards excess premium as unexplained u/s 68 of the I.T. Act, 1961. Although, the addition made by the Assessing Officer is finally upheld by the Tribunal, but fact remains that the addition can be made u/s 68 of the Act, in case any sum credited in the books of account of an assessee is not explained with relevant evidences. Further, the provisions of section 68 has no application in case of any amount received as share capital from a non-resident entity. Further, excess premium also cannot be charged to tax as per section

56(2)(vii)(b) of the Act. Therefore, in our considered view, when the addition made by the Assessing Officer towards partial share premium u/s 68 was not in accordance with section 68 or section 56(2)(viib) of the Act, then merely for the reason that the addition has been sustained by the Tribunal is not a reason for levying penalty u/s 271(1)(c) of the Act,. This is because, penalty proceedings are independent of assessment proceedings and the findings of the Assessing Officer in the assesment proceedings while making addition may not be relevant while deciding the penalty proceedings. Further, the penalty proceedings has to be seen in light of fact that whether the appellant has furnished inaccurate particulars of income or concealed particulars of income. Therefore, when the addition is made u/s 68 of the I.T. Act, 1961 by invoking the deeming provision, it cannot be said that it is a case of furnishing of inaccurate particulars of income. In the present case, going by the fact on record, there is no dispute with regard to the fact that the appellant has disclosed relevant fact of share capital received from non-resident entity. Thus, in our considered view, it cannot be considered as a case of furnishing of inaccurate particulars of income. In absence of any observation with regard to the furnishing of inaccurate particulars of income, merely for the reason of addition made towards share premium u/s 68 is sustained by the Tribunal is not a ground for levying of penalty and this legal principle is supported by the decision of the Hon'ble Bombay High Court in the case of CIT vs. Aditya Birla Nova Ltd (2012) TIOL 692-H.C.

13. We further note that the Hon'ble Bombay High Court in the case of CIT vs. Naren P Shah (HUF) in ITXA (Lodg.) No.49 of 2013 dated 04.03.2013 held that once the appellant disclose all details in the return of income, at the highest it can be said that the claim of the appellant was not sustainable in law, but same cannot be considered as furnishing of inaccurate particulars of income for the purpose of section 271(1)(c) of the I.T. Act, 1961. At this stage, it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Ltd (322 ITR 158) (S.C) where it has been clearly held that merely for the reason of claim made by the assessee is not accepted by the Assessing Officer, is not a reason for levying penalty on the ground of furnishing of inaccurate particulars of income. The sum and substance of ratios laid down by various Courts is that mere disallowance of claim or not accepting the claim of the assessee does not amount to furnishing of inaccurate particulars of income. In the present case, the assessee has substantiated receipt of share capital from a non-resident shareholder with relevant details, but the Assessing Officer has not accepted the claim of the assessee in respect of share premium and has made addition towards excess premium and claimed that the assessee has furnished inaccurate particulars of income. In our considered view, the reasons given by the Assessing Officer is not sustainable for the simple reason that any claim made by the assessee and not accepted by the Assessing Officer cannot be construed as furnishing of inaccurate particulars of income.

14. Coming back to another aspect of the issue. Admittedly, the appellant has received share capital from a non-resident venture capital company and the transaction is duly reported and there is only a difference in the perspective of the valuation of shares, which is evident from the findings of the Assessing Officer in the assessment order where, the Assessing Officer never disputed the identity and genuineness of the transaction. The allegation of the Assessing Officer on deliberate act of furnishing of inaccurate particulars of income has neither been established nor has found any mention in any of the order, but for passing the penalty order and that too, has been made against the appellant in a passing reference which is devoid of any substantiation and merit. This fact is further strengthened by the findings of the Tribunal in subsequent A.Y 2012-13 where similar addition made by the Assessing Officer towards share premium received from non-resident venture capital company has been deleted. Therefore, we are of the considered view, that when the Assessing Officer is not doubting the genuineness of the transaction by considering relevant disclosure made by the assessee in respect of share premium received from said entity, the Assessing Officer ought not to have levied penalty u/s 271(21)(c) of the act. Therefore, we are of the considered view that the penalty levied by the Assessing Officer u/s 68 cannot be sustained under law.

15. We further note that the appellant has filed further appeal before the Hon'ble Bombay High Court against the order of

the Tribunal and the question of law raised by the appellant has been admitted by the Hon'ble High Court. Once the question of law has been admitted by the High Court, it becomes apparent that the addition is definitely debatable and in such circumstances, penalty cannot be levied u/s 271(1)(c) of the Act. Therefore, on this count also, penalty levied by the Assessing Officer cannot be sustained.

16. In view of the matter and considering the facts and circumstances of the case, we are of the considered view that there is no error in the reasons given by the learned CIT (A) to delete the penalty levied by the Assessing Officer u/s 271(1)(c) of the Act. Thus, we are inclined to uphold the order of the learned CIT (A) and dismiss the appeal filed by the Revenue.

17. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 20<sup>th</sup> September, 2024.

Sd/- <b>(PRAKASH CHAND YADAV)</b> <b>JUDICIAL MEMBER</b>	Sd/- <b>(MANJUNATHA, G.)</b> <b>ACCOUNTANT MEMBER</b>
--	---

Hyderabad, dated 20<sup>th</sup> September, 2024

***Vinodan/sps***

Copy to:

S.No	Addresses
1	Dy. Commissioner of Income Tax, Central Circle 3(1) 7 <sup>th</sup> Floor, Aayakar Bhavan, Basheerbagh, Hyderabad 500004
2	M/s. Varsity Education Management (P) Ltd, 6A/1, Court Chambers, New Marine Line, Sir Vitthaldas Thackersey Marg, Mumbai 400020
3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*