

**आयकर अपीलीय अधिकरण न्यायपीठ, पटना।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PATNA BENCH, PATNA**  
(Through virtual hearing at Kolkata)

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER**  
&  
**DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.99/PAT/2021**  
**Assessment Year: 2013-14**

<b>ACIT, Central Circle -1</b> Patna, 6 <sup>th</sup> Floor, C.R. (Annexee) Building, Bir Chand patel Path, Patna-800001	Vs	<b>Piyush &amp; Associates Private Ltd.</b> Pirmohani, Kadamkuan, patna, Bihar-800003  [PAN : AADCP3041N]
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

**I.T.A. No.78/PAT/2021**  
**Assessment Year: 2018-19**

<b>Piyush &amp; Associates Private Ltd.</b> Pirmohani, Kadamkuan, patna, Bihar-800003 [PAN : AADCP3041N]	Vs	<b>ACIT, Central Circle -1</b> Patna, 6 <sup>th</sup> Floor, C.R. (Annexee) Building, Bir Chand patel Path, Patna-800001
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

**I.T.A. No.79 & 80/PAT/2021**  
**Assessment Year: 2015-16 & 2016-17**

<b>Prominent Financial</b> <b>Advisory Private Limited</b> 16, Ganesh Chandra Avenue, Kolkata, West Bengal-700 005  [PAN : AAACP4793L]	Vs	<b>ACIT, Central Circle -1</b> Patna, 6 <sup>th</sup> Floor, C.R. (Annexee) Building, Bir Chand patel Path, Patna-800001
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

**I.T.A. No.102 & 103/PAT/2021**  
**Assessment Year: 2016-17 & 2017-18**

<b>ACIT, Central Circle -1</b> Patna, 6 <sup>th</sup> Floor, C.R. (Annexee) Building, Bir Chand patel Path, Patna-800001	Vs	<b>Prominent Financial Advisory Private Limited</b> 16, Ganesh Chandra Avenue, Kolkata, West Bengal-700 005
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Nishant Maitin, CA
Revenue by :	Shri Rinku Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 24.09.2024  
घोषणा की तारीख /Date of Pronouncement : 21.10.2024

**आदेश/ORDER**

**PER BENCH:**

The captioned appeals filed by the assessee & Revenue, pertaining to assessment years 2013-14, 2015-16 to 2018 are directed against the orders passed by the Learned Commissioner of Income Tax (Appeals), Patna-3, (hereinafter referred to as the 'Id. CIT(A)') even dated 11<sup>th</sup> October, 2021 2013-14, 2015-16 to 2018 passed u/s 250 of the Income Tax Act, 1961 ('Act').

2. Since the issues raised in the instant appeals are common and assessee's are part of same business group, these appeals have been heard together and are being disposed off by this common order for the sake of convenience and brevity.

3. Both the assessee(s) in appeal before us are part of Aligarh Locks(P) Ltd. (ALPL), which is engaged in manufacturing and trading of iron rods, Ms Steel and Shutter section. This group was subjected to search and seizure action u/s 132 of the Act

conducted on 15<sup>th</sup> March, 2018. On account of search, assessment proceeding for preceding six assessment years were initiated by way of issuing valid notice u/s 143(2) and 142(1) of the Act after the assessee had furnished IT return in response to notice u/s 153A of the Act, and additions have been made by the ld. AO which have been partly deleted by ld. CIT (A). Respective appeals before us are being adjudicated in the subsequent Paras.

**ITA No. 99/PAT/2021 for A.Y. 2013-14 (Piyush & Associates (P) ltd.**

4. First we take ITA No.99/PAT/2021 for A.Y. 2013-14, at the instance of the Revenue.

5. Though the Revenue has raised as many as five grounds of appeal, but the sole grievance is that the ld. CIT (A) erred in deleting the addition of ₹2,37,30,852/- made by the ld. AO by estimating the net profit. Facts in brief are that the assessee i.e. Piyush and Associates Pvt. Ltd., which was subjected to search and seizure action, Tally data in the name of M/s Jai Durge, was found, wherein various transactions of purchase and sale and bank were appearing. The ld. AO was of the view that in this tally in the name of Jai Durge all the transactions of the Aligarh group, were recorded (whether or not disclosed in regular books of accounts). He further took out the average gross profit rate considering the Gross Profit rate offered by ALPL in its regular books and that of the assessee, Piyush and Associates Pvt. Ltd. and the same was computed at 4.40%. Thereafter, ld. AO considering the ratio of turnover offered in the regular books, bifurcated the turnover appearing in the Tally Data in the name of Jai Durge account and then computed the profit of the assessee alleging it to be the profit on unrecorded sales. Aggrieved assessee preferred the appeal before the ld. CIT (A) and succeeded.

6. Before us, the ld. DR supported the order of the ld. AO and on the other hand, the ld. Counsel for the assessee supported the finding of ld. Commissioner of Income-tax (Appeals).

7. We have heard the rival contentions and perused the records placed before us. The revenue is aggrieved with the deletion of addition made towards estimated profit from the alleged unrecorded sales appearing in sales Tally Data in the name of 'Jai Durge'. We further observe that the ld. AO has applied the average gross profit rate and treated the total sales appearing in 'Jai Durge' Tally data as unrecorded. Further, before ld. CIT (A) the contention raised by the assessee reads as under:

*"We humbly submit that the above grounds are common for all Assessment Years, which the figures which vary for each assessment year.*

*During the course of assessment, it was submitted that said account of Jai Durge is nothing but a trial consolidation of accounts of group companies ie Aligarh Locks Private Limited and Piyush & Associates Private Limited.*

*It is further submitted that the trial action of merging/ consolidation of accounts of both the companies by an inquisitive accountant in the office of the assessee resulted in production of such absurd and unreliable data.*

*It is submitted further that following defects exist in the said data so seized from the assessee*

*There is no reference of share capital in the said data which the seed for earning any income.*

*There is no reference of opening and closing stock in the said data. It is beyond doubt that any business will not have any residuary stock at the close of financial year.*

*Difference in opening balance also renders the said data faulty and unworthy of any reliance*

*The assessee deals with excisable goods and as such cannot move the same across the places without valid permits in this regards.*

*No vouchers and supporting bills as noted in the said account were recovered from the assessee .*

*No undisclosed bank account to the effect of having been utilized for executing such huge transactions was found during the entire period of search.*

*During the entire vat and excise assessment, no undisclosed sale and purchases were found. Copy of audit report from excise department is enclosed. In the entire report, there is no finding of any undisclosed sale or purchase.*

*Further the figure of purchases as found in the said data and as noted by your honour in the questionnaire is different, thereby implying that the department is resorting to intrapolation of data so seized.*

*The purchases and sales effected in the said account are unverified and not vouched.*

*It was further prayed that humbly submitted that said data is not conclusive evidence of assessee having effected the said sale and purchase.*

*The observations of Id AO are also in consonance with our submissions wherein we have submitted that compilation of accounting data of Aligarh Locks Private Limited and Piyush & Associates Private limited consolidated as "Jai Durge" is unreliable.*

*Once that being factual position admitted by Id AO, there is no reason for relying the sales figures noted in "Jai Durge" and applying the GP rate thereto. It may be submitted that the Id AO has not found any anomaly in the audited financial statements furnished by the appellant and has relied on the same. Copies of audited financial statements are enclosed.*

*It is established legal position that audited financial statements furnished by assessee can only be disturbed once any anomaly is found therein and the books of account of the assessee are rejected by Id AO.*

*In case of Mysore Fertiliser Co. v. CIT [1966] 59 ITR 268 (Mad) it was held that the ITO shall make the assessment to the best of his Judgement, it means that he must make it according to the rules of reason and justice, not according to private opinion, but according to law and not humour, and the assessment is to be not arbitrary, vague and fanciful, but legal and regular.*

*In case of CIT v. Eastern Commercial Enterprises [1994] 210 ITR 103 (Cal) it was held that where the assessee has given a comparative instance of gross profit rate, it is necessary for the department to come to a finding as to the norm of the gross profit on the basis of comparative cases.*

*Therefore, it is the duty of the Assessing Officer to counter the comparative statement cited by the assessee before he can have the option to estimate the gross profit.*

*It was observed by Hon'ble Court in case of Aluminium Industries (P) Ltd. v. CIT [1995] 80 Taxman 184 (Gauhati) that additions to the profits of the assessee made solely on the ground that it was low without giving a specific finding that the accounts of the assessee were not correct and complete, or that the income could not be properly determined and deduced from the accounting method employed by the assessee, is not justified. The mere fact that there was a less rate of gross profit declared by an assessee as compared to the previous year would not by itself be sufficient to justify the addition.*

*It was held in case of CIT v. Surjit Singh Mahesh Kumar [1994] 210 ITR 83 (All.) that so long as the Best Judgement has nexus to material on record and the discretion in that behalf has not been exercised arbitrarily or capriciously, it is not open to scrutiny in reference proceedings to give rise to a question of law or to a mixed question of law and fact.*

*In the instant case, the Id AO has not rejected books of account. The Id AO has further substituted the sales figures when he himself lays down the reasons for the consolidated date being incorrect.*

*It is submitted that the audited financial statements, excise audit report another papers and documents were filed with the Id AO as well as on the portal maintained by Income tax department. Acknowledgment of same is also enclosed with this submission.*

*In the light of above facts and self-admission of id AO raising doubt on the figures of the pen drive, the impugned addition is not sustainable and may kindly be deleted.”*

8. Considering the contentions of the assessee as well as the settled judicial precedents Id. CIT (A) deleted the impugned addition observing as follows:-

*“Appellate finding and decision*

*I have gone through the finding of AO and submissions made by AR and of the view that AO has not proved any nexus between seized material and the audited financial statements of the appellant.*

*Absence of opening stock and no disclosure of capital in the data renders the same defective, furthermore, the difference in opening balance also suggests that the data is not correct. Furthermore, there is no finding that all entries in bank accounts of the purported consolidated tally data in the name of "Jai Durge" contain all the entries in the actual books of the assessee.*

*The assessee deals in voluminous items of iron rods, MS steel and shutter materials. These being voluminous in nature cannot be carried without issue of road permits.*

*The AO has not disputed the quantitative details furnished by appellant in the audited financial statements. The appellant had furnished copy of excise audit report before the AO. Even the excise department has not noted any discrepancy in the audited financial statements.*

*The AR further drew my attention to the fact that no adverse inference has been drawn by Sales-tax/VAT department, thereby accepting the sales disclosed in the audited financial statements.*

*In the light of above facts, the addition on account of differential sales determined on the basis of pendrive seized during the course of search is hereby deleted.”*

9. From perusal of the above finding of the Id. CIT (A) and examining the same in light of the facts narrated in the written submission filed before the Id. CIT (A) as well as before us, we notice that the assessee is registered with the excise department and the movement of excisable goods is recorded in the register/ records mandated under the excise Act. We also notice that there is no reference of opening and closing stock and also no reference of share capital or other business funds. Apparently except Tally

data no other incriminating material indicating unrecorded sales/purchases were found by the search team. Further, we find that the ld. AO without having any evidence has erred in applying the average gross profit rate of two different business concerns having different style of carrying out the business activity and such calculation of gross profit rate is not based on any independent verification. It is also an admitted fact that the assessee which deals in voluminous items of iron rods, Ms Steel and Shutter material, etc. cannot be carried out without the issue of valid permits under sales tax/ VAT Act. Under all these facts and circumstances, we are of the considered view that the action of the ld. AO estimating the profit for the alleged unrecorded sales is based on surmises or conjunctures and there is no justification for making the alleged addition. Thus, no infirmity is called for in the finding of the ld. CIT (A). Effective grounds of the appeal are dismissed. The appeal of the Revenue for A.Y. 13-14 in case of Piyush and Associates Pvt. Ltd. is dismissed.

**ITA No. 78/PAT/2021 for A.Y. 2018-19 (Piyush & Associates (P) Ltd.**

10. Now, we take up the assessee's appeal in ITA No.78/PAT/2021, relevant to A.Y. 2018-19. The sole grievance of the assessee is that the ld. CIT (A) erred in treating the difference in value of physical stock and stock appearing in the books amounting to ₹9,08,766/- as undisclosed purchase of the assessee.

11. We have heard the rival contentions and perused the records placed before us. We observe that during the course of search and survey action, the physical stock at the godown was valued at ₹4,08,96206/- but the total stock in the books of account as on 14<sup>th</sup> March, 2008, as found at ₹3,99,15,440/-. The difference has been

added in the hands of the assessee. We note that alleged difference is only 2% of the total stock in hand. There is no details which showed that there is any difference in quantity of the physical stock vis-à-vis, book stock. It is an admitted fact that the assessee is registered under excise Act and is regularly maintaining quantitative records. Unless there is a difference in the quantity of share is found by the search/ survey team, the impugned addition of ₹9,80,766/- cannot stand because the same may arise on account of difference in rate of goods applied by the search / survey team and the purchase rate paid by the assessee. We thus, find merit in the submission made by the ld. Counsel for the assessee and reverse the finding of ld. CIT (A) and delete the impugned addition of ₹9,80,766/-. Ground of appeal raised by the assessee for A.Y. 2018-19 is allowed. The appeal of the assessee is allowed.

**79 & 80/PAT/2021 for A.Y. 2015-16 & A.Y. 2016-17 (Prominent Financial Advisory P. Ltd.)**

12. Now, we take up ITA No.79 and 80/PAT/2021, in case of the assessee namely Prominent Financial Advisory Pvt. Ltd. for A.Ys. 2015-16 & 2016-17.

13. The common issue raised in both the appeals is against the estimated disallowance of interest expenditure at ₹4,64,520/- and ₹6,81,334/- for A.Y. 2015-16 and 2016-17, respectively.

14. We have heard the rival contentions and perused the records placed before us. We observe that the ld. AO while carrying out the assessment proceedings for the impugned assessment year, based on information gathered during search and seizure action u/s 132 of the Act, made certain additions for unexplained credits which were in the form of amount received from existing loans and

advances/ sales of investment. The quantum of addition will be dealt by us in subsequent paras, however, the ld. AO disallowed the interest of the financial charges, but, the ld. CIT (A) sustained the same only to the extent of 25%. We notice that the assessee which is a private limited company is maintaining regular books of account which are duly audited and ld. AO has not rejected the book results. There is no detailed discussion/ reasoning about the alleged disallowance in the assessment order and even the ld. CIT (A) has not devoted any energy to examine the genuineness of the expenditure and on the estimated basis sustained it at 25% and such adhoc disallowance without any concrete evidences cannot be held to be justified and the same has been consistently held by Hon'ble Courts. We are therefore, set aside the findings of the ld. CIT (A) and also set aside the impugned disallowance of expenses towards interest /financial charges at 4,64,520/- and ₹6,81,334/- for A.Y. 2015-16 and 2016-17 respectively. The effective grounds of appeal of the assessee in ITA No.78,80/PAT/2021 for A.Y. 2015-16 and 2016-17 are hereby allowed.

**ITA No.102 & 103/Pat.2021 for A.Y. 2016-17 and 2017-18 (Prominent Financial Advisory P Ltd.)**

15. Now, we take up the Revenue's appeal in ITA No.102 & 103/PAT/2021 in case of the assessee namely Prominent Financial Advisory Pvt. Ltd. for A.Y. 2016-17. Though the Revenue has raised detailed grounds of appeal but the grievance is only limited to the deletion of addition made u/s 68 of the Act at ₹2.04 crore and ₹2,28,87,500/- for A.Y. 2016-17 and 2017-18 and partly deleting the disallowance of expenses at ₹20,44,002/- for A.Y. 2016-17.

16. So far as the issue raised for deletion of disallowance of expenses of ₹20,44,002/-, we find that the same has already been dealt by us in the preceding paras, while adjudicating the

assessee's appeal in ITA No.80/PAT/2021 for A.Y. 2016-17, where we have held that the adhoc / estimated disallowance are uncalled for in absence of any concrete evidence and more so that these being assessments framed after carrying out the search, the ld. AO ought to have made reference to any incriminating material found during the course of search/ survey action in absence there of the disallowance of expenses made by the ld. AO is uncalled for. Thus, the ground of appeal raised by the Revenue challenging the deletion of addition of disallowance of expenses of ₹20,44,002/- is hereby dismissed.

17. So far as, the issue of deletion of addition made u/s 68 of the Act is concerned, facts in brief are that the ld. AO while carrying out the assessment proceedings, noticed that during the year assessee has received the funds from certain companies. It was stated by the assessee during the assessment proceedings that the alleged sums were received from sale of investment. It was also submitted that the assessee received share capital and share premium amounting to ₹13.80 crore during the F.Y. 2007-08 and that the funds available with the company have thereafter being utilized making investment in the equity as well as giving loans and advances. Thereafter, the assessee kept on liquidate its investments year to year. From any 2011-12 to 2017-18, assessee has received around 9,15,25,000/- and the year wise amount received reads as under: -

A.Y.	Amount
2011-12	1,52,37,500/-
2012-13	65,00,000/-
2013-14	88,00,000/-
2014-15	54,00,000/-
2015-16	1,23,00,000/-
2016-17	2,04,00,000/-
2017-18	2,28,87,500/-

Total	9,15,25,000/-
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18. However, the Id. AO was not satisfied and he on observing that the companies with whom the assessee has received the alleged funds are either not active or have not responded to the notices and treating them to be shell and paper companies alleged additions have been made. We, further notice that when the matter travelled before the Id. CIT (A), the assessee made written submission which are applicable for both the years in dispute before us and the same reads as under:-

*“Appellant’s Contention*

*The Id AO noted that The modus operandi employed by the assessee group to route its unaccounted money in the garb of selling of investment of Kolkata based paper companies. Once, the money is credited in the bank account of the assessee, he is free to utilize it in whichever way he desires. In the instant case', the company has received share premium from IS companies which include 12 Kolkata based paper company and transferred the amount to other Kolkata based shell companies showing them as their investment in unquoted securities. The group has sold corresponding unquoted securities investment in Kolkata based shell companies in subsequent A.Ys for the purpose of routing their unaccounted income. The assessment year wise details of infusing its unaccounted income in the garb of selling or investment are as under:-*

A.Y.	Amount
2011-12	1,52,37,500/-
2012-13	65,00,000/-
2013-14	88,00,000/-
2014-15	54,00,000/-
2015-16	1,23,00,000/-
2016-17	2,04,00,000/-
2017-18	2,28,87,500/-
Total	9,15,25,000/-

*The Id AO further noted that questions were asked to Sh. Piyush Nandan regarding the purchase of shell company namely M/s Prominent Financial Advisory Pvt. Ltd. in F.Y. 2010-11 with share premium of Rs. 13.24 crores. The company has received share premium from 15 companies which include 12 Kolkata based paper company. The group has sold corresponding unquoted securities investment in Kolkata based shell companies in subsequent Asst Years for the purpose of routing their unaccounted income.*

*During the course of assessment proceedings, the Id AO further asked the appellant to explain why Rs. 13.24 crores should not be added as undisclosed income in total income of the assessee vide questionnaire dated 18/10/2019. The questionnaire is reproduced as under:*

"It is gathered from materials on record that the company M/s Prominent Financial Advisory Pvt. Ltd. has huge share premium of Rs. 13.24 crores and has corresponding investments in Kolkata based Paper Company of RS.13.54 crores. The group has purchased the company from Kolkata based entry operator. You are requested to explain why should not be Rs. 13.24 crores should not be added as undisclosed income in your total income

During the course of assessment, it was submitted that Prominent was incorporated on 13.10.2007 and as far as capital and premium are concerned, the same were infused in the company during FY 2007-08. Scrutiny assessment u/s 143(3) r.w 147 was carried on by department for Asst Year 2008-09. Copy of balance sheet and assessment order are being enclosed as Annexure 12 & 13 of this submission. The same are being again enclosed as Annexure 2 & 3 of this submission.

Though the assessee group has acquired the company, much before the check period, it was done with pure business intent. It may be submitted that the assessee group continues to be shareholder in the assessee company since.

The Following tabular chart will demonstrate that no change in shareholding has effected since F.Y. 2008-09.

Asst Year	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Shareholder									
V K Gupta HUF	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00
Sheetal Gupta	36,000.00	36,000.00	36,000.00	36,000.00	36,000.00	36,000.00	36,000.00	36,000.00	36,000.00
Vinod Kumar Gupta	28,000.00	28,000.00	28,000.00	28,000.00	28,000.00	28,000.00	28,000.00	28,000.00	28,000.00
K N Varshney HUF	36,800.00	36,800.00	36,800.00	36,800.00	36,800.00	36,800.00	36,800.00	36,800.00	36,800.00
Jyotsana Varshney	2,10,000.00	2,10,000.00	2,10,000.00	2,10,000.00	3,88,000.00	3,88,000.00	3,88,000.00	3,88,000.00	3,88,000.00
Parul Varshney	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00
K N Varshney	1,78,000.00	1,78,000.00	1,78,000.00	1,78,000.00	-	-	-	-	-
Lata Gupta	21,200.00	21,200.00	21,200.00	21,200.00	21,200.00	21,200.00	21,200.00	21,200.00	21,200.00

It is submitted that the assessee company has made investment in various companies through account payee cheques only, redemption of which has also been effected from time to time through account payee cheques only. The fact of assessee company having made investment in paper companies is not been proven. Furthermore, there is no dispute that the assessee was in possession of share capital and premium which was scrutinized u/s 143(3) r.w. 147 of the act and found correct by the department.

Further no material whatsoever has been seized by the department during the entire search and seizure proceedings to suggest that the capital and premium in possession of the assessee company were fictitious.

It is humbly submitted that since no anomaly has been found by the department in the share capital and premium of the assessee company so subscribed before the check period, and no transfer of shares of any fictitious nature has been effected during the entire check period, no adverse view may be taken.

This is classic example where additions have been made for receiving amount upon liquidation of investments held since long and duly scrutinize duly income tax department u/s 143(3) of the act.

It may further be submitted that all the sums so liquidated have been received by through banking transactions and copies of bank statements evidencing the same

were furnished to the Id AO. Copies of bank statements are enclosed as Annexure 4 of this submission.

The Id AO simply, relying on the statement of Sri Piyush Nandan, believed that the company is a bogus company as it did not hold any AGM nor declared any dividend.

The observation of the Id AO is unfounded as necessary AGM is carried out annually and details thereof are filed with the Registrar of Companies, working under Ministry of Corporate Affairs, Government of India.

Non-declaration of dividend is no ground as the company has not generated sufficient profits to declare dividend and it is beyond business prudence to declare dividend out of capital and other reserves besides procuring permission from central government for doing so.

*In the light of above facts, the impugned addition may kindly be deleted.”*

19. We further notice that the Id. CIT (A) on considering the details furnished by the assessee and also considering that the nexus of the funds which were received during the year is with the funds received by the assessee company during the F.Y. 2007-08 and the finding of the Id. CIT (A) reads as under:-

*“I have gone through the finding of AO and submissions made by AR and of the view that AO has not proved any nexus between seized material and the audited financial statements of the appellant.*

*Mere statement of the searched person cannot be basis of making addition in respect of investments which have been liquidated by it and proceeds received through account payee cheques.*

*Furthermore, the appellant has not enhanced any capital or received any unsecured loan during the entire period where proceedings were conducted.*

*The case of the appellant was also scrutinized by department u/s 143(3) of the act for asst year 2008-09. On perusing the audited financial statements, it is seen that no change in share capital and unsecured loan has been effected.*

*The AO simply, relying on the statement of Sri Piyush Nandan, believed that the company is a bogus company as it did not hold any AGM nor declared any dividend. It is now clear that statements recorded during search have no evidentiary value unless some concrete material is otherwise found in the course of search. In the present case, the AO has not pointed out to any other aspect except non carrying of AGM and non-declaration of dividend.*

*The observation of the AO does not appear to be correct as necessary AGM is carried out annually and details thereof are filed with the Registrar of Companies, working under Ministry of Corporate Affairs, Government of India.*

*Non-declaration of dividend is no ground as the company has not generated sufficient profits to declare dividend and it is beyond business prudence to declare dividend out of capital and other reserves besides procuring permission from central government for doing so.*

*In the light of above discussions, addition on account of liquidation of investments made previously and proceeds received through banking channels is hereby directed to be deleted.”*

20. Now going through the above finding of the Id. CIT (A) and examining the details filed in paper book containing 16 pages furnished on 9<sup>th</sup> September, 2024, we note that the assessee issued ₹5,52,000/- equity shares of face value of ₹10 and charge the premium of ₹240 per share and received the total sum of ₹13.80 crore. This was the first year of incorporation and the return filed by the assessee was selected for scrutiny and assessment u/s 147 read with section 143(3) of the Act was framed on 10<sup>th</sup> December, 2010, making additions and assessing income at ₹16,800/-. To our information as stated by the Id. Counsel for the assessee no revisionary proceeding were carried out thereafter and the assessment order for A.Y. 2008-09 framed by the Id. AO attained finality. It therefore proves that the fresh amount received during the F.Y. 2007-08 from share capital and share premium has been accepted by the Revenue authorities and found to be correct and genuine. Now the funds which were received during the financial year was 2007-08 were invested by the assessee company in the unquoted equity shares/ Loans and advances. Now these funds were moved for making investment in equity shares was and the assessee thereafter liquidated the funds year after year as mentioned above. We thus, come to the conclusion that it is not a case of fresh cash credit in the form of unsecured loan or raising of share capital or share premium during the years under appeal before us but it is a case of selling of the old brought forward investment and the source for making investment received in past during F.Y. 2007-08 stands proved. Thus, we fail to find any reason to interfere in the finding of the Id. CIT (A) for the impugned assessment year deleting the alleged addition u/s 68 of the Act by

the ld. AO. The effective grounds of appeal raised by the Revenue challenging the deletion of addition u/s 68 of the Act at ₹2.04 crore and ₹2,28,87,500/- for A.Y. 2016-17 and 2017-1 are hereby dismissed. The appeal of the Revenue is dismissed.

21. In the result, the appeal of the assessee in ITA Nos.78,79,80/PAT/2021, are allowed and that of the Revenue in ITA No. 99,102,103/PAT/2021, are dismissed.

**Order pronounced in the Court on 21<sup>st</sup> October, 2024 at Kolkata.**

Sd/-

**(SANJAY GARG)  
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 21.10.2024

**\*SS, Sr.Ps**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , पटना/DR,ITAT, Patna,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

//TRUE COPY//

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
ITAT, Patna