

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.95/Nag./2018
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Circle-1, Nagpur Appellant

v/s

M/s. Nihal Gits Pvt. Ltd.
101, Jai Bhawani Society Respondent
Wardhaman Nagar, Nagpur 440 008
PAN – AADCN1714G

Assessee by : Shri Abhay Agrawal
Revenue by : Shri Abhay Y. Marathe

ITA no.237/Nag./2018
(Assessment Year : 2012-13)

Asstt. Commissioner of Income Tax
Circle-1, Nagpur Appellant

v/s

M/s. Vishnu Gilt Pvt. Ltd.
101, Jai Bhawani Society Respondent
Wardhaman Nagar, Nagpur 440 008
PAN – AADCV1738J

Assessee by : Shri Abhay Agrawal
Revenue by : Shri Abhay Y. Marathe

ITA no.121/Nag./2020
(Assessment Year : 2012-13)

Asstt. Commissioner of Income Tax
Circle-1, Nagpur Appellant

v/s

M/s. Raghav Finvest Pvt. Ltd.
101, Jai Bhavani Society Respondent
Wardhaman Nagar, Nagpur 440 008
PAN – AAECR6095B

Assessee by : None
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 22/10/2024

Date of Order – 25/10/2024

ORDER**PER K.M. ROY, A.M.**

The Revenue has filed the captioned appeals which are against three different assessees. In case of M/s. Raghav Finvest Pvt. Ltd., the Revenue has challenged the impugned order dated 01/09/2020, passed by the learned Commissioner of Income Tax (Appeals)-1, Nagpur, [*learned CIT(A)*], for the assessment year 2012-13.

(ii) In case of M/s. Vishnu Gilts Pvt. Ltd., the Revenue has filed its appeal challenging the impugned order dated 20/07/2018, passed by the learned CIT(A)-1, Nagpur, [*learned CIT(A)*], for the assessment year 2012-13.

(iii) In case of M/s. Nihal Gits Pvt. Ltd., the Revenue has filed its appeal challenging the impugned order dated 28/02/2018, passed by the learned CIT(A)-1, Nagpur, [*learned CIT(A)*], for the assessment year 2012-13.

2. Since these appeals pertain to three different assessees involving common issues, except variation in figures, which arose out of identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were heard together and are being disposed of by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. We are, accordingly, narrating the facts, as they appear in the appeal being ITA no.95/Nag./2018, for assessment year 2012-13, in the matter of M/s. Nihal Gits Pvt. Ltd.

M/s. Nihal Gits Pvt. Ltd.
ITA no.95/Nag./2018
Assessment Year – 2012-13

3. In this appeal, the Revenue has raised following grounds:-

"1. On the facts and circumstances of the case and in law, the learned CIT(Appeals) erred in deleting the addition of Rs.2,47,38,000/- made by the assessing officer towards bogus share premium received.

2. On the facts and circumstances of the case and in law, the learned CIT(Appeals) erred in so deleting the addition without appreciating the findings of the assessing officer that the financials of the investee company did not justify receipt of such huge share premium and by not noticing the decision in the case of Cornerstone Property Investments Pvt. Ltd. Vs. ITO, ITAT Bangalore dated February 9, 2018 published on March 3, 2018 on ITAT online.

3. On the facts and circumstances of the case and in law, the learned CIT(Appeals) erred in holding that share capital and premium received are on capital account and therefore cannot be treated as income without appreciating the fact that the assessing officer had given a finding that the transaction was not a genuine transaction and therefore the same had to be treated as on revenue account.

4. Any other ground which may be taken with the permission of Hon'ble ITAT."

4. Facts in Brief:- The assessee is a Private Limited Company. It is an investment company, which invests into shares of other companies. The Assessing Officer observed that the assessee company, during year under consideration, raised share capital amounting to ₹ 2,60,40,000 (including premium) from two companies ('investor companies'). The assessee had issued 1,30,200 shares @ ₹ 200 per share (Face Value ₹ 10, each and share premium of ₹ 190 each) to the investor companies. The Assessing Officer finalized the assessment proceedings by making addition of share premium received of ₹ 2,47,38,000 (i.e., 1,30,200 shares @ ₹ 190 each to the total income of the assessee. The assessee being not satisfied with the assessment

order of the Assessing Officer, carried the matter before the first appellate authority.

5. The learned CIT(A) deleted the addition made by the Assessing Officer by observing as follows:–

"4.5 I find merit in the alternate submission of the appellant that, it is now a settled legal proposition of law that, assuming if there is any suspicion on genuineness of shareholders, then the addition can be made in the hands of the shareholders only and not the appellant company. The appellant has relied on the following judicial precedents of various Hon'ble Courts including Hon'ble Apex Court and Hon'ble Bombay High court as under:

i. CIT vs Lovely Exports P. Ltd. (216 CTR 0195) (Supreme Court), wherein it has been held as under:–

"If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."

ii. CIT v. Gagandeep Infrastructure (P) Ltd (247 Taxman 245) (Bombay High Court) wherein it has been held as:

"Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in Lovely Exports (P.) Ltd. (supra) in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by re-opening the assessment of such shareholders and assessing them to tax in accordance with law it does not entitle the Revenue to add the same to the assessee's income as unexplained credit"

iii. CIT v. Goa Sponge and power Ltd (Tax Appeal 16 of 2012) (Bombay High Court) wherein it has been held as under:

"Once the authorities have got all the details, including the names and addresses of the shareholders, their PAN/GIR number, so also the name of the Bank from which the alleged Investor received money as share application, then, it cannot be termed as "bogus". The controversy is covered by the judgments rendered by the Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd., vs. CIT, (2008) 216 CTR (SC) 195, as also by this Court in CIT vs. Creative World Telefilms Ltd., (2011) 333 ITR 100 (Bom.). In such circumstances, we are of the view that the Tribunal's finding that there is no justification in the addition made under Section 68 of the Income Tax Act, 1961 neither suffers from any perversity nor gives rise to any substantial question of law."

The above case laws have been referred only for the proposition that if the shareholders are found to be not having adequate means, the addition can be made in the hands of the shareholders only and not the appellant company. Though, it is noted that in the present case no finding has been given by the A.O. that the shareholders/share applicants were not identifiable or bogus.

4.6 On perusal of assessment order, the only objection of the A.O. was that the huge share premium amount received by the appellant was not justified and not a rational decision on part of investor companies. In response, the appellant submitted that it had provided detailed justification for share premium received before the A.O. The appellant submitted that it is a company which is promoted by Shri Nandlal Maloo and Shri Mahesh Maloo who were also one of the promoters of company M/s Murli Industries Limited. The amount of share capital raised was invested in purchasing shares of M/s Murli Industries Limited. The appellant submitted that the investor companies were aware that the promoters Shri Nandlal Maloo and Shri Mahesh Maloo had a proven track record of management & profit generating skills while being promoters of M/s Murli Industries Limited in the solvent, power, pulp as well as the paper industry and had vast experience in the production of various Agro-based products. The investor companies were well aware of the plans of the promoters of M/s. Murli Industries Limited, that they were in the process of setting up new cement plants all over India and had obtain necessary licenses for the same. The appellant had provided details about the future upcoming plants of M/s Murli Industries Limited which had good future business prospects. The appellant submitted that, the investor companies anticipating the rapid growth in housing & infrastructure sector, found it expedient to invest in a company under cement industry which would have fetched good returns in future. The appellant company further submitted that it had earlier raised share capital at similar premium amount of Rs. 190/- per share of face value of Rs.10/- per share from one of the group company i.e M/s Nandlal Enterprises Limited during FY 2009-10. The department has not raised any objection in respect of share premium collected from the group company during FY 2009-10. Copy of bank statement showing receipt of share capital including premium & breakup of share capital as on 31st March 2012 was placed on record. The appellant further submitted that it was subjected to scrutiny assessment during immediate preceding FY 2010-11 wherein the proceedings have been finalized by accepting the returned income shown by the appellant. Copy of Assessment Order of was placed on record.

4.7 I have carefully considered the submissions of the appellant. I find that, the AO erred in doubting the rationale behind making the investment by the investor companies. The appellant had provided details regarding future prospects of M/s Murli Industries Limited contemplating expansion in the field of cement industry. The AO has not doubted the details provided by the appellant regarding future plants to be set-up by M/s Murli Industries Limited. I find merit in the appellant's submission that issuing shares at a premium is a commercial decision is a prerogative of the Board of Directors of a company and the wisdom of the shareholders whether they want to subscribe to such premium. It is a settled proposition of law that the AO cannot step into shoes of a businessman to judge rationale of an expenditure or an investment vide

CIT v. Dalmia Cement (254 ITR 377) (Delhi HC) approved by SC in 288 ITR 1, CIT v. Walchand & Co. (P.) Ltd. [1967] 65 ITR 381 (SC), J.K. Woollen Mfrs. v. CIT [1969] 72 ITR 612 (SC), Aluminium Corpn.of India Ltd. v. CIT [1972] 86 ITR 11 (SC) and CIT v. Panipat Woollen & General Mills Co. Ltd. [1976] 103 ITR 66 (SC).

4.8 During the course of appellate proceedings, the appellant was asked about applicability of provisions of section 56(2)(viib) of the Act. The appellant submitted that the aforesaid provision has been inserted for the first time vide Finance Act 2012 w.e.f 01/04/2013. This has been clarified vide CBDT Circular No.3/2012 dated 12/06/2012. Therefore, the appellant submitted that the said provision will not be applicable in the cent case.

4.9 On carefully considering the facts of the case, I find force in the submission of the Appellant that it is a settled position of law that amount received towards share premium account is a 'capital receipt not exigible to tax and cannot be treated as 'income. The appellant has relied on the following judicial precedents of various Hon'ble Courts including Hon'ble Apex Court and Hon'ble Bombay High court as under.

i. *Vodafone India Services Private Limited (368 ITR 1) Bombay High Court wherein it has been held as under.*

"The word income for the purpose has a well understood meaning as defined in section 2(24). This even when the definition in section 2(24) 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). In such a case, capital gains chargeable to tax under section 45 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) and the same is enumerated as income in section 2(24)(xvi)."

ii. *CBDT vide its Instruction No. 2/2015 dated 29/01/2015 has accepted the aforesaid decision of Hon'ble Bombay High Court and clarified the same as under.*

"In reference to the above cited subject, I am directed to draw your attention to the decision of the High Court of Bombay in the case of Vodafone India Services Pvt. Ltd. for A.Y. 2009-10 (WP No.871/2014), wherein the Court has held, inter-alia, that the premium on share issue was on account of a capital account transaction and does not give rise to income and, hence, not liable to transfer pricing adjustment.

2. *It is hereby informed that the Board has accepted the decision of the High Court of Bombay in the above mentioned Writ Petition. In view of the acceptance of the above judgment, it is directed that the ratio decidendi of the judgment must be adhered to by the field officers in all cases where this issue is involved. This may also be brought to the notice of the ITAT, DRPS and CIT (Appeals)."*

iii. *Dy. CIT v. Mis Apeak Infotech Pvt. Ltd (ITA No.414/Nag/2016) (Nagpur Tribunal) wherein it has been held as under:-*

"18. Once it is clear that share capital and share application money and premium fall in the realm of capital receipt, they cannot be brought to tax u/s 28 of the I.T. Act as profits and gains of business. This proposition has been duly re-recognized by the decision of Hon'ble Apex Court and Hon'ble jurisdictional High Court. This view has recently been affirmed by Hon'ble Apex Court in the case of M/s G.S. Homes & Hotels P. Ltd. vs. DCIT in Civil Appeal No.(s) 7379-7380 of 2016 vide order dated 9th August, 2016."

The aforesaid order of Hon'ble Nagpur Tribunal has been upheld by the Hon'ble Bombay High court vide Order in ITA No.26/2017 dated 08 June 2017.

iv. G.S. Homes & Hotels (P) Ltd v. DCIT (387 ITR 126) (Supreme Court) wherein it has been held as under:

"Amount received on account of share capital from various shareholders ought not be treated as business income of assessee-company"

4.10 In view of aforesaid discussion, it is evident that the share capital and premium received by the appellant company is an amount received on capital account and cannot be treated as income. Once it is held that the share capital and premium are received on capital account, such receipts cannot be added as income. Respectfully following the judicial precedents as discussed, and considering the totality of facts and circumstances in the case of appellant, I hold that the addition made by the A.O. is unjustified being based on suspicion and surmises without bringing any adverse evidence on record. I find that addition of Rs.2,47,38,000/- towards share premium to be unsustainable and therefore direct the A.O. to delete the said addition."

6. The learned Departmental Representative (*"the learned D.R."*) supported the order passed by the Assessing Officer. The learned D.R. had also filed a gist of submission and case laws in support. Further, the learned D.R. submitted that the assessee failed to file documentary evidences with regards to the investor companies. He submitted that the financial position of M/s. Murli Industries Ltd. was not good so as to demand such huge premium being charged by the assessee from the investor companies. The learned D.R. placed reliance on the decision rendered by the Co-ordinate Bench of the Tribunal, Mumbai Bench, in DCIT v/s Leena Power Tech Engineers P. Ltd., [2021] 130 taxmann.com 341 (Mum. Trib.).

7. The learned Counsel, Shri Abhay Agrawal, appearing for the assessee, supported the order passed by the learned CIT(A). The learned Counsel submitted that during assessment proceedings the assessee had submitted documentary evidences to demonstrate the identity, genuineness, and creditworthiness of the two investor companies. The documentary evidences were filed before the learned CIT(A) and a copy of which is also placed on record at Page-1 to 109 of Paper Book. The learned Counsel further submitted that the learned Departmental Representative's observation that documentary evidences were not filed, is baseless and contrary to the material on record.

8. The learned Counsel further submitted that the issue involved in this appeal is whether the share premium charged by the assessee company is a capital or revenue receipt. The learned Counsel submitted that the Assessing Officer had after examining the documents accepted the subscription to share capital of ₹ 10 per share i.e., share capital of ₹ 13,02,000. The learned Counsel submitted that addition was not made by invoking section 68 of the Act and the identity, genuineness and creditworthiness were never doubted by the Assessing Officer. The Assessing Officer has alleged that there was no justification for charging huge premium and treated the same as business income of the assessee company. The learned Counsel further submitted that the investment decision was taken by the investors based on future prospects of M/s. Murli Industries Pvt. Ltd., in which the assessee company had made the investment. The learned Counsel further submitted that in grounds of appeal filed by the Revenue, reliance was placed on the decision of the Co-

ordinate Bench of the Tribunal, Bangalore Bench, rendered in Cornerstone Property Investments Pvt. Ltd v/s ITO, which has been subsequently reversed by the Hon'ble Jurisdictional High Court. In support of his arguments, the Counsel placed reliance on following judicial precedents:

Raising of Share Premium is a 'capital transaction' and a 'capital receipt' which is not chargeable to tax

- *Vodafone India Services Private Limited (368 ITR 1) (Bombay High Court)*
- *CBDT vide its Instruction No. 2/2015 dated 29/01/2015*
- *Dy. CIT v. M/s Apeak Infotech Pvt Ltd (ITA No.414/Nag/2016) (Nagpur Tribunal). The aforesaid order is upheld by Hon'ble Bombay High Court vide Order in ITA No.26/2017*
- *G.S. Homes & Hotels (P) Ltd v. DCIT (387 ITR 126) (Supreme Court)*
- *Greensaphire Infratech (P.) Ltd v. ITO (140 taxmann.com 308) (Amritsar ITAT)*
- *Adhoi Vyapar (P.) Ltd v. ITO (192 ITD 695) (Mumbai ITAT)*
- *Without prejudice, addition can be made in the hands of the shareholders only and not the Assessee company*
- *CIT vs Lovely Exports P.Ltd. (216 CTR 0195) (Supreme Court)*
- *CIT v. Gagandeep Infrastructure (P) Ltd (247 Taxman 245) (Bombay High Court)*
- *CIT v. Goa Sponge and power Ltd (Tax Appeal 16 of 2012) (Bombay High Court)*
- *CBDT Circular 3/2012 dated 12/06/2012*

Other

- *Cornerstone property Investments (P) Ltd v. ITO (152 taxmann.com 25) (Karnataka HC)*

9. The Appellant has filed following written submission, which are reproduced as under:–

1. The assessee places reliance on the order passed by learned CIT(A) dated 28/02/2018 thereby, deleting the addition made of Rs.2,47,38,000 towards share premium. The assessee relies on the written submission filed before the learned CIT(A) along with the documentary evidences filed, which are enclosed in the paper book at pages 1 to 109. The assessee places reliance on various judicial precedents enclosed at pages 110 to 209 of paperbook.

2. Assessee's submission/ rebuttal with respect to grounds in Department's Appeal filed before your Honour:

2.1 Department's Appeal - Ground No.1: Assessee's rebuttal

The Assessee submits that, vide ground of appeal no.1, it has been wrongly mentioned that, the addition was made of Rs.2,47,38,000 towards bogus share premium received. The assessee submits that, nowhere in the assessment order it has been mentioned by the learned AO that, the share premium received was bogus. In fact, the learned AO had accepted the subscription towards share capital from the same investors as genuine and only made additions with respect to the share premium received, on the ground that there was no prudence/ rationale for making investment at such a huge premium in the shares of the assessee company. The learned CIT(A) in the appellate order at para 4.5, page 12 has clearly mentioned that, in the present case, the learned AO has not given any finding that the shareholders/ share applicants were not identifiable or bogus. The learned AO has taxed the income under the head business income in the demand computation sheet annexed to assessment order (Refer Page 108 to 109 of paperbook). Therefore, the ground of appeal No. 1 is contrary to the facts and findings recorded by lower authorities. There is no basis for the allegation made vide ground of appeal No.1. Thus, the assessee prays that, ground of appeal No.1 is devoid of any merits and needs to be rejected.

2.2 Department's Appeal - Ground No.2: Assessee's rebuttal

The assessee submits that, vide ground of appeal No.2, reference is made to the decision of Hon'ble ITAT Bangalore in Cornerstone Property Investments Private Limited versus ITO dated 9 February 2018. The assessee submits that, the decision referred has been overruled by the Hon'ble Karnataka High Court in 152 taxmann.com 256 (Kar) dated 19 April 2023 (Copy is enclosed at Page 199 to 209 of paperback. Therefore, the reliance placed on the decision in ground of appeal No.2 is misplaced.

2.3 Department's Appeal - Ground No.3: Assessee's rebuttal

The assessee submits that, vide ground of appeal No.3, it has been again wrongly alleged that, the transaction was not a genuine transaction. In the assessment order passed, nowhere it is has been mentioned that the transaction was not a genuine one. All the documentary evidence were filed before the learned AO and he did not find any defect in the evidences filed to doubt the transaction. The learned AO, has in fact accepted the share capital amount received from the very same investors which proves the genuineness of the transaction. The learned CIT(A) has given a finding at para 4.4; page 10, that the learned CIT(A) found force

in appellants submissions that, the learned AO has not doubted the identity, genuineness and credit worthiness of the investors. Further, at para 4.3 of the learned CIT(A) order, it has been acknowledged that, the assessee had filed substantial documentary evidences to prove the identity, genuineness and credit worthiness of investor companies which were also filed before the learned CIT(A).

2.4 Assessee's additional submission:

Additionally, the assessee submits that, first proviso to section 68 was amended vide Finance Act 2012 with effect from 01 April 2013 i.e applicable from AY 2013-14 and onwards. The said proviso is not applicable in the present case which deals with AY 2012-13. Therefore, the the provisions of section 68 as unamended during AY 2012-13 and as interpreted by various judicial precedents would be applicable in the case of the assessee.

Similarly, provisions of section 56(2)(viib) have been amended vide Finance Act 2012, with effect from 01 April 2023 and therefore will be applicable for AY 2013-14 and onwards. Hence the amended provisions are not applicable in the present case i.e AY 2012-13. This is also acknowledged by the learned CIT(A) at para 4.8; page 14 of learned CIT(A) order.

3. Prayer

The assessee prays before your Honour that, the order passed by learned CIT(A) is in accordance with law after considering the documentary evidences, judicial precedents and law applicable. The assessee requests your Honour to kindly take the above submission and the paper book (Pages 1-209) on record."

10. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We find that the sole issue in this case is the addition of share premium in the hands of the assessee as business income. We also find that in this case there is no dispute regarding identity and genuineness of the share applicants / shareholders. This is fortified from the fact that subscription to share capital i.e., ₹ 10, per share amounting to ₹ 13,02,000, has been accepted as a capital receipt and no addition has been made. Share capital and share premium has been raised from same investors and is a composite transaction. Thus, if there were any doubts regarding genuineness of investors then, the share

capital would also be subjected to addition. The assessee has adduced documentary evidences which are placed on record at Pages-1 to 109 of Paper Book, which were also furnished before the Assessing Officer. The Assessing Officer has not pointed out any defects in documentary evidences filed. The learned CIT(A) had also verified the documentary evidences furnished and has provided following findings in appellate order:-

"4.3 During the course of assessment proceedings, the A.O. had asked the appellant to prove the identity, genuineness & creditworthiness of investor companies. The appellant had submitted following documentary evidences before the A.O. to prove the genuineness of share capital raised:

*PAN; Address of Investor companies;
Bank Statement of the Investor companies;
Letter for application of shares;
Confirmation letter issued by Investor companies; sale note;
Board Resolution of Investor companies;
Memorandum of Association (MOA) & Articles of Association (AOA) of Investor companies
Copy of aforesaid documentary evidences were placed on record."*

4.4.....

4.5 The above case laws have been referred only for the proposition that if the shareholders are found to be not having adequate means, the addition can be made in the hands of the shareholders only and not the appellant company. Though it is noted that in the present case no finding has been given by the A.O. that the shareholders/share applicants were not identifiable or bogus."

11. Therefore, we find that the Assessing Officer has treated share premium raised as business income and made the addition. The Assessing Officer has drawn adverse inference on the ground that, the financial position of assessee company and M/s. Murli Industries Ltd. could not justify the huge premium charged. The learned Counsel submitted that investors has made investment keeping in mind the future prospects of M/s. Murli Industries Ltd., which was coming up with three additional cements plants across the country. The

assessee submitted that the investor companies were aware that the promoters of assessee company had a proven track record of management and profit generating skills while being promoters of M/s. Murli Industries Limited in the solvent, power, pulp as well as the paper industry and had vast experience in the production of various Agro-based products. The assessee submitted that the investor companies were well aware of the plans of the promoters of M/s. Murli Industries Limited, that they were in the process of setting up new cement plants all over India and had obtain necessary licenses for the same. The assessee had provided details about the future upcoming plants of M/s. Murli Industries Limited which had good future business prospects. The lower authorities have not observed anything contrary to above submission of the assessee. We also find merit in the assessee's submission that issuing shares at a premium is a commercial decision is a prerogative of the Board of Directors of a company and the wisdom of the share holders whether they want to subscribe to such premium. It is a settled proposition of law by virtue of the judgment of the Hon'ble Delhi High Court rendered in CIT v/s Dalmia Cement, [2002] 254 ITR 377, (Del. HC), wherein it has been held that the Assessing Officer cannot step into shoes of a businessman to judge rationale of an expenditure or an investment which was further approved by the Hon'ble Apex Court in the following cases:-

- i) *S.A. Builders v/s CIT, [2007] 288 ITR 1 (SC);*
- ii) *CIT v/s Walchand & Co. (P.) Ltd. [1967] 65 ITR 381 (SC);*
- iii) *J.K. Woollen Mfrs. v/s CIT, [1969] 72 ITR 612 (SC);*
- iv) *Aluminium Corpn.of India Ltd. v/s CIT, [1972] 86 ITR 11 (SC); and*
- v) *CIT v. Panipat Woollen & General Mills Co. Ltd. [1976] 103 ITR 66 (SC).*

12. In the present cases, share applicants / investors have applied for share capital at a premium. It is well settled accounting principle that, share capital and share premium fall under capital nature of transaction. Therefore, share premium fall in the realm of capital receipt, it cannot be brought to tax as revenue receipt/ business income. This proposition has been duly recognised by the decision of Hon'ble Apex Court and Hon'ble jurisdictional High Court. This view has been affirmed by Hon'ble Apex Court in M/s. G.S. Homes & Hotels P. Ltd. v/s DCIT, Civil Appeal No.(s) 7379-7380 of 2016, vide order dated 09/08/2016. The Hon'ble Apex Court expounded as under:–

"We modify the order of the High Court by holding that the amount (Rs.45,84,000/-) on account of share capital received from the various share-holders ought not to have been treated as business income. The High Court, therefore, in our considered view, fell into error in reversing the order of the Tribunal on the aforesaid issue."

13. Reliance is placed on the decision of Hon'ble Bombay High Court (Nagpur bench) in DCIT v/s M/s. Apeak Infotech, ITA No.26/2017, wherein it has been held as under:–

"Regarding Question B :

We find that the impugned order of the Tribunal upheld the view of the Commissioner of Income-tax (Appeals) to hold that share premium is capital receipt and therefore, cannot be taxed as income. This conclusion was reached by the impugned order following the decision of this court in Vodafone India Services (P.) Ltd. (supra) and of the apex court in G. S. Homes and Hotel (P.) Ltd. (supra). In both the above cases the court has held that the amount received on issue of share capital including premium are on capital account and cannot be considered to be income.

It is further pertinent to note that the definition of income as provided under section 2(24) of the Act at the relevant time did not define as income any consideration received for issue of share in excess of its fair market value. This came into the statute only with effect from April 1, 2013 and thus, would have, no application to the share premium received by the respondentâ€"assessee in the previous year relevant to the assessment year 2012-13. Similarly, the amendment to section 68 of the Act by addition of proviso was made subsequent to previous year relevant to the subject assessment year 2012-13 and cannot be

invoked. It may be pointed out that this court in CIT v. Gagandeep Infrastructure (P.) Ltd. [2017] 80 taxmann.com 272/247 Taxman 245/394 ITR 680 (Bom.) has while refusing to entertain a question with regard to section 68 of the Act has held that the proviso to section 68 of the Act introduced with effect from April 1, 2013 will not have retrospective effect and would be effective only from the assessment year 2013-14.

In view of the above, question No.B as proposed also does not give rise to any substantial question of law as it is an issue concluded by the decision of this court in Vodafone India Services (P.) Ltd. (supra) and in the apex court in G. S. Homes and Hotels (P.) Ltd. (supra). Thus not entertained."

14. We find in a recent decision, the Hon'ble Bombay High Court in Shendra Advisory Services P. Ltd v/s DCIT, 159 taxmann.com 557 (Bom.HC) has held as under:-

"12 The charge of tax under the Act is on income. The receipt of share premium on the issue of fresh shares is on capital account and constitutes a capital receipt, which is not chargeable to tax under the Act. There is no provision under the Act to tax the receipt of share premium for the assessment year under consideration. As held in Vodafone India Services (P) Ltd. (Supra) the amount received on issue of shares is admittedly a capital account transaction not separately brought within the definition of income during the relevant period. Thus, capital account transaction not falling within the statutory explanation cannot be brought to tax."

15. The learned D.R. has relied on the decision of DCIT v/s Leena Power Tech Engineers P. Ltd., 130 taxmann.com 341, (Mum. Trib.). We find that decision in the aforementioned case was given in peculiar facts of the case which are distinguishable from facts in the case of assessee. In the said decision, the addition was made under section 68 of the Act wherein the findings were regarding huge cash deposits in various bank accounts, layering of funds etc., were recorded. The Tribunal, in Leena Power Tech Engineers P. Ltd. (supra) finally observed that the identity, genuineness and credit-worthiness of investors were not proved. Therefore, the reliance placed on the

judgment does not help the Revenue considering the facts of the assessee in the present case.

16. We also find that, the Revenue, vide ground no.2, a reference is made to the decision of the Co-ordinate Bench of the Tribunal, Bangalore Bench, rendered in Cornerstone Property Investments P. Ltd. v/s ITO, order dated 09/02/2018. The learned Counsel for the assessee submitted that the decision referred has been overruled by the Hon'ble Karnataka High Court reported as 152 taxmann.com 256 (Kar.). Therefore, the reliance placed on the decision in ground no.2, is misplaced. We find that the Special Leave Petition against the judgment of the Hon'ble Karnataka High Court has been dismissed vide order passed on 15/07/2024, reported as 164 taxmann.com 464 (SC).

17. The assessment year involved in present case is A.Y. 2012-13. We find that THE provisions of section 56(2)(viib) of the Act are not applicable to the facts of the present case since the aforesaid provisions have been inserted for the first time vide Finance Act 2012 i.e., w.e.f 01/04/2013. Similarly, we find that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 w.e.f. 01/04/2013. Thus, it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. Thus, the case laws relied by the assessee in CIT Lovely Exports (P.) Ltd. 216 CTR 195 (SC) and CIT v/s. Gagandeep Infrastructure P. Ltd. 247 Taxman 245 supports the case of the assessee.

18. In the background of aforesaid discussion and judicial precedents as noted above, we do not find any infirmity in the order of learned CIT(A). We also find that the case of the assessee is covered by judicial precedents of Hon'ble Apex Court and Hon'ble Bombay Court. The addition made by the Assessing Officer towards share premium amounting to ₹ 2,47,38,000, has been rightfully deleted by the learned CIT(A). We do not find any reason to interfere with the findings and decision of the learned CIT(A). Accordingly, the order passed by the learned CIT(A) is hereby upheld by dismissing the grounds of appeal raised by the assessee for the year under consideration.

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

M/s. Vishnu Guilts Pvt. Ltd.
ITA no.237/Nag./2018
Assessment Year – 2012-13

And

M/s. Raghav Finvest Pvt. Ltd.
ITA no.121/Nag./2020
Assessment Year – 2012-13

20. Insofar as these Revenue's appeals are concerned, the related facts and circumstances of the issues raised by the Revenue are materially identical to the issues decided by us vide Revenue's appeal being ITA no.95/Nag./2018, for the assessment year 2012-13 supra, wherein we have upheld the order of the learned CIT(A) deleting the grounds raised by the Revenue. Since the issues for our adjudication in these appeals being common, consistent with the view taken therein vide Para-10 to 18 supra and for the reasons and detailed findings given by us, we decline to interfere with the orders passed

by the first appellate authority and dismiss the grounds raised by the Revenue in both these appeals as well.

21. In the result, both the appeals filed by the Revenue are dismissed.

To sum up, all the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on 25/10/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 25/10/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur