

| आयकर अपीलीय अधिकरण न्यायापीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&

SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1691/Mum/2025

Assessment Year: 2009-10

&

I.T.A. No. 1820/Mum/2025

Assessment Year: 2010-11

ACIT - 6(1)(1), Mumbai	Vs	City Centre Mall Nashik Pvt. Ltd. Room No. 62, Plot No. 8-9 2 nd Floor, Parekh Mahal Lady Jamshedji Road Sakharam Keer Marg Mahim Mumbai - 400016 [PAN: AACCC6422B]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

C.O. No. 81/Mum/2025
Assessment Year: 2009-10

&

C.O. No. 80/Mum/2025
Assessment Year: 2010-11

City Centre Mall Nashik Pvt. Ltd. Room No. 62, Plot No. 8-9 2 nd Floor, Parekh Mahal Lady Jamshedji Road Sakharam Keer Marg Mahim Mumbai - 400016 [PAN: AACCC6422B]	Vs	ACIT - 6(1)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Tanzil Padvekar/Ms. Tejal Kharkar, A/Rs
Revenue by :	Mr. R.A. Dhyani, CIT D/R

सुनवाई की तारीख/Date of Hearing : 19/08/2025
घोषणा की तारीख /Date of Pronouncement : 25/08/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 1691/Mum/2025 & I.T.A. No. 1820/Mum/2025 are two separate orders of NFAC, Delhi [hereinafter referred to as “the Id. CIT(A)”] pertaining to AY 2009-10 & 2010-11. C.O. No. 81/Mum/2025 & C.O. No. 80/Mum/2025 are cross-objections by the assessee preferred against the very same order of the Id. CIT(A).

2. Since the underlying facts in the issues in the appeals by the revenue are identical, we heard the representatives on the facts of AY 2009-10.

3. Briefly stated the facts of the case are that during the course of scrutiny assessment proceedings, the assessee was requested to furnish the details of issue of shares at huge premium for AY 2009-10 and 2010-11.

4. During the course of assessment proceedings, the AO noticed that the assessee company had introduced a sum of Rs. 19 Crores on account of share capital and share premium. The details can be understood from the following chart:-

Name of the party	No. of share applied	No. of share allotted	Consideration of shares allotted	Share Capital	Share Premium	Total Payment Received	Received Date	Share Allotment Share
Kiran Kisanlal Sarda	62300	62300	6230000	623000	5607000	6230000	06.10.2008	07.10.2008
Shrirang Kisanlal Sarda	3050	3050	305000	30500	274500	305000	06.10.2008	07.10.2008
Shrirang Kisanlal Sarda	83450	83450	8345000	834500	7510500	8345000	06.10.2008	07.10.2008
Shrirang Kisanlal Sarda	102500	102500	10250000	1025000	9225000	10250000	06.10.2008	07.10.2008
Shrirang Kisanlal Sarda	98700	98700	9870000	987000	8883000	9870000	06.10.2008	07.10.2008
K2C Residencials Ltd.	350000	350000	35000000	3500000	31500000	35000000	07.10.2008	07.10.2008
Kisanlal Bastiram Sarda	165000	165000	16500000	1650000	14850000	16500000	03.03.2009	16.03.2009
Shrirang Bidi Pvt. Ltd.	35000	35000	3500000	350000	3150000	3500000	03.03.2009	16.03.2009
Shrirang Tobacco	90000	90000	9000000	900000	8100000	9000000	03.03.2009	16.03.2009

Processors Pvt. Ltd.								
K2C Residencials Ltd.	600000	600000	60000000	6000000	54000000	60000000	04.03.2009	16.03.2009
Kisanlal Bastiram Sarda	85000	85000	8500000	850000	7650000	8500000	04.03.2009	16.03.2009
Shrirang Tobacco Processors Pvt. Ltd.	190000	190000	19000000	1900000	17100000	19000000	04.03.2009	16.03.2009
Pashupati Tobacco Products Pvt. Ltd.	25000	25000	2500000	250000	2250000	2500000	04.03.2009	16.03.2009
Shrirang Tobacco Processors Pvt. Ltd.	10000	10000	1000000	100000	900000	1000000	05.03.2009	16.03.2009
Total	1900000	1900000	190000000	19000000	171000000	190000000		

Party Wise details:-

Name of the party	Total No. of share applied	Total No. of share allotted	Consideration of shares allotted	Share Capital	Share Premium	Total Payment Received
Kiran Kisanlal Sarda	62300	62300	6230000	623000	5607000	6230000
Shrirang Kisanlal Sarda	287700	287700	28770000	2877000	25893000	28770000
Kisanlal Bastiram Sarda	250000	250000	25000000	2500000	22500000	25000000
Shrirang Bidi Pvt. Ltd.	35000	35000	3500000	350000	3150000	3500000
Shrirang Tobacco Processors Pvt. Ltd.	315000	315000	31500000	3150000	28350000	31500000
K2C Residencials Ltd.	950000	950000	95000000	9500000	85500000	95000000
Total	19,00,000	19,00,000	19,00,00,000	1,90,00,000	17,10,00,000	19,00,00,000

5. It was found that the assessee company had issued the shares at Rs. 100/- per share which included the premium component of Rs. 90/- per share. Out of these shares, total number of 9,50,000 shares of face value of Rs.10/- each were issued to M/s. K2C Residencial Ltd. (Formerly Eredene Mauritius Ltd.) a foreign company based at Mauritius at premium of Rs.90 per share and remaining 9,50,000 shares were issued to the various entities which are closely association with the assessee group. The AO formed a belief that the transactions appear to be

abnormal, unnatural and suspicious. A reference to FT&TR, New Delhi, was made under Exchange of Information Article in the DTAAAs/TIEAs/Multilateral Agreements.

5.1. Surprisingly, the AO has only questioned the genuineness of the transactions i.e., charging of share premium of Rs. 90/- per share thereby accepting the identities and capacity of the subscribers. At the very outset, it has to be understood that deciding the share premium is the prerogative of the principal directors of the company and subscribing shares at premium is the wisdom of the subscriber and the commercial prudence of the subscribers should not be questioned by the authorities. The AO has categorically mentioned at para 10.2. of his order **“The relevant details are already on record to arrive at logical conclusion. Moreover, it is not the identity or capacity of the investor which is being deliberated upon here, instead it is the nature of transaction which is the subject matter of discussion.”** After referring to various judicial decisions, the AO finally concluded by treating the sum of Rs. 17.10 Crores being the share premium amount as unexplained credit within the meaning of Section 68 of the Act and added the same.

6. The assessee agitated the matter before the Id. CIT(A). It was vehemently argued that the share premium amount has been decided as per the valuation report of the approved valuer based upon the comparison chart of actual final report of the balance sheet as well as profit and loss account for the period from FY 2009-10 to FY 2014-15. The share premium has been determined on the basis of DCF method which is completely based on the projections. It was explained that as per the

valuation report, the operation was expected to start from April, 2009 and it in fact started in the year April, 2009, which is evident from the recommendation made in the P&L account of the assessee for AY 2010-11.

7. After considering the facts and the submissions and the valuation report, the Id. CIT(A) observed that the AO has not disputed the identity of the creditors i.e., subscribers of the shares at premium. The capacity of the subscribers or the creditworthiness of the subscribers. After referring to various judicial decisions and in particular decision of Hon'ble Jurisdictional High Court of Bombay in the case of *Shendra Advisory Services (P.) Ltd. v. Dy. CIT [(2024) 298 Taxman 261 (Bom.)(HC)]* and *SLS Energy (P) Ltd. vs. ITO [2023] 154 taxmann.com 400 (Bom.)*, the Id. CIT(A) deleted the addition of Rs. 17,10,00,000/- on account of share premium.

8. Before us, the Id. D/R reiterated what is mentioned in the assessment order and read the operative part of the assessment order.

The Id. Counsel for the assessee strongly relied on the findings of the Id. CIT(A).

9. The undisputed facts is that the AO has neither questioned the identity nor the capacity of the subscribers and in fact the subscribers are the existing shareholders of the assessee company. It is also not in dispute that the valuation of share premium is supported by valuation report which is based upon a well recognised method of DCF. Nowhere in the assessment order, the AO has brought any independent valuation report to justify his stand. Mere rejection of the valuation report based upon a well recognised method would not justify the assessment. Moreover, the

Hon'ble Jurisdictional High Court of Bombay in the case of *Shendra Advisory Services (P.) Ltd. v. Dy. CIT (supra)*, has held as under:-

"11. The issue at hand is very narrow. Whether the money received as premium of share issued on account of a capital account transaction can give rise to income?"

In SLS Energy (P.) Ltd. v. ITO [2023] 154 taxmann.com 400 (Bom.) the Court considered whether the receipt of premium on issuance of shares was receipt of income and came to a finding that the receipt of premium on issuance of shares was not receipt of income but was a capital receipt. The Court came to a finding that the receipt of share capital including the premium was on capital account and gave rise to no income. It will be useful to reproduce paragraphs 24 to 30 of SLS Energy (P) Ltd. (supra) which read as under :

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.....

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."

10. The Hon'ble High Court of Bombay in the case of *Vodafone India Services Pvt. Ltd. vs. Union of India & Ors. [2014] 368 ITR 1 (Bom.)*, has held that the receipt of share capital including premium was on capital account and gave rise to net income. The amendments incorporated in the definition of income u/s 2(24)(xvi) and 56(2)(viib) of the Act were the amendments which were to apply from 01/04/2013 i.e., AY 2013-14. The amendment to Section 68 by incorporation of the first proviso also came into effect by virtue of the Finance Act, 2012 w.e.f. 01/04/2013 and was to apply for AY 2013-14 and onwards and, therefore, since the amendments were not applicable to the assessment years in question i.e.,

2009-10 and 2010-11 and there would be no basis for the assessment made as such.

11. Considering the facts of the case in totality, we do not find any reason to interfere with the findings of the Id. CIT(A). Accordingly, appeals of the revenue are dismissed. Since we have dismissed the appeals of the revenue, the issues raised in the cross-objections are left open.

12. In the result, appeals of the revenue are dismissed.

Order pronounced in the Court on 25th August, 2025 at Mumbai.

Sd/-

**(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 25/08/2025

Sd/-

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 अपीलुय अधलकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलुय अधलकरण
ITAT, Mumbai