

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL

“F” BENCH, MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No. 4654/Mum/2024

(Assessment Year: 2010-11)

I.T.A. No. 4650/Mum/2024

(Assessment Year: 2011-12)

Vidya Buildcon Private Ltd., 6-6,10, Vijay Nagar Sangh, Shaikh Mistree Road, Antop Hill, Mumbai-400037. PAN: AADCV1521H	Vs.	ITO-8(3)(3), Aayakar Bhavan, M.K. Road, Mumbai-400020.
Assessee -अपीलार्थी / Appellant	:	Revenue - प्रत्यर्थी / Respondent

Assessee by : Shri Bhupendra Shah, AR

Revenue by : Shri Vivek Perampurna, CIT-DR

Date of Hearing : 12.01.2026

Date of Pronouncement : 20.01.2026

ORDER

Per Arun Khodpia, AM:

The aforesaid appeals are filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [for short “Id. CIT(A)”] both dated 24.06.2024 for the AY Assessment Years (AY) 2010-11 & 2011-12. Being both the appeals are of the same assessee, therefore are taken up for adjudication under this common order.

2. Condonation of delay: At the very initiation of hearing, the Id. Authorized Representative (Ld. AR) of the assessee, submitted that the aforesaid appeals are delayed by 17 days. To explain the delay, the Id. AR furnished an affidavit duly signed by the assessee, stating therein that during the month of June 2024, the only one person who is looking after the office of assessee was went to his native place for summer vacations and the Director Shri Arvind Chaubey was also not at office due to death of some family relative. It is submitted that for the aforesaid reasons the notice/orders or mails during the said period could not be received / looked into by the Director of the assessee company, as a result small delay of 17 days had taken place in filing of the appeals. It is further submitted that the delay was on account of sufficient cause beyond the control of assessee, whereas there was no intentional or deliberate act on the part of assessee to delay the filing of appeal. After considering the overall reasons for delay, we find it appropriate, following the liberal and justice-oriented approach, to condone the small delay in present matters.

ITA No. 4654/Mum/2024 AY 2010-11

3. At the outset, Id. Counsel for the assessee (AR) submitted that the assessee is a Private Limited Company, engaged in the business of trading and investment. That during the year under consideration an addition of Rs. 3,44,47,000/- under section 68 was made, on account of share premium received by the assessee on issue of 70,300 equity shares at a premium of Rs. 490/- per share, treating the same as unexplained cash credit in the hands of assessee. The Id. AR submitted that the assessee has submitted, the details of allottees pertaining to receipt of capital and share premium were furnished before the AO, like Copy of Balance Sheet, ITR and bank statement etc. to prove the identity and creditworthiness of the Investors and genuineness of the transactions, however, the addition was made by the AO and sustained by the Id. CIT(A). The Id. AR further submitted that the provisions of section 56(2)(viib) and section 68 were amended w.e.f. AY 2013-14, whereas the relevant order was AY 2010-11, thus provisions of these sections were not applicable to the relevant year. Accordingly, the addition made by the AO and sustained by the Id. CIT(A) were wrong, irrelevant and not in accordance with the provisions of Income Tax Act, 1961 and Rules made thereunder. On confrontation, Id. AR submitted that such issue was raised before the First Appellate Authority (FAA) and categorically submitted before him that the provisions of section 56(2)(viib) r.w.r. 11UA have come into force only from AY 2013-14 and AY 2018-19 respectively, therefore such provisions cannot apply in the case of present assessee for AY 2010-11, however there was no decision by the Id. CIT(A), while had entirely reiterated and relied upon the findings of AO and have avoided to offer any specific finding on the aforesaid issue. In support, Id. AR placed his reliance on the decision of Hon'ble Bombay High Court in the case of *SLS Energy (P.) Ltd. vs. ITO [2023] 154 taxmann.com 400 (Bom.) (27.06.2023)*.

4. Based on aforesaid submissions, it was the prayer that the addition made by AO was on the basis of provisions which are not in force for the year under consideration, therefore would liable to be deleted.

5. Ld. CIT-DR on the other hand strongly supported the order of ld. CIT(A).

6. We have considered the rival submissions and perused the material available on record and case law relied upon by the parties. On perusal of the impugned order by ld. CIT(A), we observed that the contentions of assessee *qua* applicability of section 56(2)(viib) and Rule 11UA are noted by the ld. CIT(A), however no specific adjudication to such contention of the assessee was offered in the appellate order, therefore such issue remain unaddressed by the ld. CIT(A). Further, to examine the issue leading to addition u/s 68 of the Act, some investigation and verification would be required. Under such circumstances, it would be appropriate to restore this matter back to the file of ld. CIT(A) for fresh adjudication of this legal aspect raised by the assessee. Accordingly, the appeal of assessee is restored back to the file of ld. CIT(A) for fresh adjudication in terms of our aforesaid observations.

7. Since the main controversy regarding addition under section 68 has been restored back to the file of ld. CIT(A). The consequential grounds *qua* the levy of interest under section 234(A), 234(B) and 234(C) or penalty under section 271(1)(c) of the Act are rendered as premature, therefore needs no separate adjudication at this stage.

8. In result, the appeal of assessee in **ITA No. 4654/Mum/2024** for **AY 2010-11** is allowed for statistical purposes.

ITA No. 2450/Mum/2024 AY 2011-12

9. While explaining the facts of the case, the ld. AR submitted that during the year under consideration, the AO had made an addition under section 68 for Rs. 1,94,04,000/- towards an amount received as share premium on issue of 19600 equity shares at a premium of Rs. 990/- per share. The grounds of appeal in this case is also identical to ITA No. 4654/Mum/2024 for AY 2010-11 wherein the applicability of section 56(2)(viib) for AY prior to AY 2013-14 was challenged, however for this year the assessee was unable to furnish necessary evidence/explanations before the ld. CIT(A), therefore had requested to set-aside this matter back to the file of ld. CIT(A), in the interest of Justice, so as to represent the matter fairly before the FAA in order to decide the issue judiciously.

10. Per contra, the ld. CIT-DR placed his reliance on the decision of ld. CIT(A).

11. We have considered the rival submissions and perused the material available on record and judicial pronouncements relied upon by the assessee as well as revenue. Admittedly it was the request by the ld. AR of the assessee that they need to file certain additional documents in support of their grounds of appeal related to sale proceeds of investment in shares, share application money and share premium. A written application has been furnished by the ld. AR under Rule 29 of ITAT Rules, 1963, extracted hereunder:

From Vidya Buildcon Pvt Ltd.
Mumbai - 20
12-1-26.
To
The F Bench,
GTA7, Mumbai - 20.
Respected Sirs,
Re: - A.Y. 2011-12 - GTA No. 4654-M-24.
With reference to the above & under instructions
from our above clients, we write to you as
under -
1) That we need to file additional papers in support
of our grounds of appeal related to sale proceeds
of investment in shares - share application money,
& share premium.
2) Kindly allow us to avail an opportunity to
do the same w.r 29 & restore the matter
to the Ao/CIT(A) for adjudication of the
same.
3) Kindly note that the said documents could
not be filed in advance before the lower
authority & lack of proper guidance to us.
Thanking You,
Yours truly
(Bhupendra Shah)
A.P. for Appellants

12. Taking into consideration the aforesaid submissions and application by the Ld. AR, seeking restoration of appeal to the file of Ld. CIT(A), which is not seriously objected by the CIT-DR, we find it appropriate, in the interest of substantial justice to restore this matter back to the file of Ld. CIT(A) for fresh adjudication.

13. In terms of our aforesaid observations, the appeal of assessee for AY 2011-12 is restored back to the file of Ld. CIT(A) for fresh adjudication.

14. Needless to say, the assessee may be allowed with reasonable opportunity of being heard in the set-aside appellate proceedings, wherein the assessee shall comply with the notices under section 250 of the Act on time

without any fail unless there are exceptional circumstances duly explained by the assessee, failing which the Id. CIT(A) would be at liberty to pass a reasoned order in terms of provisions of the Act.

15. In result, both the aforesaid appeals of the assessee for AY 2010-11 and 2011-12 are **allowed for statistical purposes**, in terms of our aforesaid observations.

Order pronounced in the open court on 20-01-2026.

Sd/-

(SANDEEP GOSAIN)

Judicial Member

Mumbai, Dated : 20-01-2026.

**SK, Sr. PS*

Sd/-

(ARUN KHODPIA)

Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)

ITAT, Mumbai