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T.C.A.Nos.14 to 16 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2025

DELIVERED ON : 28.11.2025

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

T.C.A.Nos.14 to 16 of 2020

T.C.A.Nos.14 to 16 of 2020:

The Principal Commissioner of Income Tax,
Central 1,
No.108, Nungambakkam High Road,
Chennai-600 034.

.. Appellant

vs

Lalitha Jewellery Mart P Ltd,
No.123, Usman Road, T.Nagar,
Chennai-600 017

.. Respondent

PRAYER: Appeals filed under Section 260A of the Income-tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 14.06.2019 in ITA Nos.663, 664, 665/Chny/2019.

For Appellant
in all appeals

: Mr.Karthik Rangaathan
Sr. Standing Counsel



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For Respondent
in all appeals

: Mr.N.Murali Kumaran
Senior Counsel
for M/s.McGAN Law Firm

COMMON JUDGMENT

THE CHIEF JUSTICE

Aggrieved by the common order dated 14.06.2019 passed by the ITAT in allowing of the appeals filed by the assessee, the Revenue filed T.C.A.Nos.14 to 16 of 2020.

2.1. By an order dated 20.01.2020, T.C.A.No.14 of 2020 was admitted on the following substantial questions of law:

"1. Whether the Appellate Tribunal is right in law in deleting the addition made u/s.68 on the ground that the authorities are not empowered to administrate the oath of the deponent u/s.131 of the Act, but adversely failed to consider that clause (b) of sub-section (1) of Section 131 which provides "enforcing the attendance of any person, including any officer of a banking company and examining him on oath"?



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2. *Whether the Appellate Tribunal is right in law in deleting the addition made u/s.56(2)(viib) of the Income Tax Act, when the assessee failed to substantiate the fair market value and then the Assessing Officer as per Section 56(2)(viib), determine the value of fair market value of shares as per Rule 11U and 11UA of the IT Rules, 1962?*

3. *Whether ITAT is right to rely on the decision of the High Court of Madras in assessee's own case in A.Y.2007-08, even though it has no relevance to the facts of the case for the instant assessment year?*

4. *Whether ITAT is right in law in deleting the aforesaid additions was perverse having regard to the evidence and the material on record?*

5. *Whether the Appellate Tribunal is right in law in remitting the disallowance made on lease rent paid by the assessee company to its Director which is violation of 'specified person' as per Section 40(A)(2)(a) & 40(A)(2)(b) of the Income Tax Act?*

2.2. By the same order dated 20.01.2020, T.C.A.Nos.15 and 16 of 2020 were admitted on the following substantial questions of law:

"1. *Whether the Appellate Tribunal is right in law in deleting*



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the addition made u/s.68 on the ground that the authorities are not empowered to administrate the oath of the deponent u/s.131 of the Act, but adversely failed to consider that clause (b) of sub-section (1) of Section 131 which provides "enforcing the attendance of any person, including any officer of a banking company and examining him on oath"?

2. Whether the Appellate Tribunal is right in law in deleting the addition made u/s.56(2)(viib) of the Income Tax Act, when the assessee failed to substantiate the fair market value and then the Assessing Officer as per Section 56(2)(viib), determine the value of fair market value of shares as per Rule 11U and 11UA of the IT Rules, 1962?

3. Whether ITAT is right to rely on the decision of the High Court of Madras in assessee's own case in A.Y.2007-08, even though it has no relevance to the facts of the case for the instant assessment year?

4. Whether ITAT is right in law in deleting the aforesaid additions was perverse having regard to the evidence and the material on record?

5. Whether on the facts and in the circumstances of the case and in law, is it not unwarranted on part of the ITAT to set aside the issue of disallowance made u/s.36(1)(iii) and u/s.36(1)(va) of the Act with a direction to the Assessing Officer to re-examine the matter and decide the issue



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afresh?

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6. Reliance is place on the decisions of the High Court of Gujarat in the case of CIT vs. Gujarat State Road Transport Corporation (366 ITR 170) and the High Court of Kerala in the case of CIT vs. Merchem Ltd (378 ITR 443), wherein it is held that employee's, contribution should be paid on or before the due date as prescribed under the relevant statute?"

3.1 Succinctly put, the facts leading to the filing of appeals are that, on 27.11.2013, the Assessee filed original return of income for AY 2013-14 admitting the total income of Rs.53,82,36,710/- and showing book profit of Rs.53,26,44,742/-. The case was processed under Section 143(1) of the Act on 31.3.2015. A search and seizure operation under Section 132 of the Act was conducted in the Lalithaa Jewellery Group of cases on 2.9.2014 and, as part of search operations, the business premises of the Assessee was also covered. Initially, the case was selected under CASS and scrutiny proceedings were pending as on the date of search i.e. 2.9.2014. Subsequently, notice under Section 153A of the Act was issued to the Assessee and, in response, the Assessee filed the return of



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income on 16.6.2015 admitting the total income of Rs.53,91,56,590/- and showing the book profit of Rs.53,26,44,742/-. AO completed the assessment under Section 143(3) read with Section 153A by arriving at a taxable income of Rs.91,95,16,024/- and issued assessment order on 30.12.2016.

3.2. For AY 2014-15, the Assessee filed its return of income on 16.6.2015 admitting a total income of Rs.39,19,53,000/- and book profit of Rs.38,45,80,227/-. The case was selected for scrutiny under CASS and a notice under Section 143(2) of the Act was issued on 19.3.2016. Consequent to search, notice under Section 153A was also issued to the Assessee on 11.7.2016 and, in response thereto, the Assessee filed the return of income on 19.11.2016 admitting the total income of Rs.39,19,53,010/- and declaring the book profit of Rs.38,45,80,227/-. Subsequently, notices were issued and assessment was completed making additions/disallowances, vide assessment order dated 29.12.2017.

3.3. For AY 2015-16, the Assessee filed its return of income



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on 30.11.2015 admitting the total income of Rs.92,96,23,830/- and book profit of Rs.88,96,48,183/-. A search and seizure operation was conducted under Section 132 of the Act in the business premises of the Assessee on 2.9.2014 as part of search operation of Lalithaa Jewellery group of cases. The case was selected for scrutiny under CASS and notice under Section 143(2) of the Act was issued on 19.3.2016 and served on the Assessee. Subsequently, notice under Section 142(1) of the Act was issued calling for details. After examining the details furnished, AO completed the assessment by making additions/disallowances vide assessment order on 29.12.2017.

3.4. Aggrieved by the above additions/disallowance, the Assessee filed appeals before the CIT(A). Holding that there is no infirmity in the decision of AO on addition under Section 68 of the Act; addition on account of income from other sources under Section 56(2)(viib) of the Act; disallowance under Section 36(1)(iii) of the Act; disallowance under Section 14A of the Act, the CIT(A) dismissed the appeals. The ground with regard to charging of



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interest under Section 234A, B & C of the Act, the CIT(A) partly allowed the appeal observing that charging of interest is consequential in nature and they do not require any specific adjudication. The CIT(A) also directed AO to charge interest as per law.

3.5. Aggrieved by the dismissal of the appeals on the grounds stated above, the Assessee preferred appeals [ITA Nos.663, 664, 665/Chny/2019] before the ITAT. The ITAT, vide common order dated 14.6.2019, while setting aside the orders of both the authorities, allowed the appeals for statistical purposes and remitted the matter to the file of AO thereby directing AO to re-examine the matter in the light of the discussion made in the said order. Challenging the aforesaid order of the ITAT, the Revenue filed T.C.A.Nos.14 to 16 of 2020.

FIRST, THIRD AND FOURTH SUBSTANTIAL QUESTIONS OF LAW
IN T.C.A.Nos.14, 15 AND 16 OF 2016

4.1. The first, third and fourth substantial questions of law in



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these appeals are common. Moreover, the assessments made in these three appeals pertain to assessment years 2013-2014, 2014-2015 and 2015-2016, which were part of the block assessment made based on search and seizure operation conducted under Section 132 of the Act in the business premises of the assessee on 2.9.2014. The additions were made by the Assessing Officer and confirmed by the CIT(A). On appeal before the ITAT, the additions were deleted mainly on the consideration that they were made based on statements of one Mahendra Kumar Sethia which are very vague and could not be made the basis to make additions in respect of three assessment years. Hence, these appeals by the revenue.

4.2. The order of the Assessing Offer passed in these three cases would reveal that the additions were made against receipt of share application money/share premium during the previous years, viz., 2010-2011 to 2014-2015, from its Managing Director, M.Kiran Kumar, and various companies. The share application money/share premium was received from Kothari Credit India Private Limited. The statement of Mahendra Kumar Sethia recorded on oath under Section 132(4) of the Act on 28.11.2013 and another statement on oath under Section



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131 of the Act was recorded on 9.1.2014. These statements were made the basis for additions made under Section 68 of the Act pertaining to the three assessment years.

4.3. It is also revealed that the Assessing Officer also relied upon the statement of one Dhanroop Betala, who is said to have interacted with Mahendra Kumar Sethia and Kiran Kumar of the assessee company. The Assessing Officer took into consideration his statement that he did not take part in money handling or negotiations and then came to the conclusion that in respect of receipt of capital in three assessment years from Kothari Credit India Private Limited, the assessee failed to disclose properly the details of real investors. The Assessing Officer held that the investment made by Kothari Credit India Private Limited is nothing other than the undisclosed income of the assessee that were brought in as normal capital infusion. It was further recorded that the basic ingredients of the genuine transactions like due diligence, agreement for buyback of shares, etc., were conspicuous by their absence.

4.4. The Assessing Officer further recorded that the assessee



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was though requested to produce the parties who are alleged to have invested share application money/share premium, the assessee failed to produce any such party. The Assessing Officer observed that a duty is cast on the assessee to substantiate the share premium charged, as to how it is arrived at and further that no financials are relied upon by the assessee to show how the premium was arrived at. The assessee's statement that premium was charged to save cost of fees payable on increase of authorised capital was treated as an important pointer towards the fraudulent nature of transaction.

4.5. On the aforesaid basis, the Assessing Officer concluded that the entire transaction of receipt of share application money/share premium is a sham transaction and it was the assessee's unaccounted income that was invested through various companies. The statement made by M.Kiran Kumar that the transactions are through banking channels and, therefore, should be accepted as genuine was rejected on the basis that such transactions would not get legitimacy if done through the banking channel, when all other attendant circumstances and facts prove otherwise, as it has happened in the case at hand.



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4.6. The Assessing Officer also took into consideration the provisions added to Section 68 of the Act by the Finance Act, 2012 and then proceeded to record that in view of the incriminating statements of Mahendra Kumar Sethia and others, heavy burden was cast upon the assessee to prove the genuineness of the share application money/share premium beyond shadow of doubt and it could not discharge its onus by merely submitting that the transactions are through banking channels and that investors are shown as share holders of the books and shares are allotted. The Assessing Officer was of the view that it was incumbent upon the assessee to produce the alleged investors and make them give a statement to the effect that the investments are genuine, however, the assessee failed to establish the genuineness of the transaction. The assessee did not seek cross-examination of Mahendra Kumar Sethia and other person.

4.7. Importantly, the Assessing Officer took into consideration that similar additions were made for assessment year 2007-2008, being unexplained share application money/share premium under Section 68 of the Act. The Assessing Officer heavily relied upon the findings of the ITAT recorded in the appeal relating to the assessment



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year 2007-2008 and then concluded that the same set of circumstances which were existing during 2007-2008 exist for the assessment years under consideration.

4.8. The CIT(A) affirmed the findings rendered by the Assessing Officer, which led to filing of appeals before the ITAT. The findings of the ITAT in its common order impugned in these appeals reveals that the ITAT proceeded to record the finding against the revenue and in favour of the assessee accepting the assessee's submission that the statement recorded under Section 131 of the Act is not an admissible piece of evidence under the Act. This has given rise to the first substantial question of law in all these appeals.

4.9. The ITAT has recorded a finding that, as the authorities are not empowered to administer oath to the deponent, the statement recorded under Section 131 of the Act has no evidentiary value and, consequently, the so-called statement said to have been recorded from Mahendra Kumar Sethia requires to be excluded from consideration and once that is excluded, there is no material available on record for making any addition either under Section 68 of the Act or Section



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56(2)(viib) of the Act. Accordingly, the addition made by the Assessing Officer has been found to be unsustainable.

4.10. The ITAT arrived at the conclusion that the statement recorded under Section 131 of the Act is not at all admissible, as the authorities mentioned therein are vested with power regarding discovery, production of evidence, etc., but do have the power to examine a person on oath. The said finding, in our considered opinion, is directly against the specific provision contained in Section 131(1) of the Act, which is extracted herein below:

"131. Power regarding discovery, production of evidence, etc.

(1) The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Joint Commissioner (Appeals), Commissioner (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-section (15) of Section 144C shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :—

(a) discovery and inspection;



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- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;*
- (c) compelling the production of books of account and other documents; and*
- (d) issuing commissions.”*

4.11. It is clear from the aforesaid provision that the authorities mentioned therein are having the same powers as are vested in a court under the Code of Civil Procedure, 1908, which ostensibly includes enforcing the attendance of any person, including any officer of a banking company and examining him on oath. Irrespective of the evidentiary value to be attached to such a statement recorded under Section 131 of the Act, in the attending facts and circumstances of the given case, it cannot be accepted as a proposition of law that the statement recorded under Section 131 of the Act is not admissible for the reason that the authority is not empowered to administer oath and, therefore, has no evidentiary value.

4.12. The first substantial question of law in T.C.A.Nos.14, 15 and 16 of 2020 is answered in favour of the revenue.



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5.1. However, the incidental question that would stem up would be whether it is a substantial question of law. This question arises for consideration because, though the ITAT held that the statement recorded under Section 131 of the Act has no evidentiary value, it then proceeded to evaluate the evidence of Mahendra Kumar Sethia. Had it been a case that the findings recorded by the Assessing Officer and CIT(A) would have been upset only on such a conclusion, it would have a material bearing on the result. However, since the statement of Mahendra Kumar Sethia has otherwise been reassessed by the ITAT itself, the decision on the first question of law, one way or the other, would not make any difference and it would substantially turn on the issue as to whether the ITAT acted perversely in recording a finding that the statement of Mahendra Kumar Sethia is not reliable and worthy of credence so as to justify addition under Section 68 of the Act.

5.2. Therefore, the answer would essentially depend on the conclusion to be arrived at qua third and fourth substantial questions of law. In other words, irrespective of the findings on the first substantial question of law framed, the conclusion to be arrived at qua



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third and fourth substantial questions of law would have material bearing on the case, not otherwise.

6.1. The third substantial question of law essentially relates to reliance on the decision of this court in assessee's own case for assessment year 2007-2008, viz., *Lalitha Jewellery Mart P. Ltd v. Deputy Commissioner of Income-tax and another*¹

6.2. It is beyond any cavil that, on similar facts and circumstances, in the background of search made and statements of other persons recorded, addition under Section 68 of the Act was made against the assessee for the assessment year 2007-2008. The matter travelled up to this court. This court deleted the addition reversing the order of the ITAT by applying certain principles of law. It is felicitous to reproduce the same hereunder:

"...

However, the main theme, upon which, the Assessing Officer as well as the Tribunal proceeded to discredit the investors of the assessee is completely erroneous. They are both looking for proof beyond doubt. They are proceeding on an element of suspicion that the amounts

¹ (2017) 399 ITR 425 (Mad)



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of investments are really those of the assessee, which have been ploughed back by the assessee, whereas the settled principle of law is that any amount of suspicion, however strong it might be as well, is no substitute for proof. Suspicion is not sufficient enough to lead to a conclusion that the investments received by the assessee-company are all manipulated receipts and on that basis, recorded a finding that the explanation of the assessee is not satisfactory.

On the other hand, the legal principle enunciated by the Supreme Court, as noticed supra by us, is that so long as the proof and identity of the investor and the payment received from him is through a doubtless channel like that of a banking channel, the receipt in the hands of the assessee towards share capital or share premium does not change its colour. The money so invested in the assessee-company would still be the money available and belonging to the investors. The consistent principle followed is that the investors' sources and creditworthiness cannot be explained by the assessee. If the Department has a doubt about the genuineness of the investors capacity, it is open to it to proceed against those investors. Without taking such a course of action, the Assessing Officer and the Tribunal are proceeding on conjectures that the assessee has, in fact, ploughed back the money. The very approach of the Assessing Officer and the Tribunal are completely opposed to settled legal



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principles enunciated and they have arrived at conclusions contrary to the legal principles on the subject. Further, they are finding fault with the assessee for the alleged failure of its investors in proving beyond doubt that they have the capacity to invest at the moment they did in the assessee-company. That is clearly a perverse view, as the Assessing Officer is not expected to perform a near impossibility. The assessee cannot call upon its investors to disclose all such business transactions they carried on in the immediate past and as to how much they made from their respective business enterprises. The assessee cannot also call upon its investors to prove their good business sense in investing in the assessee-company, as such investors cannot gain any controlling stake."

6.3. From the order of the ITAT, it is clear that while examining the legality of additions under Section 68 of the Act, the ITAT has relied upon the decision as between the revenue and the assessee herein, as it laid down certain principles for making addition under Section 68 of the Act and that the Assessing Officer heavily relied upon the order of the ITAT in respect of the assessment year 2007-2008 while making addition under Section 68 of the Act. This is clear from the findings recorded by the Assessing Officer as under:



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"3.12. ... It may not be out of context to mention here that in the AY 2007-08, similar addition was made being unexplained share application money/share premium u/s.68 of the IT Act, 1961. This explains the conduct of the assessee in introducing unaccounted money into the books by way of share application money/share premium. It would be interesting to reproduce here the comments of the Hon'ble ITAT, "B" Bench, Chennai while disposing off revenue appeal for the AY 2007-08 in the assessee's own case.

'... 26 It is true that all the transactions doubted by the Assessing Officer were made through banking channels. This is the anchor of the arguments advances by the assessee before the lower authorities. We also do agree that making payment of money through cheques, demand drafts and transfers, is one of the ingredients to prove the genuineness of the payment. But at the same time we have to be cautious to the fact that such transactions made through banks do not conclusively prove that those transactions have been entered in the same way explained by an assessee. The fact that a payment has been made by cheque or draft by itself does not conclusively prove that the person making such payment had enough resources in his hands to make such payment. It is always possible to



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transact through banking channels and still manipulate the original character of the amount as to whom it belonged and how it was earned. Therefore, we cannot decide this appeal only on the ground that the payments objected in this case have been effected through banking channels ...'

3.13 The same set of circumstances which were existing during the AY 2007-08 is existing for the AY under consideration as well. It may be appropriate to see the case in the background of searches conducted on the entry operators who have very categorically admitted having given accommodation to the assessee company. As held by the Hon'ble ITAT, merely caring out the transactions through banking channels would not lend credibility to the transactions."

6.4. The legal principles which were enunciated by the Supreme Court in the case of *CIT v. Lovely Exports P. Ltd*², are as below:

"In this context, it is apt to take note of the crisply worded order of the Supreme Court in the case of CIT v. Lovely Exports P. Ltd. reported in (2008) 216 CTR (SC) 195; (2009) 319 ITR (St.) 5 (SC), which runs as follows:

'Can the amount of share money be regarded as undisclosed income under section 68 of the

² (2009) 319 ITR 5 (SC)



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Income-tax Act, 1961? We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee-company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law.'"

6.5. Relying upon the aforesaid principle, this court proceeded to decide the legality of additions made against the present assessee in relation to the assessment year 2007-2008. The revenue's insistence is more on the provisos which were added later on by the Finance Act, 2012. The provisos to Section 68 of the Act, which were added by way of the Finance Act, 2012, read as below:

"Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

(a) the person, being a resident in whose name such credit is recorded in the books of such



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company also offers an explanation about the nature and source of such sum so credited; and (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10."

6.6. What we find from the aforesaid insertion is that in cases where the assessee is a company (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory if the two conditions incorporated in Clauses (a) and (b) therein are satisfied.

6.7. The effect of insertion of the new proviso, referred supra, appears to be intended to only avoid any confusion that mere



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explanation about the nature and source of sum so credited may not be claimed to be accepted as such, without any scrutiny of the nature and source of the transaction and nothing more. This power was available with the Assessing Officer even before the insertion of the proviso as aforesaid. The use of the words "any sum is found credited in the books" in Section 68 of the Act, on its plain reading, clearly indicates that the provision is not restricted, but is very widely worded. It does not restrict the authority of the Assessing Officer from making any enquiry as regards the true nature and source. It cannot be said that merely because a sum is credited as receipt of share application money, or that the payment was received through credible transaction, or that the applicants are otherwise companies, by itself, would bring the enquiry to an end.

6.8. Thus, the proviso inserted wide the Finance Act, 2012, on its true construction, only seeks to clarify the legal position with regard to the scope and ambit of power of enquiry under Section 68 of the Act, lest it is understood as limited in nature. In taking this view, we find support from a decision of the Calcutta High Court in



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*Pragati Financial Management (P) Ltd v. Commissioner of Income-tax-II*³.

6.9. If that be the legal position, it cannot be said that the decision of the Supreme Court in the case of *CIT v. Lovely Exports P. Ltd* (supra) and the decision of this court in the case of the assessee, in identical circumstances pertaining to assessment year 2007-2008, and the principles enunciated therein cease to be applicable.

6.10. As a matter of law, the Supreme Court decision in the case of *Principal Commissioner of Income-tax v. NRA Iron and Steel (P) Ltd*⁴, which was dealing with the assessment pertaining to the assessment year 2009-2010, i.e., even before the insertion of provisos, referred supra, enunciated the following legal principles:

"11. The principles which emerge where sums of money are credited as share capital/premium are:

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the*

³ (2017) 394 ITR 27 (Calcutta)

⁴ (2019) 412 ITR 161 (SC)



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- investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*
- ii. The assessing officer is duty-bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*
- iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack creditworthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”*

6.11. The survey of decisions made by the Supreme Court, which culminated in enunciating the principles as aforesaid, included the decisions of various High Courts irrespective of whether the relevant assessment year for the purpose of making the assessment and taxability was prior to or after insertion of provisos to Section 68 of the Act vide the Finance Act, 2012. Therefore, it is quite clear that the principles underlying Section 68 of the Act continue to remain the same. Ergo, we are unable to hold that the ITAT committed any illegality in applying those principles which were enunciated by the



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Supreme Court in the case of *CIT v. Lovely Exports P. Ltd* (supra) and followed in the case of the assessee in relation to the assessment year 2007-2008.

6.12. For the aforesaid reasons, the third substantial question of law raised in all these appeals is answered against the revenue and in favour of the assessee.

7.1. Apropos of the fourth substantial question of law as to whether the ITAT acted perversely in deleting the addition without having regard to the evidence on record, we find that the ITAT has recorded its finding after scrutiny of the evidence of Mahendra Kumar Sethia and it is not a case where the entire evidence of the said person was omitted from consideration. The ITAT considered the relevant piece of evidence as unreliable. Following are the relevant findings recorded in that regard:

"10. We have carefully gone through the statement said to be recorded from Shri Mahendra Sethia. The assessee claims that a copy of the statement was not furnished to them. However, the Assessing Officer has extracted the



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statement in his order. Even though Shri Mahendra Sethia claims that accommodation entry was given to the assessee-company, it is not his claim that he received money from the assessee-company. In response to question No. 19, Shri Mahendra Sethia clarified that it is possible that cash would have been received by any of the group companies and he did not remember clearly. For the purpose of convenience, we are reproducing question No. 19 and its answer as follows:

'Qn. No.19: Did you receive cash from either M/s Lalithaa Jewellery Mart Pvt. Ltd. or its promoter which was finally routed back to the company as share capital and premium?

Ans: It is possible that cash would have been received by any of the group companies. I do not remember clearly.'

11. From the above question and answer, the Assessing Officer presumed that the assessee-company paid to M/s Kothari Credit India Pvt. Ltd. From the above question and answer, it is obvious that it is not a categorical statement of Shri Mahendra Sethia that M/s.Kothari Credit India Pvt. Ltd. received money from the assessee. It is only a presumption. In other words, Shri Mahendra Sethia presumed that one of the group companies would have received but he is not able to recollect. The



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statement of Shri Mahendra Sethia is very vague and there is no basis. This Tribunal is of the considered opinion that this vague statement of Shri Mahendra Sethia cannot be a basis for making any addition under Section 68 of the Act. In response to question No.21, Shri Mahendra Sethia clarified that the original amount would have been received by cash by any one of the layers of the group. He also clarified that the amount of share premium received by the assessee-company was brought into the company by several layers of purchases and sale. For the purpose of convenience, we are reproducing question No.21 and answer as follows:-

“Qn.No.21: The amount of Rs.38 crores transferred by M/s.Kothari Credit (India) Limited did not belong to the company. Please confirm or deny this. If you confirm how you did get the bank balance of Rs.38 Crores in a company that was not doing well either before this event or after this event?

Ans.: This amount of Rs.38 Crores of bank balance was brought into the company by several layers of purchases and sales. But the original amount would be cash receipts by any one of the layers of the group. But the trace of this cash receipts are not left in the books of any



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of the company.”

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12. *It is obvious from this answer to question No.21 that by way of various layers of purchases and sales, the money was brought into the books of M/s Kothari Credit India Pvt. Ltd. He also presumed that the money might have been originally received by cash by any one of the layers. But, no concrete statement was made that money was received from the assessee-company at any stage. Moreover, no material is available on record to suggest that either the assessee-company paid money to M/s Kothari Credit India Pvt. Ltd. or to Shri Mahendra Sethia, which was invested in the form of share premium in the assessee-company. In the absence of any material evidence, this Tribunal is of the considered opinion that there cannot be any addition on presumption and assumption under Section 68 of the Act. Moreover, as rightly submitted by the Ld.counsel for the assessee, the Assessing Officer made addition under Section 56(2)(viib) of the Act in respect of the so-called excess amount. In other words, the Assessing Officer has admittedly treated the transaction as genuine and also admitted the capacity of the person for making investment in the shares of the assessee-company. Therefore, the addition made under Section 68 of the Act cannot stand in the eye of law.”*

7.2. One of the main considerations before the ITAT was that



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there was no concrete statement made that the money was received from the assessee company at any stage, nor there was any material on record to suggest that either assessee company paid money to Kothari Credit India Pvt Ltd or to Mahendra Kumar Sethia, which was invested in the form of share premium in the assessee company. We tried to find from the orders of the Assessing Office and CIT(A) whether there was any evidence led to show that the assessee paid money to Kothari Credit India Pvt Ltd or Mahendra Kumar Sethia, however, we find none.

7.3. Therefore, present is a case of re-appreciation of evidence by the ITAT and taking into consideration that the addition made was based on the statement of Mahendra Kumar Sethia, the approach of the ITAT cannot be said to be perverse. The revenue could not point out as to which concrete clinching evidence of incriminating nature was omitted from consideration by the ITAT while deleting the addition made under Section 68 of the Act. In our view, once the evidence of Mahendra Kumar Sethia is re-appreciated by the ITAT, which power it does have under the law,



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merely because it had taken another view, without anything more, it cannot be held to be perverse in law.

7.4. Accordingly, the fourth substantial question of law is answered against the revenue and in favour of the assessee.

SECOND SUBSTANTIAL QUESTION OF LAW
IN T.C.A.Nos.14, 15 AND 16 OF 2016

8.1. It appears that the Assessing Officer, in all these cases, has purported to make addition and also justified addition under Section 56(2)(viib) of the Act and, therefore, a question of law has been framed in that regard, which needs to be answered.

8.2. On this question of law, the ITAT has taken into consideration the provisions contained in Section 56(2)(viib) of the Act as also the Explanation. The finding recorded by the ITAT is that where the Assessing Officer is not satisfied about the valuation



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made by the company, he is obliged under law to call for material from the assessee as to how the valuation was made by the assessee company. It has also been held that the satisfaction of the Assessing Officer, as referred to in Explanation to Section 56(2)(viib) of the Act, would be judicial satisfaction of the Assessing Officer. The principle which has been applied by the ITAT is that the judicial satisfaction means the Assessing Officer has to take into consideration the well established method of valuation of shares, including the assets, as explained in Explanation 2 to Section 56(2)(viib) of the Act and it cannot be arbitrary. It has further proceeded on the principle that the Assessing Officer has to take note of the judicial and established principles in arriving at his satisfaction. The relevant provision contained in Section 56(2)(viib) of the Act is reproduced herein below:

"56. Income from other sources.

..

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head 'Income from other sources', namely :—

...



T.C.A.Nos.14 to 16 of 2020

(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received—

- (i) by a venture capital undertaking from a venture capital company or a venture capital fund or a specified fund; or*
- (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.*

Explanation.—For the purposes of this clause,—

(a) the fair market value of the shares shall be the value-

- (i) as may be determined in accordance with such method as may be prescribed; or*
- (ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights,*



trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher;

(b) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of Explanation to clause (23FB) of section 10."

8.3. If we look into the provision of law, the Explanation shows that valuation has to be made as per the prescribed method contemplated under Rules 11U and 11UA of the Income-tax Rules, 1962 [the Rules]. Rules 11U and 11UA of the Rules read thus:

"11U. Meaning of expressions used in determination of fair market value.

For the purposes of this rule and rule 11UA,—

*(a) [***]*

(b) "balance sheet", in relation to any company, means,-

(i) for the purposes of sub-rule (2) of rule 11UA, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the



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Companies Act, 1956 (1 of 1956) and where the balance sheet on the valuation date is not drawn up, the balance sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company; and

(ii) in any other case,—

(A) in relation to an Indian company, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and

(B) in relation to a company, not being an Indian company, the balance sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated;



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(c) "merchant banker" means category I merchant banker registered with Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(d) "quoted shares or securities" in relation to share or securities means a share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;

(e) "recognized stock exchange" shall have the same meaning as assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(f) "registered dealer" means a dealer who is registered under Central Sales Tax Act, 1956 or General Sales Tax Law for the time being in force in any State including value added tax laws;

(g) "registered valuer" shall have the same meaning as assigned to it in section 34AB of the Wealth-tax Act, 1957 (27 of 1957) read with rule 8A of the Wealth-tax Rules, 1957;

(h) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(i) "unquoted shares and securities", in relation to shares or securities, means shares and securities which is not a quoted shares or securities;



(j) "valuation date" means the date on which the property or consideration, as the case may be, is received by the assessee."

...

11UA. Determination of fair market value.

(1) For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,—

(a) valuation of jewellery,—

(i) the fair market value of jewellery shall be estimated to be the price which such jewellery would fetch if sold in the open market on the valuation date;

(ii) in case the jewellery is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the jewellery shall be the fair market value;

(iii) in case the jewellery is received by any other mode and the value of the jewellery exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;

(b) valuation of archaeological collections, drawings, paintings, sculptures or any work of art,—



(i) the fair market value of archaeological collections, drawings, paintings, sculptures or any work of art (hereinafter referred as artistic work) shall be estimated to be price which it would fetch if sold in the open market on the valuation date;

(ii) in case the artistic work is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the artistic work shall be the fair market value;

(iii) in case the artistic work is received by any other mode and the value of the artistic work exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;

(c) valuation of shares and securities,—

(a) the fair market value of quoted shares and securities shall be determined in the following manner, namely,—

(i) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;

(ii) if such quoted shares and securities are



received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,—

(a) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and

(b) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date there is no trading in such shares and securities on any recognized stock exchange;

(b) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—

the fair market value of unquoted equity shares
= (A + B + C + D - L) × (PV)/(PE), where,

A = book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance sheet as reduced by,—

(i) any amount of income-tax paid, if any,
less the amount of income-tax refund



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claimed, if any; and

(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in this rule;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer



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at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PV = the paid-up value of such equity shares;

PE = total amount of paid-up equity share capital as shown in the balance sheet;

(c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock



exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.

(2) Notwithstanding anything contained in sub-clause (b) or sub-clause (c), as the case may be, of clause (c) of sub-rule (1): —

(A) the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares, as shall be determined under sub-clause (a), sub-clause (b), sub-clause (c) or sub-clause (e), at the option of the assessee, where the consideration received by the assessee is from a resident ; and under sub-clauses (a) to (e) at the option of the assessee, where the consideration received by the assessee is from a non-resident, in the following manner:—

(a) the fair market value of unquoted equity shares = (A-L) × [PV/PE], where,

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance



tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—

- (i) the paid-up capital in respect of equity shares;*
- (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;*
- (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;*
- (iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the*



excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares; or

(b) the fair market value of the unquoted equity shares determined by a merchant banker as per the Discounted Free Cash Flow method;

(c) where any consideration is received by a venture capital undertaking for issue of unquoted equity shares, from a venture capital fund or a venture capital company or a specified fund, the price of the equity shares corresponding to such consideration may, at the option of such undertaking, be taken as the fair market value of the equity shares to the extent the consideration from such fair market value does not exceed the aggregate consideration that is received from a venture capital fund or a venture capital company or a specified fund:



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Provided that the consideration has been received by the undertaking from a venture capital fund or a venture capital company or a specified fund, within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation.

Explanation.—For the purposes of this clause,—

- (i) "specified fund" shall have the same meaning as assigned to it in clause (aa) of Explanation to clause (viib) of sub-section (2) of section 56;*
- (ii) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the same meaning assigned to them in clause (b) of Explanation to clause (viib) of sub-section (2) of section 56.*

Illustration: If a venture capital undertaking receives a consideration of fifty thousand rupees from a venture capital company for issue of one hundred shares at the rate of five hundred rupees per share, then such an undertaking can issue one hundred shares at this rate to any other investor within a period of ninety days before or after the receipt of consideration from venture capital company;



(d) the fair market value of the unquoted equity shares determined by a merchant banker in accordance with any of the following methods:

- (i) Comparable Company Multiple Method;*
- (ii) Probability Weighted Expected Return Method;*
- (iii) Option Pricing Method;*
- (iv) Milestone Analysis Method;*
- (v) Replacement Cost Methods;*

(e) where any consideration is received by a company for issue of unquoted equity shares, from any entity notified under clause (ii) of the first proviso to clause (viib) of sub-section (2) of section 56, the price of the equity shares corresponding to such consideration may, at the option of such company, be taken as the fair market value of the equity shares to the extent the consideration from such fair market value does not exceed the aggregate consideration that is received from the notified entity:

Provided that the consideration has been received by the company from the entity notified under clause (ii) of the first proviso to clause (viib) of sub-section (2) of section 56, within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation;



(B) the fair market value of compulsorily convertible preference shares for the purposes of sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, as determined—

- (i) in accordance with the provisions of sub-clause (b), sub-clause (c), or sub-clause (e) of clause (A), at the option of the assessee, or based on the fair market value of unquoted equity shares determined in accordance with sub-clause (a), sub-clause (b), sub-clause (c), or sub-clause (e) of clause (A), at the option of the assessee, where such consideration is received from a resident; and*
- (ii) in accordance with the provisions of sub-clauses (b) to (e) of clause (A), at the option of the assessee, or based on the fair market value of unquoted equity shares determined in accordance with sub-clauses (a) to (e) of clause (A), at the option of the assessee, where such consideration is received from a non-resident.*

(3) Where the date of valuation report by the merchant banker for the purposes of sub-rule (2) is not more than ninety days prior to the date of issue of shares which are the subject matter of valuation, such date may, at the option of the assessee, be deemed to be the valuation date:



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Provided that where such option is exercised under this sub-rule, the provisions of clause (j) of rule 11U shall not apply.

(4) For the purposes of clause (A) or clause (B) of sub-rule (2), where the issue price of the shares exceeds the value of shares as determined in accordance with —

- (i) sub-clause (a) or sub-clause (b) of clause (A), for consideration received from a resident, by an amount not exceeding ten per cent of the valuation price, the issue price shall be deemed to be the fair market value of such shares;*
- (ii) sub-clause (a) or sub-clause (b) or sub-clause (d) of clause (A), for consideration received from a non-resident, by an amount not exceeding ten per cent of the valuation price, the issue price shall be deemed to be the fair market value of such shares.*

Explanation.—For the purposes of this sub-rule, 'issue price' means the consideration received by the company for one share."

8.4. Where the valuation is based on value, on the date of issue of shares, of its assets, which include the intangible assets like goodwill, know-how, patents, copyrights, trademarks, licences, franchises, etc., such valuation requires application of mind. If the Assessing Officer finds any specific point for rejecting or recording



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dissatisfaction qua the valuation made by the assessee, recourse may be had to the procedure prescribed under Rule 11UA of the Rules. However, in the case on hand, the ITAT noted that the Assessing Officer had not found any specific fault in rejecting or not satisfying with the valuation made by the assessee. If that be so, the view taken by the ITAT that valuation made under Rule 11UA of the Rules by the Assessing Officer cannot be upheld, in our considered opinion, does not suffer from any legal infirmity, much less any error of fact.

8.5. Ergo, the addition under Section 56(2)(viib) of the Act is found not justified and, accordingly, the second question of law raised in these appeals is answered in favour of the assessee and against the revenue.



T.C.A.Nos.14 to 16 of 2020

FIFTH SUBSTANTIAL QUESTION OF LAW IN T.C.A.No.14 of 2020

9.1. The decision of the ITAT in remitting the disallowance made on lease rent paid by the assessee company to its Director has been questioned by the revenue more on a factual note, rather than involving any question of law as such.

9.2. The assessee company paid lease rent of Rs.16,85,400/- to its Managing Director, M.Kiran Kumar, in respect of the property at 122, Usman Road, T.Nagar, Chennai – 600 017. Admittedly, the area of the property was 4023 sq.ft. The assessee claimed that it had paid the lease rent at the rate of Rs.418/- per sq.ft. As the prime locality of the land was not disputed by the revenue, the ITAT was of the view that the finding of the Assessing Officer that lease rent paid by the assessee company to its Managing Direction was in excess of fair market value requires proper consideration. The ITAT formed an opinion that the fair rent has to be estimated considering the location of the building, amenities provided and prevailing



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market value of the land in the locality. The ITAT was of the view that the Assessing Officer is required to take into consideration the procedure prescribed under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and the City Municipal Corporation Act.

9.3. The ITAT, noting that the aforesaid relevant aspects were not considered by the Assessing Officer, thought it just, fair and appropriate that the issue should be reconsidered with reference to the relevant aspects and remanded the issue for an exercise *de novo* by the Assessing Officer, while setting aside the orders of the Assessing Officer and the CIT(A).

9.4. The decision taken to remand for consideration afresh does not prejudice the revenue. We are not at all satisfied with the submission of learned counsel for the revenue that it involves any question of law as such. Since the amount paid towards rent was to the Director of the assessee company, in view of the provisions contained in Section 40A(2)(a) read with Section 40A(2)(b) of the Act, unless a categoric finding is recorded, taking into consideration



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all relevant aspects, that the expenditure is excessive or unreasonable, disallowance should not be made.

9.5. We are, therefore, of the opinion that no question of law as such arises for consideration and the issue is, accordingly, answered in the manner that no question of law arises for consideration.

FIFTH AND SIXTH SUBSTANTIAL QUESTIONS OF LAW IN
T.C.A.Nos.15 AND 16 OF 2020

10.1. The ITAT has proceeded on an admitted position of fact that the assessee paid Rs.15 crore to its Managing Director, M.Kiran Kumar, for taking property situated at 124, Usman Road, T.Nagar, Chennai, on lease. On the basis of monthly rent at Rs.15 lakhs, the assessee's claim towards lease advance of Rs.15 crores was examined.

10.2. Taking into consideration the provisions contained in Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the ITAT



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has recorded that the rental premium shall be equivalent to three months monthly rent. It also took into consideration the provisions contained in Section 30 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 which exempts certain types of buildings specified therein.

10.3. The case of the assessee was that the premises was taken on lease for business necessity. However, the case of the revenue is that the assessee diverted Rs.15 crores in the guise of lease advance to its Managing Director and, therefore, the disallowance of payment of interest proportionately to the extent of diverted borrowed amount is justified.

10.4. A bare perusal of the provision contained in Section 36(1)(iii) of the Act makes it clear that, in computing income referred to in Section 28 of the Act, the amount of the interest paid in respect of capital borrowed for the purposes of the business of provision could be deducted. The order of the ITAT shows that the ITAT remanded the case for consideration afresh, mainly on the



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basis that the amount is required to be properly determined by taking into consideration the provisions contained in the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

10.5. The case of the revenue was that such amount could not be allowed towards claim of deduction under Section 36(1)(iii) of the Act. A bare perusal of the provision would show that once deduction is claimed on the basis that interest was paid in respect of the capital borrowed for the purposes of the business or profession, the benefit of deduction would be available under the law.

10.6. According to the assessee the property was taken on lease for carrying out business activity. The ITAT did not consider this aspect and rather diverted itself to an aspect as to whether the computation was proper or not for the purposes of granting deduction.

10.7. As far as the disallowance under Section 36(1)(va) of



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the Act to the extent of Rs.31,81,821/- is concerned, the ITAT having recorded a finding that, admittedly, there was a delay in payment of employees' contribution to the respective account, has proceeded to set aside the orders of the Assessing Officer and the CIT(A), relying upon a judgment of this court in the case of *CIT v. Industrial Security and Intelligence India (P) Ltd*⁵.

10.8. The ITAT has held that if the employees' and employer's contributions were paid to the respective account within the due date provided for filing the return of income it has to be allowed. However, having so held, the ITAT has not recorded any finding as to how delayed payment of employees' contribution could be claimed. No reasons have been recorded by the ITAT on this account as to how it has remanded to the Assessing Officer for re-examination with regard to the actual date of payment made by the assessee to the government account,

10.9. Accordingly, this substantial question of law is decided in favour of the revenue and against the assessee. The order of the

⁵ Order dated 24.7.2025 in TCA.Nos.585 and 586 of 2015



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ITAT in so far as it remands the issue regarding disallowances under Sections 36(1)(iii) and 36(1)(va) of the Act is set aside. The ITAT is directed to re-examine the entire issue based on material available on record the applicable provisions of law.

11. To sum up, the substantial questions of law are answered as under:

- (a) The first substantial question of law in these appeals is answered in favour of the revenue and against the assessee;
- (b) The second substantial question of law in these appeals is answered in favour of the assessee and against the revenue;
- (c) The third and fourth substantial questions of law in these appeals is answered in favour of the assessee and against the revenue;
- (d) Qua fifth substantial question of law in TCA No.14 of 2020, it is held that no question of law arises for consideration;



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(e) The fifth and sixth questions of law in TCA Nos.15 and 16 of 2020 are answered in favour of the revenue and the issue is remanded to the ITAT for re-examination of the issue.

12. These appeals are disposed of accordingly. There shall be no order as to costs.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (SUNDER MOHAN,J)
28.11.2025

Index : Yes
Neutral Citation : Yes

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To

1. The Assistant Registrar
Income Tax Appellate Tribunal
Chennai.
2. The Commissioner of Income Tax (Appeals)-18,
Chennai.
3. The Assistant Commissioner of Income Tax,
Central Circle-1(4) (i/c), Chennai.



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T.C.A.Nos.14 to 16 of 2020

THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN,J.

(sasi)

T.C.A.Nos.14 to 16 of 2020

28.11.2025