Dy. C.I.T. Cir-.4, Nagpur vs Inex Infotech Pvt. Ltd., Nagpur on 25 November, 2016

IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH, NAGPUR BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND SHRI RAM LAL NEGI JUDICIAL MEMBER.

S.No.	ITA No.	Asstt.Year	Appellant	Respondent.
1.	403/Nag/2016	2012-13.	Dy.Commissioner of Income-tax, Circle-4, Nagpur.	M/s Inex Infotech Pvt. Ltd.. Nagpur.
2.	413/Nag/2016	2012-13.	Dy.Commissioner of Income-tax, Circle-4, Nagpur.	M/s Amply Infotech Pvt. Ltd., Nagpur.
3.	414/Nag/2016	2012-13.	Dy.Commissioner of Income-tax, Circle-4, Nagpur.	M/s Apeak Infotech Pvt. Lt.
4.	422/Nag/2016	2012-13.	Dy.Commissioner of Income-tax, Circle-4, Nagpur.	M/s Westline Trading Co. Pvt. Ltd., Nagpu.
5.	423/Nag/2016,	2012-13.	Dy.Commissioner of Income-tax, Circle-4, Nagpur.	M/s Yogesh Projects Pvt. Ltd., Nagpur.
6.	431/Nag/2016	2012-13.	Dy.Commissioner of Income-tax, Circle-4, Nagpur.	M/s Jaspar Commerce Pvt. Ltd, Nagpur.

Appellant by : Shri Narendra Kane.
Respondent by : Shri Hitesh Shah.

Date of Hearing : 24-11-2016
Date of Pronouncement : 25th Nov., 2016

O R D E R.

PER BENCH:

These are appeals by the Revenue directed against the separate orders of learned CIT(Appeals) against separate assessees. Since the issues are common and appeals were heard together, these are being disposed by this common order for the sake of convenience. Common grounds of appeal read as under :

> 1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of share premium without appreciating that the share premium amount is liable to held as a profit earned within the meaning of section 28(iv) of the I.T. Act.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the facts that the allotment of shares to only group companies and not to the companies other than group companies.

2. Since the facts are identical, we are adjudicating the issue with reference to figures from ITA No. 403/Nag/2016.

3. Brief facts of the case are as under :

During the course of assessment proceedings, the AO noted that the assessee had received share application money of Rs.3,39,00,000/- during the year. On further verification, the AO observed that out of this share application, the assessee had received a sum of Rs.3,30,52,500/- towards share premium amount. The AO observed that the assessee company did not have any significant business for which somebody would pay this amount of share premium. The assessee during the course of assessment proceedings submitted that the receipt of share premium is a capital receipt and hence non taxable. However, the AO was not satisfied, he observed as under :

4. The AO further observed as under :

" The explanation given by assessee was not sufficient to prove and justify the base of huge premium because the assessee had received the premium only from few identical entities. The assessee company had not offered any public issue. It is notable that the assessee company did not charged any premium from any other share holders. On perusal of the audit report, books of account, balance sheet and P & L account for the relevant and recent earlier years. It is observed that assessee had not any attractive profitable, creditable activities so that some body else would have paid such huge share premium. The premium received from the particular entity is suspicious and does not stand justified. On he basis of enquiries conducted and reported by Investigation Wing it is seen that the assessee company received share application money including share premium during the year. As reported by the Investigation Wing, due enquiries were made and statement on oath of various persons involved were recorded. In which any body could not justify the huge premium charged and merely stated that it was the investment decision taken on the basis of potential of assessee company. Considering that there was no business activities carried out by the assessee company The fare offer of sale of shares was not made to the share holders or other entities. There is nothing identical ground establish to receive huge premium by the assessee. Further, it is reported after due enquiries by Investigation Wing, Nagpur that investor entities, companies who had invested a share application money bin the assessee company are from the same PPSL group. The directors of these companies were the persons of meagre means. The companies of this group had transacted these amounts in layers and stages which is established by Investigation Report. The statement were recorded on oath by

> Investigation Wing of these persons involved. Therefore, the transaction of share application money, share capital introduction, share premium stands artificially designed. Hence, the huge premium charged per share is not justifiable and there is a case to be made out that the share premium received is part of the consideration received towards the sale of shares. Alternatively amount of share premium received needs to be treated as profit enjoyed within the meaning of sec. 28(iv) of the I.T. Act, 1961 and added back to the total income of the assessee. Therefore, the amount of Rs.3,30,52,500/- on account of share premium as profit enjoyed within the meaning of sec. 28(iv) of the I.T. Act, 1961 is added back to the total income of the assessee."

5. Upon assessee's appeal, learned CIT(Appeals) elaborately considered the submissions of the assessee. Learned CIT(Appeals) also obtained remand report from the AO. In the remand report the AO reiterated the findings of the AO in the assessment order. The AO observed that regarding the receipt of share application money including huge share premium the assessee failed to establish the reasonableness, establish any market segment, project enhancement, future prospects in a company, that the amount received with the share premium was nothing but profits received in the hands of the company. That the contention of the assessee that the source of funds was established had no relevance because the assessee company had received huge quantum of share premium without having any potential. That this premium has been paid in investment in group companies only and no outsiders was involved. That this proves the nature of transaction was artificial. Therefore, the premium received by the assessee was held to be profit within the meaning of section 28(iv) and brought to tax.

6. Considering the assessee's submissions and the remand report, learned CIT(Appeals) referred to the decision of a group concern of the assessee in M/s Gondwana Engineering Pvt. Ltd. for assessment year 2010-11 wherein the issue of share premium was added u/s 68 and the learned CIT(Appeals) had deleted the addition. Learned CIT(Appeals) further referred to ITAT Bombay Bench decision in the case of Green Infra Ltd. vs. ITO 145 ITD 240 wherein the Tribunal had concluded that the receipt related to share capital of a company is capital in nature and, therefore, cannot be taxed u/s 56(1). That the Tribunal held that no evidence was found for which the AO could conclude that entire transaction was sham. The learned CIT(Appeals) further referred extensively to the case laws referred by him and observed as under :

> "6.2 I find that during the course of assessment proceedings, the appellant has submitted the address, PAN, copies of audited Balance Sheet , Copies of ITR, copies of resolution of Board of Directors authorizing the said investment, copy of bank statements, the appellant has also submitted that parties who had invested in shares of appellant company at a premium have confirmed the transaction of shares during the course of assessment proceedings. Accordingly, the appellant has submitted that the assessee company has established identity nd creditworthiness of the entities as well as proved the bonafides and genuineness of transactions beyond doubt. This submission of the appellant was sent to the A.O. for comments and the A.O. in remand proceedings has not disputed this assertion of the appellant. Accordingly, considering the ratio of the case decided vide order No.CIT(a)-ii/153/13- 14, dated

1.10.2014 and ratio laid down in the case of Green Infra Ltd. by Mumbai Bench of ITAT, it is clear that the amount of share premium cannot be treated as income either u/s 68 or u/s 56 in the case of the appellant. I also find that an amendment has been brought in the Income- tax Act and Sec. 56(2)(viib) and has been inserted by the Finance Act 2012 w.e.f. 1.4.2013. The current assessment will not be effected by this provision.

6.3 However, in the present case the A.O. brought this amount to tax not u/s 68 or u/s 56(1) but he has brought the amount to tax u/s 28(iv) of the Incometax Act. I find that Ld. ITAT, Mumbai in the case of Softner Traders & Consultants vs. Department of Incometax decided vide ITA No.3070 & 3071/Del/2008 (E-Bench) has considered the similar question with similar grounds of appeal

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6.4 Again I find that ITAT, Mumbai in the case of DP World (P) Ltd. Vs. DCIT 140 ITD 694 has stated that in a case where assessee received residential flats from its sister concerns, a UK based company, which the assessee explained as transaction of gift of shares and agreement of capital receipt not chargeable to tax. Considering the facts of the case the Hon'ble Tribunal held that provision of Sec.28(iv) could not be applied to the assessee's case.

6.5 I also find that similar issue has been decided in favour of the appellant by Hyderabad Tribunal in case of M/s K.N.B. Investments (P) Ltd. The matter has also been decided in favour of the appellant in appeal before Hon'ble High Court of Andhra Pradesh decided vide 367 ITR 616.

6.6 Further I find that the Hon'ble High Court of Delhi in the case of Jindal Equipments Leasing & Consultancy Services Ltd. Vs. CIT in 325 ITR 87 (Delhi) has considered a similar issue of benefit arising to an assessee. The matter under consideration before the Hon'ble Court was that whether amount due to assessee - investment company from a creditor was waived by creditor, having regard to assessee's business, amount waived constituted receipt in assessee's hands and therefore, it was not taxable u/s 28(iv) of the Incometax Act, 1961.

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6.8 Also in the case of Fortune Oceanic Products Ltd. Vs. Department of Incometax decided vide ITA NO.2414/Del/2011 similar issue has been decided by ITAT Delhi Bench in favour of appellant.

7. The learned CIT(Appeals) concluded as under :

" These judicial pronouncements clearly show that share premium received by the appellant is a transaction in the nature of sale and purchase of shares hence, a transaction which is capital in nature and can't be added u/s 28(iv) of the I.T. Act as a benefit within the meaning of that section. Accordingly the AO is directed to delete the addition of Rs.3,30,52,500/- on account of share premium as profit enjoyed within the meaning of section 28(iv) of the I.T. Act, 1961. This ground is accordingly Allowed."

8. Against the above order, the Revenue is in appeal before us.

9. We have heard both the counsel and perused the records. Learned D.R. relied upon the orders of the AO.

10. Per contra learned counsel of the assessee supported the order of learned CIT(Appeals). He submitted that in this case there is no dispute regarding the identity and genuineness of the transaction. The share applicants are identified. No case has been made out that they are non existent. In such circumstances the learned counsel pleaded that there is no basis for making the addition regarding share capital and share premium in the hands of the company when the share holders and share applicants are identified. For this proposition learned counsel placed reliance on the decision of Hon'ble Apex Court in the case of M/s Lovely Exports 216 CTR 195 and the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. K.C.Pipes Pvt. Ltd. 386 ITR 532. Further learned counsel submitted that there is no basis whatsoever that the share premium receipt can be treated as benefit u/s 28(iv) of the I.T. Act. For this proposition learned counsel placed reliance on catena of decisions including that of Hon'ble Bombay High Court in the case of Idea Cellular Ltd. vs. Union of India and Others in WP(LODG) NO. 1462 of 2013 vide order dated 21st Sept., 2013. Learned counsel further submitted that in the recent decision of 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 Hon'ble Apex Court had held that share capital receipt from various shareholders cannot be treated as business income. Further learned counsel referred to several case laws as under :

i) Delhi High Court judgement in the case of CIT vs. M/s Fair Finvest Ltd. (2012) 83 CCH 0265.

ii) Calcutta High Court judgement in the case of CIT vs. General Industrial Society Ltd. (2013) 71 CCH 0296.

iii) ITAT Bombay G-Bench decision in the case of Green Infra Lt. Vs. ITO in ITA No. 7762/Mum/2012 dt. 23rd August, 2013.

iv) Bombay High Court judgement in the case of Idea Cellular Ltd. vs. Union of India & Ors. In WP (LODG) No. 1462 of 2013 dt. 21st Sept., 2013.

v) Delhi High Court decision in the case of Addl. CIT vs. OM Oils & Oil Seeds Exchange Ltd. 152 ITR 552.

vi) Madhya Pradesh High Court judgement in the case of CIT vs. Rajaram Maize Products 234 ITR 0667.

vii) Bombay High Court judgement in the case of Vodafone India Services Pvt. Ltd. vs. Addl. CIT 368 ITR 01.

viii) Bombay High Court decision in the case of Prashant Joshi vs. ITO, 324 ITR 154.

ix) Madras High Court in the case of Iskraemeco Regent Ltd. vs. CIT 331 ITR 317.

x) ITAT, Mumbai Bench decision in the case of ACIT vs. Gagandeep Infrastructure Pvt. Ltd. 2014-TIOL-656-ITAT-Mum.

xi) ITAT, Delhi Bench decision in the case of DCIT vs. M/s CNB Finwiz in ITA No. 3756/Del/2010 dated 13-12-2013.

xii) ITAT, Kolkata Bench decision in the case of ITO vs. M/s Kyal Developers Pvt. Ltd. dated 19-12-2013.

11. Upon careful consideration, we find that the sole issue in this case is the addition of share capital and share application money in the hands of the assessee as income u/s 28(iv) of the I.T. Act. We find that in this case there is no dispute whatsoever regarding identity of the share applicants/shareholders.

Adverse inference has been drawn by the AO only on the ground that the statements on oath of various persons recorded could not justify the huge premium charged and merely stated that it was the investment decision taken on the basis of potential of assessee company. The AO has drawn adverse inference further on the ground that fare offer of shares was not made to the shareholders or other entities. In the remand report also the AO has only emphasised that there was no justification of charging huge share premium. Hence the AO has observed that the nature of transaction was artificial and hence the premium received by the assessee was held profit within the meaning of section 28(iv).

12. In our considered opinion the above basis of addition brought on record by the AO has no cogency. It is settled law that once the identity of shareholders are established, the addition, if any, on account of share application/share premium, share capital has to be considered in the hands of the shareholders. It is trite law that the company is an artificial juridical person. It can own property in its name. It can sue and can be sued. This proposition is duly fortified by the decision of Hon'ble Apex Court in the case of Lovely Export 216 CTR 195. Further in a recent judgment, the Hon'ble Punjab & Haryana High Court in the case of CIT vs. K.C.Pipes Pvt. Ltd. 386 ITR 532 has held that the assessee cannot be held responsible if shareholders have acquired money illegally. Further

Hon'ble jurisdictional High Court in Tax Appeal No. 16 of 2012 in the case of CIT vs. Goa Sponge and Power Ltd. vide its judgement dated 13-02- 2012 has held as under :

> "....Once the authorities have got all the details, including the names and addressed of the shareholders, their PAN/GIR number, so also the name of the Bank from which the alleged investors received money as share application, then, it cannot be termed as "bogus". The controversy is covered by the judgements 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 assessee company. Though it is noted that in the present case no finding has been given that the shareholders/share applicants are not unidentifiable or bogus, in fact the AO has also referred to statement on oath from the share applicants.

13. The only ground taken by the Revenue is that there is no justification for charging of share premium. So the sums received are taxable u/s 28(iv) of the I.T. Act. In this regard we may gainfully refer to section 28(iv) of the I.T. Act as under :

> 28. 42The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",--
>
> (i) the profits and gains43 of any business or profession43 which was carried on by the assessee at any time during the previous year ;
>
> (ii) any compensation43 or other payment due to43 or received by43,--
>
> (a) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;
>
> (b) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto ;
>
> (c) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating

thereto ;

[(d) any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business ;]

(iii) income derived by a trade, professional or similar45 association from specific services45 performed for its members ;

[(iiia) profits on sale of a licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 (18 of 1947) ;] [(iiib) cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India ;] [(iiic) any duty of customs or excise re-paid or re-payable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971 ;] [(iiid) any profit50 on the transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);] [(iiie) any profit on the transfer of the Duty Free Replenishment Certificate, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) ;] [(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession ;] [(v) any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm :

Provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted ;] [(va) any sum, whether received or receivable, in cash or kind, under an agreement for--

(a) not carrying out any activity in relation to any business; or

(b) not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services:

Provided that sub-clause (a) shall not apply to--

(i) any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business, which is chargeable under the head "Capital gains" ;

(ii) any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations

> Environment Programme, in accordance with the terms of agreement entered into with the Government of India.

Explanation.--For the purposes of this clause,--

(i) "agreement" includes any arrangement or understanding or action in concert,--

(A) whether or not such arrangement, understanding or action is formal or in writing; or (B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

(ii) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as accounting, banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging;] [(vi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.--For the purposes of this clause, the expression "Keyman insurance policy"

> shall have the meaning assigned to it in clause (10D) of section 10;] [(vii) any sum, whether received or receivable, in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD.] Explanation 1.--[Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.] Explanation 2.--Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business.

14. A reading of the above makes it clear that section 28 refers to the profits and gains of business or profession. It sets out the income which are chargeable to income-tax under the head "profits and gains of business or profession" and clause (iv) thereto states that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession. A plain reading of this provision shows conditions precedent for such taxability i.e. (1) that there should be benefits or perquisites; and that (ii) such benefits or perquisites should arise from the business or exercise of the profession. The expression 'arising from the business' essentially implies that the benefit or perquisite must be in the nature of a business receipt or revenue receipt. No matter how wide be the scope of section 28(iv), the difference between capital receipt and revenue receipt cannot be overruled. One must bear in mind the fact that section 28 only refers to the 'income' which can be charged to income tax under the head 'profits and gains from business or profession', and, therefore, when a particular advantage, perquisite or receipt is not in the nature of income, there cannot be any occasion to bring the ame to tax under section 28(iv). It is settled law

that a capital receipt, in principle, is outside the scope of income chargeable to tax. It is also important to bear in mind that, the burden is on the revenue to establish that the receipt is of a revenue nature. As to what constitutes capital receipt, is found guidance from Madras High Court's judgment in the case of CIT v. Seshasayee Bros. (P) Ltd. [1996] 222 ITR 818/819 Taxman 13 wherein it was held that "when a receipt is referable to fixed capital, it is not taxable, and it is taxable as a revenue receipt when it is referable to circulating capital or stock in trade". To sum up, unless it is a revenue receipt, it cannot be in the nature of income [except in a situations in which capital receipts are specifically included in the definition of income such as under section 2(24)(vi), and unless it is in nature of income, it cannot be considered for taxation under section 28(iv).

15. From the above it is clear that to find out whether or not the benefit even if that be so is on capital account or Revenue's account, it is necessary to understand the nature of transaction which resulted in what the AO assessed as benefit to the assessee.

16. In the present cases share applicants have applied for share capital at a premium. It is well settled accounting principle that share capital, share application money and share premium fall under capital nature of transaction.

17. The Companies Act which governs the principles and manner of preparations of accounts of Companies also provides under section 211 vide Schedule VI that share capital, share premium, share application money pending allotment be separately shown as capital item in the balance sheet. In such circumstances there is no dispute that share capital, share application money including share premium fall under capital head and thus are to be treated as capital receipt and not as revenue receipt.

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 recognised 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 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."

In the aforesaid case Karnataka High Court had held following the case of Shree Nirmal Commercial Ltd. 193 ITR 694 (Bom.) and 213 ITR 361 (FB) that both the capital and refundable deposits received by Housing Company from its shareholders in consideration for allotting areas to them is assessable as business profits.

19. In this regard we may also gainfully refer to Hon'ble Bombay High Court decision in the case of Idea Cellular Ltd. vs. Union of India (supra). In this case the Hon'ble Bombay High Court has referred to the assessee's contention that the benefit which arises on capital account cannot be subject matter of income u/s 28(iv) of the said Act and in this regard the assessee had relied upon the decision of ITAT in the case of ITO vs. Shreyas Investment P. Ltd. 141 ITD

672. Referring to the above ITD decision the Hon'ble High Court has observed that in its application for stay the petitioner had specifically referred to the said decision of the Tribunal that the respondent does not state that this decision is inapplicable to the facts of the petitioner's case and that he does not distinguish the same. In these circumstances the Hon'ble High Court held that "we are not inclined to direct the petitioner to deposit any amount till its application is heard and decided in accordance with law. Similarly Hon'ble Bombay High Court in the case of Vodafone India Services P. Ltd. vs. Union of India 368 ITR 001 has also considered the taxability of share capital including premium as income and held as under :

> " The word "income" for the purpose of the Income-tax Act, 1961 has a well understood meaning as defined in section 2(24) of the Act. Even though the definition in section 2(24) of the Act is an inclusive definition, income will not in its normal meaning including capital receipts unless it is so specified, as in section 2(24)(vi) of the Act. Amounts received on issue of share capital including the premium are undoubtedly on capital account. Absent express legislation, no amount received, accrued or arising on capital account transaction can be subjected to tax as income."

20. From the above it is evident that the share capital and share application money with premium received by the assessee company is an amount received on capital account. From the above case laws it is quite evident that sums received on capital account cannot be treated as income. Once it is held that the share capital and share application money with premium are received on capital account, such receipts cannot be added as income from business and profession u/s 28 of the I.T or for that matter u/s 28(iv) of the I.T. Act. In this regard even at the risk of repetition we find that section 28(iv) provides that following amount shall be chargeable to income-tax under the head profits and gains from business or profession, "the value of any benefit or perquisite convertible into money or not arising from business or the exercise of a profession. In this regard we fail to understand as to how section 28(iv) is applicable on the facts of the present case where share application, application money has been received. Section 28(iv) covers the value of any benefit or perquisite and not sums received on capital account which is the case in the present context. Hence in our considered opinion the AO could not resort to this provision as the receipt was of capital nature.

21. In the background of aforesaid discussion and precedent, we do not find any infirmity in the order of learned CIT(Appeals).

22. Since we are deciding the issue on the basis of Hon'ble Apex Court decision and Hon'ble Jurisdictional High Court decision, we do not find any need to deal with the other case laws referred

by the learned counsel of the assessee which are also relevant on the facts of this case and support the assessee's case.

23. In the result, these appeals filed by the Revenue stand dismissed Order pronounced in the Open Court on this 25th day of Nov., 2016.

Sd/-	Sd/-
(RAM LAL NEGI)	(SHAMIM YAHYA)
JUDICIAL MEMBER.	ACOUNTANT MEMBER.

Nagpur,
Dated: 25th Nov. , 2016.

Copy forwarded to :

1.
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2. D.C.I.T., Circle-4, Nagpur.
3. C.I.T.- , Nagpur.
4. CIT(Appeals), - Nagpur.
5. D.R., ITAT, Nagpur.
6. Guard File

True Copy

By Order

Assistant Registrar,
Income Tax Appellate Tribunal,
Nagpur Bench, Nagpur.

Wakode.