IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

ITTA.Nos. 245, 246, 366 & 367 of 2019

Dt. 06.03.2026

ITTA.No.245 and 246 of 2019

Between:

The Prl. Commissioner of Income Tax-2, Hyderabad.

…. Appellant

and

Bharathi Cement Corporation Pvt. Ltd.

…Respondent

ITTA.No.366 and 367 of 2019

Between:

Bharathi Cement Corporation Pvt. Ltd.

…. Appellant

and

The Pr. Commissioner of Income Tax-2, Hyderabad.

…Respondent

COMMON JUDGMENT: *(Per the **Hon'ble Sri Justice Suddala Chalapathi Rao**)*

1. The instant batch of appeals in ITTA Nos.245 and 246 of 2019 are filed by the revenue and ITTA Nos.367 and 366 of 2019 are filed by the assessee, challenging the very same common order passed by the Income Tax Appellate Tribunal, Hyderabad, Bench 'B' ITA No.696/2014 and 697/2014, dt.10.08.2018, for the respective assessment years are 2009-10 and 2010-11.

2. Since all the appeals preferred by both the Revenue and the Assessee arise from the same common order passed by the learned

ITAT, though on distinct factual grounds, they were heard together analogously and decided by a common order.

3. The brief facts of the case are that the assessee is engaged in the business of manufacture and sale of cement. For the Assessment Year 2010–11, it filed its return of income on 15.10.2010 declaring a loss of Rs.189,75,94,495/-. The assessment was completed by the Assessing Officer by making addition of Rs.182,00,00,000/- under Section 68 of the Income Tax Act, 1961 (for short 'the Act').

4. During the assessment year 2010-11, the assessee claimed to have received share premium aggregating to Rs.182,00,00,000/- from five companies i.e., India Cements, Dalmia Cements (Bharat) Limited,

Gilchrist Investment Pvt. Ltd., Alpha Villas Pvt. Ltd. and Alpha Avenue Pvt. Ltd. and pursuant to the said investments, the assessee allotted 0% convertible preference shares numbering about 1,08,27,490 at a premium of Rs.94/-, Rs.110/-, Rs.175/- and Rs.1,440/- per share to the said companies.

5. The Assessing Officer passed assessment orders dt.30.12.2011 (AY-2009-10) and dt.31.03.2013 (AY 2010-11) stating that despite investing Rs.185 crores, the above investor companies were allotted only 0.3% of the equity shareholding, whereas the main promoter of the company i.e., Sri Y.S. Jagan Mohan Reddy and the other promoter

namely M/s Silicon Builders, who had invested about Rs.45 crores, held 99.7% of the shareholding.

6. The Assessing Officer recorded statements of key personnel of the investor companies, to examine the justification for such substantial investments, more particularly when the assessee had not even commenced commercial production during the relevant period and although the face value of each share was Rs.10/-, the shares were allotted at a high premium of Rs.94/-, Rs.110/-, Rs.175/- and Rs.1,440/- per share without any prior valuation of the equity shares in the company, which had no operational track record at the relevant point of time.

7. Further, the Assessing Officer held that the said investments were not genuine commercial transactions of purchase of equity shares and the said amount was deposited by the investor companies, who had derived certain benefits such as sanctions and approvals from the Government of Andhra Pradesh, as a *quid pro quo* deal as the then Chief Minister was the father of the main promoter, by showing the said amount as investment of purchase of equity shares. The Assessing Authority further held that the assessee adopted the said mechanism and received the said amount s towards a mutual arrangement and cleverly designed it as purchase of equity shares and thus, the Assessing Officer, added Rs.182,00,00,000/- to the income of the assessee under Section 68 of

the Act and the Assessing Officer has also assessed the said amount as income from other sources and passed the impugned assessment orders

↵ Challenging the said assessment orders, the assessee preferred appeals before the Commissioner of Income Tax (Appeals) (for short 'the CIT(A)') and the CIT(A) dismissed the said appeals *vide* separate orders, dt.25.02.2014, holding that the entire amount was liable to be assessed as income from other sources under Section 56 of the Act.

↳ Aggrieved, thereupon the assessee preferred appeals before the learned ITAT in ITA Nos.696/2014 and 697/2014 and the learned ITAT after proper appreciation of material on record allowed the assessee's appeals and remanded the matter to the Assessing Officer for fresh

consideration by directing the Assessing Officer not to follow human probabilities, but on actual evidence of passing of the benefit to the shareholders/directors. Challenging the said orders of remand, both the Revenue and Assessee have filed the present appeals before this Court.

10. The appeals filed by the Revenue in ITTA.No.245 and 246 of 2019 were admitted for determination of the following substantial questions of law:

> "i) Whether, on the facts and in the circumstances of the case, the Tribunal is right in observing that the issue and allotment of shares, and the procedure of share premium payment by investors are according to law, while itself expressing doubt about the soundness of the investment decision and the reasonableness of huge premium paid by investor companies?
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> ii) Whether, on the facts and in the circumstances of the case, the Tribunal is correct in not confirming the order of AO and

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CIT(A) by observing that proper evidence or cogent material is to be brought on record, despite the fact that the AO and the learned CIT(A) have brought in the evidences sufficient enough to prove that the legal entity was used for the benefit of the directors by a colourable device?

iii) Whether, on the facts and in the circumstances of the case, the Tribunal is right in ignoring the specific findings of the Department in the form of e-mails etc., retrieved from the pendrive during the search operation, which shows that the amounts were received as unaccounted cash payments and further that the same facts were confirmed by Finance Manager of investor company, M/s.Dalmiya Cement?

iv) Whether, on the facts and in the circumstances of the case, the Tribunal is correct in ignoring the facts found by AO that the investor companies have remitted huge amounts to the assessee-Company as a 'quid-pro-quo' for favours which they have obtained from the then Andhra Pradesh Government due to huge political clout of assessee company?

v) Whether, on the facts and in the circumstances of the case, the Tribunal's order is valid in not considering the surrounding circumstantial evidences and human probability which is evident in the present case as per the rational laid down by

the Hon'ble Apex Court in the case of Sumati Dayal Vs. CIT and in the case of CIT Vs. Durga Prasad More?"

11. While, the appeals filed by the assessee in ITTA.No.366 and 367 of 2019, which were directed to be tagged along with ITTA.No.245 and 246 of 2019, were filed for determination of the following substantial questions of law:

"1. Whether, in the facts and circumstances of the case, the statement by the investors that they were not forced to sell the shares but found the price offered to be attractive was a material fact that should have been considered by the Hon'ble ITAT?

2. Whether the conclusion reached by the ITAT that even when all shares acquired in the assessee company over the years by the investors had been disposed off, the average price of acquisition cannot be considered and the price of acquisition of the same shares had to be considered is erroneous?

3. Whether, without establishing if proceeds were reinvested in the assessee company in the form of loans, the ITAT

should not have recorded this as a fact that has been noticed by them and, in the absence of evidence to this effect, should not have found place in the impugned order?

4. Whether, having held that the investments were capital receipts within the meaning of the Companies Act that the lower authorities were seeking to convert to a revenue transaction under the Act without establishing that the receipts were income of the assessee, the ITAT should have deleted the addition in entirety?

5. Whether, in any event, the ITAT ought to have deleted the addition on the ground of inapplicability of section 56, especially where the specific limb of section 56 has not been stated anywhere in the order of the first appellate authority and was also not clarified by Revenue during the course of the proceedings before the ITAT despite being called upon to do so?

6. Whether, without prejudice to the foregoing and in the facts and circumstances of the case, having concluded that the Revenue authorities had examined the matter based on circumstantial evidence and wrongly applying the test of human probabilities to a business transaction and that no cogent material had been brought on record by the Revenue authorities, the ITAT should have deleted the addition in entirety and not have restored the matter to the AO?

7. Whether, therefore, in the facts and circumstances of the case, the impugned order is bad in law and the appeal of the assessee should have been allowed?"

12. Heard Sri. B. Narasimha Sharma, the learned Additional Solicitor General of India appearing for the revenue in ITTA. Nos.245 and 246 of 2019 and for the respondents in ITTA.Nos.366 and 367 of 2019 and Sri D.D.Nageshwar Rao, learned counsel for appellants in ITTA.Nos.366 and 367 of 2019 and for respondents in ITTA.Nos.245 and 246 of 2019.

13. Sri. B. Narasimha Sharma, learned Additional Solicitor General of India representing Ms.J.Sunitha, learned Senior Standing Counsel for Income Tax Department for Revenue, mainly contended that both the Assessing Officer as well as the CIT(A) have recorded clear and

categorical findings that the transactions in question were not genuine. According to the Revenue, the amounts shown as share investments were in fact payments made as *quid pro quo* for benefits allegedly received by the investor companies from the Government during the relevant period. In fact, the investor companies collectively invested about Rs.185 crores in the assessee-company, yet were allotted only a minimal percentage of shareholding of 0.03%, which, according to the Revenue, renders the transaction commercially not viable besides the same is irrational. Learned Addl. Solicitor General further submits that there exists a direct nexus between the investments made by these companies and the benefits said to have been obtained by them from the

Government at the relevant point of time and they are *quid pro quo* transactions and that the said shares of the company were never offered to the general public and thus, the said investment made for purchase of equity shares in the assessee-company is not genuine.

14. It was further contended by the learned Additional Solicitor General of India, that the apparent nature of the transaction does not reflect its real character and though the entire transaction was depicted to be genuine under the guise of shares, in fact, the entire transaction was paid otherwise and merely because the transactions were structured in the form of share allotments, they cannot be treated as legitimate share capital, the prevailing circumstances indicate otherwise. Thus, it is

contended that the Assessing Officer was justified in invoking Section 68 of the Act and adding Rs.182,00,00,000/-, as unexplained cash credits under Section 56 of the Act, ought not to be interfered by the learned ITAT.

15. Learned Additional Solicitor General of India further contended that the learned ITAT has not appreciated the material on record in proper perspective, despite the entire record being available before it and the learned ITAT being the last appellate authority to appreciate the material on record has not appreciated the material and erroneously remanded once again to the Assessing Officer, which is per se illegal and the findings arrived at by the learned ITAT are perverse. Thus, it is prayed

to set aside the orders passed by the learned ITAT and to allow the Revenue appeals and to dismiss the appeals of the assessee by confirming the orders of the Assessing Officer.

16. The learned Additional Solicitor General of India placed reliance on judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax v. P.Mohanakala***[1] wherein the Hon'ble Supreme Court held as under:

"Doubtful nature of the transaction and the manner in which the sums were found credited in the books of accounts maintained by the assessee have been duly taken into consideration by the authorities below—Prima facie evidence against assessee—

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[1] 2007 (291) ITR 278 (SC)

Liable to be assessed u/Section68 –Appeal of Revenue Deptt. Allowed"

17. The learned Additional Solicitor General of India also placed reliance in the case of the ***National Aluminum Company Ltd. v. State of Andhra Pradesh & Others***[2] wherein the Hon'ble Supreme Court has held that *"without any material to hold that there was any sale involved and that too, any intra-state sale within the State of Orissa, the Tribunal could not have come to the impugned conclusion"*.

1↵ Further, drawing a clue from the aforesaid judgments, learned Additional Solicitor General of India, Mr.B.Narasimha Sharma, contends that in the instant case though there is no substantial evidence to show

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[2] (2008) 4 Supreme Court Cases 490

that the said amount of Rs.185 Crores was a genuine transaction for the purchase of equity shares and deposited in the account of the assessee purporting to be the sale price of equity shares, more so, when the assessee-company i.e., Bharati Cement, has not even started its operations of production at the relevant time and at any stretch of imagination of a prudent person, the sale proceeds of equity shares will not be that high as calculated and deposited by the respective companies of Rs.185 Crores into the accounts of the assessee-company. In that view of the matter, it is contended that remand to the very same Assessing Authority by the ITAT is unwarranted and the said findings of the learned ITAT are perverse and liable to be set aside.

1↳ *Per contra*, Sri D.D.Nageshwar Rao, the learned counsel representing Sri Rajesh Maddy, learned counsel for the assessee has submitted that in fact, the companies, which have deposited the sum of Rs.185 Crores into the assessee-company, all are reputed companies, who are in the market from many years, and out of their rich expertise anticipating that the assessee would do good business, have purchased the equity shares of the assessee-company by investing the said amount towards the purchase of the equity shares and it is for those companies to decide the sale price of the equity shares and the balance sheet of the said companies in fact have properly shown the said amount as investment in the assessee-company and a proper procedure has been

followed in purchase of the said equity shares and apparently, all the amounts were deposited into the account of the assessee, which is still lying in the credit of the assessee-company as on today and there is no deviation of any procedure. Further, upon proper evaluation of the prospects of the company only, the said amount was invested towards purchasing the equity shares and that in any way, the said addition cannot be maintained and the learned ITAT has erred in not appreciating the facts in proper perspective and ought to have allowed the appeals by setting aside the assessment orders.

20. Learned counsel Sri D.D.Nageshwar Rao, has placed reliance on the decision of the Hon'ble High Court of Madhya Pradesh in

Commissioner of Income Tax v. Chain House International Pvt. Ltd.[3]

wherein it was held as under:

> *"52. Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies"*

21. Further, in the case of ***Shendra Advisory Services P. Ltd. v. the Deputy Commissioner of Income Tax***[4] the Hon'ble High Court of Bombay held as under:

> *"15. Therefore, since the Act does not stipulate the non-compliance of any provision of other Act would result in turning a*

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[3] (2018) 408 ITR 561

[4] 2024:BHC-OS:2554-DB

capital receipt into a revenue receipt, even assuming for the sake of argument that the appellant had breached the provision of Section 78(2) of the Companies Act, 1956,it would not turn the share premium amount received into a revenue receipt. As observed in ***Credit Suisse Business Analysis (India) (P.) Ltd. V/s. Assistant Commissioner of Income Tax****((2016) 72 taxmann.com 131(Mumbai-Tribu.)),for determining the due taxes, the Assessing Officer should avoid bringing far-fetched fancies and ideas".*

22. By drawing a clue from the said judgments, the learned counsel for the assessee would contend that in the instant case also the assessee had done in the same way and even if the assessee had violated the provisions of the Companies Act, 1956(for short 'the Act, 1956'), it would be penalized under the provisions of the said Act, but however would not

turn into a revenue receipt or *vice-versa* and there is nothing on record from the balance sheet of the company that the share premium has been utilized for the purpose other than what is prescribed under Section 78(2) of the Act, 1956.

23. It is also contended by the learned counsel for the assessee that as on today, the very same amount of Rs.185 Crores is still lying in the assessee account and the same is capital receipt and not a revenue receipt and that there is absolutely no evidence to show that the assessee company has been used as a vehicle to benefit the directors and the Assessing Officer basing on guesswork by applying the test of

human probability has made the said addition of the amount under Section 68 of the Act, which is impermissible under law.

24. Learned counsel for the assessee has further placed reliance on the judgment of the Hon'ble High Court of Delhi in ***Principal Commissioner of Income Tax-12 v. Smt. Krishna Devi***[5], which held as under:

> "……share price and other factors may be enough to show circumstances that might create suspicion; however the Court has to decide an issue on the basis of evidence and proof, and not on suspicion alone. The theory of human behavior and preponderance of probabilities cannot be cited as a basis to turn a blind eye to the evidence produced by the Respondent"

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[5] (2021) 126 taxmann.com 80(Delhi)

25. Further, in the case of ***Commissioner of Income-Tax v. Lanco Industries Ltd.***[6] the erstwhile High Court of Andhra Pradesh held as under:

> "If the ostensible shareholders failed to explain the means of investment, that should have been treated as unexplained income in their hands. In order to add it to the income of the assessee there must be a further finding that in fact the shareholders were mere name-lenders and the money allegedly invested by them really belonged to the directors of the assessee-company. In the absence of a finding that the persons to whom the share certificates were issued on receipt of consideration as per the book entries were in fact dummies or stooges of the directors of the assessee-company, the same cannot be treated as unaccounted income of the assessee".

26. The learned counsel for the assessee has also placed reliance on the judgment of the Hon'ble High Court of Delhi in ***Principal***

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[6] (2000) 110 Taxman 172 (Andhra Pradesh)

Commissioner of Income Tax v. Third Generation Traders (P) Ltd.[7], wherein it was held as under:

> "13. It is clear from the above, the commission for providing entries to beneficiaries would be the real income of Jain Brothers and there is no material to indicate that the Assessee had earned any commission income. This is so because, according to the AO, the Assessee company was a conduit operated by Jain Brothers.
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> 14. It is also apparent that there was income in the hands of the Assesee and it was merely a conduit. The credit, which has been introduced in the books of the Assessee was matched by a debit to the other entities used to route the funds to the ultimate beneficiaries. In the aforesaid context the CIT(A) and the learned ITAT had held that the unexplained credits were liable to be taxed in the hands of the beneficiaries. And, since the same had been done, there is no occasion of taxing the channels through which the amounts were routed."

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[7] (2025) 174 taxmann.com 1227 (Delhi)

27. By drawing a clue from the ***Smt. Krishna Devi's*** case (supra), learned counsel for the assessee would contend that this Court has to decide the issue on evidence and proof, but not on suspicion alone and the theory of human behaviour and predominance of probabilities, cannot be cited as a basis to turn a blind eye to the evidence produced by the assessee.

2↵. The learned counsel for the assessee would contend that in fact proper procedure has been followed by the respective investor companies while purchasing the equity shares of the assessee-company and deposited the said amounts towards the equity shares purchased, and as such, it would only amount to capital receipt and cannot be taxed

as revenue receipt and thus, learned counsel has prayed to dismiss the appeals filed by the revenue.

2↳ But however, learned counsel supported the substantial questions in the appeals filed by the assessee and contends that the very remittance for re-verification before the Assessing Officer is not warranted and in fact, the appeals are to be allowed by setting aside the assessment orders for the respective years of 2009-10 and 2010-11, and thus, prayed the indulgence of this Court to quash the assessment orders by setting aside the orders of the CIT(A) as well as the learned ITAT.

30. We have given earnest consideration to the submissions made by the learned counsel appearing on either side and perused the material on record.

31. On appreciation of factual matrix of the case, evidently, the assessee-company has received an amount of Rs.185 Crores from the investor companies i.e., India Cements, Dalmia Cements (Bharat) Limited, Gilchrist Investment Pvt. Ltd., Alpha Villas Pvt. Ltd. and Alpha Avenue Pvt. Ltd., and the said amounts alleged to have been deposited in the account of the assessee towards the purchase of equity shares to the extent of 0.03% in the assessee-company. However, the Assessing Authority initially passed the assessment orders by making addition of Rs.182 Crores under Section 68 of the IT Act, upon which the assessee

has filed appeals before the CIT(A), and the CIT(A), after due enquiry, has dismissed the said appeals by confirming the orders passed by the Assessing Authority, against which, the appeals were filed by the assessee-company before the learned ITAT and the learned ITAT after appreciation of facts and by appreciating the judgments relied upon by both the revenue as well as the assessee, remitted the issue to the Assessing Officer for re-verification in simple terms by verifying the cash flow management of the company for both the assessment years 2009-10 and 2010-11. It however directed that the Assessing Officer not to resort to rely on the circumstantial evidence or on test of human probabilities, but on factual evidence of passing of the benefit to the

shareholders/directors, and thus, the grounds raised by the assessee were allowed by the learned ITAT for statistical purposes for both the respective assessment years, which are identical to each other.

32. Now that since there was a remand by the learned ITAT to the Assessing Officer, the revenue as well as the assessee have filed two sets of appeals for two assessment years and though the said appeals were admitted on different substantial questions of law, however, the only question of law that falls for consideration of this Court is whether the learned ITAT was justified in remanding the matter for re-verification of all the accounts including the funds and cash flow management of the assessee for both the respective years of assessment and further

directing not to resort to rely on the circumstantial evidence or on test of human probabilities but on factual evidence of passing of benefit to the shareholders/directors.

33. In that view of the matter, though the revenue as well as the assessee have placed reliance on a catena of judgments, the principle of the said judgments would show that the findings should necessarily be arrived at by looking at the evidence adduced by the assessee in proper perspective but not on human probabilities and that though the amount of Rs.185 Crores has been contended to be deposited by the respective companies for the purchase of the equity shares at a higher price, the test of human probability should not be a factor for determination of the said issue as to whether the said amounts are deposited by the

respective companies towards the purchase of equity shares in the assessee-company and on that count, the learned ITAT after proper appreciation of facts has remanded the matter to the primary Assessing Authority to re-verify, in simple terms, by verifying all the funds and cash flow management of the assessee-company for the respective assessment years 2009-10 and 2010-11, without placing reliance on circumstantial evidence or on test of human probabilities but on factual evidence of passing of benefit to the shareholders/directors.

34. It is well settled by the Hon'ble Supreme Court and various High Courts that when a matter is remitted to the Assessing Authority for reconsideration or re-verification of the material on record, with a view to

arriving at a fair and proper conclusion on the real dispute between the parties, such an order of remand does not give rise to a substantial question of law [*See:* ***Hero Vinoth v. Seshammal***[1] and ***Kondiba Dagadu Kadam v. Savitribai Sopan Gujar***[2]]. It is trite law that remand cannot be a substantial question of law, where *1)* factual adjudication is incomplete, *2)* fresh evidence is required, 3) lower authority has not considered the material evidence, and thus, remand cannot be routinely interfered, if there is no statutory violation and procedural violation by the authorities.

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[1] (2006) 5 SCC 545

[2] (1999) 3 SCC 722An

35. In the instant case, the Assessing Officer has applied the test of human probabilities and circumstantial evidence, therefore, the learned ITAT, upon appreciation of the material available on record, has remanded the matter for determination by the Assessing Officer to verify the cash flow management of the assessee-company and pass orders based on factual evidence, but not on human probabilities, and directed the Assessing Officer to decide the issues comprehensively based on material on record and also the Assessing Officer can direct the assessee-company to produce any evidence for arriving a just conclusion, in accordance with law.

36. The said findings arrived by the learned ITAT, in directing fresh examination of facts by the Assessing Officer, is essentially procedural in nature and falls within the domain of factual adjudication, to decide the issue comprehensively, solely basing on the material on record but not on human probabilities. Further, in view of the remand, both the Revenue as well as assessee can place sufficient material to prove their respective contentions. Thus, in our considered opinion, the said findings are justified and do not warrant interference by this Court.

37. In that view of the matter, there are no substantial questions of law involved in all these four appeals and they are liable to be dismissed.

3↵ Accordingly, all four appeals are dismissed. However, the Assessing Officer is directed to decide the issue comprehensively, in simple terms basing on the appreciation of material on record, as directed by the learned ITAT. No order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

P.SAM KOSHY, J

SUDDALA CHALAPATHI RAO, J

Dt. 06.03.2026

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