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 NARSING RAO NANDIKONDA

WRIT PETITION No.16627 of 2023

DATE: 11.08.2026

Between:
Escientia Advanced Sciences Private Limited.

...Petitioner

AND

Assistant Commissioner of Income Tax – Circle 8(1),
Signature Towers, Opposite Botanical Gardens,
Kondapur, Hyderabad – 500 084 and 2 others.

...Respondents

ORDER: *(per the Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. T. Suryanarayana, learned Senior Counsel representing Mr. K. Raghavendra Rao, learned counsel for the petitioner; and Ms. J. Sunitha, learned Senior Standing Counsel for Income Tax Department representing Ms. Sundari R. Pisupati, learned Junior Standing Counsel for Income Tax Department.

2. The instant Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner assailing the action of respondent No.1, dated 12.04.2023, on levying tax, *vide*

letter Nos. ITBA/AST/F/148A/2023-24/1052043412(1) and ITBA/AST/S/148A/2023-24/1052043584(1), for the assessment year 2019-20.

3. *Vide* the impugned order, the authority concerned demanded a tax liability to the tune of Rs.44,07,04,380/- under Section 148A of the Income Tax Act, 1961 (for short, the 'Act') for the share premiums received by the petitioner from the issue of shares to Escientia Life Science (for short, 'ELS').

4. The facts of the case are that the petitioner is a private limited company engaged in the business of research, development and manufacturing partner to the pharmaceutical and biotechnology innovators. During the assessment year 2019-20, the petitioner issued Rs.6,38,702/- fresh equity shares to its shareholder ELS, a company registered in Mauritius. Accordingly, the petitioner filed its returns of allotment in Form PAS-3, under Section 39 and Section 42 of the Companies Act, 2013 with the Ministry of Corporate Affairs, reporting the details of the equity shares issued and allotted by the petitioner as well as the share allotment details in the Financial Statements of the petitioner. For the assessment year 2019-20, the petitioner filed its return of income under Section 139(1) of the Act, declaring a total loss of Rs.25,09,88,052/- under the normal provisions of the Act and a

book loss of Rs.26,51,85,087/- as per Section 115JB of the Act. During assessment, the respondent No.2 was under the impression that ELS had purchased shares from the petitioner, and based on that presumption, it issued a notice dated 07.03.2023 under Section 148A(a) of the Act directing the petitioner to file a copy of the share purchase agreement and other details of the shares allegedly purchased by ELS. Pertinently, the said notice neither referred to nor provided a copy of the prior approval of the specified authority for the issuance of the said notice.

5. In response, the petitioner submitted a letter dated 14.03.2023 clarifying that the petitioner had made fresh issue of shares to its shareholder, ELS, during the relevant year and that there was no transfer of shares from the petitioner to ELS. It was also submitted that the question of there being a share purchase agreement would not arise. The petitioner also provided copies of the Form Nos. PAS-3 filed with the Registrar of Companies (for short 'ROC'), bank account statements reflecting the transaction, audited financials and the valuation report in connection with the issue of shares. The respondent No.1 then issued a notice dated 28.03.2023, under Section 148A(b) of the Act, proposing to initiate proceedings under Section 148 of the Act once again stating that as per the risk management system / network management system,

the petitioner had entered into transactions for sale of shares at a premium amount of Rs.44,07,04,380/- and that it had not correctly declared its income. The respondent No.1 directed the petitioner to show cause as to why a notice under Section 148 of the Act should not be issued. The petitioner filed the response on 05.04.2023 to the above said notice, objecting to the proceedings, submitting that there is no income chargeable to tax which has escaped assessment. It was once again explained that during the relevant assessment year, the petitioner had only issued equity shares to its shareholder for a total premium of Rs.44,07,04,380/-, which was towards the petitioner's share capital and thus, cannot be treated as income of the petitioner. It was further submitted that there was no 'information' suggesting that income chargeable to tax had escaped assessment and it was also pointed out by the petitioner that the notice under Section 148A(a) in the first instance had been issued without prior approval of the specified authority and consequently that the notice under Section 148A(b) relying upon the enquiry conducted thereunder, was invalid. On the basis of the above submissions, the petitioner submitted that the proposed reassessment proceedings to be dropped.

6. Despite the above submissions of the petitioner, respondent No.1 proceeded to pass an order dated 12.04.2023 under Section

148A(d) of the Act, holding it to be a fit case for issuance of notice under section 148 of the Act. However, the respondent No.1 proceeded to justify the initiation of the proceedings on a completely new ground that the petitioner had not demonstrated the ‘genuineness of the transactions’ and on the same day, a notice under Section 148 of the Act was also issued by respondent No.1 proposing to assess / reassess the petitioner for the assessment year 2019-20 and directed the petitioner to furnish its return of income.

7. Learned Senior Counsel for the petitioner argued that the impugned proceedings initiated are liable to be set aside inasmuch as the alleged ‘information’ on the basis of which the proceedings are initiated viz., that the petitioner had undertaken a sale of shares to ELS is in itself incorrect as the transaction was a fresh issue of shares by the petitioner to ELS and the amount of Rs.44,07,04,380/- received towards share premium was on the capital account, having no bearing whatsoever on the income of the petitioner. The respondent No.1's finding in the order passed under 148A(d) of the Act also was that the petitioner had not submitted documents to show that the petitioner while allotting shares to ELS had complied with FDI Regulations. Therefore, the genuineness of the transaction has not been demonstrated when the petitioner was

never called upon to demonstrate the same and was never disputed before, is only an afterthought to get over the submissions made by the petitioner and in violation of principles of natural justice of the petitioner.

8. Learned Senior Counsel for the petitioner vehemently argued that in light of the decision of the Bombay High Court in the case of **Vodafone India Services (P) Ltd. vs. Union of India**[1] wherein it was held that the issue of shares at a premium by the assessee to its non-resident holding company does not give rise to any income from an admitted international transaction. The relevant paragraphs of the said judgment are reproduced below for ready reference:

> *"**24.** A plain reading of section 92(1) of the Act very clearly brings out that income arising from a international transaction is a condition precedent for application of Chapter X of the Act. This has already been so held by the order dated November 29, 2013, of this court in Vodafone-III. We could have straight way held that the issue of examining the jurisdiction to apply Chapter X of the Act stands concluded by the order in Vodafone-III.*
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> ***25.** But we have examined the issue afresh. The word "income" for the purpose of the Act has a well understood meaning as defined in section 2(24) of the Act. This even when the definition in section 2(24) of the Act is an inclusive definition. It cannot be disputed that income will not in its normal meaning include capital receipts unless it is so specified, as in section 2(24)(vi) of the Act. In such a case, capital gains chargeable to tax under section 45 of the Act*

[1](2014) 368 ITR 1

are, defined to be income. The amounts received on issue of share capital including the premium is undoubtedly on capital account. Share premium have been made taxable by a legal fiction under section 56(2)(viib) of the Act and the same is enumerated as income in section 2(24)(xvi) of the Act. However, what is brought into the ambit of income is the premium received from a resident in excess of the fair market value of the shares. In this case, what is being sought to be taxed is capital not received from a non-resident, i.e., premium allegedly not received on application of the arm's length price. Therefore, absent express legislation, no amount received, accrued or arising on capital account transaction can be subjected to tax as income. This is settled by the decision of this court in Cadell Weaving Mill Co. P. Ltd. v. CIT (2001) 249 ITR 265 (Bom) was upheld by the apex court in CIT v. D.P. Sandu Bros. Chembur (P) Ltd. (2005) 273 ITR 1 (SC). This court has in Cadell Weaving Mill Co. (supra), inter alia, observed as under:

> *"It is well-settled that all receipts are not taxable under the Income tax Act. Section 2(24) defines 'income'. It is no doubt an inclusive definition. However, a capital receipt is not income under section 2(24) unless it is chargeable to tax as capital gains under section 45. It is for this reason that under section 2(24)(vi) that the Legislature has expressly stated, inter alia, that income shall include any capital gains chargeable under section 45. Under section 2(24)(vi), the Legislature has not included all capital gains as income. It is only capital gains chargeable under section 45 which has been treated as income under section 2(24). If the argument of the Department is accepted then all capital gains whether chargeable under section 45 of not, would come within the definition of the word 'income' under section 2(24). Further, under section 2(24)(vi) the Legislature has not stated that "any capital gains" will be covered under the word income. On the contrary, the Legislature has advisedly stated that only capital gains which are chargeable under section 45 of the Act could be treated as income. In other words, capital*

gains not chargeable to tax under section 45 fall outside the definition of the word 'income' in section 2(24) of the Act. It is true that section 2(24) of the Act is an inclusive definition However, in this case, we are required to ascertain the scope of section 2(24)(vi) and for that purpose we have to read the sub-section strictly. We cannot widen the scope of sub-section by saying that the definition as a whole is inclusive and not exhaustive. In the present case, the words 'chargeable under section 45' are very important. They are not being read by the Department. These words cannot be omitted. In fact, the prior history shows that capital gains were not chargeable before 1946. They were not chargeable between 1948 and 1956. Therefore, whenever an amount which is otherwise a capital receipt is to be charged to tax, section 2(24) specifically so provides."

In view of the above, we find considerable substance in the petitioner's case that neither the capital receipts received by the petitioner on issue of equity shares to its holding company, a non-resident entity, nor the alleged short-fall between the so-called fair market price of its equity shares and the issue price of the equity shares can be considered as income within the meaning of the expression as defined under the Act."

9. Learned Senior Counsel for the petitioner further placed on record a circular issued by the Under Secretary to the Government of India, dated 29.01.2015, pursuant to the order of the Bombay High Court in the case of **Vodafone India Services (P.) Ltd.** (supra), wherein it directed that the *ratio decidendi* of the aforesaid judgment be adhered to by the field officers in all cases where the issue of 'premium on share issue was on account of a capital

account transaction' is involved and the same may also be brought to the notice of Income Tax Appellate Tribunals, Dispute Resolution Panels and Commissioner of Income Tax (Appeals) by approval of the Chairperson of Central Board of Direct Taxes.

10. Learned Senior Counsel for the petitioner also relied on the case of **Shendra Advisory Services (P) Ltd. vs. CIT**[2] wherein it was similarly held that monies received on issue of shares at a premium would be on capital account and would not give rise to any income which also followed in line with the CBDT instruction No.2/2015, dated 29.01.2015, and the decision in the case of **Vodafone India Services (P.) Ltd.** (supra). The relevant paragraphs of the said judgment also for ready reference are reproduced hereunder:

> *"**12.** The charge of tax under the Act is on income. The receipt of share premium on the issue of fresh shares is on capital account and constitutes a capital receipt, which is not chargeable to tax under the Act. There is no provision under the Act to tax the receipt of share premium for the assessment year under consideration. As held in Vodafone India Services Pvt. Ltd. v. Union of India [(2014) 368 ITR 1 (Bom); 2014 SCC OnLine Bom 1496; (2014) 50 taxmann.com 300 (Bom).] the amount received on issue of shares is admittedly a capital account transaction not separately brought within the definition of income during the relevant period. Thus, capital account transaction not falling within the statutory explanation cannot be brought to tax.*
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> *xxx xxxxxx*

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[2](2025) 482 ITR 385

15.*Therefore, since the Act does not stipulate that non-compliance of any provision of other Act would result in turning a capital receipt into a revenue receipt, even assuming for the sake of argument that the appellant had breached the provisions 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) Pvt. Ltd. v. Asst. CIT [2016 SCC OnLine ITAT 11307; (2016) 72 taxmann.com 131 (Mum).] , for determining the due taxes, the Assessing Officer should avoid bringing far-fetched fancies and ideas. In the case under consideration they have done the same. Without understanding the basic philosophy of income they have referred to the provisions of the Companies Act, 1956 so that the amount in question can be taxed at any cost. It is not a fair or judicious approach to deal with the subjects of the State. Even if the assessee had violated the provisions of the Companies Act, 1956, it will be penalised by the provisions of that Act and it would never turn a capital receipt into revenue receipt or vice versa. There is nothing on record from the balance-sheet filed that the share premium amount has been utilised for purposes other than what is prescribed in section 78(2) of the Companies Act, 1956. Just because the amount has been invested does not mean that the amount has been utilised for purposes other than what is prescribed in section 78(2) of the Companies Act, 1956.”*

The aforesaid judgment which was challenged by the Department was upheld by the Hon’ble Supreme Court in **CIT vs. Shendra Advisory Services (P) Ltd.**[3] wherein the Hon’ble Supreme Court refused to interfere with the decision held by the Bombay High Court. The relevant paragraphs of the judgment are reproduced below for ready reference.

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[3](2025) 481 ITR 457

> "***2.*** *Even otherwise, we find no good reason to interfere with the impugned order passed by the High Court [Shendra Advisory Services Pvt. Ltd. v. Dy. CIT(2025) 482 ITR 385 (Bom); 2024 SCC OnLine Bom 556.].*
> ***3.*** *The special leave petition is, accordingly, dismissed on the ground of delay as well as the merits."*

11. On the contrary, the sole argument of the learned Senior Standing Counsel for Income Tax Department was that the respondent No.1 passed the impugned order on the basis of the petitioner having sold its shares to ELS and received the amount of Rs.44,07,04,380/- in return of sale, and deemed the above transaction as a transfer of shares by sale, and proceeded on the footing that the above transaction had escaped assessment and thereafter, passed the order of assessment under Section 148 of the Act.

12. Having heard the contentions put forth on either side and on perusal of records, the issue which falls for consideration in the instant case is "whether the monies received from premium of share issued on account of a capital account can be deemed to be income or not?"

13. It would be pertinent at this juncture to take note of the case of **Vodafone India Services (P.) Ltd.** (supra), wherein the High Court of Bombay dwelled on the interplay between provisions of Section 2(24) of the Act and the transaction of receipt of

premium on allotment of shares and the implication of income arising from it. It was held as under:

> "***21.*** *Before considering rival submission, it would be useful to set out the relevant provision of the Act which would have bearing to decide the controversy which arises before us as under:*
>
> "***2. In this Act, unless to context otherwise requires:—..*** .
>
> ***(24) income includes—***
>
> ***(i) profits and gains;. ..***
>
> ***(vi) any capital gains chargeable under section 45***
>
> ***and with effect from April 1, 2013,***
>
> ***(xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (viib) of sub-section (2) of section 56."***
>
> ***xxx xxxxxx***
>
> ***24.*** *A plain reading of section 92(1) of the Act very clearly brings out that income arising from a international transaction is a condition precedent for application of Chapter X of the Act. This has already been so held by the order dated November 29, 2013, of this court in Vodafone-III. We could have straight way held that the issue of examining the jurisdiction to apply Chapter X of the Act stands concluded by the order in Vodafone-III.*
>
> ***25.*** *But we have examined the issue afresh. The word "income" for the purpose of the Act has a well understood meaning as defined in section 2(24) of the Act. This even when the definition in section 2(24) of the Act is an inclusive definition. It cannot be disputed that income will not in its normal meaning include capital receipts unless it is so specified, as in section 2(24)(vi) of the Act. In such a case, capital gains chargeable to tax under section 45 of the Act are, defined to be income. The amounts received on issue of share capital including the premium is undoubtedly on capital account. Share premium have been made taxable by a legal fiction under section 56(2)(viib) of the Act and the same is enumerated as income in section 2(24)(xvi) of the Act. However, what is brought*

into the ambit of income is the premium received from a resident in excess of the fair market value of the shares. In this case, what is being sought to be taxed is capital not received from a non-resident, i.e., premium allegedly not received on application of the arm's length price. Therefore, absent express legislation, no amount received, accrued or arising on capital account transaction can be subjected to tax as income. This is settled by the decision of this court in Cadell Weaving Mill Co. P. Ltd. v. CIT (2001) 249 ITR 265 (Bom) was upheld by the apex court in CIT v. D.P. Sandu Bros. Chembur (P) Ltd. (2005) 273 ITR 1 (SC). This court has in Cadell Weaving Mill Co. (supra), inter alia, observed as under:

> *"It is well-settled that all receipts are not taxable under the Income tax Act. Section 2(24) defines 'income'. It is no doubt an inclusive definition. However, a capital receipt is not income under section 2(24) unless it is chargeable to tax as capital gains under section 45. It is for this reason that under section 2(24)(vi) that the Legislature has expressly stated, inter alia, that income shall include any capital gains chargeable under section 45. Under section 2(24)(vi), the Legislature has not included all capital gains as income. It is only capital gains chargeable under section 45 which has been treated as income under section 2(24). If the argument of the Department is accepted then all capital gains whether chargeable under section 45 of not, would come within the definition of the word 'income' under section 2(24). Further, under section 2(24)(vi) the Legislature has not stated that "any capital gains" will be covered under the word income. On the contrary, the Legislature has advisedly stated that only capital gains which are chargeable under section 45 of the Act could be treated as income. In other words, capital gains not chargeable to tax under section 45 fall outside the definition of the word 'income' in section 2(24) of the Act. It is true that section 2(24) of the Act is an inclusive definition However, in this case, we are required to ascertain the*

scope of section 2(24)(vi) and for that purpose we have to read the sub-section strictly. We cannot widen the scope of sub-section by saying that the definition as a whole is inclusive and not exhaustive. In the present case, the words 'chargeable under section 45' are very important. They are not being read by the Department. These words cannot be omitted. In fact, the prior history shows that capital gains were not chargeable before 1946. They were not chargeable between 1948 and 1956. Therefore, whenever an amount which is other wise a capital receipt is to be charged to tax, section 2(24) specifically so provides."

In view of the above, we find considerable substance in the petitioner's case that neither the capital receipts received by the petitioner on issue of equity shares to its holding company, a non-resident entity, nor the alleged short-fall between the so-called fair market price of its equity shares and the issue price of the equity shares can be considered as income within the meaning of the expression as defined under the Act.

14. Applying the ratio laid down in **Vodafone India Services (P.) Ltd.** (supra), as followed and reiterated in **Shendra Advisory Services (P) Ltd.** (supra) and affirmed by the Hon'ble Supreme Court, to the facts of the present case, it is evident that the amount of Rs.44,07,04,380/- received by the petitioner was towards share premium on a fresh issue of equity shares to ELS, its non-resident shareholder. This is squarely a capital account transaction. The receipt of share premium, does not partake the character of income within the meaning of Section 2(24) of the Act, save and except to the limited extent carved out under Section 56(2)(viib), which applies only to the premium received

from a resident and not from a non-resident such as ELS. No other provision of the Act has been shown to us, nor was anything relied upon by the Revenue, which brings the transaction in question within the ambit of taxable income.

15. What compounds the matter further is that the entire teeth of the impugned proceedings rests on a factual premise that is demonstrably incorrect, namely, that the petitioner had sold its shares to ELS. The record, including the Form PAS-3 returns filed with the Registrar of Companies, the audited financials, and the valuation report, all of which were placed before respondent No.1 unambiguously establish that the transaction was a fresh allotment of shares and not a transfer or sale. Despite this material being on record, respondent No.1 proceeded, first on the mistaken premise of a 'share purchase agreement' and upon being corrected, shifted ground to allege a want of demonstrated 'genuineness of the transaction', a ground never put to the petitioner at the show-cause stage and raised for the first time in the order under Section 148A(d) of the Act. Such a shifting of stance which is unsupported by any fresh tangible material and unaccompanied by any opportunity to the petitioner to meet the new ground cannot be countenanced and offends the basic tenets

of natural justice that are envisaged in the scheme of Section 148A of the Act.

16. We are also unable to appreciate the manner in which the Revenue has proceeded to disregard the binding effect of CBDT Instruction / Circular No.F.No.500/15/2014-APA-I, dated 29.01.2015, issued consequent to the decision in **Vodafone India Services (P.) Ltd.** (supra). The said Circular, issued with the approval of the Chairperson, CBDT in unequivocal terms directs the field officers to apply the ratio of the Bombay High Court's judgment in all cases involving share premium on capital account transactions. Further, the Circulars issued by the CBDT under Section 119 of the Act are binding on the income tax authorities and it was not open to respondent Nos.1 and 2 to act in a manner contrary to, or in oblivious disregard of the said Circular. The impugned action, viewed in this light, is not a mere error of appreciation but reflects a failure on the part of the authority concerned to advert to a binding departmental instruction that squarely covered the issue at hand, a lapse that could have been avoided with the exercise of due diligence.

17. In view of the foregoing discussion, we hold that the premium received by the petitioner on issue of shares to ELS being a receipt on capital account, cannot be treated as income

chargeable to tax, and the very foundation on which the impugned notices and order proceed, namely, an alleged sale of shares, is factually unsustainable. Therefore, the action of respondent No.1, *vide* letters dated 12.04.2023, in levying tax for the assessment year 2019-20, is set aside / quashed. The question of law raised stands answered in favour of the petitioner and against the Revenue.

18. In the result, the Writ Petition stands allowed.

19. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

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P. SAM KOSHY, J

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NARSING RAO NANDIKONDA, J

Date: 11.08.2026
GSD