आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.1115/Mds/2014**

निर्धारण वर्ष / Assessment Year : 2008-09

M/s PVP Ventures Ltd., KRM Centre, 9th floor, 2, Harrington Road, Chetpet, Chennai - 600 031.	v.	The Deputy Commissioner of Income Tax, Company Circle V(2), Chennai - 600 034.
PAN : AAACS 3101 P (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA No.1899/Mds/2014**

निर्धारण वर्ष / Assessment Year : 2008-09

The Deputy Commissioner of Income Tax, Company Circle V(2), Chennai - 600 034. (अपीलार्थी/Appellant)	v.	M/s PVP Ventures Ltd., KRM Centre, 9th floor, 2, Harrington Road, Chetpet, Chennai - 600 031. (प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Sh. B. Ramakrishnan, CA

राजस्व की ओर से /Revenue by : Shri P.B. Sekaran, CIT

सुनवाई की तारीख/Date of Hearing : 17.07.2015

घोषणा की तारीख/Date of Pronouncement : 16.09.2015

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both assessee and Revenue have filed the present appeals against the order of the Commissioner of Income Tax (Appeals) – V, Chennai, dated 27.03.2014, for the assessment year 2008-09. Therefore, we heard both the appeals together and disposing of the same by this common order.

Let's first take assessee's appeal in I.T.A. No.1115/Mds/2014.

2. The first issue arises for consideration is with regard to disallowance of ₹3,70,36,474/- being the unrecoverable advance.

3. Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that under the head "Administrative and Other expenses", the assessee had claimed ₹3,70,36,474/-. The tax deducted at source receivable amounting to ₹1,76,13,603/- was also part of the sales already offered in the earlier year. Therefore, the same qualifies for written off under Section 36(1)(vii) read with Section 36(2) of the Income-tax Act, 1961 (in short 'the Act'). The

Ld. representative further submitted that the work-in-progress to the extent of ₹1,94,12,871/- was also written off in the books of account. Since the project could not be completed as contemplated by the company, the project was abandoned, therefore, the expenditure incurred by the assessee, namely, the work-in-progress for the project abandoned has to be allowed as revenue expenditure either under Section 28 or under Section 37 of the Act. Referring to the inoperative bank account to the extent of ₹10,000/-, the Ld. representative submitted that this also forms part of income of the assessee, therefore, it cannot be disallowed.

4. On the contrary, Shri P.B. Sekaran, the Ld. Departmental Representative, submitted that the CIT(Appeals) called for remand report from the Assessing Officer. The Assessing Officer clarified that in respect of receivable to the extent of ₹1,76,13,603/-, the assessee has not furnished any evidence either before the Assessing Officer or before the CIT(Appeals). In the absence of any details, the CIT(Appeals) confirmed the addition made by the Assessing Officer. Referring to bank balance to the extent of ₹10,000/- in the inoperative bank account and work-in-progress to the extent of ₹1,94,12,871/-, the Ld. D.R. submitted that these are

all capital in nature. Therefore, it cannot be allowed as revenue expenditure. Therefore, the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material on record. The assessee claims that a sum of ₹1,76,13,603/- was part of the sales already offered in the earlier years. However, no details were filed by the assessee either before the lower authorities or before this Tribunal. In the absence of any particulars with regard to inclusion of income in the earlier assessment year as claimed by the assessee, this Tribunal do not find any reason to interfere with the order of the lower authority.

6. Now coming to the balance amount standing as inoperative bank account to the extent of ₹10,000/- and work-in-progress to the extent of ₹1,94,12,871/-, the assessee claims that the project could not be completed as contemplated by the company. The fact remains is that the investment made by the assessee is in the capital asset. The assessee claims the same under the head “Administrative and Other expenses”. Since the expenditure relates to capital asset, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the addition made by the

Assessing Officer. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority in confirming the addition of ₹3,70,36,474/- being the unrecoverable advance under the head “Administrative and Other expenses”.

7. The next ground of appeal is with regard to disallowance of ₹50 lakhs claimed as bad debt. During the course of hearing, Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that he was instructed not to press this ground before this Tribunal. The Ld. representative also clarified in the note filed before this Tribunal during the course of hearing that the ground relating to bad debts of ₹50 lakhs is not pressed.

8. In view of the above, this ground of the appeal with regard to disallowance of bad debts is dismissed as not pressed.

9. The next ground of appeal is with regard to addition made by the Assessing Officer to the extent of ₹31,07,20,000/- under Section 69A of the Act.

10. Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that the assessee purchased the property in the assessment year 2008-09 and sold the same in the very same

assessment year. The assessee offered the profit on sale of the land under the head “short term capital gains” in the return of income. The Ld. representative submitted that a copy of the return filed by the assessee is available at pages 1 to 4 of the paper-book. The Ld. representative further submitted that the agreement for sale of the property and power of attorney was dated 4.2.2008, a copy of which is available at pages 7-12 of the paper-book. The sale deed dated 28.03.2008 is available in pages 13 to 28 of the paper-book. Since the property was purchased and sold in the very same assessment year, it was not reflected in the fixed asset schedule and in depreciation statement. The Ld. representative further submitted that both the authorities below failed to appreciate the fact that once the property was sold in the very same year in which it was purchased, it will not be reflected in the fixed asset statement and depreciation schedule. Therefore, both the authorities below are not correct in treating the profit on sale of the land as undisclosed income under Section 69A of the Act.

11. On the contrary, Shri P.B. Sekaran, the Ld. D.R. submitted that the agreement dated 04.02.2008 shows that the assessee agreed to purchase the property. It is not known whether this

agreement was available before the Assessing Officer or not. Referring to the assessment order, the Ld. D.R. submitted that there was no reference of agreement in the assessment order. The Assessing Officer found that in the fixed asset schedule of the company for the relevant assessment year, no land was shown as disposed of. If the land was purchased during the year under consideration and disposed of in the very same year, the same should be reflected in the fixed asset schedule. In other words, according to the Ld. D.R., once the land was purchased by the assessee, it should form part of the fixed asset of the assessee and when it was sold, it has to be shown as dispose of. It is not the case of the assessee that the property was purchased and sold on the same day. In fact, there was a considerable time gap between the date of agreement for purchase of property and the date on which the sale was executed. Moreover, the details of advance received and the balance amount received were not reflected in the books of the assessee. In the absence of any details of transaction relating to sale of land to M/s Arihant Hospitality (Chennai) Private Limited, the CIT(Appeals) found that the Assessing Officer has rightly upheld the addition made under Section 69A of the Act. Even before this Tribunal, the assessee could not file any details

with regard to the amount said to be received on sale of property. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition.

12. We have considered the rival submissions on either side and perused the relevant material on record. The Assessing Officer disallowed the claim of the assessee and made addition of ₹31,07,20,000/- under Section 69A of the Act on the ground that the purchase and sale of the property was not reflected in the fixed asset schedule of the company. The CIT(Appeals) found that the assessee has not filed any details before the lower authorities. The CIT(Appeals) further found that the date on which the advance was received as well as the balance amount was received were not reflected in the books of the assessee-company. The CIT(Appeals) also found that unless and until the assessee furnishes the details of the transaction of sale made to M/s Arihant Hospitality (Chennai) Private Limited for a consideration of ₹31,07,20,000/-, it cannot be decided with regard to the actual amount received by the assessee at the end of the transaction. In the absence of any details, the addition made by the Assessing Officer under Section 69A of the Act was confirmed by the CIT(Appeals). We have gone through the

agreement said to be entered between M/s AGS Properties Development (India) Pvt. Ltd. and the assessee-company on 04.02.2008. The assessee agreed to purchase the property for a total consideration of ₹16,26,00,084/-. A copy of the sale deed is available at pages 13 to 28 of the paper-book shows that M/s AGS Properties Development (India) Pvt. Ltd. in fact executed a sale deed through their power of attorney agent in favour of Arihant Hospitality (Chennai) Pvt. Ltd. for a total consideration of ₹31,07,20,000/-. This registered sale deed does not show that the assessee became the owner at any point of time. The agreement for sale of the property discloses the sale consideration at ₹16,26,00,084/-. It is not known how the very same property was sold for ₹31,07,20,000/-. That means, the assessee is not willing to disclose all the material facts relating to the above said transaction. The sale deed dated 28.03.2008 was executed within two months from the date of the agreement, i.e. on 04.02.2008. Within two months period from the date of agreement, the value of the property will not go to the extent of ₹31,07,20,000/-. Therefore, the assessee obviously invested undisclosed money in the transaction and on sale of the property, now bringing the same as short term capital gains. The sale deed dated 28.03.2008 was executed in favour of

M/s AGS Properties Development (India) Private Limited by one Shri R.R. Aroonkumar. The power of attorney was executed in the individual capacity of Shri Aroonkumar. Therefore, the assessee-company invested its funds from undisclosed source in the property and the same was sought to be brought on accounts in guise of short term capital gains. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer under Section 69A of the Act. This Tribunal do not find any infirmity in the order of the CIT(Appeals) and accordingly, the same is confirmed.

13. The next ground of appeal is with regard to addition of ₹2,28,18,258/-.

14. During the course of hearing, Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that he was instructed by the assessee not to press this ground of appeal. The Ld. representative has also filed a note of agreement before this Tribunal during the course of hearing saying that the ground relating to writing off of capital work-in-progress to the extent of ₹2,28,18,258/- is not pressed.

15. In view of the above, the addition made by the Assessing Officer to the extent of ₹2,28,18,258/- is confirmed and the ground of appeal raised by the assessee is dismissed as not pressed.

16. In the result, the appeal of the assessee is dismissed.

17. Now coming to Department's appeal in I.T.A. No.1899/Mds/2014, Shri P.B. Sekaran, the Ld. D.R. submitted that the assessee-company is engaged in the business of infrastructure development. In the course of assessment proceedings, the Assessing Officer found that the assessee has received a sum of ₹377,71,78,316/- from M/s Platex Limited incorporated in Mauritius. The assessee claimed before the Assessing Officer that the Mauritius company M/s Platex Limited invested the above sum of ₹377,71,78,316/- by way of foreign direct investment for subscription towards convertible debentures. The assessee was asked to produce the creditworthiness of M/s Platex Limited, Mauritius and genuineness of transaction. The assessee-company has produced only provisional accounts of M/s Platex Ltd., Mauritius for the financial year 2007-08. The provisional accounts produced by the assessee does not support the claim of the assessee that it has received ₹377,71,78,316/- from M/s Platex Ltd., Mauritius. The

Ld. D.R. further submitted that M/s Platex Ltd., Mauritius was carrying on its business on the borrowed funds from Deutsche Bank. M/s Platex Ltd., Mauritius did not have any surplus fund to make investment in assessee-company. Since the M/s Platex Ltd., Mauritius had no source in making investment, the Assessing Officer found that the said company had no financial capacity to investment in assessee-company. Therefore, the Assessing Officer came to a conclusion that the so-called creditor has no creditworthiness to make investment in the assessee-company and the transaction was also not genuine.

18. Shri P.B. Sekaran, the Ld. D.R. further submitted that one Shri Prasad V. Potluri is a common Director in M/s Platex Ltd., Mauritius and in the assessee-company. The financial statement of M/s Platex Ltd., Mauritius clearly indicates that there was no generation of income other than the so-called investment said to be made in the assessee-company. Therefore, the Assessing Officer found that the assessee has not discharged it onus to prove the source of fund claimed to be received from M/s Platex Ltd., Mauritius to the extent of ₹377,71,78,316/-. However, on appeal by the assessee, the CIT(Appeals) found that the loan was sanctioned

by Deutsche Bank which was invested in M/s PVP Enterprises Pvt. Ltd., which was subsequently merged with the assessee-company. Therefore, under Section 170 of the Act, if at all any addition was to be made, it has to be made in the hands of M/s PVP Enterprises Pvt. Ltd. and not in the hands of the assessee. Referring to Section 170 of the Act, the Ld. D.R. pointed out that in case of succession of business, by way of transfer and the predecessor-company was in existence, such predecessor shall be assessed in respect of the income of the previous year in which the succession took place, upto the date of succession. The Ld. D.R. clarified that it is not a transfer of business. It is a merger of one company into another company, namely, M/s PVP Enterprises Pvt. Ltd. merged with assessee-company by way of amalgamation. Therefore, there is no transfer of business involved in this case. It is a case of merger of M/s PVP Enterprises Pvt. Ltd. into M/s PVP Ventures Ltd. Therefore, on the date of merger, M/s PVP Enterprises Pvt. Ltd. looses its identity and it is no longer in existence. Once the predecessor is not in existence, in the eye of law, no assessment could be made in the hands of the predecessor-company. If at all any assessment was made in the hands of M/s PVP Enterprises Pvt. Ltd., then that would amount to making assessment in favour of

the company, which is not in existence. Therefore, the assessment order would be nullity in the eye of law. In fact, while considering the issue, the Hyderabad Bench of this Tribunal in I.T.A. No.1159/Hyd/2010 dated 31.07.02013 found that when M/s PVP Enterprises Pvt. Ltd. merged with the assessee-company by way of amalgamation, from the date of amalgamation, the assessment has to be made in the hands of the assessee-company at Chennai. After merger, M/s PVP Enterprises Pvt. Ltd. has no independent existence. Therefore, it has to be assessed at Chennai in the name of PVP Ventures Ltd. Therefore, the Hyderabad Bench found that the order passed by the Addl. Director of Income Tax (International Taxation) is without authority. Accordingly, it was annulled.

19. In view of the above, according to the Ld. D.R., the CIT(Appeals) is not justified in observing that the assessment has to be made in the hands of M/s PVP Enterprises Pvt. Ltd. and not in the hands of the assessee-company. Therefore, the Ld. D.R. submitted that the order of the CIT(Appeals) cannot be upheld in the eye of law.

20. On the contrary, Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that M/s PVP Ventures

Pvt. Ltd. was a private limited company assessed in Hyderabad. Deutsche Bank, Singapore, sanctioned ₹508.72 Crores to M/s Platex Ltd., Mauritius. M/s Platex Ltd., Mauritius, in turn, invested the entire amount of ₹508.72 Crores in M/s PVP Ventures Pvt. Ltd. in Hyderabad. The Ld. representative further submitted that the assessee-company was earlier known as SSI Limited. M/s PVP Ventures Pvt. Ltd. merged with SSI Ltd. by order of amalgamation approved by Madras High Court. Once M/s PVP Ventures Pvt. Ltd. merged with SSI Ltd., till the date of merger, the assessment if any, has to be made only in the hands of M/s PVP Ventures Pvt. Ltd. and not in the hands of M/s SSI Ltd. The SSI Ltd. subsequently changed its name as M/s PVP Ventures Ltd., the present assessee. Therefore, according to the Ld. representative, in view of Section 170 of the Act, the predecessor-company, namely, M/s PVP Ventures Pvt. Ltd. has to be assessed in respect of its receipts till the date of amalgamation. Therefore, the CIT(Appeals) has rightly found that no addition can be made in the hands of the present assessee. Referring to page 161 of the paper-book, the Ld. representative submitted that the Assessing Officer, while considering the assessment of M/s PVP Ventures Pvt. Ltd. for the assessment year 2007-08, admitted the receipt of ₹508.72 Crores

from M/s Platex Ltd., Mauritius. Referring to paragraph 9 of the order, the Ld. representative submitted that in view of the admission made by the Assessing Officer with regard to receipt of ₹508.72 Crores from M/s Platex Ltd., Mauritius, the genuineness cannot be doubted at this stage. The Ld. representative further submitted that the Assessing Officer has also made assessment with regard to interest income of Platex Ltd., Mauritius in the hands of the present assessee and also made protective assessment in the hands of M/s Platex Ltd., Mauritius. These orders of Assessing Officer were annulled by this Tribunal at Hyderabad on the ground that there ws no jurisdiction for the Assessing Officer at Hyderabad after merger of M/s PVP Ventures Pvt. Ltd.

21. Referring to Facility Agreement said to be entered into by M/s Platex Ltd., Mauritius with Deutsche Bank, Singapore Branch, the Ld. representative for the assessee submitted that Deutsche Bank provided loan to M/s Platex Ltd., Mauritius. Referring to page 84 of the paper-book, this is the bank statement from Development Credit Bank Ltd. which shows that M/s PVP Ventures Pvt. Ltd., the predecessor-company of the assessee, received credit from M/s Platex Ltd., Mauritius through Deutsche Bank to the extent of

₹40,87,50,000/-. A similar credit was received subsequently. Therefore, all transactions were received by M/s PVP Ventures Pvt. Ltd. from M/s Platex Ltd., Mauritius. Hence, the transactions are genuine. The source for making investment in M/s PVP Ventures Pvt. Ltd. was the loan borrowed by M/s Platex Ltd., Mauritius from Deutsche Bank. Therefore, according to the Ld. representative, the assessee has discharged its onus by proving that the entire credit of ₹377,71,78,316/- was the loan received by M/s Platex Ltd., Mauritius from Deutsche Bank. If genuineness of the transaction, namely, the receipt of loan is doubted, according to the Ld. representative, at the best the addition could be made only in the hands of M/s PVP Ventures Pvt. Ltd., since the loan was admittedly received by M/s PVP Ventures Pvt. Ltd. and not by the assessee-company. Therefore, according to the Ld. representative, under Section 170 of the Act, the addition, if any, has to be made only in the hands of M/s PVP Ventures Pvt. Ltd. and not in the hands of the present assessee. Therefore, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer.

22. We have considered the rival submissions on either side and perused the relevant material on record. M/s PVP Ventures Pvt.

Ltd., Hyderabad was amalgamated with SSI Limited with effect from 01.10.2007 by order of Madras High Court. The assessee claims that M/s PVP Ventures Pvt. Ltd. received ₹377,71,78,316/- from M/s Platex Ltd., Mauritius. The source for making investment in M/s PVP Ventures Pvt. Ltd. was the loan said to be borrowed by M/s Platex Ltd., Mauritius from Deutsche Bank. The assessee has produced a statement from bank, namely, Development Credit Bank Ltd., Hyderabad, to show that all the funds were transferred to M/s PVP Ventures Pvt. Ltd. through banking channel. The first contention of the assessee is that if at all any addition has to be made, it has to be made only in the hands of the predecessor-company, namely, M/s PVP Ventures Pvt. Ltd. and not in the hands of the present assessee. It is also pertinent to note that after amalgamation of M/s PVP Ventures Pvt. Ltd. with M/s SSI Limited, Chennai, the name of the company was changed to M/s PVP Ventures Ltd. from SSI Limited. Now, when the company M/s PVP Ventures Pvt. Ltd. is not in existence, the question arises for consideration is whether the addition, if any, could be made in the hands of M/s PVP Ventures Pvt. Ltd. or in the hands of M/s PVP Ventures Ltd., Chennai.

23. We have gone through the provisions of Section 170 of the Act, which reads as follows:-

> "170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,--
>
> (a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;
>
> (b) the successor shall be assessed in respect of the income of the previous year after the date of succession.
>
> (2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.
>
> (3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the Assessing Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor any sum so paid.
>
> (4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with

> the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section.
>
> *Explanation* — For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession."

A bare reading of Section 170 of the Act shows that this provision is not applicable in respect of succession which takes place on death of a person. When the business or profession was succeeded by other person, the predecessor shall be assessed in respect of previous year in which the succession took place, upto the date of succession. However, the successor-company shall be assessed in respect of the income of the previous year after the date of succession. Sub-section (2) of Section 170 of the Act clearly says that notwithstanding anything contained in sub-section (1) of Section 170, when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made

on the predecessor-company. In view of the express language in Section 170(2) of the Act, whenever the predecessor-company was not found or not in existence, then the assessment has to be made only in the hands of the successor-company. In the case before us, the amalgamation admittedly took place on 01.10.2007. Therefore, on and from 01.10.2007, M/s PVP Ventures Pvt. Ltd. is not in existence. Therefore, the question arises for consideration is when a company is not in existence due to amalgamation with effect from 01.10.02007, whether still the assessment can be made in the hands of the predecessor-company? This issue was considered by the Kolkata Bench of this Tribunal in Pampasar Distillery Ltd. v. ACIT (2007) 15 SOT 331. After referring to Section 170 of the Act, more particularly, Section 170(2) of the Act, found that in the case of amalgamation, when one entity takes over the business of another entity, the same may be the case of succession of business. Referring to the amalgamation, the Tribunal found that the amalgamating company is not in existence, therefore, no assessment can be made in the hands of non-existing company. The Tribunal found that if at all any assessment can be made, it should be made in the hands of the amalgamated company, namely, the successor company. In this case also, M/s PVP

Ventures Pvt. Ltd. is not in existence as on 01.10.2007. Therefore, no assessment can be made in the hands of M/s PVP Ventures Pvt. Ltd. In fact, order passed by the Director of Income Tax (International Taxation) was quashed by the Hyderabad Bench on the ground that M/s PVP Ventures Pvt. Ltd. is not in existence. Therefore, in view of Section 170(2) of the Act, the income of M/s PVP Ventures Pvt. Ltd. has to be assessed only in the hands of the present assessee upto the date of amalgamation and also subsequent to the date of amalgamation. In other words, there cannot be any assessment order in favour of the company which is not in existence on and after 01.10.2007. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) is not correct in holding that the assessment, if any, has to be made in the hands of M/s PVP Ventures Pvt. Ltd. and in the hands of the present assessee. The observation made by the CIT(Appeals) that the assessment, if any, has to be made in the hands of M/s PVP Ventures Pvt. Ltd. amounts to making an assessment in the case of non-existing company. Therefore, in view of non-obstante clause in Section 170(2) of the Act, this Tribunal is of the considered opinion that the provisions of Section 170(2) will override the provisions of Section 170(1) of the Act. Therefore, the assessment has to be

made only in the hands of the present assessee in view of the provisions of Section 170(2) of the Act. The CIT(Appeals) is not justified in holding that the assessment has to be made only in the hands of the predecessor-company.

24. Now coming to the genuineness of the loan, it is a fact that Shri Prasad V. Potluri is a common Director in all the companies, namely, M/s Platex Ltd., Mauritius, M/s PVP Enterprises Pvt. Ltd., M/s PVP Ventures Pvt. Ltd. and present M/s PVP Ventures Ltd. This fact is not disputed by the assessee. It is also not in dispute that M/s Platex Ltd., Mauritius did not have net worth to support the claim of investment made to the extent of ₹377,71,78,316/-. The financial statement said to have been filed before the Assessing Officer shows that there was no generation of income by M/s Platex Ltd., Mauritius. Therefore, it is doubtful that Deutsche Bank granted loan to M/s Platex Ltd., Mauritius by way of Facility Agreement. When M/s Platex Ltd., Mauritius has no net worth and it could not generate any income of its own, it is not known how Deutsche Bank could come forward to sanction more than ₹500 Crores as loan by way of Facility Agreement. In view of financial statement of M/s Platex Ltd., Mauritius and the fact that Shri Prasad V. Potluri is a

common Director in all the three companies, namely, M/s Platex Ltd., Mauritius, M/s PVP Ventures Pvt. Ltd. and M/s PVP Ventures Ltd., Chennai, creates a doubt that the money might have been flown from the assessee-company to M/s Platex Ltd., Mauritius and by way of investment would have come back to Chennai through banking channel. Unfortunately, this fact was not examined by the lower authorities. Therefore, this Tribunal is of the considered opinion that the matter needs an investigation by the Assessing Officer as it was done in the case before Apex Court in CIT v. P. Mohanakala (2007) 291 ITR 278. The Assessing Officer has to examine when M/s Platex Ltd., Mauritius had no net worth and it could not generate any income of its own, how Deutsche Bank was able to sanction loan facility of more than ₹500 Crores. It also needs to be examined whether any loan was sanctioned and disbursed by Deutsche Bank to M/s Platex Ltd., Mauritius. Further, it is to be examined whether any money was flown from India to Mauritius in order to enable the Deutsche Bank to sanction the loan to M/s Platex Ltd., Mauritius. These aspects were not examined by the Assessing Officer. Therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined as observed by the Apex Court in CIT v. P. Mohanakala (supra). Merely because the

funds were transferred through banking channel, that alone will not prove the genuineness of transaction. It is a mandatory requirement for the assessee to establish the creditworthiness of the creditor, genuineness of the transaction and the identity of the creditors. Therefore, this Tribunal is of the considered opinion that the matter needs a thorough investigation by the Assessing Officer. Accordingly, the orders of the lower authorities are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh and bring on record all material facts as indicated above. The Assessing Officer shall thereafter decide the issue afresh in accordance with law, after giving reasonable opportunity to the assessee.

25. In the result, the assessee's appeal in I.T.A. No.1115/Mds/2014 is dismissed and the Revenue's appeal in I.T.A. No.1899/Mds/2014 is allowed for statistical purposes.

Order pronounced on 16th September, 2015 at Chennai.

sd/-	sd/-
(ए. मोहन अलंकामणी)	(एन.आर.एस. गणेशन)
(A. Mohan Alankamony)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 16th September, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-V, Chennai
4. आयकर आयुक्त/CIT-V, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.