

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. G. S. PANNU, PRESIDENT AND
SH. SAKTIJIT DEY, VICE-PRESIDENT**

ITA No.9424/Del/2019
(Assessment Year : 2016-17)

ACIT Circle – 21(2) New Delhi PAN No. AAFCR 0028 M (APPELLANT)	Vs.	M/s. Rishi Infratach Pvt. Ltd. 31, Bhogal, Jangpura Road, New Delhi-110 014 (RESPONDENT)
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Assessee by	Shri Salil Aggarwal, Sr. Adv. Shri Shailesh Gupta, Adv.
Revenue by	Shri Pramod Kumar, Sr. D.R.

Date of hearing:	17.05.2023
Date of Pronouncement:	14.08.2023

ORDER

Captioned appeal has been filed by the Revenue challenging the order dated 03.09.2019 of Learned Commissioner of Income-tax (Appeals)-7, New Delhi pertaining to Assessment Year 2016-17.

2. Though, the Revenue has raised as many as 10 grounds, however, the only dispute between the parties is with regard to deletion of addition of an amount of Rs.5,95,87,500/- made by the Assessing Officer under Section 68 of the Act.

3. Briefly the facts relating to the issue and dispute are, the assessee is a resident corporate entity stated to be engaged in real estate business. In the assessment year under dispute, the assessee

filed its return of income on 26.07.2016 declaring income of Rs.90,73,860/-. In course of assessment proceedings, the Assessing Officer, on verifying details furnished by the assessee, noticed that in the F.Y. 2014-15, the assessee had issued 12,29,375 partly paid equity shares of Rs.10/- each at a premium of Rs.290/- each. Out of which, Rs.160/- per share including Rs.155/- as share premium was received by the assessee on allotment of shares in A.Y. 2015-16 and the balance amount of Rs.140/- per share aggregating to Rs.5,95,87,500/- towards call money was received by assessee in the impugned assessment year. He observed that the call money of Rs.140/- per share comprised of face value of Rs.5/- per share and share premium Rs.135/- per share.

4 Noticing these facts, the Assessing Officer called upon the assessee to prove the identity, creditworthiness and genuineness of the parties from whom such share capital and share premium was received. In response to the query raised, the assessee furnished audited financial statements, copies of Income-tax returns, bank account statements etc. of the investing companies. The Assessing Officer, however, was not convinced with the evidences furnished by the assessee. He observed, as per the first proviso to Section 68 of the Act, if any amount representing share application money, share capital or share premium is found credited in the accounts of the assessee and explanation offered by the assessee to establish the genuineness of such transactions is not deemed to be satisfactory, provisions of Section 68 of the Act will apply. To ascertain the genuineness of the investments made towards share capital and share premium, the Assessing Officer proceeded to conduct independent enquiry by summoning the principal Officers of the

investing companies i.e. M/s. Verma Finvest Pvt. Ltd. and M/s. Touchstone Holdings Pvt. Ltd.

5. In response to the summons issued, one of the Directors of Touchstone Holdings Pvt. Ltd., appeared before the Assessing Officer and statement on oath u/s 131 of the Act was recorded from him. Similarly, one of the Directors of M/s. Verma Finvest Pvt. Ltd., the other investing company appeared before Assessing Officer and statement was recorded from him. Analysing return of income and other materials relating to the investing companies, the Assessing Officer ultimately concluded that the investing companies did not have the creditworthiness to invest in the share capital and share premium of the assessee company. Thus, he ultimately concluded that neither the genuineness of transactions nor the creditworthiness of the creditors could be established by the assessee. Accordingly, he treated the call money received by the assessee amounting to Rs.5,95,87,500/- as unexplained cash credit u/s 68 of the Act and added back to the income of the assessee. Assessee contested the aforesaid addition by filing an appeal before Learned First Appellate Authority.

6. Before the First Appellate Authority, the assessee along with its submissions furnished evidences/details furnished in course of assessment proceedings. After considering the submissions of the assessee in the context of facts and material on record, the CIT(A) found that in A.Y. 2015-16, investing companies have invested in share capital and share premium and partly paid the price of the equity shares. The Assessing Officer in scrutiny assessment proceedings undertaken u/s 143(3) of the Act had passed the

assessment order on 30.03.2017 accepting the investments made by the investing companies in share capital and share premium of the assessee to be genuine. Thus, he observed that when in the initial year of allotment of equity shares, the Assessing Officer has accepted the investments made in share capital and share premium to be genuine in the impugned assessment year, when the call money was received, the Assessing Officer cannot take an adverse view. Further, as regards the merits of the issue, on analysis of documentary evidences available on record, learned CIT(A) noticed that assessee has discharged its primary onus of establishing the identity and creditworthiness of the creditors as well as the genuineness of the transactions. Thus, he held that none of the ingredients of Section 68 of the Act are fulfilled to make the addition. Accordingly, he deleted the addition made by Assessing Officer.

7. Before us, Learned Departmental Representative relied upon the observations of the Assessing Officer. Per contra, Learned Counsel appearing for the assessee strongly relied upon the observations of Learned First Appellate Authority. Further, he submitted, when in A.Y. 2015-16 the Assessing Officer has accepted part of the investment received by the assessee from the investing companies towards share capital and share premium, the balance part out of the total consideration cannot be treated as unexplained cash credit in the impugned assessment year. Proceeding further, he submitted, after detailed analysis of facts and evidences, Learned CIT(A) has found that not only the investors have creditworthiness but the transactions are genuine. Thus, he submitted, in absence of any contrary evidence brought on record by Revenue, the decision of

Learned First Appellate Authority should be upheld. In support of his contention, Learned Counsel relied upon the following decisions:

- i. CIT vs. M/s. JPM Tools Pvt. Ltd. ITA No.358/2022 Judgment dated 26.09.2022 (Delhi High Court)
- ii. DCIT vs. Memphis Investment & Trading Co. Ltd. ITA No.6239/Mum/2019 order dated 22.07.2022

8. We have considered rival submissions and perused material on record. The short issue arising for consideration is whether the addition made u/s 68 of the Act by the Assessing Officer is sustainable. Undisputedly, the Assessing Officer has treated the call money received by the assessee towards share capital and share premium from two investor companies to be unexplained cash credit u/s 68 of the Act. However, facts on record reveal that the equity shares of the assessee were bought by investing companies in the F.Y. 2014-15 relevant to A.Y. 2015-16 at a value of Rs.300/- per share comprising of face value of Rs.10/- per each share and premium of Rs.290/- per share. It is also a fact that out of value of Rs.300/- per share, in A.Y. 2015-16 on allotment of shares, the investing companies have paid a part of the value of shares, being Rs.160/- per share comprising of Rs.5/- towards face value and Rs.155/- per share as share premium. Whereas, the balance amount of Rs.140/- per share was paid as call money in the impugned assessment year. It is relevant to observe, in the year of allotment i.e. A.Y. 2015-16, in scrutiny assessment completed u/s 143(3) of the Act vide order dated 30.03.2017, the Assessing Officer after verifying relevant facts and evidence has accepted the investment made by investing companies towards share capital and share premium as genuine. The only

disallowance made by him was an amount of Rs.7,84,957/- towards share issue expenses.

9 Thus, once the issue was examined in the year of initial investment and allotment of share by the Assessing Officer and the transaction was found to be genuine, a part of the very same transaction cannot be questioned and held to be non-genuine in the subsequent assessment year, when there is no change in the factual position. Thus, in our view the Assessing Officer could not have taken an adverse view with regard to call money received in the impugned assessment year. Therefore, in our opinion, the addition made by Assessing Officer in the impugned assessment year is unsustainable

10. Even, otherwise also, the assessee has a strong case on merits as well. On going through the detailed factual analysis made by Learned First Appellate Authority after verifying the documentary evidences, it is observed that the assessee has discharged its primary onus of establishing the identity and creditworthiness of the creditors as well as the genuineness of the transactions. Not only the assessee had furnished the confirmations of the investing companies supported by bank statements but all other relevant documents such as audited Balance Sheets, Income-tax returns etc. were filed. On going through the audited financial statements of the investing companies, Learned First Appellate Authority has given a factual finding that both the investors had sufficient funds available with them to make the investments in the shares of the assessee company. He has further found that the source from which the investing companies received the funds to invest in the assessee company also stood explained. The documentary evidences furnished by the

assessee, not only prove the source from which the assessee received the investment but the source from where the investing companies generated the funds to invest in the assessee company. Learned First Appellate Authority has given a categorical factual finding that the adverse inference drawn by the Assessing Officer that share holders of the assessee company as well as the investing companies are closely related cannot lead to the conclusion that the transactions are non-genuine. He has further observed that adverse inference drawn by the Assessing Officer with reference to Silpi Cables Technologies is unsustainable, as, the assessee has not carried out any transactions with the said company. Thus, from the detailed factual analysis recorded by the First Appellate Authority as well as the facts and evidences available on record, we find, the assessee has, indeed, proved the identity and creditworthiness of the investing company as well as the genuineness of transactions. The Revenue has failed to bring any contrary material on record to challenge the factual finding of Learned First Appellate Authority. Thus, in such scenario, the findings recorded by Learned First Appellate Authority cannot be disturbed. In view of the aforesaid, we are inclined to uphold the decision of Learned First Appellate Authority by dismissing the grounds raised.

11. In the result, appeal of Revenue is dismissed.

Order was pronounced in the open court on 14.08.2023

Sd/-
(G. S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Date:- 14.08.2023

*Priiti Yadav**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI