

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER**

ITA No. 6744/DEL/2018 [A.Y. 2009-10]

The I.T.O
Ward - 20(1)
New Delhi

Vs.

M/s Placid Buildwell Pvt Ltd
1123, DLF Tower -B,
Jasola District Centre,
New Delhi

PAN - AAACP 1017 H

CO No. 33/DEL/2022
[A/o ITA No. 6744/DEL/2018 [A.Y. 2009-10]]

M/s Placid Buildwell Pvt Ltd
1123, DLF Tower -B,
Jasola District Centre,
New Delhi

Vs

The I.T.O
Ward - 20(1)
New Delhi

PAN - AAACP 1017 H

(Applicant)

(Respondent)

Assessee By : Shri Ved Jain, Adv
Ms. Supriya Mehta, CA

Department By : Shri Prakash Nath Baranwal, CIT- DR

Date of Hearing : 11.01.2024

Date of Pronouncement : 16.01.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned appeal by the Revenue and cross objection by the assessee are directed towards the very same order of the CIT(A) - XXV, New Delhi dated 02.08.2018 pertaining to A.Y. 2009-10.

2. Since the appeal and cross objections were heard together, they are disposed of by this common order for the sake of convenience and brevity.

3. Grievances of the Revenue read as under:

"(1) Whether on the facts and under the circumstances of the case, the Ld. CIT (A) has erred in law as well as on facts of the case in deleting the addition of Rs. 16,55,00,000/- made by the AO on account of unexplained cash credit u/ s 68 of the Act received by the assessee from M/ s. Luminous Infrastructure Pvt. Ltd, M/ s. Heaven Infracon Pvt Ltd and M/ s. Shine Infracon Pvt Ltd.

(2) Whether on the facts and under the circumstances of the case, the Ld. CIT (A) has erred in law without considering the Modus operandi with the fact that all three companies were created on 28.04.2008 with same directors in Placid Buildwell Pvt. Ltd. and RPS infrastructure Ltd.

(3) Whether on the facts and under the circumstances of the case, the Ld. CIT (A) has erred in law without considering the survey conducted by the Investigation Wing of the department that the share applicant companies are only layering companies having no substantial income/ revenue which may justify source of such huge funds invested on the assessee company.

(4) The appellant craves to be allowed to add any fresh ground(s) of appeal and/ or delete or amend any of the ground(s) of appeal."

4. Cross objections by the assessee are as under:

- 1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.*
- 2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in ignoring the contention of the assessee that the proceedings initiated under Section 147 and order passed by the learned Assessing Officer (AO) under Section 147/143(3) is without jurisdiction.*
- 3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the assessment framed under Section 147 is bad and liable to be quashed as no valid notice under Section 148 as required under the law has been issued and served on the assessee.*
- 4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in upholding the reopening of*

assessment done by the AO, despite the fact that the initiation of the proceedings under Section 147, read with Section 148 of the Act is bad and liable to be quashed, as the conditions and procedures prescribed under the statute have not been satisfied and complied with.

5. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the reopening despite the fact that the same has been made by the AO without independent application of mind.*
6. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the notice issued under section 148 of the Act is bad and liable to be quashed as the same is barred by limitation having being issued beyond the four years from the end of relevant assessment year.*
7. *On the facts and circumstances of the case, the CIT(A) has erred both on facts and in law, in rejecting the contention of the assessee that reopening of assessment is bad without there being any whisper in the reasons recorded by the AO that the income has escaped assessment on account of failure on part of the assessee to disclose fully and truly all material facts necessary for assessment.*
8. *On the facts and circumstances of the case, the CIT(A) has erred both on facts and in law, in rejecting the contention of the assessee that the assessment has been reopened by the AO on the basis of the reasons which are mere change of opinion as the issue was already examined during the course of assessment under Section 143(3) of the Act.*
9. *The respondent craves leave to add amend on alter any of the grounds of cross objection."*

5. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

6. Briefly stated, the facts of the case are that original return of income was filed on 16.09.2019. Return was selected for scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

7. The assessee is engaged in the business of trading of under constructed flats. Returned income of Rs. 2,78,127/- was assessed at Rs. 3,27,511/- vide order dated 25.11.2011 framed u/s 143(3) of the Income-tax Act, 1961 [the Act, for short]. Vide notice dated 29.03.2016, assessment was reopened u/s 147 of the Act. Reopening was done on the basis of information received from the office of the ADIT, INV 1, Faridabad from which it came to the knowledge that various group companies of RPS Group have received share capital/premium from various dummy entities and the assessee is one of the group companies of RPS Group and has received share capital/premium amounting to Rs. 14,89,50,000/- during the F.Y.

2008-09 from Heaven Infracon Pvt Ltd and Luminous Infrastructure Pvt Ltd.

8. Return of income of the assessee was analyzed and the following facts came to the knowledge of the Assessing Officer:

Sl. No	Particulars	AY 2008-09	A.Y 2009-10	Increase (+)/ Decrease (-)
1.	Authorised share capital	1,00,000	2,00,00,000	1,90,00,000(+)
2.	Issued, subscribed and paid up capital	1,00,000	1,66,50,000	1,65,50,000(+)
3.	Security premium Account	0	14,89,50,000	14,89,50,000

9. During the course of scrutiny assessment proceedings, the Assessing Officer found that the assessee has received share capital/premium as under:

Sl. No	Name of the Share Applicant	Share Capital/Premium received during the year (In Rs.)
1.	M/s Shine Infracon Pvt Ltd	7,39,00,000/-
2.	M/s Heaven Infracon Pvt Ltd	5,26,00,000/-
3.	M/s Luminous Infrastructure Pvt Ltd	7,40,00,000/-

10. The Assessing Officer found that the assessee has returned an amount of Rs. 3.50 crores to M/s Luminous Infrastructure Pvt Ltd out of total share capital /premium of Rs. 20.05 crores. Thus, the total share

capital/premium left with the assessee was 16.55 crores, out of which it has invested an amount of Rs. 14.06 crores in the shares of M/s RPS Infrastructure Ltd.

11. The Assessing Officer found that returned income of M/s Shine Infracon Pvt Ltd was Rs. 28,530/-, that of M/s Heaven Infracon Pvt Ltd was Rs. 55,510/- and Luminous Infrastructure Pvt Ltd was Rs. 25,320/-. The Assessing Officer formed a belief that these companies are nothing but paper companies, having no net worth to subscribe to such huge share capital/premium.

12. Since Rs. 14.06 crores was introduced in M/s RPS Infrastructure Ltd, the Assessing Officer made protective addition of Rs. 14.06 crores in the hands of the assessee, as substantive addition has been made in the hands of RPS Infrastructure Ltd. Balance amount of Rs. 2.94 crores was also added on substantive basis u/s 68 of the Act.

13. The assessee carried the matter before the Id. CIT(A) and vehemently argued that the assessee has explained the transaction in light of section 68 of the Act. The assessee filed necessary evidence which were examined by the Id. CIT(A).

14. After considering the facts and submissions and after examining the documentary evidence, the ld. CIT(A) was convinced that the assessee has successfully discharged the onus cast upon it by provisions of section 68 of the Act. The ld. CIT(A) observed that credit worthiness of a company means availability of funds from legitimate source in the hands of investors that can be cross-checked from the availability of funds which can be verified from the balance sheet and bank statement. Credit worthiness cannot be judged only on the basis of returned income. The ld. CIT(A) deleted the impugned addition.

15. Before us, the ld. counsel for the assessee stated that substantive addition made in the hands of RPS Infrastructure Ltd has been deleted by this Tribunal in ITA No. 6300/DEL/2018 and CO No. 70/DEL/2021.

16. The ld. counsel for the assessee further stated that in the assessments of Shine Infracon Pvt Ltd, Heaven Infracon Pvt Ltd and Luminous Infrastructure Pvt Ltd, the impugned transactions have been accepted. Therefore, there is no basis for the impugned addition and the ld. CIT(A) has rightly deleted the same.

17. Per contra, the ld. DR strongly supported the findings of the authorities below and read the operative part.

18. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee has received share capital/premium from the three parties mentioned elsewhere. We have the benefit of the assessment order of Luminous Infrastructure Pvt Ltd for A.Y 2009-10 framed u/s 143(3)/147 of the Act wherein the share application money received by M/s Luminous Infrastructure Pvt Ltd has been accepted after thorough scrutiny.

19. M/s Luminous Infrastructure Pvt Ltd has invested in shares of the assessee company out of premium received by it and since its source has been accepted after thorough scrutiny, we do not find any reason why source of M/s Luminous Infrastructure Pvt Ltd in the assessee company be not accepted.

20. The same is the fate of M/s Shine Infracon Pvt Ltd whose assessment was also framed u/s 147 r.w.s 143(3) of the Act and after thorough scrutiny, its financial statements have been accepted as

such, which means that investment made by Shine Infracon Pvt Ltd in the assessee company has also been accepted.

21. Coming to the investment made in M/s Heaven Infracon Pvt Ltd, we find that in its assessment order framed u/s 143(3) r.w.s 147 of the Act, addition of Rs. 8.76 crores has been made. Investment made by M/s Heaven Infracon Pvt Ltd in the shares of the assessee company can be safely considered out of funds available with M/s Heaven Infracon Pvt Ltd.

22. Considering the assessment status of all the three share applicant companies, we have no hesitation to hold that the assessee has successfully discharged the initial onus cast upon it by provisions of section 68 of the Act. We, therefore, do not find any reason to interfere with the findings of the assessee Id. CIT(A).

23. As a result, the appeal of the Revenue is dismissed and the cross objections have become infructuous.

24. In the result, the appeal of the Revenue in ITA No. 6744/DEL/2018 is dismissed and the Cross objection in CO No. 33/DEL/2022 is dismissed as having become infructuous.

The order is pronounced in the open court on 16.01.2024.

Sd/-

**[YOGESH KUMAR U.S]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 16th JANURARY, 2024

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	