

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “E”: NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA , ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1312 /DEL/2023  
Assessment Year: 2016-17**

DCIT, Central Circle-13,  
New Delhi.

Vs M/s Nishit Capinvest Pvt. Ltd.,  
31, Bhogal Jangpura Road,  
New Delhi-110004.

PAN-AAECN7120M

**(APPELLANT)**

**(RESPONDENT)**

<b>Assessee represented by</b>	:	Sh. Salil Aggarwal, Sr. Adv.
	:	Sh. Shailesh Gupta, CA &
	:	Sh. Uma Shankar, Adv.
<b>Department represented by</b>	:	Sh. M.P. Dwivedi, Sr. DR
<b>Date of hearing</b>	:	23.11.2023
<b>Date of pronouncement</b>	:	04.01.2024

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The Revenue has come in appeal against the order dated 08.02.2023, for the assessment year 2069-17, passed by the Commissioner of Income Tax (Appeals)-26, New Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in appeal no. 10227/2018-19, arising out of assessment order dated 29.12.2018 u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the ACIT, Circle-18(2), New Delhi, hereinafter referred to as the “AO”).

2. The facts in brief are the assessee in this case is a closely held company, engaged in the business of making investments. During the instant year it has raised share capital from Directors of the assessee company and their relatives when it issued 3896000 Equity shares to them for a total consideration of Rs.42,85,00,000/- which consisted of share capital amounting to Rs.3,89,60,000/- and share premium of Rs. 38,96,00,000/-. The Equity shares were allotted at a share price of Rs.110/- per share including an amount of Rs.100/- per share as share premium. The shares were issued as per the valuation certificate obtained under Rule 11UA as on 31st March 2015, according to which the book value of each share was certified at Rs.110/- per share. The assessee company had furnished a return of income declaring a net taxable income of Rs.36,82,070/-. The case was picked up for Limited Scrutiny to verify "whether the funds received in the form of share premium are from disclosed sources and have been correctly offered to tax". During the course of assessment proceedings, it was explained to the Assessing Officer that share premium was received from existing shareholder Shri Dinesh Gupta (HUF), his HUF Dinesh Gupta (HUF), HUF of the existing shareholder Shri Rajesh Gupta and also from wife of Shri Rajesh Gupta namely Smt. Renu Gupta. The entire share premium was received by account payee cheques and all the share applicants were duly assessed to income tax. The copies of their confirmations along with copies of their bank accounts from where the share premium was received as also the source of credit in their bank account immediately preceding the payment to the assessee company were also explained along with documentary evidences. Assessee thus claimed

that the assessee in this manner proved the nature and source of the amount credited in its bank account by way of share premium has also explained the nature and source of the funds available in the hands of the shareholders which enabled them to make the investment in the assessee company. That in this manner the assessee company duly discharged the onus that lay upon it u/s 68 of the Act to explain the nature and source of credit in its books of accounts and bank account and the shareholder also discharged the onus to explain the nature and source of the sum invested by them in the assessee company. However, the learned Assessing Officer has rejected the explanation so furnished and has held that the amount of Rs.42,85,00,000/- received by the assessee company is unexplained and has made addition of this amount as income u/s 68 of the Act.

3. Before learned CIT(A), on behalf of the assessee, relevant evidences were filed about the identity of the investors. Evidence was also filed with regard to source of funds available in the hands of investors and being satisfied, the learned CIT(A) considered the genuineness of transactions and investment explained. It will be appropriate to reproduce the relevant findings of learned CIT(A) in para 4 of the impugned order as follows:

*“4. Ground No.-1 to 4: These grounds are raised by the appellant w.r.t. the addition of Rs.42,85,60,000/- on account of investment by the promoter shareholders in the company which was held as unexplained. The appellant has submitted that the AO has erred in making addition of Rs. 42,85,60,000/- u/s 68 of the Act and that the entire share capital was raised during the instant year from the existing shareholders are closely related family members who are also promoters of the assessee company which are fully explained in the hands of shareholders as well as the assessee company. The assessee further submitted that*

*the addition was made only on the basis of suspicion and the shareholders of the assessee company have duly confirmed the transaction with the assessee company and have also explained the nature and source of the investment made by them in the assessee company.*

*As per the assessment order dated 29.12.2018, the instant case was selected for limited scrutiny by CASS: "Whether the funds received in the form of share premium are from disclosed sources and have been correctly offered for tax". The assessee was asked to submit explanations and evidences regarding the aforesaid single limited scrutiny point by the AO. It was found by him that during the instant year the assessee company issued 38,96,000 equity shares of face value of Rs. 10/- per share at a premium of Rs. 100/- per share. In this manner the assessee company received share premium of Rs. 38,96,00,000/- along with share capital of Rs. 3,89,60,000/- from four persons as per details here under:*

S. No.	Name of Party	PAN	Share capital (Rs.)	Share Premium (Rs.)	Total amount Received (Rs.)
1.	Dinesh Gupta HUF	AACHD9271Q	1,40,50,000	14,05,00,000	15,45,50,000
2.	Rajesh Gupta HUF	AAGHR4685G	83,50,000	9,18,50,000	8,35,00,000
3.	Renu Gupta	AFUPG6910N	77,10,000	7,71,00,000	8,48,10,000
4.	Dinesh Gupta	AAAPG4180D	88,50,000	8,85,00,000	9,73,50,000
		Total	3,89,60,000	38,96,00,000	42,85,60,000

*The assessee was asked to prove the identity creditworthiness and genuineness of the transactions with above persons as per the provisions of section 68 of the I.T. Act 1961. The submissions made and the documentary evidences filed by the assessee were examined by the AO during the assessment proceedings. However, he was not satisfied with such explanations and he made an addition u/s 68 of the I.T. Act 1961 in respect of share premium amounting to Rs. 38,96,00,000/- as well as addition of Rs. 3,89,60,000/- received as share capital from the aforesaid four persons. In this manner a total addition of Rs. 42,85,60,000/- was made by the AO and the whole amount of the addition has been disputed by the appellant in these proceedings.*

*4.1 During the course of appellate proceedings the appellant has submitted some additional evidence which are as under:*

- i. Bank statement of M/s Rishi Infratech Pvt. Ltd. for FY 2015-16.*
- ii. ITR of Rishi Infratech Pvt. Ltd. for AY 2016-17*

- iii. *Bank statement of M/s SAP Compusoft Pvt. Ltd. for the FY 2015-16*
- iv. *Form MGT-7 filed before ROC by M/s Nishit Capinvest Pvt Ltd. for FY 2015-16*

*On the above submission the comments were called from the AO. The AO submitted that during the assessment proceedings notice u/s 133(6) of the I.T. Act was sent to M/s Rishi Infratech Pvt. Ltd. to verify the genuineness and identity of the party however, the party remained non-compliant. It was also noted by the AO that on perusal of the bank statements of M/s Rishi Infratech Pvt Ltd and M/s SAP Compusoft Pvt. Ltd. it is found that the funds are being circulated among the individuals and Gupta family members. The appellant assessee has also filed Form MGT-7 filed with ROC for FY 2015-16. The assessee had submitted that these documents/evidences could not be filed because of the pending dispute among the family members and therefore the appellant company was prevented by sufficient cause from producing the documents/evidences before the AO.*

*On perusal of the bank statements of M/s Rishi Infratech Pvt Ltd and M/s SAP Compusoft Pvt. Ltd it is found that there has been regular transactions in the bank account of these two company. The AO could not point out any specific reason for not allowing the said submission considering the submission made by the appellant it appears that these companies are group companies and there was a reasonable cause which prevented the appellant filing the documents called for during the assessment. Therefore, the filing of additional document is allowed.*

*4.2 The findings of the AO in the assessment order and the submissions of the appellant have been carefully perused by the undersigned along with the documents filed in the paper book as well as the additional evidences filed u/R 46 A of the IT Rules, 1962. The additional evidences are admitted. A perusal of the assessment order shows that the adverse inference has been drawn by the AO against the appellant for the following reasons:*

*I. The AO found that all the four persons from whom share capital and share premium was received are showing huge exempt income and meagre returned income in their individual returns of income.*

*II. The examination of details of exempt income in the hands of Dinesh Gupta, Dinesh Gupta HUF and Rajesh Gupta HUF showed that the majority of the amount is on account of income claimed by them as exempt on selling shares of Shilpi Cables Technologies Ltd (herein after refer to as SCTL).*

*III. According to the AO the trading data of SCTL shows characteristics of penny stock and transaction of selling its stock by the four persons*

*(including Renu Gupta) appeared to the AO to be a sham transaction in the hands of the four shareholders.*

*IV. The AO was not satisfied with reply furnished by the assessee in response to his query regarding the exempt income earned by the shareholders on sale of SCTL shares and after examining the trading data of SCTL shares in the stock exchanges he was of the view that SCTL was defying both general market trend and industry specific trend which according to him is inexplicable. Accordingly, he concluded that the assessee has not provided full details about the exempt income of any of the four shareholders and even though he could not find any sale of shares of SCTL in the bank account of Renu Gupta, it was assumed by him that in absence of details regarding the exempt income the same is also from selling of shares of SCTL by Renu Gupta.*

*V. He thus concluded that the apparent was not real and held that the total amount of Rs. 42,85,60,000/- including the amount of Rs. 38,96,00,000/- of share premium and Rs. 3,89,60,000/- received as share capital is treated to be unexplained and consequently taxed U/s 68 of the I.T. Act 1961.*

*4.3 It has been contended by the assessee that it has duly discharged the onus that lay upon it u/s 68 of the Act to prove the nature and source of the share capital and share premium received by it during the instant year from its directors, existing shareholders and their relatives. The appellant has further contended that each of such four subscribers/shareholders have also proved the nature and source of the funds invested by them in the assessee company during the instant year and thus the onus that lay upon the assessee u/s 68 of the Act stood fully discharged. It is seen from the perusal of the written submissions and paper book filed by the assessee that it has furnished the following documentary evidences in respect of all the subscribers/shareholders:*

- a) Copy of the share application form.*
- b) Confirmation of the shareholder.*
- c) Affidavit of the shareholder.*
- d) Copy of bank statement of the shareholder.*
- e) Copy of income tax return of the shareholder.*
- f) Copy of ROC return showing allotment of the shares to the shareholder.*
- g) Copy of bank account of the assessee company showing receipt of share premium from the shareholder.*

*Apart from the above the appellant also furnished the details of the source of source of each of the subscriber/shareholder where it had explained the nature and source of each of the amounts paid by each of such subscriber to the assessee company. It is also seen that a detailed chart was submitted before the AO by the*

*assessee vide letter dated 04.12.2018 which shows the immediate source of funds in the hands of each of the shareholder which enabled them to make the investment in the assessee company. Documentary evidences in support of the availability of such funds in the hands of each of the shareholders were also filed by the assessee during assessment proceedings as well as the present appellate proceedings.*

*4.4 The copies of explanations and documentary evidences filed by the assessee have been carefully perused and examined by me. It is found as under:*

*I. All the four subscribers of the assessee company which is an unlisted closely held company are either the existing shareholders or directors or relatives of the directors.*

*II. The entire amount of subscription has been received by account payee cheques or through RTGS from the bank accounts of each of the subscribers.*

*III. Each of such subscribers is an income tax assessee and has duly confirmed that they have made the investment in the assessee company and have also explained the nature and source of funds credited in their respective bank accounts out of which they made the payment for investment in the assessee company.*

*IV. It is also seen that the exempt income earned by them is fully disclosed and accounted for in their own individual return of income filed by them.*

*V. A perusal of the explanation filed by the assessee in respect of two subscribers namely Rajesh Gupta HUF and Renu Gupta Shows that the nature and source of funds available with these subscribers out of which investment has been made in the assessee company does not include any exempt income.*

*VI. The nature and source of funds available in the hands of other two subscribers namely Dinesh Gupta HUF and Dinesh Gupta includes exempt income as per following details:*

*a. In the hands of Dinesh Gupta HUF - Sale proceeds of shares of SCTL through stock exchange claimed as exempt income in its ITR 1.17 crores.*

*b. In the hands of Dinesh Gupta - Sale proceeds of shares of SCTL through stock exchange claimed as exempt income in its ITR Rs. 3.98 crores and receipt of Dividend from SCTL Rs. 24 lakhs.*

*VII. It is seen that apart from the above no other exempt income has been claimed to have been invested in the assessee company by any of the four share subscribers.*

*VIII. Assessment order passed u/s 143(3) of the Act in the case of Dinesh Gupta HUF by ITO Ward 28(4) Delhi on 21.12.2018 for the instant year shows that no addition has been made in his hands in respect of the exempt income declared by him in his return of income for sale of equity shares of SCTL. Likewise a perusal of the assessment order u/s 143(3) of the Act dated 17.12.2018 in the case of Rajesh Gupta HUF for the AY 2016-17 also shows that no addition has been made in respect of sale of shares of SCTL. In the case of Renu Gupta the source of investment claimed by the assessee is also not out of any exempt income and it is the claim of the assessee that Renu Gupta never owned any shares of SCTL and even the AO in the impugned has only assumed in para 4.13 of the impugned order that her exempt income is from selling of shares of SCTL. However, in my considered opinion this is not even relevant as Renu Gupta. She has not claimed to have made any investment in the assessee company out of exempt income. In the hands of Dinesh Gupta addition was made on account of sale of shares of SCTL by holding the same to be the penny stock vide assessment order passed u/s 143(3) of the Act on 30.12.2018 by the ACIT Central Circle 15, Delhi. However, the same was deleted vide appellate order passed u/s 250(6) of the Act by my learned Predecessor CIT Appeals - XXVI New Delhi vide order dated 16.08.2019 in appeal no. 10171/18-19 when it was held by him that no addition could be made in respect of the long term capital gains derived by the assessee on sale of SCTL shares as the same was exempt u/s 10(38) of the Act. The appeal filed by the revenue against such order of my learned predecessor was also dismissed by the ITAT Delhi bench 'G' in ITA no. 8571/DEL/2019 dated 06.04.2021/On these facts the adverse inference drawn by the AO regarding the creditworthiness of these four subscribers on the allegation of sham transactions on sale of shares of SCTL is wholly wrong and not borne out of any material on record.*

*VIII. It is further observed that the appellant had filed all the requisite details as mentioned in the fore going paragraphs to discharge its burden of proof u/s 68 of the Act in respect of the share capital and share premium received by it. The assessee has duly established the identity, credit worthiness and genuineness of the share capital and share premium received by it. All the four investing entities are either existing shareholders or directors or closely related to shareholders of the appellant company. Each of such subscriber is filing its return of income and have explained the credit entries in their respective bank accounts out of which investment*



*has been made in the assessee company. It is also seen that there are no cash deposits in the bank accounts of these four subscribers and the credits are in respect of either sale of unlisted shares for which capital gain has been declared in the returns or the source of fund is return of earlier advanced loans from various entities. The assessee has furnished all documentary evidences in support of availability of such funds in the bank account of the four subscribers out of which they have made the investment in the assessee company. Thus, the assessee has discharged the burden that lay upon it. However, the AO has failed to bring on record any specific adverse material to prove non genuineness or non-credit worthiness of these investors.*

*IX. The observation of the AO that the income declared by the four subscribers does not justify the large amount of investment made by them is also found to be unjustified as ordinarily the current year income alone cannot be criterion of justification of any investment when there may be earlier year investments in various assets like loans/stocks etc. which are liquidated/received in the current year to make the investment. The AO has not brought on record any specific material to counter the documentary evidences filed by the assessee to prove the return of loan given to various entities or the sale of unlisted shares by the four subscribers which enabled them to make the investment in the assessee company.*

*X. The perusal of the findings of the AO shows that he has drawn adverse inference against the appellant mainly because according to him the four subscribers have earned income from long term capital gains from sale of SCTL shares and have claimed to be exempt. It is only on this basis that the AO has disbelieved the claim of the assessee without bringing any other specific contrary material on record. As found by me in earlier paragraphs the two subscribers namely Renu Gupta and Rajesh Gupta HUF have not claimed to have made any investment in assessee company out of any income claimed to be exempt by them in their return of income and therefore there was no basis for the AO to draw any adverse inference in respect of these two subscribers. As regards Dinesh Gupta HUF, no adverse inference was drawn in his case on sale of share of SCTL when assessment was framed u/s 143(3) of the Act for the instant year. In case of Dinesh Gupta the additions made in his hands on the sale of SCTL shares was deleted by the CIT Appeals and the order of CIT Appeal was upheld by the ITAT. Thus, there is no justification for the AO to draw any adverse inference regarding the nature and source of funds available in the hands of four subscribers who have invested an amount of Rs. 42,85,60,000/- in the share capital and share premium of the appellant company.*

*XI. I also agree with the contention of the appellant that the AO has erred in drawing the adverse inference against assessee and its shareholders only on the basis of suspicion without bringing on record any specific adverse material which could enable him to validly reject the documentary evidences filed by the assessee to prove the nature and source of funds received by the assessee as also the nature and source of funds available in the hands of the shareholders which enabled them to make the investment in the assessee company. In my considered opinion the AO while framing the assessment in the hands of the assessee company ought not to have tried to frame the assessment of shareholders who have admittedly disclosed all their transactions in their own return of income and separate assessment orders have been passed in the cases of at least three subscribers out of four subscribers in the instant case. The appellant is found to have duly discharged the onus that lay upon it w / s \* 68 of the Act and the AO has disbelieved the same only on the basis of suspicion without pointing out any specific discrepancy in the documentary evidences filed by the assessee. The AO has failed to bring any material on record to prove that the apparent is not real.*

*XII. The AO had made the addition on account of unexplained investment in the hands of company. The shareholders are the promoters or their HUFs. The sources of funds in the hands of investing persons were explained and the appellant has also explained the source of funds in the hands of source's source. In the case of three investors out of four assessment u/s 143(3) was completed. Out of these three, in the hands of two assessee no addition was made. In case of one assessee even if the addition was made got full relief from CIT Appeal and ITAT. Even if it was considered by the AO as unexplained money in the hands of the investors the same could not be added in the hands of appellant company but to the individual investors.*

*In view of the above, I find the addition of Rs. 42,85,60,000/- made by the AO u/s 68 of the Act not sustainable and therefore hereby deleted. Accordingly, these Grounds of Appeal of the assessee is allowed.”*

4. The Revenue is now in appeal raising following grounds:

*“1. Whether on the facts and in law, the Ld. CTT(A) is correct in deleting the addition made u/s 68 of the I.T. Act, 1961 amounting to Rs.42,85,60,000/- by stating that the assessee has duly discharged the onus that lay upon it u / s 68 of the Act despite the fact that assessee has failed to prove the credit worthiness and genuineness of parties who have paid the loan amount to the share subscribers of assessee company.*

(ii) *Whether on the facts and in law, the Ld.CIT (A) is correct in ignoring that the share subscribers had received refund of loan from M / s Rishi Infratech Pvt Ltd, M/s Renu Propstech Pvt Ltd, M / s SAP Compusoft Pvt Ltd and BDR Builders and Developers Pvt Ltd, wherein it is found that the funds are being circulated among same individuals and Gupta family members and fund which was credited in the bank account was debited on the same day in which it was received.*

(iii) *Whether on the facts and in law, the Ld.CIT(A) is correct in ignoring the facts that the creditworthiness and genuineness of the share subscribers from whom share capital and share premium was received is not proved since they were showing huge exempt income from sale of penny stock namely Shilpi Cables Technologies Ltd and also shown meager returned income in their individual returns of income.*

(iv) *Whether on the facts and in law, the Ld.CIT(A) is correct in ignoring the facts that the major exit providers of M / s Shilpi Cables Technologies Ltd are M/s Touchstone Holdings Pvt. Ltd. M/s Able Management Consultants, M/s Viable Management Consultants Pvt Ltd, M/s Nirmal Gupta and M/s Ajay Fincap Consultants Pvt. Ltd which are shell companies and their shareholding and directorship is in close control of the Gupta family.*

vi) (a) *Whether on law and facts of the case the order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*

(b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

5. Heard and perused the record.

6. Learned DR has submitted that learned CIT(A) has fallen in error in not appreciating that learned AO has very meticulously examined the source of source of the investors and had rightly concluded that investor's funds were generated from the source in which the assessee company and the directors of assessee company were interested. Learned DR thus, relied on the findings of learned AO.

7. On the other hand, learned AR took the Bench across the various factual findings of learned CIT(A), which, as such, are reproduced above. Learned AR specifically relied on the composite order dated 06.04.2021 rendered by the ITAT Delhi Bench “G” in ITA

no. 5204/Del/2019 in the case of ITO Vs. Smt. Shivani Gupta; and ITA No. 8571/Del/2019 in the case of ACIT Vs. Shri Dinesh Gupta.

8. On appreciating the material on record and the submissions it comes up that primarily the learned AO was not satisfied with the source of source aspect of the investors and he has inquired into the investors' sources, trying to establish that the source of source did not have stand of its own and that they had some sort of control of the Gupta Family, who are the investors of assessee. It comes up that while trying to unearth the disinvestment in the alleged penny stock of Shilpi Cable Technologies Ltd. (SCTL), learned AO concluded that even the assessee company itself has provided exit to the share subscribers to the extent of Rs. 2,24,08,286/- and concluded that money of assessee is being circulated, which is introduced as share capital/ premium. This at first looked as a substantive ground supporting the conclusion of the learned AO that source of source remained unexplained. However, when the order of learned CIT(A) is considered in clause VIII on page 18, it establishes that on account of exempt income declared from the sale of equity shares of the alleged penny stock of SCTL, no addition was made in the hands of Dinesh Gupta HUF in assessment u/s 143(3) or in the hands of Rajesh Gupta HUF. The addition was made in the hands of Dinesh Gupta in assessment u/s 143(3). However, the same was deleted by learned CIT(A)-26, New Delhi and the order stands sustained by the Tribunal in ITA no. 8571/Del/2019 order dated 6.4.2021. Lastly, there was no allegation of Renu Gupta having source arising out of disinvestment of alleged penny stock and primarily her source was refund of loan in certain companies or sale of equity shares of Mangal Kalas Services Pvt. Ltd. Thus, learned CIT(A) has not

erred in not finding substance in the conclusion of learned AO that the source of source is tainted.

9. It can be further appreciated that learned CIT(A) has taken into consideration all the relevant information about the identity of the investors, their bank statements, another financials which were duly filed to give details of the financial credibility of the investors. We are also of the considered opinion that in the absence of any allegation of any cash deposits in the bank accounts of the investors so as to draw inference that it was assessee's own money which was accounted back by the investors, Learned AO certainly had fallen in error in stretching the principles of test of improbability too far to hold that the transactions were created to mask the apparent as real. We are of the considered opinion that merely because of some sort of control of Gupta family into companies transacting in the alleged penny stock cannot be basis to question the source of source in the hands of the assessee company without any direct evidence or circumstantial evidence giving a complete link of circumstances. Mere inference of Ld. AO, out of valid and reported transactions to question the source of source for addition u/s 68 could not have been sustained by learned CIT(A). Consequently, the grounds of the Revenue have no substance. The appeal of Revenue is dismissed.

Order pronounced in open court on 04.01.2024.

**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI