

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "F" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI O.P. KANT, A.M.

ITA.No.5629 & 5630/Del./2013  
Assessment Years 2008-2009 & 2009-2010

The ACIT, Central Circle-13, Room No.332, ARA Centre, Jhandewalan Extn., New Delhi.	vs.	M/s. River Valley Meadows & Township Pvt. Ltd., (Formerly known as Tsunami Technologies India Pvt. Ltd.), 104, 10 <sup>th</sup> Floor, Mittal Chamber, Nariman Point, Mumbai. PIN - 400 021. PANAABCT9188J
(Appellant)		(Respondent)

For Revenue :	Shri Surender Pal, Sr. D.R.
For Assessee :	Shri Ajay Wadhwa, Advocate.

Date of Hearing :	13.03.2019
Date of Pronouncement :	27.03.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

Both the appeals by Revenue are directed against the different orders of the Ld. CIT(A)-1, New Delhi dated 5th August 2013, for the assessment years 2008-2009 and 2009-2010, challenging the deletion of addition of Rs.7,92,19,406/- and Rs.2,34,96,795/- respectively, made

by the assessing officer on account of unexplained share application money received from the Holding Company M/s. Palm Technologies (P) Ltd., Mauritius.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

3. Learned Representatives of both the parties mainly argued in assessment year 2008-2009 and have submitted that the issue is same in assessment year 2009-2010. Therefore, order in assessment year 2008-2009 may be followed in another appeal. For the sake of disposal of both the appeals, we proceed to decide ITA.No.5629/Del./2013 for the assessment year 2008-2009 as under.

ITA.No.5629/Del./2013 – A.Y. 2008-2009 :

4. The facts of the case are that the assessee is a Company filed return of income declaring loss of Rs.13,72,942/-. The assessing officer on perusal of the return and details submitted found that during the year

under consideration the assessee-company has received share application money of Rs.7,92,19,406/- on 15th February 2008 from the Holding Company M/s. Palm Technologies (P) Ltd., Mauritius. Thus, assessee was asked to furnish complete details regarding share application money received and prove the creditworthiness of the Investor. In response thereto, the assessee submitted as under :

***“Evidence of credit worthiness of Palm Technology Ltd.,***

*The said company was incorporated in Mauritius on 31.10.2000 under the name of Y2K Ltd.*

*(a) Certified copy of Certificate of Incorporation dated 16.11.2010 is enclosed.*

*(b) Thereafter, the name of the company was changed into Palm Technologies Ltd., in terms of certificate issued by the Registrar of Companies effective 15th March. 2002. (Attested copies of the certificate are enclosed).*

(c) *The said company was issued a Tax Resident Certificate by the Income Tax Department Republic of Mauritius (Attested copies of the certificate are enclosed).*

(d) *The company was maintaining a bank account with HSBC and certificate of HSBC dated 20th June. 2008 is enclosed.*

(e) *Copy of the balance sheet of M/s Palm Technology Ltd. for the year ending 23rd March 2008 is enclosed.*

**2. Documents in support of remittances from Palm Technology Ltd.**

a. *Detail of amount received any equity shares allotted to Palm Technology Ltd. during the year ended 31.03.2008.*

b. *Letter dated 26.08.2008 addressed to the Manager IDBI Bank regarding submission of Form FCGBR - Foreign Direct Investment along with the following Annexure:-*

- i. Two letters dt. 26.08.2008 addressed to Reserve Bank of India.*
- ii. Form FC-GPR*
- iii. Certificate of Compliance dated 26.08.2008 issued by the Company Secretary.*
- iv F1RC No. 098902 dated 15.02.2008 issued by IDBI Bank.*
- v. Certificate of compliance dated 25.08.2008 issued by Chartered Accountant.*
- vi. Valuation certificated dated 05.08.2008 issued by the Chartered Accountant along with Annexure-A.*
- vii. Copies of the Annexure-II Ill forming part of Form No. FC-GPR.”*

4.1. The assessing officer on perusal of the balance sheet of M/s. Palm Technologies (P) Ltd., Mauritius noted that it had reflected investments of US \$ 5745000 in subsidiary companies as on 31st March 2008. He has further noted that the said company has shown profit of US \$ 7833 during the period. Assessing officer after analysing

the balance sheet as on 31st March 2008 further noted as  
under :

a.

<i>Non Current Assets</i>	<i>Year ending on 31.03.2008</i>	<i>Year ending on 31.03.2007</i>
<i>Investment in subsidiary companies</i>	<i>US \$ 5,745,000</i>	<i>US \$ 4,083,929/-</i>

b.

<i>Non Current Liabilities</i>	<i>Year ending on 31.03.2008</i>	<i>Year ending on 31.03.2007</i>
<i>Borrowings</i>	<i>US \$ 54,56,197</i>	<i>USD 4,110,922</i>

c. *The share capital of the company has remained unchanged at US \$ 1001.”*

4.2. The assessing officer in view of the above also noted that the meager profit earned by the said company shows that investment in the subsidiary company has been financed through borrowings. During the course of assessment proceedings, a Reference to Government of Mauritius through Director General of Income Tax (Inv.), Delhi was made through F.T.&T.R. Division of CBDT under

DTAA. In this Reference, Government of Mauritius was requested to provide the following details :

*'Enquiries to be conducted with regards to M/s Palm Technologies Ltd. Mauritius with following specific queries: -*

- a) Source of funds in the remitter banks.*
- b) Copy of account of M/s Palm Technologies Ltd. in the remitter banks from 1.4.2000 to 27.02.2007.*
- c) Equity structure in M/s Palm Technologies Ltd. Mauritius.*
- d) Beneficial owner of M/s Palm Technologies Ltd. Mauritius.*
- e) Sources of funds in M/s Palm Technologies Ltd. Mauritius.*
- f) Copy of all bank accounts of M/s Palm Technologies Ltd. Mauritius in for the period 1.4.2000 to 27.02.2007.*
- g) Copy of Annual Accounts of M/s Palm Technologies Ltd. Mauritius filed before the Mauritian*

*Tax Authorities, if any, starting from financial year 2000-01 till 2006-07.*

*h) Photo copies of documentation filed before the Competent Authorities in Mauritius for bringing funds in Mauritius in the accounts of M/s Palm Technologies Ltd. Mauritius.*

*i) Any other query which the Mauritian Tax Authority may deem fit in this regard”*

4.3. The Government of Mauritius vide its letter dated 4th April 2008 provided the income statement and balance sheet of M/s. Palm Technologies (P) Ltd., and clarified the following points :

- a) The equity structure is as per the balance sheets.*
- b) As shown in the balance sheets, the sources of funds enabling investments made in the Indian companies are from loans/shareholders loans.*
- c) Please note that there is no exchange control in Mauritius. There is no requirement to submit documentation for bringing funds in Mauritius.*

d) *A Request has been made to the above companies to submit bank statements and other particulars requested in your aforesaid letter. The information will be forwarded to von as soon as they are received. "*

4.4. The assessing officer, thereafter, noted the table in para 2.7 of the assessment order, which gives snapshot of the financial position of the Investor, which shows its current liabilities from UBS Trading FZC and Y2KSIL. During the course of assessment proceedings, the balance sheet of M/s. Palm Technologies (P) Ltd., Mauritius for the year ending 31st March 2008 was submitted. The following tables depicts the balance sheet as under :

<b>Assets</b>	<b>USD</b>
<b>Non current assets</b>	
<i>Investment in subsidiaries</i>	57,45,000/-
	57,45,000/-
<b>Current assets</b>	
<i>Trade and other receivables</i>	4,13,294/-
<i>Cash and Bank balance</i>	8,657/-
	4,21,951/-
<i>Total assets</i>	61,66,951/-
<b>Equity and Liabilities</b>	
<b>Capital and Reserves</b>	
<i>Share Capital</i>	1,001/-

Revenue reserves	(22,891/-)
Shareholders interests	21,890/-
<b>Non current Liabilities</b>	
Shareholder's loan	4,56,197/-
Other Loans	50,00,000/-
<b>Current Liabilities</b>	
Trade & Other payables	62,644/-
Other Loans	6,70,000/-
	62,644/-
	7,32,644/-
<b>TOTAL EQUITY AND LI ABILITY</b>	61,66,951/-

4.5. The assessing officer on the basis of the details and accounts and balance sheet, noted the financial position of the said company with respect to its Investments and its liability in assessment year under appeal and the preceding assessment years. The details of investment made by M/s. Palm Technologies (P) Ltd., in Claridges SEZ Private Limited [Now M/s. River Vallery Meadows & Township Pvt., Ltd.]. The table below gives the details of share capital in assessee company as under :

A.Y.	Share Capital	Share Application Money
2004-05	Rs. 34,60,000/-	
2005-06	Rs. 34,60,000/-	
2006-07	Rs. 34,60,000/-	Rs. 3,25,00,000/-
2007-08	Rs. 17,32,98,000/-	Rs. 1,90,00,000/-
2008-09	Rs. 17,32,98,000/-	Rs. 9,57,19,406/-

4.6. The assessing officer also noted that investment in the share capital of the assessee-company has been made through the borrowings from two entities controlled by Shri Suresh Nanda that are as under :

UBS Trading FZC	US \$ 3,000,000
Y2K SIL	US \$ 431, 197

4.7. Thereafter, the assessing officer tried to make a point that as to how there was a close link of Shri Suresh Nanda with UBS Trading FZC and Y2KSIL which were noticed from the documents recovered during the course of search under section 132 of the Income Tax Act on 28th February 2007. The documents are described below :

- *Page no. 35 Annexure No. A-8 seized from the residence of Mr. Suresh nanda-4, Prithvi Raj Road New Delhi. This is draft of a letter issued by Mr. Suresh Nanda from Dubai to M/s Infotech Services Ltd., Jersey, Channel Islands where it has been written that shareholders of UBS Trading FZC are 1% - M/s ISL and*

99% - Suresh Nanda. In this letter it is written that M/s UBS FZC will declare an interim dividend of USD 4.5 millions which will go toward capital contribution in UBS Mauritius. This draft is indicative of ownership of Mr. Suresh Nanda of UBS Mauritius as well as UBS Trading FZC, UAE.

- Page no. 36 Annexure No. A-8 seized from the residence of Mr. Suresh Nanda-4, Prithvi Raj Road New Delhi., This is again draft of letter prepared by Mr. Suresh Nanda from Dubai requesting UBS Trading FZC dated 31<sup>st</sup> May, 2004 requesting them to declare an interim dividend of USD 50 lacs and direct such payments to the account of Mideast Consortium, S.A. which is a co-investor in UBS, Mauritius.

- Page no. 76 Annexure No. A-8, seized from the residence of Mr. Suresh Nanda-4, Prithvi Raj Road New Delhi. This is a draft letter written to M/s UBS Trading FZC for declaring further interim dividend of USD 45 lacs to Mr. Suresh Nanda and transfer the sum to M/s

*UBS Mauritius' Bank – Barclays Bank, Port Louis, Mauritius.*

- Page 77-79 Annexure No. A-8, seized from the residence of Mr. Suresh Nanda-4, Prithvi Raj Road New Delhi. These are covering letters and E-mail of all the drafts seized and discussed above and these were forwarded by the consultancy firm to M/s Mauritius Consulting and Management Limited for signature of one Mr. Endreen Venchard.*
- Page 8-49 Annexure No. A-15, seized from the residence of Mr. Suresh Nanda-4, Prithvi Raj Road New Delhi. This is the audited Financial Statements of Mr. Nanda's company M/s UBS Trading FZC for the year ended 31<sup>st</sup> December, 2005. It is seen that Mr. Suresh Nanda is chairman of the company and is holding 99 shares out of total 100 and the remaining 1 share is held by Infotech Services Limited, Jersey which is also held on his behalf. The profit for 2004 is shown as AED 34,115,538 and profit for 2005 has been declared as AED 24,924,085. The company has also paid a*

*dividend of AED 15,000,000 calendar year, 2005 and  
AED 19,000,000 in the year ending December, 2004.*

- *Page 55-69 Annexure No. A-15, seized from the  
residence of Mr. Suresh Nanda-4, Prithvi Raj Road New  
Delhi. These contain major operational highlights of UBS  
Trading FZC since its inception and it has been shown  
to have earned a profit of*

*USD 1.411 Million - March 2002-30th June, 2003*

*USD 8.311 Million -1 July 2003-31st December, 2004*

*USD 4.4311 Million - 1.1.2005 -31.12.2005*

*USD. 2.884 Million - 1.1.2006 – Nov 2006*

*These pages also include personal profile of Mr.  
Suresh Nanda.*

4.8. The assessing officer further noted from the above mentioned documents that it is evident that Mr.Suresh Nanda is the owner of M/s. UBS Trading FZC, Dubai. He has been making investments in Mauritius based company to hide the true source of money, till it is finally invested in India. The fact that investment in assessee-company is

financed through the borrowings from M/s. UBS Trading FZC, Dubai and Mr.Suresh Nanda close association with the affairs of Claridges SEZ Pvt. Ltd., in India goes to show that it is Mr.Suresh Nanda's money that has been routed through M/s. Palm Technologies (P) Ltd., Mauritius into Indian Company. The assessing officer also noted that there is a close connection of Mr. Suresh Nanda with Y2KSIL which is evident from the document seized during the course of search operation under Income Tax Act conducted on the premises belonging to Mr. Suresh Nanda, details of the same are noted in the assessment order. Based on these facts, assessing officer held that assessee-company has been bringing unaccounted money after creating layers of intermediaries including M/s. Palm Technologies (P) Ltd., Mauritius due to less stringent exchange control norms there. The intermediaries have merely provided the names. The true source of funds has not been disclosed before the Income Tax Authorities. Since the assessee-company is an ultimate beneficiary of these unaccounted funds. Hence, the receipts were treated as unexplained in the hands of the

assessee and addition of Rs.7,92,19,406/- was made in assessment year under appeal.

5. The assessee challenged the addition before Ld. CIT(A) and it was submitted that similar addition has been deleted by the Ld. CIT(A) in assessment year 2004-2005 and also relied upon order of ITAT, Delhi Bench in the case of M/s. Russian Technologies Private Limited. Assessee, therefore, pleaded that the issue is identical and covered in favour of the assessee. The Ld. CIT(A) found the contention of assessee to be correct because for assessment year 2004-2005, in assessee's own case, similar addition have been deleted. The Ld. CIT(A) noted that the arguments, facts and submissions of the Revenue are same. Therefore, following the reasons for decision for the assessment year 2004-2005, the Ld. CIT(A), deleted the addition.

6. The Ld. D.R. relied upon the order of the assessing officer and referred to para-2.7 of the assessment order and submitted that resources of the Investor was very small. The Ld. CIT(A) followed his order for assessment year

2004-2005 in the case of the assessee, which is confirmed by ITAT, by dismissing the appeal of the department, holding the assessment to be time barred. The Ld. D.R. submitted that seized documents found from the premises of Mr.Suresh Nanda may be considered. It was money of Mr Suresh Nanda who is controller of the Companies of the Group. The Ld. D.R. in support of her contention has relied upon the following decisions :

1.	Pr. CIT, New Delhi vs. NDR Promoters (P.) Ltd., [2019] 410 ITR 379 (Del.)
2.	CIT vs. Nova Promoters & Finlease (P) Ltd., [2012] 342 ITR 169 (Del.)
3.	CIT-II vs. MAF Academy (P.) Ltd., [2014] 361 ITR 258 (Del.)
4.	CIT vs. N.R. Portfolio (P.) Ltd., [2014] 42 taxmann.com 339 (Del.)
5.	CIT, West vs. Durga Prasad More [1971] 82 ITR 540 (SC)
6.	Sumati Dayal vs. CIT 1995 AIR (SC) 2109

7. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has referred to PB-2, Page-17 which is order of Ld. CIT(A) for the assessment year 2004-2005 in the case of the same assessee, in which, similarly, share

application money was received from M/s. Palm Technologies (P) Ltd., Mauritius and Ld. CIT(A) deleted the addition following the decision in the case of M/s. Russian Technology Centre Pvt. Ltd., The Learned Counsel for the Assessee further submitted that the Department has filed appeal before ITAT, Delhi Bench against the order of Ld. CIT(A) for the assessment year 2004-2005 and assessee also filed cross-objection. The Tribunal has quashed the assessment order being barred by limitation vide order dated 28th September 2017. Learned Counsel for the Assessee submitted that if Mr.Suresh Nanda made the money available as per the contention of the Department, no addition could be made in the hands of the assessee. Learned Counsel for the Assessee referred to Para 2.5 of the assessment order, in which, the Government has made a reference to Government of Mauritius through Director General of Income Tax (Inv.) making inquiries against the Investor Company, on which, several details were asked for and the Government of Mauritius has filed a reply to the Government confirming the source of the funds and also

confirmed the investment made by the Investor Company. He has, therefore, submitted that assessee has explained the source of the investment from M/s. Palm Technologies (P) Ltd., Mauritius which in turn taken it from loans/ shareholders loans. Learned Counsel for the Assessee, therefore, referred to Page-5 of the assessment order, in which, it is highlighted by the assessing officer that the Investor Company has the source of money to make the investments from M/s. UBS Trading FZC and Y2KSIL. How they got source is also explained. He has submitted that assessee-company has filed the following documents to prove identity of the investor, it's creditworthiness and the genuineness of the transaction, which have not been doubted or disputed by the authorities below :

i)	Certified copy of certificate of incorporation of the company dt. 16 <sup>th</sup> November, 2000 under the name Y2K Ltd., by the Registrar of Company, Mauritius.
ii)	Certified issued by Registrar of Companies effective 15 <sup>th</sup> March, 2002 with respect to change of name of Palm Technologies Ltd.,
iii)	Tax Residency Certificate issued by Income Tax Department Republic of Mauritius.
iv)	The company was maintaining a bank account with Barclays Bank Certificate dated 24 <sup>th</sup> June 2008.

v)	Certified true copy of Balance Sheet of M/s. Palm Technologies Ltd., for the year ending 31 <sup>st</sup> March, 2008.
3.	Documents filed evidencing receipt of Rs.7,92,19,406/- in due compliance with the rules and regulation laid down by the Reserve Bank of India.
i)	Details of amount received and equity shares allotted to Palm Technologies Ltd., during the year ended 31.03.2008.
ii)	Letter dated 26.08.2008 addressed to the Manager, IDBI Bank regarding submission from FCGBR-Foreign Direct Investment along with the following annexure.
(a)	Two letters dt. 26.08.2008 addressed to RBI
(b)	Form No. FC-GPR
(c)	Compliance certificate dated 26.08.2008 issued by the Company Secretary.
(d)	FIRC No.098902 dt. 26.02.2008 issued by the IDBI Bank.
(e)	Compliance certificate dated 25.08.2008 issued by Chartered Accountant.
(f)	Valuation certificate dt. 05.08.2008 issued by the Chartered Accountant along with Annexure-A
(g)	Copy of Annexure-II, III forming part of Form No.FC-GPR.

7.1. The assessee, therefore, proved source of the source as well which is not required by Law. Learned Counsel for the Assessee referred to PB-2-52 which is order of ITAT, Delhi G-Bench in the case of Mr Suresh Nanda in ITA.Nos.2237 & 3718, 3431 & 4641/Del./2013 dated 11th April 2014, in which, similar addition has been deleted in

the hands of Shri Suresh Nanda. Para-70 of the order is reproduced as under :

*“70. Ground No. 4 relates to addition made on protective basis. We find that Ld CIT(A) has clearly held that share capital was subscribed Palm Technologies Ltd. which is a separate entity. Ld. CIT(A) held by a clear finding that the capital did not belong to assessee but to a distinct entity whose existence is not denied. After giving such dear finding, he should not have given finding about addition on protective basis. Palm technologies Ltd. and assessee are held to be two different persons. The CIT(A) has held that ownership of Palm Technologies Ltd is known and appellant was not a shareholder in Palm Technologies which was owned by One Mrs. EA Half land. It is undisputed that both UBBS and PTL are duly incorporated companies under the laws of Sharjah and Mauritius respectively. The Ld CIT(A) has himself observed that this amount cannot be held as un-explained money/investment of*

*appellant thereafter there is no justification in keeping a protective addition in this behalf. We also find that similar addition on substantive basis was made in assessment year 2004-05 and Tribunal on revenue appeal in I.T.A.No.2605/Del/2013 has dealt with this issue at page 60 onwards vide order dated 21.2.2014 and vide para 7.5. at page 68 has dismissed the appeal of revenue on this issue. During these years the Ld CIT(A) has however made the addition on protective basis without justification. In view of the above and following the IT AT order for 2004-05 in assesses own case we delete the alternate retention of addition on protective basis. Therefore, ground No. 4 in both the years is allowed."*

7.2. He has referred to PB-2, pages-56-67 which is Judgment of the Hon'ble Delhi High Court in the case of CIT vs., Mr.Suresh Nanda dated 27th May, 2015, in which the above Judgment of the Tribunal have been confirmed, by dismissing the departmental appeals. Learned Counsel for

the Assessee submitted that the Hon'ble Delhi High Court considered the investment made by M/s. Palm Technologies Limited, Mauritius in several years and it was noted that involuntary stay of Mr.Suresh Nanda during the period should be excluded for calculating the period under section 6(1)(a) of the Income Tax Act, 1961 and Departmental Appeal has been dismissed. He has submitted that Mr.Suresh Nanda is NRI and similar money have been explained in his case as well. Thus, the assessee is able to prove source of the source as well. The addition is made in the hands of the assessee-company merely because assessee-company is beneficiary of the money. He has referred to PB-2, Page-35-47, which is Judgment of the Delhi High Court in the case of CIT, Central-1 vs., M/s. Russian Technology Centre (P) Ltd., in ITA.Nos.547, 549 & 555 of 2013, Dated 15th December 2016, in which, similar documents have been considered and Departmental Appeal has been dismissed. The findings of the Hon'ble Delhi High Court in Paras 12 to 14 are reproduced as under :

“12. The preceding enumeration of the circumstances of the case show that the assessee had furnished all relevant data before the AO and the CIT(A), which, however, were not inquired into by the AO. Instead he obdurately adhered to his first impression and/or initial understanding that the entire transaction was neither creditworthy nor genuine. The assessee relied upon the documents to prove that the monies had been received through banking channels from its principal and other related companies: it had submitted the FIPB Approval dated 10.12.2005 authorizing the assessee company to raise capita! unto '600crores. copy of certificates of incorporation of share holders, copy of bank statement copy of Form 2 filed before ROC, copies of Certificates of (i) Incorporation of RTCHL, (ii) Incumbency of RTCHL, (iii) Good Standing of RTCHL. (iv) Director Certificate of RTCHL as well as the Balance Sheet of RTCHL for the years 2004-05 and the confirmation given by the remitters towards remittance of share capita! etc. This was all that the assessee

*could have furnished in the circumstances. It could not be expected to prove the negative that the monies received by it were suspicious or not genuine infusion of capital etc. The assessee had discharged its burden of proof in terms of the settled dicta in Divine Leasing (supra). It is only logical to expect that if the AO was not convinced about the genuineness of the said documents, he would have inquired into their veracity from the banks) to ascertain the truth of the assessee's claims. Having not done so. he was not justified in disregarding the assessee's contentions that the infusion of monies into its accounts was legitimate. Consequentially, the AO was not justified in making additions of the various sums under Section 68 of the Act.*

13. *In view of the above, this Court is of the view that the conclusion of the Tribunal in deleting the additions made cannot be faulted. Accordingly, the Questions of law are answered against the Revenue*

*and in favour of the assessee. The order of the Tribunal is, therefore, affirmed.*

14. *Resultantly, the appeals are dismissed.”*

7.3. The Learned Counsel for the Assessee also referred to PB-2, Page-71 which is order of ITAT, Delhi B-Bench in the case of ACIT, Central Circle-13, New Delhi vs. Claridges Hotels Pvt., Ltd., New Delhi in ITA.No.2737/Del./2012, ITA.No.4607/Del./2013 and C.O.No.10/Del./2014 in ITA.No.4707/Del./2013 dated 30.09.2014, in which on identical facts, the Departmental Appeal has been dismissed. Para-30 of the order is reproduced as under :

"30. *We thus find that the assessee has been able to establish the identity, creditworthiness of the share applicants and the genuineness of the transaction by furnishing several documents in evidence in support on the basis of which the Learned CIT(Appeals), in our view, has rightly deleted the addition in question made under sec., 68 of the Income-tax Act, 1961 by the Assessing Officer as the facts*

*noted by the Learned CIT(Appeals) in the above concluding para No. 4.5 of the First Appellate Order have also not been rebutted by the revenue with satisfactory explanation to that. The First Appellate Order on the issue is comprehensive and reasoned one to which we do not find reasons to interfere with. The same is upheld. The ground No. 2 is accordingly rejected."*

7.4. Learned Counsel for the Assessee further submitted that the CBDT Circular says *"when the money come from foreign country through banking channel, it should be considered."* He has submitted that Amendment under section 68 is applicable from the year 2013 and source of the source is to be proved in the case of resident company only. However, the Investor M/s. Palm Technologies Pvt. Ltd., Mauritius is NRI, therefore, the amended provision would not apply to the case of assessee. Learned Counsel for the Assessee, therefore, submitted that the issue is covered in favour of the assessee by the order of ITAT, Delhi

Bench in the case of assessee as well as in the case of Mr Suresh Nanda and M/s. Russian Technologies Pvt. Ltd., (supra). Apart from the above, the Learned Counsel for the Assessee also relied upon the following decisions :

1.	Commissioner vs. Orissa Corporation Ltd. reported in (1986) 159 ITR 78 (SC)
2.	CIT vs. M/s Pandy Metal and Rolling Mill in ITA No. 788/2006
3.	CIT vs. Diamond Products Ltd. [2009] 177 Taxman 331 (Delhi)
4.	CIT vs. Flex Plastic & Packaging (P.) Ltd. [2007] 211 CTR 607 (Delhi)
5.	PCIT vs. Paradise Inland Shipping (P.) Ltd. [2017] 84 taxmann.com 58 (Bom).
6.	CIT vs. Lalit Kumar Poddar (2015) 231 taxman 819 (Delhi).
7.	CIT Vs. Gangeshwari Metal (P.) Ltd., reported in 361 ITR 10 (2014).
8.	Dolphin Canpack Ltd., reported in 2004 CTR 50.
9.	CIT vs. Samir BioTech P. Ltd., [2010] 325 ITR 294 (Delhi), ITA No. 415/2008 (Delhi).

7.5. Learned Counsel for the Assessee also contended that since addition has been deleted in the hands of Mr. Suresh Nanda on substantive basis, which is confirmed by the Hon'ble Delhi High Court, then the findings of the assessing officer which are solely based on the presumption that it was the unaccounted money of Mr. Suresh Nanda routed through the intermediary companies to the assessee

company, has no basis to justify the addition. He has further pointed-out that similar addition was made in earlier years, which have been deleted and the assessing officer has admitted that even in earlier years similar investments have been made in assessee-company, which have already been deleted. Therefore, Ld. CIT(A), on proper appreciation of facts and material on record, correctly deleted the addition.

8. We have considered the rival submission and perused the material on record. The assessing officer considered the issue of unexplained share application money received by assessee-company from the Investor M/s. Palm Technologies (P) Ltd., Mauritius in assessment year under appeal as well as in earlier years. The assessing officer had made out a case that the impugned money belongs to Mr. Suresh Nanda, who has routed the amount to the assessee-company through M/s. Palm Technologies (P) Ltd., Mauritius and that the source of loan to M/s. Palm Technologies (P) Ltd., Mauritius is from M/s. UBS Trading

FZC and Y2KSIL. The assessing officer held that the investor company is merely a conduit of Mr. Suresh Nanda to bring his unaccounted money and assessee is the ultimate beneficiary of the unaccounted funds. The assessee-company, on the other hand, has produced the documentary evidences above, which clearly proves that assessee received the genuine money from identified and existing Investor which was accepted in earlier year as well. The documentary evidences filed by the assessee-company have not been disputed and doubted by the Revenue Authorities. Thus, the assessee has been able to prove the Identity of the Investor, its creditworthiness and genuineness of the transaction in the matter. The assessing officer also noted in the assessment order that even in earlier years the assessee-company has received the share application money from the same Investor. The assessing officer made similar addition against the assessee-company in assessment year 2004 2005 and the Ld. CIT(A) deleted the addition. The order of the Ld. CIT(A) have been confirmed by the ITAT, by dismissing the Departmental

Appeal, though, on the ground that the assessment order is time barred. The finding of fact recorded by the Ld. CIT(A), have been confirmed by the Tribunal by dismissing the Departmental Appeal. No distinguishing fact or evidence have been pointed-out by Ld. D.R. as to how case of Revenue is different from earlier years. In assessment year under appeal, based on the same facts, the assessing officer made certain inquiries with regard to source of the money and sought information from the Government of Mauritius, who have supplied certified copies of the balance sheet and income statement for earlier years as well as for assessment year under appeal, in which, it is clarified that the Investor Company has made investment in assessee-company through its own sources. The assessee-company filed Tax Residence Certificate issued by the Tax Department of Government of Mauritius, Certificate issued by Registrar of Companies, Letter addressed to Reserve Bank of India and Form FC-GPR, Compliance Certificate issued by the Company Secretary and details issued by IDBI Bank. These documents supports the explanation of assessee-company

that assessee-company received genuine share application money. The assessing officer instead of examining the documentary evidences and record in depth, has made an attempt to link Mr. Suresh Nanda, who was having interest in the Companies namely M/s. UBS Trading FCZ and Y2KSIL, who were the different entities, who have provided loans and funds to Investor Companies. Even if certain documents were found during the course of search in the case of Mr. Suresh Nanda, but, nothing has been brought on record, if any, material was found that he has received any unaccounted money. No material was found during the course of search to prove Mr. Suresh Nanda was dealing with unaccounted money rather the Department had made similar addition in the hands of Mr. Suresh Nanda, which have been deleted by the ITAT and the Order of the ITAT have been confirmed by the Hon'ble Delhi High Court. The issue is also covered by Judgment of the Delhi High Court in the case of M/s. Russian Technology Centre (P) Ltd., (supra), in which, similar addition have been deleted on the same set of facts, in which the subsidiary of M/s. Russian

Technology Centre (P) Ltd., which had received various amounts towards share capital from its related Companies and Promoters. The assessee filed all the documents as are filed in the present case and on that basis, the Tribunal deleted the addition and Judgment is confirmed by the Hon'ble Delhi High Court. In the present case assessee has received share application money from its holding Company.

8.1. The above facts and circumstances, would clearly reveal that burden upon assessee-company under section 68 of the Income Tax Act, 1961, to prove the identity of the Investor, its creditworthiness and the genuineness of the transaction, have been proved by the assessee-company, which have been correctly appreciated and accepted by the Ld. CIT(A) for the purpose of deleting the addition. No addition could be made merely on presumption as has been done in the present case. Since the similar addition have been deleted by the Ld. CIT(A) in assessment year 2004-2005 and the Departmental Appeal have been dismissed by the Tribunal and similar addition have been deleted in the

case of Mr. Suresh Nanda by ITAT on substantive basis and the Order is confirmed by the Hon'ble Delhi High Court, therefore, the issue is covered in favour of the assessee by the Order of the Tribunal in its own case as well as in the case of Mr. Suresh Nanda (supra). Therefore, there is no justification to make the addition against the assessee-company. No cash was found routed by any person related to this transaction. The assessing officer cannot ask the assessee-company to prove source of the source. We, rely upon the Judgment of the Hon'ble Gujarat High Court in the case of Rohini Builders 256 ITR 360 (Guj.), and Judgment of Hon'ble Delhi High Court in the case of Dwarakadheesh Investment Pvt. Ltd., 330 ITR 298 (Del.) and Judgment of Hon'ble Allahabad High Court in the case of Zafar Ahmed & Co., 30 taxmann.com 269 (Alld.). However, in the present case, the assessee-company has even explained the source of the source. The Hon'ble Madhya Pradesh High Court in the case of CIT vs. Peoples General Hospital Ltd., [2013] 356 ITR 65 (MP) has admitted

the following substantial question of Law in one of the appeal :

*“(i) Whether the Income-tax Appellate Tribunal was correct in law in deleting the addition made by the Assessing Officer in respect of the non-resident Indian company, which admittedly has contributed share capital, even on the assumption that the assessee has failed to discharge the financial capacity of the non-resident Indian company ?”*

8.2. The Hon’ble Madhya Pradesh High Court held as under :

*“Held dismissing the appeals, that if the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of*

*the share capital represented the company's own income from undisclosed sources. It was nobody's case that the non-resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted.”*

8.3. In view of the above discussion, we do not find any infirmity in the Order of the Ld. CIT(A) in deleting the addition. The decisions relied upon by the Ld. D.R. would not support the case of the Revenue. Accordingly, the Departmental Appeal is dismissed.

ITA.No.5630/Del./2013 – A.Y. 2009-2010 :

9. The issue is same as have been considered in A.Y. 2008-2009. Following the reasons for decision, we dismiss this appeal of the Department.

10. In the result, ITA.No.5630/Del./2013 of the Department is dismissed.

12. To sum-up, both the appeals of the Department are dismissed.

Order pronounced in the open Court.

Sd/-  
(O.P.KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated March, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi