

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA ACCOUNTANT MEMBER

ITA No. 7653/DEL/2019 [A.Y 2016-17]

M/s Renu Proptech Pvt Ltd
31, Jangpura Road
Bhogal, New Delhi

Vs.

The A.C.I.T.
Circle - 21(1)
New Delhi

PAN: AAFCR 1253 G

ITA No. 9451/DEL/2019 [A.Y 2016-17]

The A.C.I.T.
Circle - 21(1)
New Delhi

Vs. Renu Proptech Pvt Ltd
31, Jangpura Road
Bhogal, New Delhi

[Appellant]

[Respondent]

Assessee by : Shri Govil Upadhyaya, CA

Revenue by : Shri H.K. Choudhary, CIT(DR)
Shri Prakash Dubey, Sr. DR

Date of Hearing : 01.04.2021

Date of Pronouncement : 26.04.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above two cross appeals by the assessee and revenue are preferred against the order of the Commissioner of Income Tax (Appeals) - 7, New Delhi dated 03.09.2019 pertaining to Assessment Year 2016-17. Since both these appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

2. Representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel and the Id. DR, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

3. Representatives of both the sides have also filed written submissions in addition to their respective oral submissions supported by various judicial decisions.

4. We have carefully considered the written submissions. The ld. counsel for the assessee has reiterated what has been stated before the lower authorities.

5. The ld. DR has highlighted the findings of the Assessing Officer. The ld. DR has also relied upon several judicial decisions of the co-ordinate benches. In our considered opinion, there cannot be any decision which would be factually identical to the facts of the assessee mutatis mutandis. In fact, all the decisions of the co-ordinate benches, relied upon by the ld. DR, are based on specific facts of those cases and the co-ordinate benches have decided the issues after analyzing the facts of each case. Therefore, we do not find it necessary to consider the judicial decisions relied upon the peculiar facts of the case in hand discussed hereinbelow.

6. Briefly stated, the facts of the case are that during the year under consideration, the assessee company was engaged in the business of construction, developing, promoting, managing, operating, leasing and dealing in all kinds of real estate. During the year, the assessee company

issued 1269400 fully paid equity shares of face value of Rs.10 at a premium of Rs. 490/- per share and 1065400 partly paid equity shares of face value of Rs.10 per share at a premium of Rs. 490/- per share. Accordingly, the assessee company received Rs. 1,80,21,000/- as share capital and Rs. 88,30,29,000/- as share premium during the year.

7. Invoking the provisions of section 68 of the Act, the AO asked the assessee to prove the identity, genuineness and credit worthiness of the subscribers. The requisite details were submitted by the assessee. The list of shareholders to whom shares were allotted during the year is as under:

Annexure – 09

List of Shareholders to whom shares allotted during the year

S. no.	NAME OF THE SHARE HOLDER	ADDRESS	PAN	RATE OF SHARE INCLUDING PREMIUM	TOTAL NUMBER OF SHARES ALLOTTED	TOTAL CONSIDERATION RECEIVED	BANK ACCOUNT NUMBER IN WHICH MONEY CREDITED	DATE OF RECEIPTS(DOR) IN BANK AND DATE OF ALLOTMENT(DOA)		
								DOA	DOR	Amount(R)
1.	Anand Gupta	R-6A, Green Park Extension, New Delhi-110016	AGSPG8250C	500/-	73,200	3,66,00,000	15572320000412	25.06.15	25.04.15	1,53,00,00
									11.05.15	73,00,00
									16.09.15	25,00,00
									17.09.15	75,00,00
									18.09.15	83,00,00
									Less: Excess application amount Refund	4,09,00,00
									16.05.15	42,00,00
26.05.15	1,00,00									
TOTAL	3,66,00,00									
2.	Anand Gupta HUF	R-6A, Green Park Extension,	AAFHA1885A	500/-	65,600	3,28,00,000	15572320000412	25.06.15	25.04.15	1,64,00,00
									17.09.15	36,00,00
									22.09.15	30,00,00
									24.09.15	35,00,00

		New Delhi-110016							14.10.15	43,00,00
									21.10.15	20,00,00
									TOTAL	3,28,00,00
3.	Rajesh Gupta HUF	B-393, New Friends Colony, New Delhi-110025	AAGHR4685G	500/-	60,400	3,02,00,000	15572320000412	25.06.15	29.05.15	39,00,00
									09.06.15	58,00,00
									24.06.15	54,00,00
									10.08.15	26,00,00
									24.09.15	1,25,00,00
									TOTAL	3,02,00,00
4.	Ram Kumar Gupta HUF	B-393, New Friends Colony, New Delhi-110025	AAHR5865C	500/-	61,600	3,08,00,000	15572320000412	25.06.15	25.04.15	1,54,00,00
									18.09.15	60,00,00
									22.09.15	50,00,00
									23.09.15	44,00,00
									TOTAL	3,08,00,00
5.	Manish Garg	B-131, Bihari Nagar, Ghaziabad, Uttar Pradesh	AMAPG2289D	500/- (Partly paid up Rs. 250/-)	2,00,000	10,00,00,000 (Paid up Rs. 5,00,00,000)	15572320000412	25.06.15	21.04.15	40,00,000
									21.04.15	35,00,000
									15.05.15	45,00,000
									15.05.15	45,00,000
									18.05.15	50,00,000
									18.05.15	75,00,000
									26.05.15	25,00,000
									26.05.15	20,00,000
									28.05.15	40,00,000

									29.05.15	50,00,000
									05.06.15	30,00,000
									05.06.15	10,00,000
									06.06.15	35,00,000
									TOTAL	5,00,00,000
6.	Nimit Builders Pvt. Ltd.	83/2, 2nd Floor, Back side, Bharat Nagar, near New Friends Colony, New Delhi-110025	AADCN0995R	500/-	8,32,200	41,61,00,000	15572320000412	12.11.15	14.09.15	3,30,00,000
									16.09.15	1,00,00,000
									17.09.15	4,30,50,000
									17.09.15	4,30,00,000
									17.09.15	4,30,00,000
									17.09.15	2,10,00,000
									22.09.15	1,20,00,000
									01.10.15	30,00,000
									08.12.15	90,00,000
									10.12.15	1,20,00,000
									14.12.15	75,00,000
									14.12.15	72,00,000
									14.12.15	1,90,00,000
									14.12.15	1,43,00,000
									15.12.15	1,00,00,000
									15.12.15	1,00,00,000
									15.12.15	1,00,00,000
									18.12.15	1,00,00,000
									22.12.15	65,00,000
									22.12.15	75,00,000
									29.12.15	1,00,00,000
									29.12.15	1,00,00,000
									30.12.15	1,00,00,000
									01.01.16	1,00,00,000

									01.01.16	72,00,00
									04.01.16	45,00,00
									07.01.16	1,00,00,00
									12.01.16	1,00,00,00
									14.01.16	70,00,00
									15.01.16	63,50,00
									TOTAL	41,61,00,00
7.	Sanchit Gupta	R-6A, Green Park Extension, New Delhi-110016	AKCPG4858N	500/-	96,400	4,82,00,000	15572320000412	12.11.15	24.09.15	2,41,00,00
									02.12.15	41,00,00
									02.12.15	59,00,00
									09.12.15	82,00,00
									17.12.15	59,00,00
									TOTAL	4,82,00,00
8.	Verma Finvest Pvt. Ltd.	Flat No. D-699, Pocket-11, Janta Flats, Jasola Vihar, New Delhi-110025	AAECV2763L	500/-	80,000	4,00,00,000	15572320000412	12.11.15	07.10.15	2,00,00,00
									11.12.15	89,00,00
									11.12.15	90,00,00
									25.01.16	21,00,00
									TOTAL	4,00,00,00
9.				500/-	60,000	3,00,00,000		25.03.16	02.02.16	1,50,00,00

	N P Earthmovers Pvt. Ltd.	T-88C, First Floor, Opp.- MGF Mall Saket Khirki Village, Malviya Nagar , New Delhi-110017		(Partly paid up Rs. 250/-)		(Paid up Rs. 1,50,00,000)			TOTAL	1,50,00,000
10.	Sawhney Coal Transport Pvt. Ltd.	D 15/4, Okhla Industrial Area, Phase II, New Delhi-110020	AAICS4335D	500/- (Partly paid up Rs. 250/-)	1,00,000	5,00,00,000 (Paid up Rs. 2,50,00,000)	15572320000412	25.03.16	15.12.15 15.12.15 15.12.15	90,00,000 90,00,000 70,00,000
									TOTAL	2,50,00,000
11.	Swastik Coal Carriers Pvt. Ltd.	8A, Inderprastha, Sonapat Road, Rohtak, Haryana-124001	AAJCS9434L	500/- (Partly paid up Rs. 250/-)	80,000	4,00,00,000 (Paid up Rs. 2,00,00,000)	15572320000412	25.03.16	01.02.16 01.02.16	1,75,00,000 25,00,000
									TOTAL	2,00,00,000
12.	Comfort Living (Hotels) Pvt. Ltd.	D-15, Amar Bhawan, Ground Floor Hauz Khas	AAACC1260H	500/- (Partly paid up Rs. 250/-)	3,09,600	15,48,00,000 (Paid up Rs. 7,74,00,000)	15572320000412	25.06.15	18.05.15 21.05.15 23.05.15 29.05.15 03.06.15	50,00,000 50,00,000 1,26,00,000 25,00,000 66,00,000

		Market, N-Delhi - 110016.						03.06.15	1,00,00,00
								08.06.15	35,00,00
								10.06.15	3,22,00,00
								TOTAL	7,74,00,00
			500/- (Partly paid up Rs. 250/-)	47,800	2,39,00,000 (Paid up Rs. 1,19,50,000)	15572320000412	12.11.15	03.07.15	1,00,00,00
								09.09.15	19,50,00
								TOTAL	1,19,50,00
			500/- (Partly paid up Rs. 250/-)	2,68,000	13,40,00,000 (Paid up Rs. 6,70,00,000)	15572320000412	25.03.16	01.03.16	6,25,00,00
								23.03.16	45,00,00
								TOTAL	6,70,00,00

8. The AO examined the details of each share applicant. The AO further examined the source of the source and summarized his findings as under:

"11. Without prejudice to conclusion drawn in the above paras, few facts are being reiterated below to understand the complete picture:-

1. All the individuals having meagre gross total income have huge exempt income from the non-genuine sources, including entry

operators like S.K. Jain (specifically barred by the Enforcement Directorate), penny stock.

2. Shares of four independent or non-related parties which were partly paid, are forfeited in the subsequent Assessment Year, i.e., 2017-18. These dubious entries show that the assessee never had the genuine intention to raise the share capital/premium, but to show the channels differently in different Assessment years.
3. Summonses were issued to these investor companies but nobody from their side turned up in compliance to the summons. Even though it was not at all difficult for the assessee to produce them as all the investor parties are in some or other way related to the Assessee Company, yet, the assessee chose not to comply with the notices issued by the department which further shows the casualness of the assessee company.
4. Assessee didn't even furnish the requisite documents, hence haven't even fully complied with the notices (same can be seen in Table 1). It was left to the AO to do independent inquiry.
5. The valuation of shares in companies where the assessee company has made investment (in unlisted shares) is been done by Mr. Satvindra Singh who also happen to be the AR of the assessee, it clearly creates conflict of interest. Thus even the investment amounting to Rs. 10 cr. remains unexplained.

6. Similarly, the valuation of shares of the assessee company is being done on forward date 22.7.2016 while the issuance of shares and date of receipts of share premium in bank accounts are starting from the beginning of the year (April 2015), which raises the suspicion that back calculation has been done by the assessee after receiving the premium amount.

7. Two related companies, Nimit Builders Pvt Ltd and Verma Finvest Pvt Ltd, have no financials supporting their creditworthiness. Their balance sheet is symptomatic of paper companies/shell companies, i.e., heavy capital and premium, but nil underlying operations. Despite being provided with the show cause regarding the same, the assessee couldn't prove otherwise.

8. In case of not directly related companies, the assessee couldn't furnish the exact source of income. It is pertinent to note that all 4 such companies are loss making and don't have any worth as such as shown in Table 2. Especially in the light of the cash deposits, and bank entries through same group concerns, poor financials, even these companies doesn't qualify the criteria of creditworthiness. Moreover, the forfeiture in subsequent year shows that it was merely an entry passed during the Assessment year. In such circumstances, the only possibility remain is to route the funds by making these companies as intermediaries.

- 1.
2. There is no considerable business activity in these investor companies and or no definite source of income of the individuals.
3. Routing and re-routing in the same companies, as discussed in the case of Nimit Builder Pvt Ltd
4. Bank accounts of many of the intermediaries in the bank channel are closed and dormant which further clears the intention of their existence, i.e., to channelize the unaccounted funds through layers
5. Bank statement of these investor companies show that, money came from some third party into their account, which remain unexplained in absence of any cooperation from the investor companies, and immediately the money was transferred to the account of the assessee company.
6. Modus operandi of all these investor companies is strikingly identical
7. Moreover, director and addresses of these investor companies are also related and appointed by the director of the investee companies and individuals (As explained in company chart attached and the family tree).
8. Moreover, Sh. Dinesh Gupta who is the Director of the assessee company and has been stated to be the real managing director of all other group companies could not produce himself

against the summons issued to the investor parties in the capacity of principal officer of these parties and could not provide sufficient documentary evidence to prove the source of this money; leave aside discharging the onus of producing other directors of the companies as was required by the undersigned. It is pertinent to mention that he could not explain his source of income satisfactorily."

9. In light of the aforementioned conclusion, the AO formed a firm belief that the assessee has grossly failed to discharge the burden of proof cast upon it by provisions of section 68 of the Act. The AO also observed that the source of the share applicants is entry providers belonging to S.K. Jain group. The AO further observed that though the assessee has claimed to be in the business of real estate but has no running real estate business and is showing no entry in the books of accounts and the primary source of income is through investment in FDs in the form of interest, while the source of this investment is money that it has received in the form of share capital and share premium through circuitous transactions.

10. The AO found that the assessee did not undertake a single project during the year and hence it is inexplicable how the capital appreciation has accrued to the investor companies. Drawing support from the ratio laid down by the Hon'ble Supreme Court in the case of Sumati Dayal 80 Taxmann.com 89, the AO applied the test of human probability and made addition of Rs. 88,30,29,000/-.

11. Assessment was assailed before the CITA.

12. Before the first appellate authority, the assessee reiterated what has been stated before the lower authorities and relied upon the very same documentary evidences which were filed during the course of assessment proceedings.

13. After perusing the written submissions and detailed documentary evidences, the first appellate authority partly confirmed the additions of Shri Anand Gupta, HUF and Shree Sanchit Gupta and all other additions were deleted. Hence these cross appeals by the assessee and the revenue.

14. The documentary evidences which the appellant filed in respect of all persons to whom the shares were allotted to demonstrate that it has discharged the initial onus cast upon it by provisions of section 68 of the act are as under:

1. Copy of PAN,
2. Copy of share application,
3. Confirmation of receipt of shares,
4. Shareholders confirmation for subscription of shares,
5. Copy of share certificate,
6. Copy of ITR acknowledgement for a Y 2016-17,
7. Affidavit,
8. Bank statement,
9. Source of source document.

15. On careful perusal of the aforementioned documents, we are of the considered view that the assessee has not only proved the source of share capital and share premium received by it, but has also proved the nature and source of funds in the hands of shareholders. We find that the AO has not pointed out any discrepancy in the documentary evidences filed by

the assessee in support of its claim but has made general observations in respect of entry provider of some SK Jain group. In our considered opinion, once the assessee has established the 'source' and 'source of the source', and if the 'source' is not able to explain or give plausible explanation of its 'source', then, the addition should be made in the hands of that person and not in the hands of the assessee company, as prima facie, the assessee company has discharged its burden of proof.

16. Further, we find that Shri Anand Gupta, HUF and Shri Sanchit Gupta, whose additions have been confirmed by the CIT[A], these two share applicants have shown their respective source of source, sale consideration resulting into capital gain on sale of shares of Shital Leasing and Finance Ltd which, according to the Assessing Officer, was a company engaged in accommodation entry business. Assuming that the shareholder Anand Gupta HUF has introduced his own unaccounted cash in the disguise of long-term capital gain from sale of shares of some penny stock company, then the addition should have been made in his hands and not in the hands of assessee company.

17. Long-term capital gain from sale of shares of Shital Leasing and Finance Ltd, if according to the AO, is a sham transaction, then, addition should have been made in the respective hands of the share applicants and not the assessee company. The appellant is only required to prove the identity, genuineness of the transaction and capacity of the lender and by virtue of the first proviso to section 68 of the Act where the appellant has received share premium, then it has also to establish the source of source.

18. Considering the plethora of documentary evidences, we find that not only the assessee has established the source of the creditor, but it has also furnished documentary evidences to show the 'source of source'. We find that the AO, while making addition, has made general observations relating to the circulation from one source to the other.

19. On the one hand, the AO observes that all the share applicants/individuals/HUF/companies are related to the assessee company and on the other hand the AO is doubting the identity of the share applicants. The AO cannot blow hot and cold in the same breath. Further, the first appellate authority, while deleting the additions on

account of 10 share applicants on the same set of facts has erred in confirming the addition on account of two share applicants, namely, Shri Anand Gupta, HUF and Shri Sanchit Gupta.

20. We find that the entire share capital and premium has been received through account payee cheques drawn on the account of shareholders who are all independent assesseees and have confirmed the transaction of having made investments in the assessee company and have also filed their respective bank accounts and have explained the nature and source of funds in their bank account out of which share subscription including premium has been paid to the assessee company. These evidences cannot be brushed aside lightly and preponderance of human probability cannot get precedence over these evidences galore.

21. It is pertinent to note that the AO has not doubted the share premium of Rs. 490/- per share as the same is supported by the valuation report as per the I.T. Rules. By disbelieving the source of source being long term capital gain from the sale consideration of shares of Shital Leasing and Finance Ltd and Shilpi Cable Technologies, the AO cannot justify the addition in the hands of the assessee company. As mentioned

elsewhere, any addition which deserved to be made should have been made in the hands of the share applicants who have shown their source of source as sale of shares of these companies or alleged accommodation entries. Whether the assessee has discharged the burden cast upon it by the provisions of section 68 of the Act or not is purely a question of fact and has to be decided on the facts of each case and, therefore, no judicial decision has been considered on the peculiar facts of the case in hand.

22. Considering the evidences brought on record, we are of the considered view that the additions made by the AO on the basis of general observations and without drawing any adverse inference in the hands of the individual taxpayers [share applicants] such additions based on surmises and conjectures cannot be sustained. The assessee has also furnished evidences demonstrating the source of the share applicants, therefore, the additions, at least, cannot be made in the hands of the assessee. As pointed out earlier, the Id. CIT[A] has also erred in sustaining the two additions, namely, Shri Anand Gupta HUF and Shri Sanchit Gupta which are also without any basis. In the light of the

discussion hereinabove the appeal of the assessee is allowed and that of the revenue is dismissed.

23. In the result the appeal of the assessee in ITA No.7653/DEL/2019 is allowed and that of the Revenue in ITA No.9451/DEL/2019 is dismissed.

The order is pronounced in the open court on 26.04.2021.

Sd/-
[BHAVNESH SAINI]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 26th April, 2021.

VL/

Copy forwarded to:

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

Asst. Registrar,
New Delhi