

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.1936/Del./2019
(ASSESSMENT YEAR : 2010-11)**

ITO, Ward 20 (3),
New Delhi.

vs.

M/s. Pyramid Infracon Pvt. Ltd.,
D – 16, Kamla Nagar,
Delhi – 110 007.

(PAN : AAACP6300M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Shri Aman Garg, CA

REVENUE BY : Shri Ajay Kumar Arora, Sr. DR

Date of Hearing : 05.01.2023

Date of Order : 17.01.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-7, New Delhi dated 12.12.2018 pertaining to the Assessment Year 2010-11.

2. Ground of appeal taken by the Revenue read as under :-

“Whether the Ld. CIT (A) has erred in law and on facts and in circumstances of the case, in deleting the addition of Rs.2,25,00,000/- made by the Assessing Officer under section 69 of the Income Tax Act, 1961, on account of unexplained investments with M/s. Legend Infrastructure Pvt. Ltd. during the AY 2010-11, as the assessee did not record/declare the said

transaction in its books of accounts and the said transactions came into light on the basis of incriminating material found and seized during the search operation at the business premises of M/s. RPS Infrastructure Ltd. group on 21.10.2013 by the DDIT (Inv.)-I, Faridabad.”

3. Brief background in this case noted by the Assessing Officer read as under :-

In this case, information was received from DDIT (Inv.)-I, Faridabad vide his No.DDIT(In)-I/Fbd/2015-16/3675 . dated 25.02.2016 that during the course of survey conducted on the business premises of M/s RPS Infrastructure Ltd. on 21.10.2013 and statement of Shri R.C. Gupta was recorded on oath wherein Shri Gupta accepted that various companies are controlled and managed by him and belongs to RPS group. The source of fund with various entities is found to be from other group entities either in the form of loans and advances or investment in the shares of those entities. These have entered into various sales/purchases amongst each other. The various group companies have taken share capital/premium from various dummy entities and M/s Pyramid Infracon Pvt. Ltd had invested Rs.225,00,000/- in the form of share capital including premium with M/s Legend Infrastructure Pvt. Ltd, the company controlled by RPS group, as per list of allottees as on 07.09.2009 pertaining to FY 2009-10 relevant to AY 2010-11.

4. Further AO noted that as per information received, various group companies have been taken/invested share capital/share premium from various dummy entities and M/s. Pyramid Infracon Pvt. Ltd. had invested Rs.2,25,00,000/- in the form of share capital including premium with M/s. Legend Infrastructure Pvt. Ltd., the company controlled by RPS Group. In written submissions before the AO, assessee admitted that M/s. Pyramid Infracon Pvt. Ltd. had indeed invested in the shares of M/s.

Legend Infrastructure Pvt. Ltd. amounting to Rs.2,25,00,000/- during AY 2010-11 but due to inadvertent error on the part of the accountant of the assessee, the two figures were netted off in the balance sheet for AY 2010-11 and the investments were not appearing in the balance sheet. In this regard, AO referred to the details received along with report from DDIT (Inv.)-I, Faridabad referring the bogus transactions as under :-

S.N.	Name & address of allottees	No. of shares	Total amount paid (in Rs.) including premium
1	Pyramid Infracon (P) Ltd., D-16, Kamla Nagar, Delhi-110007	225,000	22500,000/-
2	Adonis Infrastructure (P) Ltd., D-16, Kamla Nagar, Delhi-110007	605,000	605,00,000/-
3	Luminous Infrastructure (P) Ltd., A-193, 1 st Floor, Okhla Indl. Area, Pse-1, New Delhi-110020.	150,000	150,00,000/-
	Total	980,000	980,00,000/-

5. AO did not accept the explanation of the assessee. According to the AO, this is an after-thought story concocted by the assessee in order to cover up the non-showing of investment made by the assessee during AY 2010-11 wherein it did not show it in the ITR and balance sheet and also not recorded in the assessee's books of account. AO further noted that in assessee's own case in previous AY 2009-10, notice u/s 148 of IT Act was issued by his predecessor in order to verify the investment made

by the assessee with M/s Legend Infrastructure (P) Ltd. That during the course of assessment proceedings for AY 2009-10, assessee or its AR had not mentioned the fact that the investment was actually made in AY 2010-11 and not in AY 2009-10. That when asked about this fact during the course of present assessment proceedings, the AR, Shri Rohit Ahuja, was unable to furnish any reply. It was only after pointing out the fact by the department by way of issue of notice u/s 148 and supply of reasons recorded for issue of notice u/s 148 to assessee company that it had investment of Rs.225,00,000/- with M/s Legend Infrastructure (P) Ltd. assessee company had started to take one excuse or the other for not declaring its investment it made during AY 2010-11.

6. AO asked for information u/s 133 (6) of the Income-tax Act, 1961 (for short 'the Act') from M/s. Legend Infrastructure Pvt. Ltd. with regard to the investment made with them by M/s. Pyramid Infracon Pvt. Ltd.. The response of the party was noted by the AO as under :-

- “(i) M/s Pyramid Infracon (P) Ltd has applied for 225000 shares in our company during the FY 2009-10;
- (ii) M/s Pyramid Infracon (P) Ltd were allotted 225000 shares in FY 2009-10;
- (iii) Total investment made by M/s Pyramid Infracon (P) Ltd was of Rs.225,00,000/- as under:-

Rs.125,00,000/- vide cheque No.718176 dated 26.5.2009
Rs. 25,00,000/- vide cheque No. 718177 dated 03.6.2009
Rs. 75,00,000/- vide cheque No.718178 dated 04.06.2009
Rs.225,00,000/-

Copy of ITR & balance-sheet for FY 2009-10 is enclosed herewith."

7. Further, assessee submitted to the AO that assessee company had taken unsecured loan from shareholders, namely, Shri Kanwar Lal, Shri Mahipal and Shri Jaggi which in turn was invested with M/s. Legend Infrastructure Pvt. Ltd. during AY 2010-11. It was stated that these persons' land had been compulsorily acquired by the Government and compensation was received. AO did not accept this contention by stating that during the course of survey conducted on the business premises of M/s. RPS Infrastructure Ltd. on 21.10.2013, a statement of Shri R.C. Gupta was recorded on oath wherein he accepted that various companies are controlled and managed by him and belongs to RPS Group. The source of fund with various entities was found to be from other group entities either in the form of loans and advances or investment in the shares of those entities. They have entered into various sales/purchases amongst each other. The various group companies have taken share capital/premium from various dummy entities and M/s. Pyramid Infracon Pvt. Ltd. had invested Rs.2,25,00,000/- in the form of share capital including premium with M/s. Legend Infrastructure Pvt. Ltd., the company controlled by RPS Group. AO also noted that counsel for the assessee filed certain details for the source of investment but it has no

relevance as assessee company failed to declare its investment in its ITR and balance sheet, as narrated above, for which no cogent reason put forth by the assessee company. AO concluded as under :-

“5.6 From the confirmation received from M/s Legend Infrastructure (P) Ltd. controlled and managed by Shri Gupta and belongs to RPS group and also in view of detailed report of DDIT (Inv.)-1, Faridabad. it is established beyond doubt that assessee had investment of Rs.225.00,000/- with M/s Legend Infrastructure (P) Ltd during AY 2010-11, which Pyramid Infracon Pvt ltd has failed to declare in its return of income and balance-sheet and also failed to record the said transactions in its books of accounts. During the course of assessment proceedings, AR has taken various pleas like, mistake committed by Accountant & two figures were netted etc which is treated as mere after-thought. Had the DDIT (Inv.)-1, Faridabad, vide No.DDIT(In)-1/Fbd/2015-16/3675 dated 25.02.2016, had not informed about the transactions undertaken between the assessee and M/s Legend Infrastructure (P) Ltd during AY 2010-11, the unexplained investment could have gone unnoticed. The investment of Rs.225,00,000/- is, therefore, treated as unexplained investment of assessee for AY 2010-11 u/s 69 of IT Act and added to its taxable income.”

8. Against the above order, assessee went in appeal before the Id. CIT(A) challenging both the validity of reopening of reassessment and the addition. Ld. CIT (A) upheld the jurisdiction of reopening and held as under :-

“ Therefore, from the above details, it is noted that the AO has not acted mechanically before framing. the reasons to believe. He has applied his mind by considering all the information before him and then has taken the approval of the higher authorities as required u/s 151 of the Act before issuing notice u/s 148 of the Act. He has not acted under the borrowed belief or under the directions. In the information there is specific details of the amount and cheque number in respect of

entities controlled and operated by Shri R. C. Gupta from whom the appellant has transactions. At the stage of forming belief, it was necessary for the AO to see the existence of the reasons and not the sufficiency of the reasons. The cases laws relied upon by the appellant in his submission have been gone through and it is found that the facts of the present case are different from the case laws relied upon by the appellant. The Investigation Wing has prepared a list of the beneficiaries after carrying out investigations from the material gathered as a result of action. On the basis of such investigation, the list of entities controlled and managed by Shri R. C. Gupta along with the beneficiaries has been prepared by the Investigation Wing and has been made available to the AO for necessary action. Out of these entities, one specific entity has been found with which the appellant has transactions. Therefore, the reasons recorded by the AO are based upon specific information, based upon Investigation conducted by the Department and, therefore, the reasons framed by the AO are based by the credible information about the bogus transactions of Rs.2,25,00,000/- in the case of the appellant. It is not important that the AO should have initially ascertained the facts by making further investigations and should have drawn conclusions as at this stage of proceedings it is not relevant. The important question is Whether there was relevant material on which a reasonable person could have formed a belief is necessity which definitely there was in this case. Whether or not the material would conclusively establish the escapement is not important. This aspect has to be examined subsequently in the re-assessment proceedings. It is noted that the AO has applied his mind to the information independently to arrive at the belief on the basis of material which was available with him.

5.5. In view of the above facts and discussion, it is held that the A.O. has validly assumed jurisdiction u/s 148 of the Act by recording the reasons to believe in accordance with the provisions of the Act u/s 147 of the Act and, therefore, the same is hereby held to be valid. Accordingly, this ground of appeal is dismissed.”

9. As regards merits of the case, Id. CIT (A) accepted the assessee's submission that it was an inadvertent presentation error on the part of the

accountant which led to non-disclosure of the investment and that assessee company has obtained loan from shareholders to invest in the company. Ld. CIT (A) accepted that assessee company shareholders have received compensation which was used for making investment in M/s. Legend Infrastructure Pvt. Ltd.. Ld. CIT (A) further accepted that on perusal of Schedule 'E' i.e. notes to accounts on paper book page no.10, it is noticed that assessee made true disclosure under the head 'Related Party Disclosure' that unsecured loan of Rs.2,25,00,000/- was received from shareholders of the assessee company. Ld. CIT (A) further referred to Form 23AC filed before ROC wherein such disclosure was also made at point no.14 of the balance sheet items under the head 'Gross value of transaction as per AS-18'. Thirdly, he noted that in financial statements of subsequent financial year wherein assessee suo moto rectified the error by disclosing investments of Rs.2,25,00,000/- in the balance sheet of the assessee. Further, ld. CIT (A) put emphasis on the confirmation of M/s. Legend Infrastructure Pvt. Ltd.. So, accepting the assessee's submission as sacrosanct and the omission of the investment mere inadvertent presentation error, ld. CIT (A) held that this is not a case of undisclosed investment rather it is a case of misrepresentation of figures in the balance sheet. Ld. CIT (A) was of the opinion that the said item was not amenable to section 69 of the Act and

held that investments was duly recorded in the books of accounts corroborated from bank ledger and investment account on page nos.41 & 79 of the paper book placed before him. Further, he referred that assessee also submitted nature and source of investments of Rs.2,25,00,000/- as unsecured loan obtained from the shareholders of assessee along with documentary evidences i.e. bank statement and ID proofs of the lenders. Further, he accepted the submission that the shareholders had received compensation and accordingly, he deleted the addition.

10. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

11. We find that in this case, investigation wing has found that RPS Group companies were engaged in bogus investments in the name of share capital and share premium. These companies were controlled by RPS Group who admitted the existence of the dummy entities and M/s. Pyramid Infracon Pvt. Ltd. had invested Rs.2,25,00,000/- in the form of share capital and share premium with M/s. Legend Infrastructure Pvt. Ltd. When assessee was confronted this aspect, he stated before the Id. CIT(A) that it was an error on the part of the accountant in which unsecured loan received from shareholders were adjusted against investment made in M/s. Legend Infrastructure Pvt. Ltd.. For this purpose, there is neither any statement by the accountant nor by the

auditors. It is a simply *ipse dixit* of the assessee which Id. CIT (A) accepted as gospel truth. All the documents, which were placed before the Id. CIT (A), were also submitted before the AO. We note that it is absolutely correct that AO has doubted the same and disbelieved these documents and he was under the firm belief that it is a concocted story but he has not made any verification. On the other hand, Id. CIT (A) is speaking about several aspects having been verified from assessee's books of account and records. This finding of Id. CIT (A) is diametrically opposed to that of the AO. In the whole submissions, there is no whisper of any document relating to unsecured loan taken from shareholders. Even in paper book before us, no loan document has been produced. In our considered opinion on the facts and circumstances of the case, this issue needs to be sent to the file of AO. AO is directed to examine the veracity of assessee's submissions which are before the Id. CIT (A). AO shall also, if deem appropriate, examine the auditors of financial statements which have claimed to have the inadvertent presentation error. The AO is also directed to examine submission of the Id. Counsel for the assessee that in subsequent year, the error has been rectified and unsecured loan and investments reflected. We note that there is no mention in the auditor's report that there was any error in the earlier accounts which has been corrected during the year. In these

circumstances, it is all the more necessary to examine the auditors who have certified the present year as well as subsequent year's accounts. With these directions, we remit the issue to the file of AO. AO shall examine afresh in the light of our observations as above. Needless to say, the assessee should be provided an opportunity of being heard.

11. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on this 17th day of January, 2023.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 17th day of January, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-7, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**