

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.1095/DEL/2019
[Assessment Year: 2009-10]**

M/s Subhshree Investment Management Private Limited, 2 nd Floor, 19 Local Shopping Complex, Near Pushpa Bhawan, Madangir, New Delhi-110062	Vs	The ACIT, Central Circle-8, Room No.333, 2 nd Floor, E-2, ARA Centre, Jhandewalan Extn. Delhi-110055
PAN-AAMCS4230P		
Assessee		Revenue

Assessee by	None
Revenue by	Sh. H. K. Choudhary, CIT-DR

Date of Hearing	31.07.2023
Date of Pronouncement	09.08.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Ld. CIT(A)-24, New Delhi, dated 31.12.2018 pertaining to Assessment Year 2009-10.

2. The grounds of appeal reads as under:-

“1. That on facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-XXIV, New Delhi, [‘the Ld. CIT(A)’] has erred in upholding the order of the Assistant Commissioner of Income Tax, Central Circle-08, New Delhi (‘the Ld. Assessing Officer’) in upholding the addition of Rs.15,62,00,000/- made u/s 68 of the Act on account of receipt of share capital.”

3. Brief facts of the case are that in this case the return of income was originally e-filed on 207.03.2010 declaring total income of Rs.NIL,

claiming a loss of Rs.1834/-. The case of the assessee was also selected for scrutiny assessment u/s 147 of the I.T. Act, 1961. Notice u/s 148 was issued to the assessee company on 31.03.2016. Assessment proceedings were abated as per proviso of the section 153C r.w.s. 153A of the I.T. Act, 1961. A search and seizure operation was carried out in the case of Priya Gold Group & its promoters on 16.12.2014. During the proceedings of search and seizure action at the Head Office of the group M/s Surya Processed Food Pvt. Ltd. at D-1, Sector-2, Noida, District-Gautam Budh Nagar, Substantial Documents were found and seized. The information contained in these documents related to M/s Subhshree Investment Management Pvt. Ltd.

4. The AO further noted that the assessee company has received share application money including share premium of 490 Rs. Per share for an amount of Rs.15,62,00,000/- from the following companies;

S.No.	Name of allottee	No. Of shares allotted	Amount of share application money	Amount of share premium money	Total investment
1	Chicory Merchants Pvt. Ltd.	5000	50,000	24,50,000	25,00,000
2	Ekdant Financial Advisory Pvt. Ltd.	67,900	6,79,000	3,32,71,000	3,39,50,000
3	Navratan Distributers Pvt. Ltd.	50,000	5,00,000	2,45,00,000	2,50,00,000
4	Shivam Financial Management	54,800	5,48,000	2,68,52,000	2,74,00,000
5	Subhdhan Financial Advisory Pvt. Ltd.	8000	80,000	39,20,000	40,00,000
6	Swastic Investment Management Pvt. Ltd.	67,900	6,79,000	3,32,71,000	3,39,50,000
7	Vinayak Investment Advisory Pvt. Ltd.	58,800	5,88,000	2,88,12,000	2,94,00,000
Total		3,12,400			15,62,00,000

5. The AO referred to the finding of such parties extensively in this case. He also noted that the reply of the assessee. In reply, the assessee tried to suggest that it is Shell Company without having any assets of its own and that the assessee has only dealing book entries. However, the AO was not satisfied and he held as under:-

“7.9 The reply of the company has been duly considered but is not acceptable. AR has merely stated that the total amount of Rs. 15,62,00,000/- received by the assessee company is only by way of book entries, but he has not provided the name of the beneficiary. Hence, the funds, as credited in the books of the assessee company will be treated as its own funds, until it justify the identity, creditworthiness and genuineness of the transaction or establishes the link with ultimate beneficiary. It is further noted that the Priya Gold group is the beneficiary of funds from A.Y. 2013-14 onwards. The Priya gold group was not the beneficiary in this period. Mere a statement that the funds belong to some other party, is not sufficient to discharge the onus of justifying the credits in the books of the assessee company. It should have provided the details of the beneficiary in support of his submissions. But the assessee company has failed in doing so. Hence, the share application money credited in the books of the assessee company for an amount of Rs.15,62,00,000/- is here by added in the income of the assessee company u/s 68 of the I.T. Act, 1961.”

6. Against the above order, the assessee appealed before the Ld. CIT(A).

7. The Ld. CIT(A) elaborately discussed the issue but he was also not convinced with the assessee's reply. He observed as under:-

“The appellant has contended that if these were actual assets in these shell companies then these would have been taken over by the Priya Gold Group Companies, which would be the recipient of these assets. On due consideration, I find that the AO conducted enquiries to identify whether the companies from whom the appellant had received share application money during the year under consideration were genuine or not.

The AO rightly issued notices us 133(6) of the Act to all the share applicants at the addresses registered on the Ministry of Corporate Affairs. Even the AO issued summons to all these parties. As stated in the assessment order all the notices returned un-served. Thereafter, the AO perused the bank statement of the appellant company and noticed that there are numerous debit & credit entries of the same amount on the same day.

5.3 Subsequently the A vide order sheet entry dated 19.12.2016 asked the appellant to provide details of debit entries of bank account and prove the genuineness of these transactions. The appellant in his reply vide letter dated 23.12.2016 did not provide details of debit entries of bank account and also made no effort to prove the genuineness of the transactions. Neither before the AO nor before the undersigned the appellant submitted documentary evidences to prove the identity and creditworthiness of the so called share applicants and genuineness of the transactions. The appellant just contended that the appellant company is a shell company. It has no assets except paper entries showing investment in other shell companies. In fact if there were actual assets in these shell companies then these would have been taken over by the Priya Gold Group and in that case the Group would be the recipient of these assets. The appellant further submitted that the total amount of Rs. 15,62,00,000/- received by the appellant is only by way of book entries. It further claimed that the investments shown in the Balance Sheet are in other shell companies which are mere paper entries and do not have intrinsic value. It was also claimed that the appellant acted as intermediary and was merely a conduit for introducing share capital for Priya Gold Group of companies.

5.4 The contention of the appellant was not accepted by the AO. In my considered view the AO has rightly not accepted the reply of the appellant. The appellant simply stated that the total amount of Rs. 15,62,00,000/- received on account of share application money is only by way of book entries but did not provide the name of the beneficiary. The appellant company did not provide the details of the debit entries of its bank account. The appellant company knows its affairs and its transactions. The appellant company knows the sources of the amounts credited in its bank account. The appellant company also knows the beneficiaries in respect of debit entries in its bank account. In such situation, to make things more clear and transparent, the appellant was required to provide the

requisitioned details to the AO to lend credence to its contention.

5.5 The AO has rightly noted that Priya Gold Group is beneficiary of funds from AY 2013-14 onwards and definitely was not beneficiary during the period relevant to AY 2009-10. The appellant company should have provided details of beneficiary during the period relevant to AY 2009-10 in support of its contention. The appellant company cannot shirk from its legal obligation to prove the identity and credit worthiness of the so called share applicants and genuineness of transactions by adjudging itself as shell company”.

8. The Ld. CIT(A) referred to the provisions of the Act and case laws and finally concluded as under:-

5.12 Considering the facts stated above, in my considered and reasoned opinion the appellant undoubtedly has failed in course of assessment and appellate proceedings to establish the identity and creditworthiness of the so-called share applicants and genuineness of transactions. The AO has rightly invoked the provisions of the section 68 of the Act to make addition of Rs.15,62,00,000/- on account of share application money and added it back to the total income of the appellant. Thus, I hold that the action of the AO in making addition of Rs. 15,02,00,000/- on account of share application money is justified and therefore the addition of Rs. 15,62,00,000/- u/s 68 of the Act made by the AO is confirmed.”

9. Against the above order, the assessee is in appeal before us.

10. We have heard the ld. DR and perused the record. None appeared on behalf of the assessee for a long time, therefore, we are disposing of this appeal after hearing the ld. DR and perusing the records. We find that the authorities below have given a finding of fact that the assessee has failed to establish the identity and creditworthiness of the share applicants and genuineness of transaction of share application money and the assessee has tried to prove that it is only a book entries but no evidence of this effect was there. Hence, we do not find any infirmity in

the well reasoned order passed by the lower authorities and upheld the same.

11. In the result, this appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 09th August, 2023.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Delhi; 09.08.2023.

Shekhar,

Copy forwarded to:

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

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi