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

BEFORE, SHRI M. BALAGANESH, ACCOUNTANT MEMBER

And

SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1194/DEL/2022
[Assessment Year: 2018-19]

ACIT, Circle-16(1), Room No.419, 3rd Floor, C.R. Building, I.P. Estate, New Delhi-110002	Vs	M/s News Nation Network Pvt. Ltd. C-165, Naraina Industrial Area, Phase-1, New Delhi-110002
		PAN-AAICA6439Q
Revenue		Assessee

Revenue by	Sh. Subhra Jyoti Chakraborty, CIT-DR
Assessee by	Sh. Rakesh Joshi, CA

Date of Hearing	**04.10.2023**
Date of Pronouncement	**21.12.2023**

ORDER

PER M. BALAGANESH AM,

This appeal of the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No. NFAC/2017-18/10022544 against the order passed by DCIT, Circle-16(1), Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) r.w.s.143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 16.03.2021.

2. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) was not justified in deleting the addition of Rs.25 Crores

made u/s 68 of the Act in respect of share capital received by the assessee company in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the material available on record. The assessee is a media company running three channels. During the year under consideration, the assessee raised share capital of Rs.25 Crores from the two investors:-

(i) M/s Nextwave Technologies Private Ltd.-Rs.15 Crores.

(ii) M/s Infotel Technologies Pvt. Ltd. -Rs.10 Crores

4. These amounts were invested by the investors in 0.01% non-cumulative redeemable preference shares of the assessee company. The assessee was asked to explain the source of share capital alongwith necessary documents and also prove the three ingredients u/s 68 of the Act i.e. identity of the investors, creditworthiness of the investors and genuineness of the transactions. The assessee furnished the PAN, name and address of the investors, their bank statements, their audited financial statements before the Ld. Assessing Officer. The assessee also provided the source of source of the investor companies before the Ld. Assessing Officer by furnishing the requisite details of credits appearing in the bank statement of the investor companies, which had been used by them for making investment in the share capital of the assessee company. **The assessee also informed that both the investors are already**

existing shareholders in the assessee company. The Assessing Officer issued notice u/s 133(6) of the Act to both the investors calling for certain documents. Both the investors directly filed their reply before the Ld. Assessing Officer by furnishing the requisite documents and by filing due confirmation of the fact of having made investment in share capital in the assessee company. However, the Ld. Assessing Officer simply rejected those documentary evidences by stating that these transactions do not represent any business sense from the side of the investors and accordingly proceed to treat the receipt of share capital of Rs.25 Crores as unexplained cash credit u/s 68 r.w.s 115BBE of the Act in the hands of the assessee. The Ld. Assessing Officer before drawing such conclusion has also given an observation that the assessee company as well as two investors were under continuous losses year after year and they do not have capacity to invest in the assessee company.

5. The assessee submitted before the Ld. CIT(A) that there is no prohibition under any law to raise share capital inspite of losses. Hence, there is nothing wrong in the investor company for making investment in the assessee company. All the requisite documents as called for by the Ld. Assessing Officer were furnished by the assessee and the same were also subjected to cross verification from the side of investors by the Ld. Assessing Officer by issuing notice u/s 133(6) of

the Act and those investors had also directly responded to the Ld. Assessing Officer by furnishing all the requisite documents and confirming the fact of having made investment in the assessee company. The assessee had also explained the source of source of the investor companies. The assessee also brought to the knowledge of the Ld. CIT(A) that since the assessee is in media business, the investor companies were interested in investing in media ventures and they were also consistent in making their investments in media ventures as they had already made investments in TV18, News24, etc. other than making investment in the assessee company. There is no dispute that the assessee is running a prominent media company running three news channels and there is absolutely nothing wrong in these two investors coming forward to make investment in assessee company in anticipation of future gains. It was also brought to the attention of the Ld. CIT(A) that one of the investors M/s Infotel Technologies Pvt. Ltd. had filed its return of income for Assessment Year 2018-19 declaring total income of Rs.94,84,200/- despite having losses in its profit & loss account. It was pointed out that the main business of the investor company is making investments and they are made to gain profits as the value of securities grow and business gets better valuation. The assessee also furnished the bank statements and copy of income tax return for Assessment Year 2018-19 of M/s

Parmesh Finlease Ltd., who had made investment in the form of optionally fully convertible debentures in M/s Nextwave Televentures Pvt. Ltd. (i.e. one of the investor companies before us). This clearly goes to prove the source of source is also proved by the assessee. The Ld. CIT(A) appreciated this contention of the assessee and deleted the addition made u/s 68 of the Act.

5. It is not in dispute that the assessee furnished the audited financial statements of the investor company for the year ended 31.03.2018; the ledger confirmation from those investors; their bank statements duly highlighting the transactions of immediate source of credit as well as the fact of making investment in the assessee company; income tax returns for the assessment year 2018-19 of the investor companies; source of source for the investor companies; audited financial statements and income tax returns of the parties who had made investments in the investors companies of the assessee. These documents are enclosed at pages 25 to 146 of the paper book filed before us. Apart from all these documents, the Ld. Assessing Officer still proceeded to examine the veracity of those documents by issuing notice u/s 133(6) of the Act to those investors calling for various details. Both investors duly complied with to the notices u/s 133(6) of the Act by furnishing the requisite details directly before the Ld. Assessing Officer. Despite this, the Ld. Assessing Officer still

proceeded to step in to the shoes of the business man and says there was no business prudence on the part of the investors to make investment in the assessee company. The law is very well settled in this regard that the decision to make any investment by a business man in another business is to be viewed from the angle of business man and not from the angle of the Revenue. The Revenue cannot step into the shoes of the business man and dictate terms as to manner in which the investment should be made, whether the investment should be made, etc. Reliance in this regard is placed on the celebrated decision of the Hon'ble Supreme Court in the case of Commissioner Of Income-Tax vs Dhanrajgiri Raja Narasingirji reported in 91 ITR 544 (SC). All the documents furnished by the parties clearly proved the identity of the investors, creditworthiness of the investors, and genuineness of the transactions beyond doubt within the meaning of section 68 of the Act. Further, both the investors are already existing equity and preferential share holders in the assessee company. In fact, similar investment made by these investors in assessee company in Assessment Year 2017-18 had been accepted as genuine by the Ld. Assessing Officer u/s 143(3) of the Act dated 30.12.2019. Further, the very same Assessing Officer is the Assessing Officer for one of the investor company i.e. M/s Nextwave Televentures Private Ltd., wherein for Assessment Year

2017-18, the very same Assessing Officer had framed the assessment u/s 143(3) of the Act on 29.12.2019 in the hands of M/s Nextwave Televentures Pvt. Ltd. accepting the fact of having made investment in the assessee company. Further, M/s Infotel Technologies Private Ltd. (another investor company) scrutiny assessment for AY 2018-19 was also completed by the NFAC, Delhi, u/s 143(3) r.w.s. 144B of the Act on 30.04.2021 duly considering the factum of making investment in preferential share in assessee company while adjudicating the issue of disallowance u/s 14A of the Act. Absolutely no adverse finding has been recorded by the AO of M/s Infotel Technologies Private Ltd. with regard to the fact of investment made in assessee company. This fact was duly appreciated by the Ld. CIT(A) while granting relief to the assessee. For the sake of convenience, the relevant adjudication by the Ld. CIT(A) in this regard are reproduced hereunder:-

> *"4.4 The appellant has contended that once it had discharged its primary onus u/s 68, it was the AO's duty to establish that either the investors companies did not exist or the transactions were not genuine. In the present case, the appellant had clearly established the fact that all the entities were part of the Infotel Group whose standalone net worth was approximately 285 Crores. The appellant had further established even the source of source of such funds of the investor companies. The onus had now shifted clearly on the AO to rebut these contentions and establish that the investor companies did not exist or did have the creditworthiness to introduce the share capital of Rs. 25 Crores. The AO has completely failed to do so. The AO has not brought out any material on record to substantiate the addition when the burden of onus had shifted to him. It was not the AO's case that the investors company did not exist or were trying to evade furnishing relevant information. It is common knowledge that in many cases where additions are made u/s 68, either the creditors do not respond at all, or if enquiries are made by the AO,*

it is found that the Creditors do not exist at the given address. Here the appellant has itself admitted that all the investor companies are from the same Infotel group who's combined net worth was 285 Crores. The appellant has provided all relevant details to establish even the source of source of funds. It is therefore, held that the appellant had duly discharged its onus u/s 68, regarding the introduction of share capital of Rs. 10 + 15 = Rs. 25 crores.

4.5 Now coming to the AO's reasoning, that looking at the fact that both the investor companies, as well as the appellant company were running in huge losses, hence it made no business sense for such loss making investor companies to invest in another loss making company and such losses implied that the investor companies did not have the capacity to invest.

4.6 Firstly, the appellant's defence is that losses incurred during any year did not imply that the investor companies did not have the capacity to invest. The investor companies had duly established that they were part of the Infotel Group whose net worth was 285 Crores, and that details of even the source of source of funds were provided to the AO. The AO's assumption that the returned income is the sole determinant of the financial capacity / credit worthiness of creditor cannot be accepted when the Investor Companies had submitted all relevant financials / bank statements to prove the source of funds borrowed by them to make the investment in share capital of 25 crores. The AO has not countered such evidences at all, but continued to remain under the wrong impression that the Investor Companies were investing out of their current losses, which was never their claim. The AO has clearly been swayed by the losses, without appreciating the fact that the Investor companies had sufficient funds (by way of capital/borrowed funds) available with them to invest in the share capital of the appellant. The AO has simply proceeded on the basis of suspicion without bringing any evidence on record, and without controverting the evidence submitted by the appellant. In view of these facts, the AO's action cannot be upheld.

4.7 Secondly, the appellant has relied on various court decisions that the AO did not have any right to sit on the judgment of the commercial wisdom of the investor companies to make investment in the loss making appellant company. The appellant has submitted that the main business of the investment companies was to make investments. Details of Investments made by these investors companies in other media companies like TV 18, News 24 etc. were also provided to the AO. The aim of the investors company was not to have regular annual income (as the AO assumed), but to have windfall capital gains once its investment in the businesses gets substantial valuations which may happen any time in the future.

4.8 The contentions of the appellant have been carefully perused. It is trite law that the Revenue cannot sit on judgment on the commercial wisdom of the assessee. It is common knowledge that in present times, there are multitudes of companies which attract huge valuations, even when they are making losses year after year. The investor company therefore has every business right to invest in a loss making enterprise with the hope of getting better valuations in the future. In any case, the AO cannot decide on the commercial wisdom of the assessee. Therefore, his action on such conjectures and surmises, without any collaborating evidences, cannot be upheld.

4.9 To summarize, in view of the above facts and discussion, it is held that the appellant has discharged its primary onus u/s 68, and has duly proven the identity and Credit worthiness of the Investor companies and has established the genuineness of the share capital transactions. The AO's reasoning that merely because the investor companies and the appellant were all loss making enterprises, and therefore the share capital transactions were non genuine, cannot be accepted both on facts and in law. The law is clear on the issue that the Revenue has no business to sit on the judgment over the commercial wisdom of an assessee, and that the Revenue cannot dictate to him as how to carry out his business. The appellant's appeal is therefore allowed and the addition of Rs. 25 Crores is hereby deleted."

6. The Ld. AR before us has placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of PCIT vs Satkar Infrastructure (P.) Ltd. reported in 145 taxmann.com 461(Del.). For the sake of convenience, the relevant head note is reproduced hereunder:-

"Section 68 of the Income-tax Act, 1961 - Cash credit (Share premium and share capital)- Assessment year 2012-13 - Assessing Officer made addition of certain amount under section 68 to income of assessee-company on account of unexplained share premium and share capital holding that identity and creditworthiness of shareholders and genuineness of transactions were not established by assessee - Tribunal deleted addition - It was noted that appellate authorities below had recorded concurrent findings of facts that as many as eight out of nineteen investor companies were assessed under section 143(3) in same assessment year and concerned Assessing Officers had verified their investments while calculating disallowance under section 14A - Appellate authorities below had also recorded that entire amount had been received by assessee by account payee

cheques or demand drafts - Whether since factual finding recorded by appellate authorities below indicated that identity, creditworthiness and genuineness of transactions could not be doubted and it could not be said that assessee had brought its own unaccounted funds through investor companies as bogus share capital or share premium, no substantial question of law arose for consideration - Held, yes [Paras 6 and 8] [In favour of assessee]"

7. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we do not find any infirmity in the order of the Ld. CIT(A) in granting relief to the assessee. Accordingly, the grounds raised by the Revenue are dismissed.

8. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the open court on 21st December, 2023.

Sd/-	**Sd/-**
(ANUBHAV SHARMA)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 21.12.2023

Shekhar

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI