

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

**BEFORE,
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.7785/Del/2018
(ASSESSMENT YEAR-2013-14)**

Shivnandan Buildwell Pvt. Ltd. Flat No.4, RR Apartment 3-3, Manglapuri Mehrauli, Delhi-110030 PAN:AALCS9186R	Vs.	Dy.CIT Circle-23(1) C.R. Building I.P. Estate, New Delhi
(Appellant)		(Respondent)

Assessee by	Shri Ajit Gandhi, CA
Respondent by	Ms. Kirti Sankratyayan, SR-DR

Date of Hearing	07/08/2024
Date of Pronouncement	16/10/2024

ORDER

PER VIMAL KUMAR, JM:

1. The appeal of the Assessee is against order dated 07/09/2018 of the Learned Commissioner of Income Tax (Appeals)-28, New Delhi [hereinafter referred to as 'Ld. CIT(A)'] u/s 143(3) of the Income Tax Act, 1961 [hereinafter referred as 'the Act'] arising out of Assessment Order dated 31/03/2016 of the Deputy Commissioner of Income Tax, Central Circle-23(1), New Delhi [hereinafter referred to as "Ld. AO"] for the Asst. Year 2013-14.

2. Brief facts are that assessee filed return of income on 03/06/2014 declaring total income of Rs.54,20,310/-. The case was selected for scrutiny and notices u/s 143(2) was issued on 28/08/2015. Notice u/s 142(1) along with questionnaire was issued on 07/12/2015. Due to change of incumbent notice u/s 143(2) r.w.s 142(1) was re-issued on 31/12/2015. In response to the notice issued, Shri Pravin Goel, CA & AR attended the hearing from time to time, and furnished the requisite information/details and documents. The assessee is engaged in business of real estate activities. In response to notice u/s 142 (1), assessee submitted following details of share application money vide letter dated 07/01/2016.

Sr. No.	Name of Company	Opening Balance	Share Application Money received during the year	Share Application Money refunded during the year e	Share Application Money O/S at the year end
1	Akdant Buildtech Pvt. Ltd.	21,00,000	11,00,000	-	32,00,000
2	Elite Villas Pvt. Ltd.	2,85,00,000	3,50,00,000		6,35,00,000
3	Kartikeya Buildcon Pvt. Ltd.	9,81,44,500	2,17,00,000	1,15,00,000	10,83,44,500
4	Sarv Buildwell Pvt. Ltd.	-	2,16,00,000	-	2,16,00,000
5	Shivnandan Buildcon Pvt. Ltd.	-	50,000	-	50,000
	Total	12,87,44,500	7,94,50,000	1,15,00,000	19,66,91,500

The assessee was asked to furnish confirmation and other supporting documents to establish the identity, credit worthiness and genuineness of the companies that have applied such share application. In response the assessee furnished confirmation, bank statement and ITR of the parties from whom share application

money received by the assessee. The Ld. AO through assessment order dated 31/03/2016 made additions Rs.7,94,50,000/- and 21,000/-.

3. Appellant/assessee preferred appeal before Ld. CIT(A) which was dismissed vide order dated 07/09/2018.

4. Being aggrieved appellant/assessee preferred present appeal with following grounds:-

“1. That on the facts, circumstances of the case and law, the Ld. Commissioner of Income Tax (Appeals) 28, New Delhi, erred in confirming the assessment concluded by Ld. AO at Rs. 8,48,91,310/- instead of the returned income of Rs. 54,20,310/-.

2. That the Learned Commissioner of Income Tax (Appeals) - 28, New Delhi erred on facts as well as in law, in confirming an addition of Rs. 7,94,50,000/- on account of unexplained credits, in respect of share application monies received by the appellant.

3. That the Learned Commissioner of Income Tax (Appeals) - 28, New Delhi erred, in upholding the inferences made by Ld. AO that a sum of Rs.7,94,50,000/- as above- without affording proper opportunity to appellant.

4. That the Learned Commissioner of Income Tax (Appeals) - 28, New Delhi erred on facts as well as in law, in confirming an addition of Rs.21000/- as prior period expenditure.

5. That the Learned Commissioner of Income Tax (Appeals) -28, New Delhi erred on facts as well as in law, in not deciding the appeal on merits & in a non- speaking manner, without dealing with all aspects of the additions made.

6. That the Learned Commissioner of Income Tax (Appeals) - 28, New Delhi erred on facts as well as in law, as the order passed by Ld. CIT(A) is pervasive to the specific provisions of law & the interpretations by higher courts and is as such, a nullity.

7. That the Learned Commissioner of Income Tax (Appeals) -28, New Delhi erred on facts as well as in law, in not granting proper opportunities to the appellant, as per law and also in not appreciating that the assessment

was concluded, in absence of proper opportunity of being heard, granted to the appellant.

8. That the above grounds of appeal; are without prejudice to each other.

9. That the appellant reserves its right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal.”

5. Learned Authorized Representative for appellant/assessee submitted that Ld. CIT(A) erred in confirming the additions of Rs.7,94,50,000 and Rs.21,000/- on account of unexplained credit in respect of share application money received by appellant and expenditure receivable. Learned CIT(A) erred in upholding the additions without affording proper opportunity to the appellant. Learned CIT(A) erred in not deciding the appeal on merit and giving a non speaking order.

6. Learned Authorized Representative for Department of Revenue submitted that the address of the companies who have share application money to the assessee company during the year under consideration, is also to be noticed which has the same address even today i.e. Flat No.4,R.R. Apartment, 3-4, Manglapuri, Manglapuri, Mehratuli, New Delhi-11030, And this is not enough, how these shell companies are being run to give bogus entries to evade the taxes as pointed out by the assessing officer in the order as detailed above is further proved that after receiving these share application money, the address of the assessee company charges to 65/2, Masjid Road, Bhogal, New Delhi-South Delhi-110014 so that the share application money received to the company (the assessee company) with the previous address of Flat No.4, R.R. Apartment,

3-4, Mangalpuri, Mehrauli, New Delhi-110030 takes its actual place who have invested this unaccounted money through the web of the shell companies kept for this purpose.

Akdant Buildtech Pvt. Ltd.	Flat no.4, R.R. Apartment, 3-4, Manglapuri, Mehrauli	
Elite Villas Pvt. Ltd.	Flat no.4, R.R. Apartment, 3-4, Manglapuri, Mehrauli	
Kartikeya Buildcon Pvt. Ltd.	Flat no.4, R.R. Apartment, 3-4, Manglapuri, Mehrauli	
Sarv Buildwell Pvt. Ltd.	Flat no.4, R.R. Apartment, 3-4, Manglapuri, Mehrauli	
Shivnandan Buildcon Pvt. Ltd.	-----do----- As on 19.6.2015	65/2, Masjid Road, Bhopal As on 20.06.2015.

6.1 The shares holding pattern of these companies are actually in such way that they are actually not having control on the companies and the same can be reached by observing share holding pattern of these companies. The actual control is with the person who is controlling the activities to evade takes through applying the route of share application, premium on shares etc. The company who becomes cash rich by applying this route finally transfer to the hand of whom this unaccounted money or invested money belongs to.

6.2 The assessee company claimed to be engaged in the real estate activities has the following as on 31/03/2013 as per the submitted Audited Balance sheet before the Assessing Officer. The assessee company having authorized share capital of Rs.1 lac and paid up share capital of Rs.1 lacs suddenly gets cross from companies at the same address, received such huge money gets transferred from

here to the real owner of these invested unaccounted money. The assessee company by that time was having no current liabilities.

6.3 Therefore while looking into the reply filed by the Assessing Company through submission made dated 07/03/2023, it is simply a farce and not attract any different consideration as decided and explained by the Assessing Officer in his detailed assessment order dated 31/03/2016 and then vide the order dated 28/09/2018 of the First Appellate Authority. This is also because the issue raised in the assessment order not replied even now and that it is the same reply which is denied by the CIT(A) after due consideration of the same while adjudicating the matter. The addition u/s 68 of the Act is actually assessee's own unaccounted money and the shell companies are used only a mode to route through.

7. From examination of record in light of aforesaid rival contention, it is crystal clear that Learned AO made addition of Rs.7,94,50,000/- on account of share application money from five group companies. The details of the share application money received by the appellant from group companies with respect to the opening balance, money received during the year and the closing balance thereof in the table below:

Sl. No.	Name of entity	Share application money as at 01.04.2012	Received during Financial Year 2012-13	Refunded During FY 2012-13	Net Share application received during the Financial Year 2012-13	Closing balance as at 31.03.2013
1	M/s. Akdant Buildtec	21,00,000/-	11,00,000/-		11,00,000/-	32,00,000/-

	Pvt. Ltd.					
2	M/s. Elite Villas Pvt. Ltd.	2,85,00,000/-	3,50,00,000/-		3,35,00,000/-	6,35,00,00/-
3	M/s. Kartikeya Buildcn Pvt. Ltd.	9,81,44,500/-	2,17,00,000/-	1,15,00,00/-	1,02,00,000/-	10,83,44,50/-
4	M/s. SARV Buildwell Pvt. Ltd.	--	2,16,00,000/-	2,16,00,000/-	2,16,00,000/-	
5	M/s. Shivnandan Buildcon Pvt. Ltd.	--	50,000/-		50,000/-	50,000/-
Total		12,87,44,500/-	7,94,50,000/-	1,15,00,000/-	6,79,50,000/-	19,66,94,500/-

Assessee filed reply dated 09/03/2016 before Ld. AO. Copies at page No.178-183 of PB-1; and relevant page 179, furnishing documentary evidences. Written submissions before Ld. CIT(A) filed on 14/07/2017 (relevant pages 11-13 of PB-1, Submission dated 01/08/2018, relevant page 38 -39 of PB-1, and dated 04/07/2024, relevant page no.46 of PB-1 established the identity of the share application companies, Besides the fact and dated 04/07/2014.

(a) For establishing the identity of the share applicant companies, Besides the fact that particulars with respect to three companies were already on record, following documents were placed on record by the Appellant:

- i. Copies of Certificate of Incorporation of all the share applicant companies;
- ii. Copies of acknowledgement of return of Income filed
- iii. Copies of Assessment Order passed under Section 143(3) of the Act of In cases of Akdant Buildtech (AY 2013-14),

Kartikeya Buildcon (AY 2012- 13), Shivnandan Buildcon (AY 2012-13) and Sarv Buildwell (AY 2014-15)

iii. Full address of all the share applicant companies.

(b) Regarding Genuineness of Transactions

i. Copies of bank statement of all the share applicant companies showing payment of money to the Appellant; and

ii. Confirmation of accounts duly signed and stamped by the principal officers of the all share applicant companies.

(c) For establishing the credit worthiness of the share applicant companies

i. Copy of Income tax return filed by the share applicant companies for the AY 2013-14,

ii. Copy of Audited balance sheet of the share applicant companies, and

iii. Copy of bank statement of the share applicant companies showing the source of investment in the Appellant company.

It is a matter of fact that the existence of sufficient funds in bank accounts of share applicants is a conclusive evidence of credit worthiness of the share applicant companies' capacity to invest in the capital of the Appellant. Further, on perusal of the balance sheet of the share applicant companies, it can be ascertained that the share applicant companies had sufficient funds at their disposal at the time of investment in the Appellant company. Besides Funds available by all the companies, the creditworthiness of companies as well as the financial capabilities of the companies is also

apparent from their respective audited financial statements as under:

Particulars	Akdant Buildcon	Elite	Kartikeya Buildcon	Sarv Buildwell	Shivnandan Buildcon
Share Capital	1,00,000	1,00,000	1,00,000	1,00,000	1,00,000
Reserve and Suprlus	(2,00,977)	(299656)	(664024)	(46427)	(306523)
Share Appl. Money Pending Allotment	277255000	NIL	657588860	402700000	47499860
Total Sources of available funds	277154023	(199656)	657024838	402753573	47293337

8. Share application subscribed though accumulated balance in respective banks, accumulated out of disclosed transactions in books of accounts and audited statements of share applicants. None of the transactions in banks or nature thereof treated as unexplained either in respective assessments of the share applicants nor otherwise rebutted by Ld. AO/CIT(A). None of the funds in bank account are out of cash deposited in the banks to facilitate the transaction. All companies had sufficient funds (refer Chart P.B-1, Page no. 14). Share Applicant wise explanation of source of Source (PB-1, page no. 38-39) alongwith the bank the bank statements of source of source of source. So, the source is fully explained. All the share applicants are duly existing income tax payees and their identity and creditworthiness stood proved from the copies of the income tax assessments and other records like returns, PAN numbers etc. The copies of bank statements and

the genuineness of the transactions stood proved from the fact that each of them had duly confirmed the fact of having paid Share Application money through normal banking channels. The fact of advance for share application money paid by share applicants duly disclosed in books and audited accounts of share applicants as well as came for consideration in their respective assessments. The bank statements of share applicants submitted on record clearly show that they had sufficient balance in its accounts to enable it to subscribe to the share application. There is neither any finding nor any evidence on record to show that the funds of the assessee-company has gone to these persons which in turn had come back to the assessee- company. Requisite material to prove that the assessee was not beneficiary as share application money received was repaid in subsequent year. Neither Ld. AO nor Learned CIT(A) find any fault with the documents filed by the assessee which clearly prove the identity and credit worthiness of the investor and the genuineness of the transaction. Otherwise also, Learned AO has not brought any material on record to indicate that the investment is unexplained. Though the profit declared by the investor companies over the years is negligible. However, the assessee-company has received share application money out of funds from sources duly reflected in books and accumulated in respective bank accounts. The assessee-company has filed sufficient details to not only prove the source but the source of the source. Therefore, addition could not have been made on this issue.

9. Regarding issuing of summons to recorded u/s 131 of the Income Tax Act, 1961. Appellant in response produced Mr. Navneet Agarwal who was a common director in Akdant Builtech, Sarv Buildwell and Shivnandan Buildon, Mr. Navneet Agarwal recorded his statement under section 131 of the Act, wherein he categorically stated the source of investment of money from the aforementioned 3 companies in the Appellant Compnay. Further, the fact that Appellant was holding 150 Beegha of Land was stated as the commercial rationale for investing the money in the Appellant Company. Shri Navneet Agarwal in statement gave specific explanation of the source of funds for contribution of share application money to the Appellant. In fact, the reason why Sarv Estate Private Limited had paid a sum of INR 4,25,00,000 to Sarv Buildwell was also expressly mentioned by Mr. Navneet Agarwal. Further, the rationale behind the investment was also very categorically stated by Mr. Navneet Agarwal. He has explicitly mentioned that the fact that the Appellant was holding huge area of land (150 Beegha), therefore, not only the Mr. Navneet Agarwal was conversant with the affairs of the company, its business objectives and rationales, hence cannot be rejected as rubber stamp. Merely because low income is shown in the return of income by the creditor is no ground to make any addition against the assessee.

10. Hon'ble Delhi High Court in the case of CIT vs. Vrindavan Farms (P.) Ltd. [IT Appela No. 71 of 2015, dated 12/08/2015] in which it was held as under:

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon’ble High Court.”

11. In view of the above material facts and well settled principle of law, the grounds of appeal are meritorious. The impugned order dated 07/09/2018 passed by the CIT(A) is not sustainable.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this day 16th October, 2024.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 16/10/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI