

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 2228/Del/2024  
(Assessment Year: 2016-17)**

Income Tax Officer,  
CR Building, IP Estate, New  
Delhi

(Appellant)

**PAN:AAACN3075D**

Vs. Nirvan Construction  
and Finlease Pvt. Ltd,  
D-II/208, Savitri  
Nagar, New Delhi  
(Respondent)

Assessee by :	None
Revenue by:	Shri Akhilesh Kumar Yadav, Sr. DR
Date of Hearing	04/12/2024
Date of pronouncement	10/12/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.2228/Del/2024 for AY 2016-17, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] in Appeal No. ITBA/NFAC/S/250/2023-24/1063225224(1) dated 23.03.2024 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 25.01.2019 by the Assessing Officer, ITO, Ward-18(3), Delhi (hereinafter referred to as 'Id. AO').
2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in deleting the addition made in the sum of Rs 2,00,00,000/- under section 41(1) of the Act in the facts and circumstances of the case.
3. None appeared on behalf of the assessee despite issuance of notice. Hence we proceed to dispose of the appeal on hearing the Learned DR and based on materials available on record. The return of income for the Assessment year 16-17 was filed by the assessee on 17-10-2016 declaring loss of Rs. 13,500/-. During the course of assessment proceedings, the entire details that were reflected in the

audited financial statements were duly furnished before the learned AO from time to time. The assessee had reflected a sum of Rs. 2 crores under long-term liabilities as share application money received from others in its Balance Sheet. The learned AO observed that assessee had neither issued shares till date nor returned back the said share application money to its subscribers. Accordingly, he without issuing any show cause notice to that effect and without passing any speaking order proceeded to treat the said liability as cessation of liability and made an addition to the extent of Rs 2 crores.

4. We find that the assessee had received share application money from the following parties:-

M/s Anjani Technoplast Limited (PAN -AACCA3104G) – Rs 1,35,00,000/-

M/s Surya Construction ( PAN -AAYFS9156R) - Rs 65,00,000/-

These share application monies were received by the assessee during the financial year 2010-11 and since the shares could not be issued by the assessee company within the prescribed date, the same had been shown under the head long-term liabilities in its balance sheet. The Learned CITA had taken due cognizance of the fact that there was no receipt of share application money during the year and hence no addition could be made during the year under consideration.

5. We find that assessee had duly acknowledged the liability towards share application money to be payable to the aforesaid share subscribers by reflecting it as a liability in its balance sheet. Hence, the liability had not ceased to exist as far as the assessee company is concerned and the debt payable by the assessee has been duly acknowledged by it by reflecting the same as liability in the balance sheet. Hence, this cannot be a case of cessation of liability at all. On these grounds, the Learned CITA deleted the addition. We find that in order to treat the said liability as cessation of liability, the only provision available to the revenue is to invoke the provisions of Section 41(1) of the Act. But before invoking Section 41(1) of the Act, it is the duty of the Learned AO to bring on record as to whether any deduction per se was claimed by the assessee in earlier years while creating such

liability. In the instant case, it is not in dispute that assessee had merely received share application money from the aforesaid two share subscribers during the financial year 2010-11 and no deduction has been claimed there on in the return in earlier years and no deduction was granted by the Learned AO in that regard in earlier years. Hence, the provisions of Section 41(1) of the Act per se could not be made applicable to the facts of the instant case. Further, the share application money has not been received by the assessee company during the year under consideration. Hence, the provisions of Section 68 of the Act also could not be applied in the instant case. Accordingly, there is absolutely no case for the revenue to make this addition of Rs 2 crores which has been rightly deleted by the Learned CITA in this order on which we do not find any infirmity. Accordingly, the grounds raised by the revenue are dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 10/12/2024.

**-Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

**-Sd/-**  
**(M BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 10/12/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi