

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.5658/Del/2015
Assessment Year: 2011-12

Income- Tax Officer, Ward-2(4), New Delhi	Vs.	M/s. Ansal Phalak Infrastructure Pvt. Ltd., 206, B Wing, 2 nd Floor, Naurang House, 21, Kasturba Gandi Marg, New Delhi
PAN :AAF6583P		
(Appellant)		(Respondent)

With

ITA Nos.216 & 217/Del/2020
Assessment Years: 2014-15 & 2015-16

ACIT, Circle-2(2), New Delhi	Vs.	M/s. Ansal Phalak Infrastructure Pvt. Ltd., 115, Ansal Bhawan, Naurang House, 16, Kasturba Gandhi Marg, C.P., New Delhi
PAN: AAF6583P		
(Appellant)		(Respondent)

Assessee by	Sh. Ravi Sharma, Adv.
Department by	Ms. Jaya Choudhary, CIT(DR) Sh. B.S. Anand, Sr. DR

Date of hearing	25.11.2024
Date of pronouncement	18.12.2024

ORDER

PER SATBEER SINGH GODARA, JM

These Revenue's three appeals ITA No.5658/Del/2015, 216/Del/2020 and 217/Del/2020 for assessment years 2011-12, 2014-15 and 2015-16, arise against the CIT(A)-22, New Delhi's twin orders dated 28.07.2015 and dated 18.10.2019 passed in case no. 207/15-16; 255/19-20/CIT(A)-22, and 256/19-20/CIT(A)-22, respectively, involving proceedings under section 143(3) and 144/142(1) of the Income Tax Act, 1961 (in short "the Act"); respectively.

2. Heard both the parties at length. Case files perused.
3. Coming to the Revenue's "lead" appeal ITA No. 5658/Del/2015 for assessment year 2011-12 raising its sole and substantive grievance that the CIT(A) has erred in law and on facts in reversing the Assessing Officer's action making section 68 addition of Rs.55 crores, we note that the impugned lower appellate discussion to this effect reads as under:

"4.6 I have considered the observation of the Assessing Officer made in the assessment order, submission filed by the appellant, remand report submitted by the AO on the additional evidence submitted by the appellant and the enquiries conducted by the Department through FT&TR, CBDT

with Cyprus and Mauritius Income Tax Authorities. As discussed above, the appellant company was incorporated on 13.09.2010 in the name of Phalak Infrastructure Ltd. with a share capital of Rs.1,00,000/- by Ansal Group for carrying out real estate development. Subsequently, the appellant company entered into an agreement namely investment-cum-collaboration agreement on 24.02.2011 with M/s New Dimension Holdings Ltd., Mauritius and Velford Ventures Ltd., Cyprus. As a result of this agreement, the name of the company was changed to Ansal Phalak Infrastructure Pvt. Ltd. w.e.f. 03.05.2011. The Article of Association and Memorandum of Association was also revised. On execution of the agreement, both the foreign investors invested money in the appellant company as per the agreement. As per agreement M/s New Dimension Holdings Ltd. purchased 25.9% shares of the appellant company for Rs.5,70,50,000/-. Similarly, M/s Velford Ventures Ltd., Cyprus purchased 14 shares of the appellant company for Rs.2,03,000/-, M/s Velford Ventures Ltd. also invested Rs.49,90,47,000/- in compulsorily convertible debentures of the appellant company. Shares and CCDs were issued to these companies as per the agreement. During the course of the assessment proceedings, AO doubted the creditworthiness of the parties, capacity of the parties and genuineness of the transactions. In the assessment proceedings, the appellant submitted copy of the investment-cum-collaboration agreement with the foreign investors, copy of the certificate issued by the Commissioner of Income Tax, Ministry of Finance, Inland Revenue Department, Republic of Cyprus, certifying that Velford Ventures Ltd, was a company incorporated and registered in Cyprus with tax identification number 12228367B and has its Registered Office at Griva, Digeni 115, Trident Centre 3101, Limassol, Cyprus. It was also clarified by the appellant that M/s Velford Ventures Ltd. was registered in Cyprus on 06.05.2008 and as per the double taxation convention with Cyprus all the global income of M/s Velford Ventures Ltd. is taxable in Cyprus. The copy of the certificate issued by the Cyprus authorities was filed before the AO and the same is placed at page 168 of the paper book filed before me.

Similarly, the appellant filed tax residency certificate issued by the Director General, Mauritius Revenue Authority for M/s New Dimension Holdings Ltd. having Tax Account No.27069682; 608 St. James Court, St. Denis Street, Port Louis, Mauritius. This company was incorporated in Mauritius on 17.02.2011. As per the certificates issued by Director General, Mauritius Revenue Authority, this company is governed by the convention between the Government of Mauritius and Government of India for avoidance of double taxation. The appellant has also filed before AO copies of the prescribed certificate of foreign inward remittance issued by Hongkong and Shanghai Banking Corporation Ltd. setting out all details of remittances, purpose of remittances, description of the remittances like equity participation as well as issue of compulsorily convertible debentures. These certificates are filed at page 170-171 of the paper book

filed before me where the purpose of the remittance is clearly mentioned. The remittances were deposited in the Punjab National Bank wherein the account of the appellant company was maintained. The appellant company also filed audited financial statements for the year ended 31 December, 2010 of M/s Velford Ventures Ltd. and M/s New Dimension Holdings Ltd. before the Assessing Officer. Copies of these audited financial statements have been filed in the paper book at page 172A-220 of the paper book filed before me. The appellant also filed the copy of the master circular issued by Reserve Bank of India with reference to investment by the foreign companies before the AO. A copy of the same is placed in the paper book filed before me from page 221-312. It is submitted by the appellant that the investment- cum-collaboration agreement alongwith the tax resident certificates issued by tax authorities of Cyprus and Mauritius, foreign inward remittance certificates issued by HSBC Bank with all the details, audited financial statements for the period ending 31.12.2012 of the foreign investor companies and master circular issued by RBI clearly establish the purpose of investment, identity of the investor, creditworthiness of the investor companies and genuineness of the transactions with the appellant company. The appellant further stated that the investment by the foreign companies has been made in terms of master circular issued by the RBI. Details of terms and conditions are mentioned at sl. No. 20 page 48 of the circular. In this circular it is mentioned that 100% foreign investment is allowed through automatic route for development of township, housing, built of infrastructure and construction of development projects subject to the condition that minimum 10 million dollar for wholly own subsidiaries and 5 million dollars for joint ventures subject to the condition that fund would have to be brought within 6 months from the commencement of the business of the company. In this case company was incorporated on 10.09.2010 and investment-cum-collaboration agreement was signed on 24.02.2011 and foreign remittance was received from 08.03.2011 to 14.03.2011 from both the investors. These facts clearly establish that investment was received through legitimate means as per the guidelines issued by the RBI and as per the extent rules prescribed by the Government of India.

It may also be mentioned here that during the course of the assessment proceedings, the appellant has filed financial statements of M/s Velford Ventures Ltd. and M/s New Dimension Holdings Ltd. wherein the investment made by these entities in the appellant company was clearly reflected. The copies of the balance sheets, financial statements are placed from page 172A to 220 of the paper book. In the notes to the financial statements of Velford Ventures Ltd. which is at page 187 of the paper book, it is clearly mentioned that the said company has entered into agreement on 22.02.2011 with the appellant and it has invested 19,490.470 compulsorily convertible debentures of 100 each by the Indian company which invest in the real estate developments. It is also mentioned that investor company has invested 14 class A equity shares issued by the

appellant company. Similarly, the financial statement of New Dimension Holdings Ltd. was filed before the AO and in the financial statements filed before the AO and placed at the paper book filed before me, it is clearly mentioned at page 213 that said company has invested Rs.5,07,50,000/- in the equity shares of the appellant company and owned 25.90% shares of the appellant company. These details filed by the appellant before the Assessing Officer clearly prove the creditworthiness, capacity of the investor and genuineness of the transactions with the appellant company. In the assessment order the AO has relied upon certain observations made by the auditors of the investor companies which are discussed at page 17 and 18 of the assessment order by the AO. These observations were related to certain compliance issues of IAS 27 and 28 applicable in the International Accounting Standards, however, it is seen that these observations did not cast any aspersions on the genuineness and creditworthiness of the investor companies. Therefore, the reliance placed by the AO on those remarks was unwarranted and out of the context.

In the assessment order, the AO has cast aspersions on the financial standing of M/s Velford Ventures Ltd. and M/s New Dimension Holdings Ltd. that they do not have any business activity to generate such a huge amount of investment and the source of funds in these companies has not been explained by the investing companies either through Mauritius tax authorities under the exchange of information provisions. To clear the aspersions made by the AO, in the assessment order at page 20, the appellant during the course of the appellate proceedings filed financial statement of M/s Redfort India Real Estate Fund II LLC vide his submission dated 12.06.2015 before me and requested for admission of the additional evidence under Rule 46A of the I.T. Rules, 1962. The copy of financial statement and balance sheet was forwarded to the AO vide this office letter dated 15.06.2015 for examination and report of the AO. At the first instance, the Assessing Officer has objected for admission of new evidence under Rule 46A. In this context it is mentioned that the financial statement of the Redfort India Real Estate Fund II LLC is not additional evidence but it is a supporting evidence to prove that investment in New Dimension Holdings was made by M/s Redfort India Real Estate Fund II LLC. This financial statement was necessary to clear the aspersions casted by the AO in the assessment order that there is no fund basis of the investor companies. Therefore, the objection of the AO that financial statement and balance sheet of Redfort India Real Estate Fund II LLC should not be admitted as additional evidence is not considered and I admit the additional evidence filed by the appellant under Rule 46A as this financial statement is very relevant for disposal of this appeal.

The Assessing Officer vide his letter dated 06.07.2015 has submitted that M/s Redfort India Real Estate Fund was not having any business during the year ended December 2009 and December 2010 and the accounts of this company shows operational losses of US Dollar 1,15,625

and 5,25,066 US Dollar respectively. It is also mentioned by the AO that during the FY 2010-11, bank account of the Redfort India Real Estate was inactive. Therefore, the AO has cast aspersions on the balance sheet of Redfort India Real Estate Fund II LLC. The appellant vide his letter dated 27.07.2015 filed before me submitted that there is no evidence that Hermes Guardian Ltd. was holding 100% shares of Velford Ventures Ltd. The appellant before me has also submitted in the submission at para 9 dated 15.07.2015 that source of investment by Redfort Real Estate was share capital and bank borrowings. It is stated by the appellant that M/s Redfort Real Estate has invested through subsidiaries, associate companies to the extent of US Dollar \$103207366. The balance sheet of the Redfort is filed at page 312-340. On page 15 of the financial statement, it is mentioned that M/s New Dimension Holdings Ltd. a company incorporated in Mauritius is associate company of the Redfort India Real Estate Fund II LLC and Mis Redfort India Real Estate Fund II holds 46.2% equity shares as on December 31, 2011 in the said company. As per para 4.1 of the financial statement which is filed at page 331 of the paper book, it is mentioned that Redfort India Real Estate Fund II LLC holds 46.2% shares of the votes at shareholders meeting of New Dimension Holdings Ltd. M/s New Dimension Holdings Ltd. is an investor company which makes investment in real estate development companies in India and carries such investment at fair value. The investment at fair value is shown in US Dollars \$55257311. At para 15 of the financial statement of Redfort India Real Estate Fund II LLC, it is mentioned that M/s New Dimension Holdings Ltd. is an associate and M/s Ansal Phalak Infrastructure Ltd. the appellant company is a non investment affiliate of the Redfort India Real Estate Fund II LLC. This clearly proves that the funds in M/s New Dimension Holdings have come from M/s Redfort India Real Estate Fund II LLC which is holding company of the New Dimension Holdings Ltd. It may also be mentioned here that in the financial statement of New Dimension Holdings for the period 31.12.2012 at para 6 it is clearly mentioned that M/s Velford Ventures Ltd. is 100% subsidiary of M/s New Dimension Holdings Ltd. and also hold redeemable preferences of US Dollar 43117866 in the said company. All these facts establish the creditworthiness, capacity and genuineness of the transactions of the appellant company. The observations of the Assessing Officer on the balance sheet of Redfort and the holding company of New Dimension Holdings are unfounded and not related to the financial of the said company and nowhere doubted about the financial viability of the investor companies. Therefore, the same are rejected.

In the remand report, the AO has also mentioned that as per the RBI master circular investment through automatic route upto 100% is permissible in the real estate projects subject to certain conditions. One of the conditions is that the amount is to be brought within 6 months of the commencement of the business of the company having minimum capitalization of US Dollar 10 million on wholly owned subsidiaries and US

Dollar 5 million for joint ventures. He has further stated that till December 2010 M/s Redfort India Real Estate was not having any business activities till December 2010 and M/s New Dimension Holding and Velford Ventures Ltd. were not having capitalization within the limits prescribed by the RBI circular. The observations of the Assessing officer are not based on the correct appreciation of the facts of the circular issued by the RBI. The master circular of the RBI at page 48 mentions that for subsidiaries the minimum capital investment is 10 million dollars and for the joint ventures the minimum capitalization is 5 million dollars and such funds has to be brought within 6 months from the commencement of the business of the company. In this case the appellant company is the company in whose case the funds were invested by the foreign companies within 6 months from the commencement of business. In this case the business commenced on 24.02.2011 and the investment made by the foreign companies was more than 5 million dollars for construction of township and housing projects. The observation of the AO that Redfort India Real Estate Fund II LLC has not commenced business till December 2010 and the investor companies New Dimension Holdings Ltd. and Velford Ventures were not having capitalization within the limits specified by the RBI circular is out of the context. The commencement of the business has to be in the joint venture in which the funds were invested by the foreign companies and not in the case of investor companies. Therefore, the observations of the AO are irrelevant and not on the subject.

In view of the factual positions discussed above, the source of the investments made by M/s New Dimension Holdings Ltd., Mauritius and M/s Velford Ventures Ltd., Cyprus in the appellant company to the extent of Rs.55 crores has been established and capacity of the investors, genuineness of the transactions and identity of the investor has been proved. Hence, the addition made by the AO u/s 68 of the I.T. Act is deleted. In support of my above decisions, reliance is placed on following judicial pronouncements:

(a) ITO Vs. Neelkanth Finbuild Ltd. ITA No. 2821/Del/2009 dated 01.04.2015

It was held "Once the identity of Shareholders have been established it cannot be added in the hands of Company unless any adverse evidence is on record. Source of Source cannot be enquired from Assessee. Additional evidence other than information received from Investigation Wing must be brought on record by Assessing Officer"

ITAT Delhi, ITO v. N.C. Cables Ltd. ITA No. 4122/Del/2009 dated 22.10.2014 (b)

It was held "Arguments and evidences provided by Assessee to substantiate transaction are genuine. AO did not find any evidence and

had not given any basis. No detail of investigation done by Investigation Wing was brought on record"

*(c) ITAT Delhi, ITO v. Rakam Money Matters P. Ltd. ITA No.2821/Del/2011
dated 16.10.2014*

It was held All the documents in respect of shareholders were filed. AO had no evidence except the statement of third parties recorded by the Investigation"

(d) PCI Ltd. v. ACIT, Delhi ITA No. 5936, 5937/Del/2012 dated 05.05.2015

It was held "Action of the Assessing Officer in reopening the assessment by issuance of notice U/s 148 failing to connect the name of the assessee with the statements of so called entry providers is void".

(e) Modinager Rolls Ltd. v. Additional Commissioner of Income Tax, Ghaziabad ITA No.330, 331, 332 & 334/Del/2015 dated 29.05.2015

It was held Where objections were filed by the assessee on the issuance of notice U/s 143 of the IT Act and those were not decided by the AO till the completion of assessment, the assessment completed by AO was Void ab initio and deserve to be quashed and accordingly was quashed."

(f) High Court of Delhi, CIT v. Kamdhenu Steel and Alloys Ltd. reported at 19 taxmann.com 26 (2012) (Delhi)

It was held "Where assessee had given particulars of registration of investing/ applicant companies; confirmation from share applicants; bank account details, and had shown payment through account payee cheques etc., it could be said that the assessee had discharged its initial onus and just because some of creditors/share applicants could not be found at address given, it would not give revenue a right to invoke section 68 without any additional material to support such a move"

(g) ITAT Chandigarh, ACIT v. Kisco Castings Pvt. Ltd. reported at 34 taxmann.com 37 (Copy Enclosed) (Pages 132/ 144).

It was held Where Assessing Officer had failed to bring on record any relevant and credible material to neutralize documentary evidences filed by assessee, impugned addition was to be deleted"

(h) CIT Vs. Fair finvest itd. [2014] 44 taxmann.com 356 (Delhi) High Court of Delhi.

"Section 68 of the Income-tax Act, 1961-Cash credit - Assessment year 2002- 03-Where assessee had filed documents including certified copies issued by Registrar of Companies in relation to share application and affidavits of directors, Assessing Officer could not make addition on account of share application money solely on basis of investigation report [in favour of assessee]

Where assessee adduces evidence in support of share application monies, it is open to Assessing Officer to examine it and reject it on tenable grounds. In case he wishes to rely on report of investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between assessee and alleged hawala operators.

Where assessee had filed documents including certified copies issued by Registrar of Companies in relation to share application, affidavits of directors, Form 2 filed with Registrar of Companies by such applicants, confirmations by applicants for company's shares, certificates by auditors, etc., Assessing Officer was not justified in making addition under section 68 on account of share application money merely on general inference to be drawn from the reading of the investigation report. The least that Assessing Officer ought to have done was to enquire into matter by, if necessary, invoking his powers under section 131 summoning the share applicants or directors."

(1) Commissioner of Income-tax v. Expo Globe India Ltd. [2014] 51 taxmann.com 208 (Delhi) HIGH COURT OF DELHI

"Section 68 of the Income-tax Act, 1961-Cash credits (Share application money) - Assessment year 2000-01-Assessee received share application money during relevant assessment year - Assessing Officer held that assessee had not given satisfactory explanation and included entire amount under section 68 On appeal, assessee furnished income-tax returns, balance sheets, ROC particulars and bank account statements of shareholders Commissioner (Appeals) considering said materials held that share application money or source of share application money had been satisfactorily explained and deleted addition Tribunal confirmed order of Commissioner (Appeals) Whether entire issue being purely factual, no interference was called for with Tribunal's order - Held, yes [Para 7] [In favour of assessee]."

(1) Delhi High Court decision in CIT vs. Oasis Hospitalities (P) Limited and Vijaya Power Generators Limited vs. Director of Income-tax and others (2011) 333 ITR 119 (Del)

"In this case, it was held that where in support of share application money assessee produced PAN number, bank account, copies of income tax

returns of share applicants, primary onus of the assessee stood discharged and addition was not sustainable."

In view of the discussion made above and various judicial pronouncements cited above on the issue, it is held that appellant has received investment from foreign companies M/s Velford Ventures Ltd. and M/s New Dimension Holdings Ltd. by way of investment in the shares and also purchase of compulsorily convertible debentures. The identity, creditworthiness and genuineness of the transactions has been established from the details filed by the appellant and enquiries conducted by the Assessing officer with Mauritius and Cyprus tax authorities through FT&TR. Therefore, the addition made by the Assessing Officer of Rs. 55 crores received from above named two companies on the ground that identity, creditworthiness and genuineness of the transaction has not been proved is not sustainable and the same is deleted."

4. Learned CIT(DR) vehemently argues during the course of hearing that the Assessing Officer had rightly made the impugned addition as the assessee could not prove the genuineness/creditworthiness of the impugned share capital and unsecured loans, as the case may be, coming from the twin entities herein i.e. M/s. New Dimension Holdings Ltd. and M/s. Velford Ventures Ltd. She further quotes Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC), CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC) and PCIT Vs. NRA Iron & Steel Co. (2019) 412 ITR 161 (SC) to buttress the point that it was the assessee's bounden duty only to satisfy the foregoing twin clinching parameters so as to get out of the rigor of unexplained cash credits addition.

5. The assessee on the other hand has placed strong reliance on the CIT(A)'s foregoing detailed discussion deleting the impugned addition and prays for upholding the same.

6. We advert to the relevant basic facts. The assessee, admittedly, is a company which got incorporated on 13.09.2010 i.e. in the relevant previous year only. It is undisputedly engaged in real estate business. It had received share capital/premium from the foregoing twin entities involving varying sums along with unsecured loans i.e. 16% compulsorily convertible debentures. The assessee filed its return of income on 23.09.2011 declaring loss of Rs.2,03,804/-. It emerges from a perusal of the assessment order dated 31.03.2015 in para 2 that since these all the foregoing credit entries amounted to international transactions under section 92B of the Act; the Assessing Officer made a reference under section 92CA to the Transfer Pricing Officer (TPO) to ascertain arm's length price (ALP) thereof. The Revenue could hardly dispute that the said latter prescribed authority passed its order in assessee's favour that no interference was called for once the said international transactions had been carried out at arm's length only. This made the learned Assessing Officer thereafter to take up the scrutiny who

admittedly made the impugned addition in assessee's hands that the very transactions which had forming subject matter of reference to the "TPO" would now attract section 68 unexplained cash credits addition(s) herein on the ground that genuineness/creditworthiness thereon had not been proved at the assessee's behest.

7. The assessee preferred its lower appeal wherein the CIT(A) has reversed the assessment findings vide above extracted detailed discussions. We note in this factual backdrop that the Revenue's instant sole substantive ground hardly carries any merit as the assessee's impugned transaction had been duly verified even by the TPO hereinabove. This is indeed coupled with the fact as noticed from para 3.2 (page 15) of the assessment order that the Assessing Officer had made a reference to prescribed authority i.e. the Joint Secretary (FT & TR)-I & II, CBDT, New Delhi on 04.03.2014, wherein no adverse report came from the latter's side.

8. Learned counsel invites our attention to the Assessing Officer's remand report as well dated 06.07.2015 (page 24) in CIT(A)'s order that he could hardly rebut the corresponding additional evidence and chose to reiterate his assessment findings

only. It is in these peculiar facts that we are of the considered view that the assessee could not be held to have not discharged its onus of proving genuineness and creditworthiness of the share capital/share premium and unsecured loans (supra) coming from overseas entities. We further note that this Tribunal in ITA No. 1090 & 2569/Mum/2019 decided on 13.09.2019 has already rejected the Revenue's very stand involving no adverse report by the CBDT's prescribed authority, as follow:

"5. We have heard rival submissions and perused the materials available on record. The primary facts stated hereinabove together with various documentary evidences placed on record before the lower authorities remain undisputed and hence, the same are not reiterated for the sake of brevity. We find from the perusal of the aforesaid narrated facts supported with documentary evidences that M/s.Rabna Holdings Ltd., a Mauritius based entity, a group company of Hinduja group had invested in share capital of the assessee company. M/s.Rabna Holdings Ltd. had received loan from M/s. Amas Ltd., a company incorporated in Bahamas. This loan was utilised by M/s.Rabna Holdings Ltd. to make investment in share capital of the assessee company. Hence, the source of funds for the assessee company is established beyond doubt. The assessee is required to explain the nature and source of credit appearing in its books in the form of share capital and share premium in the light of provisions of Section 68 of the Act. The nature of credit is in the form of share capital and share premium. The source of credit is money received from M/s.Rabna Holdings Ltd., a Mauritius based entity. In the instant case, the assessee has also proved the source of source i.e., source of funds for M/s.Rabna Holdings Ltd. being loan received from M/s. Amas Ltd., Hence, the source of source is also proved in the instant case by the assessee. We find that the ld CITA had upheld the addition on the ground that the assessee had not proved the source for Amas Ltd i.e source of source of source, which is not required to be proved by the assessee company herein, as per law. It is very pertinent to note that all these documents were collected by FT & TR division of CBDT from Mauritius tax authorities under exchange of information in terms of Section 90 of the Act and relevant DTAA

provisions. It is not in dispute that FT & TR division had indeed submitted a report wherein all these documentary evidences were forwarded to the ld AO. The identity of the share subscriber is proved by the assessee as the amount received from M/s.Rabna Holdings Ltd. which is also confirmed by FT & TR division in their report and also by Mauritius tax authorities. From the financials of M/s.Rabna Holdings Ltd. as on 31/03/2014, as confirmed by Mauritius tax authorities and FT & TR division of CBDT, the investment made by M/s.Rabna Holdings Ltd. in the shares of assessee company are duly reflected in their balance sheet. The monies had been received by the assessee company from M/s.Rabna Holdings Ltd. through normal banking channels under FDI route after obtaining proper approvals from FIPB & RBI. The relevant statutory forms in this regard have been duly filed by the assessee with FIPB and RBI, on which there is absolutely no dispute. Hence, it could be safely concluded that the receipt of monies in the form of share capital and share premium by the assessee from M/s.Rabna Holdings Ltd., Mauritius based entity had got the blessings of FIPB and RBI and more so the monies were received through normal banking channels. This proves the genuineness of the transactions carried out by the assessee. It is not in dispute that M/s.Rabna Holdings Ltd. had borrowed loan from M/s. Amas Ltd., a company incorporated in Bahamas, which fund has been used for making investments in shares in assessee company. This fact is duly confirmed by Mauritius tax authorities and FT & TR division of CBDT on which fact there is no dispute. This proves the creditworthiness of the share subscriber i.e., M/s.Rabna Holdings Ltd. Hence, it could be safely concluded that assessee had duly established the three necessary ingredients of Section 68 of the Act i.e., identity of the share subscriber, genuineness of the transaction and creditworthiness of the share subscriber.

5.1. We are unable to persuade ourselves to accept to the argument of the ld. DR that assessee had not furnished the copy of income tax return for the relevant year and the intimation, if any, issued by Mauritian tax authorities to M/s.Rabna Holdings Ltd. for the relevant year and hence, the source of funds and creditworthiness of M/s.Rabna Holdings Ltd. cannot be accepted. In this regard, we hold that merely because the investor had not filed its income tax returns, it does not make the entire transactions bogus or the said investor non-existent. If an investor company in Mauritius had not filed its income tax return, then it is for the Mauritian tax authorities to take necessary action against the said company and assessee cannot be faulted for the same. With regard to another observation made by the ld. CIT(A) that the letters filed in page 65 & 66 of the paper book by M/s.Rabna Holdings Ltd. and M/s. Amas Ltd., duly confirming the entire loan transactions and investment in share transactions had some deficiencies in the form of not submitting the same in letterhead,

not having the address, not mentioning the name of the person who had signed the said letter etc., we find that contents in the said letter have been otherwise duly confirmed by both Mauritian tax authorities as well as by FT & TR division of CBDT. It is not in dispute that Mauritian tax authorities had indeed confirmed the fact that M/s. Amas Ltd., had given loan to M/s.Rabna Holdings Ltd. and M/s.Rabna Holdings Ltd. had used the same for making investment in shares in assessee company. The same fact is also confirmed by FT & TR division of CBDT. When these facts are staring on us, we are not inclined to accept to the finding of the ld. CIT(A) with M/s.Rabna Holdings Ltd. is only a mere pass through entity and M/s. Amas Ltd., being incorporated in Bahamas is found to be a tainted entity. All these observations of the ld. CIT(A) are purely without any basis and not supported by any material evidences brought on record. This is a classic case of the ld. CIT(A) disbelieving the information obtained by CBDT, FT & TR division from Mauritian tax authorities under exchange of information in terms of Section 90 of the Act and relevant DTAA Article. The ld. AR placed on record various case laws in support of its contentions. Since this is purely a factual matter, we do not find it necessary to look into those case laws as in our considered opinion, assessee had duly established three necessary ingredients of Section 68 of the Act of facts and on merits duly supported by all documentary evidences. In view of the aforesaid observations, we direct the ld. AO to delete the addition made in the sum of Rs.155 Crores u/s.68 of the Act. Accordingly, the ground Nos.1 to 4 raised by assessee are allowed.”

9. We are accordingly of the considered view that the learned CIT(A) has rightly reversed the assessment findings making section 68 unexplained cash credits addition going by the assessee's overwhelming supportive evidence discharging its onus of genuineness/creditworthiness and reject his Revenue's instant sole substantive ground as well as its "lead" appeal ITA No.5658/Del/2015 in very terms.

10. The Revenue's second appeal ITA No.216/Del/2020 for assessment year 2014-15 raises the following substantive grounds:

1. *The Ld. CIT(A) has erred in deleting the addition made by AO on the ground of disallowance of interest paid on debentures of Rs.1,56,13,962/- to M/s. Velford Ventures Ltd. without considering the fact that the CCB received from M/s. Velford Ventures Ltd. is still disputed before Hon'ble ITAT in A.Y. 2011-12.*
2. *The Ld. CIT(A) has erred in deleting the addition made by AO on the ground of disallowance of interest paid on debentures of Rs.71,12,469/- to M/s. Grainwell Ventures Ltd. without considering the fact that the issue based on which the CIT(A) has deleted the disallowance is disputed before Hon'ble ITAT.*
3. *The appellant craves leave, modify, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

11. Suffice to say, the Revenue's above former substantive ground seeks to revive interest paid disallowance on debentures amounting to Rs.1,56,13,962/- wherein it's stand is that the corresponding loan amount(s) had been disallowed in the first and foremost assessment year herein assessment year 2011-12. That being the case, we refer to our preceding detailed discussion in the "lead" assessment year 2011-12 to reject the Revenue's instant former substantive ground in very terms.

12. So far as the Revenue's second substantive ground herein seeking to revive interest disallowance on debentures of amounting to Rs.71,12,469/- paid to M/s. Grainwell Ventures Ltd. is concerned, we note that the CIT(A)'s lower appellate discussion to this effect reads as under:

“6. Ground No. 3: pertains to disallowance of interest of Rs.71, 12,469/- to M/s Grainwell Ventures Ltd, Cyprus for the reason that the amount received from M/s Grainwell Ventures Ltd. towards non-convertible debentures was not genuine. The reason for disallowance in the assessment order is as follows:

“It is pertinent to mention that M/a. Gruiswell Ventures Ltd is also based in Cyprus and situated at the same address as Mis. Velford Ventures Limited, Griva, Digeni Avenue, 115, Drident Centre, P.C. 3101, Lúnasoll, Cyprus Additionally, the ultimate holding company. directors and registered office of both of these companies are the same. In this set of circumstances, the AD is constrained to hold that the unsecured loan from M/s Grainwell Ventures Ltd cannot be treated on explained”

6.1 In appeal, the Ld. AR submitted that during the A.Y. 2013-14, the Appellant raised loan of Rs.65 Cr. by way of secured non-convertible debentures (NCDs) issued to M/s Grainwell Ventures Ltd. The funds raised through NCDs are reflected in the balance sheet under the head long term borrowings. The NCDs subscribed by M/s. Grainwell Ventures Ltd in A.Y. 2013-14 have been accepted, inasmuch as, no addition in respect of funds received from M/s. Grainwell Ventures Ltd was made in A.Y. 2013-14. The Ld. AR submitted the assessment order u/s 143(3) of the Act dated 29.12.2016 for A.Y. 2013-14. It is submitted that a sum of Rs. 14,20,52,603/- was provided as interest on 20% NCDs to M/s. Grainwell Ventures Ltd., however, only a sum of Rs.71,12,469/- was claimed on actual payment basis. It is further submitted that the CCDs subscribed by M/s. Grainwell Ventures Ltd were accepted as genuine, still the A.O. has disallowed the interest of Rs. 71,12,469/-.

6.2 I have carefully examined the finding of the AO, submission of the Ld. AR and the documents placed before me. I have perused the assessment order by the AO for A.Y. 2013-14 dated 29.12.2016 and I find that the AO has not drawn any adverse inference about loan of Rs.65 Cr. by way of secured non-convertible debentures (NCDs) issued to M/s Grainwell Ventures Ltd. On considering the issue in totality, I find the genesis of disallowance of interest in the case of M/s Grainwell Ventures Ltd is emanating from the addition in the case of Velford Ventures Ltd and disallowance of interest for Velford Ventures Ltd is already deleted in above para. Therefore, following the same reason and since, no adverse inference has been drawn regarding money received from M/s Grainwell Ventures Ltd. by NCD, therefore, disallowance of interest paid on these NCD is deleted. These grounds of appeal are decided in favour of the appellant.”

13. The Revenue vehemently argues during the course of hearing that the corresponding compulsorily convertible

debentures herein itself could not be held as genuine; and therefore, the impugned interest expenditure had been rightly disallowed during scrutiny by the Assessing Officer. We note in this factual backdrop that there is no merit in the Revenue's instant argument once the learned Assessing Officer had himself accepted the very transaction in his section 143(3) assessment dated 29.12.2016 relating to assessment year 2013-14. Rejected accordingly. The Revenue's instant second appeal ITA No. 216/Del/2020 fails.

14. We are now left with the Revenue's last appeal ITA No.217/Del/2020 for assessment year 2015-16 raising the following substantive grounds:

- 1 The Ld. CIT(A) has erred in deleting the addition made by AO on the ground of disallowance of interest paid on debentures of Rs. 1,32,74,710/- to M/s Velford Ventures Ltd without considering the fact that the CCD received from M/s Velford Ventures Ltd is still disputed before Hon'ble ITAT in A.Y. 2011-12.*
- 2. The Ld. CIT(A) has erred in deleting the addition made by AO on the ground of disallowance of interest paid on debenture of Rs. 68,09,119/- to M/s Grainwell Ventures Ltd without considering the fact that the issue based on which the CIT(A) has deleted the disallowance is disputed before Hon'ble ITAT.*
- 3. The Ld CIT(A) has erred in deleting addition of Rs.1,21,340/- made by the AO on account of Employee's contribution to PF deposited beyond the due date u/s 2(24)(x) r.w. section 36(1)(va) of the IT Act, 1961.*
- 4. The appellant craves leave, modify, add or forgo any ground(s) of appeal at any time before or during the hearing of this appeal*

15. Learned Senior DR could hardly rebut the clinching fact that the Revenue's instant former twin substantive grounds seeking to

disallow interest payments made to M/s. Velford Ventures Ltd. and M/s. Grainwell Ventures Ltd., are identical to those decided against it in the preceding detailed discussion. We thus adopt judicial consistency in absence of any distinction pinpointed at the Revenue's behest on facts and law, as the case may be.

16. Mr. Anand at this stage submits that the Revenue's third substantive ground herein seeking to revive PF/ESI disallowance of Rs.1,21,340/- is covered against the assessee as per the hon'ble apex court's landmark decision in Checkmate Services Pvt. Ltd. Vs. CIT [2022] 448 ITR 518 (SC). Learned counsel is equally fair in not disputing all these clinching legal developments. We thus accept the Revenue's instant third substant ground in very terms. Necessary computation shall follow as per law.

17. To sum up, the Revenue's instant former twin appeals ITA No. 5658/Del/2015 and 216/Del/2020 are dismissed and its third appeal ITA No. 217/Del/2020 is partly allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 18th December, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 18th December, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New De