

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
and
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1471/Del/2024
(Assessment Year : 2016-17)**

**ITA No.1472/Del/2024
(Assessment Year : 2017-18)**

Ekalavya Gift Gaileries Private Limited,
H-35, 1st Floor, Jangpura Extension,
New Delhi – 110 014.

vs.

ITO, Ward 1 (3),
Faridabad.

(PAN : AADCE4842N)

ASSESSEE BY : Shri Rajiv Saxena, Advocate
Shri Shyam Sundar, Advocate
REVENUE BY : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 19.11.2024
Date of Order : 12.01.2025

ORDER

PER S. RIFAUR RAHMAN, AM :

1. These appeals have been filed by the assessee against the order of Id . Commissioner of Income-tax (Appeals)/National Faceless Appeal centre (NFAC), Delhi (hereinafter referred to as 'Id. CIT (A)') dated 15.03.2024 for the Assessment Years 2016-17 & 2017-18.
2. Since the issues are common and the appeals are connected, therefore, the same

are heard together and being disposed off by this common order. First we take up ITA No.1471/Del/2024 for AY 2016-17 as lead case.

3. Brief facts of the case are, the return of income was processed under section 143 (1) of the Income-tax Act, 1961 (for short 'the Act') and thereafter the case was selected for limited scrutiny under CASS to verify whether the funds received in the form of share premium are from disclosed sources and have been correctly offered for tax. During the course of assessment proceedings various notices u/s 143(2) and 142(1) were issued. In response, ld. AR of the assessee submitted relevant documents, such as, certificate of incorporation, MoA/AoA, auditor's report along with Balance Sheet and Profit & Loss account, valuation report of shares, bank statement and bank ledger accounts. He further submitted confirmations from the investor companies, share application form and certificate of incorporation, MoA/AoA, auditor's report along with Balance Sheet and Profit & Loss account of the investor companies. Further Assessing Officer issued notice u/s 133(6) of the Act to investor companies confirming the investment made in the assessee company. In response, most of the investor companies confirmed the investment made in the assessee company and filed relevant documents before the Assessing Officer. The Assessing Officer rejected the same and proceeded to make the addition of the entire share application received by the assessee.

4. Aggrieved assessee preferred an appeal before the ld. CIT (A) and ld. CIT (A) after considering the submissions of the assessee sustained the addition made by the Assessing Officer for the reason that assessee failed to produce the investors before the Assessing Officer.
5. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

“1. That the Ld. CIT (A) NFAC has grossly erred in law as well as on facts in sustaining the addition of Rs.99,00,000/- made by Ld. AO u/s 68 of the IT Act, 1961 on account of share capital received from the shareholders whose nature and source have been explained and details have been furnished by the appellant before the Ld.AO, thereby, discharging the burden u/s 68 of the Act

2. That the Ld. CIT(A). NFAC has grossly erred in law as well as on facts in not considering the fact that share capital and share premium amounting to Rs.18,00,000/- was received in the previous years and therefore the same could not be added for the assessment year in concern.

3. That the order passed by Ld. CIT (A)/NFAC is bad in law as the same has been passed without appreciating that:

- a. The investor companies are separate income-tax assessee*
- b. The explanation and documents sought have duly been furnished which have not been controverted and therefore cannot be rejected arbitrarily.*
- c. No anomaly has been found in the books of the assessee.*

4. That Ld. CIT(A)/NFAC has erred in law as well as on facts in confirming the order of Ld.AO without appreciating that such

addition made without rejection of books of accounts u/s 145 of the IT Act, 1961 is bad in law.

5. *That Ld. CIT (A)/NFAC erred in law as well as on facts in non-admission of additional evidence under Rule 46A merely stating that same has been filed before AO.*

6. *That the Ld. CIT (A)/NFAC has grossly erred in law as well as on facts in not appreciating the fact that valuation or shares was made in accordance with the Rule 11UA(2)(b) of Income Tax Rules, 1962 i.e. Discounted Cash Flow Method, which is one or the prescribed method for valuation of shares.*

The above grounds of appeals are independent of and without prejudice to each other. “

6. At the time of hearing, ld. AR submitted that during the course of assessment proceeding for AY 2016-17, Ld. AO at Page 2 Para 1 observed that No ITR, Balance sheet, PAN, address and bank statement has been filed in the case of M/s Nu Ruchi Barter Pvt. Ltd. Against this observation, ld. AR submitted, it is necessary to state that all the requisite documents were filed/uploaded before Ld. AO on the E-filing portal during the course of assessment proceeding itself. However, the documents filed were not appreciated by the Ld. AO and therefore assessee was left with no other option except to re-file the evidences under Rule 46A of the Income Tax Rules. Subsequently during the course of appellate proceeding, Ld. CIT(A) at Page 16, Para 5.1 of the Order appreciated the documents filed before the Ld. AO and observed that “5.1. *During the course of*

appellate proceedings, the appellant had requested for admission of additional evidence under rule 46A. Since it is observed that the evidences submitted are the same as submitted at the stage of assessment proceedings, the request for additional evidence is not accepted.”.

7. He further submitted that for AY 2017-18, AO at Para 5 stated that assessee company has not even provided the complete address, PAN, ITR, bank account statements of M/s Acquatic Exim Pvt. Ltd. and confirmation of account from the said investor to establish the identity and creditworthiness of the investor and the genuineness of transaction. Against this, he submitted, it is necessary to state that during the course of assessment proceeding few documents could not be uploaded properly on the E filing portal due to technical glitches and therefore to avoid any controversy the additional evidences were filed before the Ld. CIT(A) and the same were admitted as observed by Ld. CIT(A) at Page 5.1 of the order. He further submitted that the brief summary/chart showing common issue involved in both the abovementioned appeals of assessee as under :-

S.No.	Particulars	For AY 2016-17	For AY 2017-18
1.	Addition made by the Ld.AO u/s 68 of the Acton account of share capital invested by investor companies and which has been subsequently upheld by the Ld. CIT(A), NFAC.	Rs. 99,00,000/-	Rs. 45,00,000/-

2.	Details of Investment made by the investor companies in preceding years.	Total Rs. 18 Lacs (Rs. 9 Lacs by M/s Cee Aar Décor on 25.07.2014, Rs. 4.5 Lacs by M/s Rishikesh Buildcon on 25.07.2014 and Rs. 4.5 Lacs by M/s RSM Construction on 24.07.2014)	N/A
3.	Details of Investment made by the investor companies in the year in concern.	M/s Herculese Builders (Coimbatore) Pvt. Ltd. (Rs. 45 Lacs on 13.10.2015) M/s Nu Ruchi Barter Pvt. Ltd. (Rs. 36 Lacs in March 2016)	M/s Aquatic Exim Pvt. Ltd. (Rs. 30 Lacs on 15.10.2016 and Rs. 15 Lacs on 03.11.2016)
4.	Information sought by the Ld. AO u/s 133(6).	133(6) Notice was complied by Cee Aar Décor Pvt. Ltd, Rishikesh Buildcon Pvt. Ltd., RSM Construction Pvt. Ltd. and could not be complied by Herculese Builder Pvt. Ltd. Further no information was sought from Nu Ruchi Barter Pvt. Ltd.	No information was sought u/s 133(6) of the Act.

8. It is submitted that the Ld. CIT(A), NFAC has sustained the addition u/s 68 of the Act while holding that though the assessee company has produced the requisite documents like copies of ITR's, PAN, Audited Reports, Bank Statements and other requisite documents in respect of the shareholders but failed to produce the investors before the assessing officer. It is submitted that once the assessee furnishes the documents to prove identity, creditworthiness and genuineness of the transaction the same cannot be denied in absence of any material contrary brought by the Ld.AO or by Ld. CIT(A). It may be appreciated that after perusing the documents placed on record in the Paperbook, there was nothing on the part of the assessee which was to be fulfilled.
9. He further submitted that it is necessary to note that the assessee company has furnished all the relevant documents before the lower authorities along with the valuation certificate as per the Rule 11UA(2) of the Income Tax Rules, 1962 and thus, the ingredients required u/s 68 of the Act i.e., identity, creditworthiness and genuineness of the transactions were fulfilled. It is also necessary to state that assessee has also filed the documents as additional evidences along with the application for admission of additional evidences before the Ld. CIT(A). Against the evidences filed before the Ld. CIT(A) for AY 2016-17 he himself at Para 5.1, Page 16 of the order observed that the evidences submitted are the same as

submitted at the stage of assessment proceedings, and thus the request for additional evidences was not accepted. Further for AY 2017-18 Ld. CIT(A) appreciated the documents filed as stated at Para 5.2.1 of the order but still dismissed the appeal of assessee for the reason that assessee has failed to produce the director of investor company during the course of assessment proceeding and merely on doubts dismissed the appeal of assessee.

10. He further submitted that from the perusal of the table placed above, it is relevant to note that for AY 2016-17 total of Rs. 18 Lacs of the share application money and share premium was received by the assessee company in preceding years. (The same could be corroborated from the bank statement placed in the PB along with various documents). However, the shares were allotted by the assessee company in the relevant assessment year. Hence, the investors from whom the share application money was received in preceding year, but to whom the shares were allotted in the current assessment year, their investment could not be added in the income of the assessee in the current AY. However, such amount was also upheld by the Ld. CIT(A), NFAC for the concerned assessment year. In this connection various judicial pronouncements are relied upon, which are reproduced below :-

- A. In case of Naveen Aggarwal, New Delhi vs. Department of Income Tax ITA 2928/Del/2011 in Delhi ITAT it was held that “addition could not have been made

u/s 68 of those amounts which appear as opening balances on 1.4.2006 as in all cases, the bank accounts have been produced to show that the amount have been received by cheque. And the amounts have been confirmed by the parties concerned and no addition can be made u/s. 68 in cases where the closing credit balances pertain to opening balance only".

- B. In case of CIT vs. Vardhman Overseas Ltd. ITA 774/2009 the Hon'ble Delhi High Court has confirmed the ITAT decision to the effect that "addition u/s 68 cannot be made when there are no fresh cash credits received during the year from sundry creditors and section 41(1) and section 28(iv) cannot be invoked to subject to tax the outstanding balances of sundry creditors". It was observed:

"It was contended by the assessee that there was no fresh credit during the relevant accounting year ended 31.3.2002 in any of the accounts of the sundry creditors, and that the balances as on the last day of the accounting year represented opening balances only. It -was, therefore, pleaded that the provisions of Section 68 cannot be invoked to add the balances in the accounts of the sundry creditors. As regards the applicability of the Section 41(1), it was contended before the Tribunal that no addition can be made under that section unless it is shown that the liability had ceased to exist. The assessee relied upon the judgment of the Supreme Court in the case of CIT v. Sugauli Sugar Works (P) Ltd. (1999), 236 TR 518 and contended that the question whether the liability ceased to exist or not was not a matter to be decided by considering the assessee's conduct alone, but was a matter to be decided only if the creditor was also before the concerned authority and that in the absence of the creditor it is not possible for the concerned authority to come to the conclusion that the debt was barred by limitation and had become unenforceable. It was further pointed out on behalf of the assessee that the aforesaid view was reiterated by the Supreme Court in the case of Chief Commissioner of Income Tax v. Kesaria Tea Co. Ltd. (2002) 254 ITR-434. It was pointed out that in this judgment the Supreme Court had considered its earlier decision in CIT v. T.V.Sundaram (Iyengar & Sons Ltd. (1996) 222 ITR 344 and distinguished the same on the ground that the factual matrix and the provision of law considered therein were entirely different. A few other authorities were also cited before the Tribunal. The tribunal after taking note of the rival contentions, held that the applicability of section 68 was ruled out since no fresh amounts were credited in the

accounts of the creditors under consideration during the relevant accounting year”.

- C. In the case of M/s Sooraj Leathers vs. Income Tax Officer, ITAT Chennai bearing ITA No. 305/Mds/2016 held that the “consent/acceptance given by the assessee could not give jurisdiction and a right to the assessing authority to make an addition. The taxing authority can act only if there is power under the statute to do so. It further held that if the liabilities are old representing opening balances only, section 68 cannot be applied”.
11. He further submitted that in the paper book filed before this Bench, the assessee has furnished all the relevant documents which were furnished before the lower authorities though for some of the investors the investment was received in the preceding assessment year for which the addition cannot be made in assessment year in concern. Further as regards to the investment made by the investors during the present assessment year is concerned, it is necessary to explain for each investor and the relevant documents filed before the lower authorities. He submitted that a list of documents which are placed in the Paper Book in order to prove the genuineness of the transaction, identity & creditworthiness of the investor are listed herein below in a tabular format :-

<i>S.No</i>	<i>Particulars</i>
<i>1.</i>	<i>Copy of Certificate of Incorporation, along with MOA & AOA</i>
<i>2.</i>	<i>Copy Auditor’s report, Balance Sheet and trading and profit & loss account for the relevant AY along with notes to financial statement</i>

3.	<i>Copy of acknowledgement of return of income along with computation of income tax for the year in concern</i>
4.	<i>Copy of share application form.</i>
5.	<i>Copy of confirmation of accounts.</i>
6.	<i>Copy of bank account statement.</i>
7.	<i>Copy of valuation report as per rule 11UA</i>

12. It is submitted that the nature and source of credit in the books of the assessee company have been duly explained by the assessee company. The credit is in the form of receipt of share capital and share premium from the applicants. The nature of receipt towards share capital is well established from the entries passed in the respective balance sheet of the investor companies as share capital and investments. Hence, the nature of receipt is proved by the assessee beyond doubt. The investors have furnished the bank statements through which money towards subscription of the share capital in the assessee company and Ld.AO is wrong to hold that these are not having any creditworthiness. All the companies are registered companies filing their ITR regularly, with running income and business activities. The relevant documents are being filed for your kind perusal in the PB.
13. He further submitted that in respect of source of credit, the assessee has to prove the three necessary ingredients i.e identity of share applicants, genuineness of

transactions and creditworthiness of share applicants. The identity of the share applicants is very well proved beyond doubt by the assessee by furnishing the copies of balance sheets and income tax returns etc in the Paper Book. Apart from this, these companies are active in the MCA website i.e www.mca.gov.in. The creditworthiness of the share applicants, these companies are having sufficient capital and reserves to make the investment in the assessee company and the same could be evident from their audited financial statements. Thus, creditworthiness of the applicants is proved beyond doubt. Since, the monies have been directly paid to the assessee company by account payee checks out of the bank balances available in their respective bank accounts, genuineness of the transactions cannot be doubted.

14. He further submitted that it is relevant to state that the AO has recorded that some of the documents were not filed by the assessee in relation to aforesaid investors however Ld. CIT(A) appreciated the documents but did not agree despite there was nothing brought on record contrary to these documents. It is submitted that AY 2016-17 was the first year of assessment under faceless scheme and due to technical glitches sometimes despite uploading the documents it could not reach. The IT department also found faults and so upgraded their website later and various other issues are very well known to the public. It may be appreciated that

on the part of the assessee it can only submit the documents and it was the duty of the AO to make necessary efforts and enquiry if required but cannot sit idle by not accepting the documents submitted by the assessee. The Ld. CIT(A) also merely on doubts ignored the documents but could not bring any material contrary during the appellate proceedings.

15. In view of the above, Id. AR submitted that the assessee has discharged its onus to prove the identity, creditworthiness and genuineness of the investor and thereafter the onus shifted to the income tax authorities to disprove the documents furnished by the assessee.
16. Ld. AR further relied on the following cases of Hon'ble High Courts and Supreme Court and Comparative analysis of Judgements as under :-

<i>S No.</i>	<i>Facts</i>	<i>Efforts made by the revenue authorities</i>	<i>Judgements relied upon by assessee in submissions filed before lower authorities or in synopsis before the Hon'ble Bench or relied by the revenue authorities.</i>
1.	<i>Assessee filed relevant documents in support of nature and source of credit received from corporate assesseees i.e., Identity, Credit worthiness and Genuineness such as MOA/AOA, PAN, ITR, Audited Accounts, Bank</i>	<i>Merely stated that documents filed are not sufficient and no enquiry whatsoever by the AO.</i>	<i>Hon'ble Supreme court expressed their view that addition made cannot be sustained even if bogus shareholders as revenue is free to proceed to reopen their individual assessment CIT vs. Lovely Exports 319 ITR 5 (St),</i>

	<i>Statement, Share Certificates and confirmation from the creditors.</i>		
2.	<i>Do</i>	<i>AO issued registered letters to the investing companies.</i>	<p><i>Hon'ble Supreme Court expressed their view that AO failed to carry his suspicions to a logical conclusion by further investigations as he presumed that these companies did not exist at the given address i.e., they have only paper existence and assessee had not been able to disclose the source of the amount received but it has to be conclusively established that a company is non-existence.</i></p> <p><i>CIT vs. Kamdhenu Steel and Alloys 361 ITR 220 (PB II, Pg 57-78)</i></p> <p><i>PCIT v Agson Global (P.) Ltd. (Delhi HC) [2022] 441 ITR 550</i></p> <p><i>PCIT v Manoj Kumar Vipin Kumar (Rajasthan HC)/[2022] 441 ITR 632</i></p> <p><i>PCIT V. Kautilya Monetary Services (P) Ltd. (ITA 602/2019 dated 10.07.2019) HC (Delhi)</i></p> <p><i>Pr. CIT vs M/s N.C. Cables Ltd. ITA No. 335/2015 (Del)</i></p>
3.	<i>AO got information from the source such as investigation wing and in response to enquiry the assessee filed all the relevant documents as stated above.</i>	<i>AO failed to conduct any enquiry and merely relied on the report of the investigation wing.</i>	<p><i>333 ITR 119 (Del) CIT vs. Oasis Hotel Properties (P) Ltd</i></p> <p><i>299 ITR 286 (Del) CIT vs. Divine Leasing & Finance Ltd.</i></p> <p><i>330 ITR 298 (Del) CIT vs. Dwarkadhish Investment (P.) Ltd.</i></p> <p><i>Pr.CIT v. Laxman Industrial Resources Ltd. ITA No. 169/2017 (Del)</i></p>
4.	<i>AO got the information from the source such as</i>	<i>AO made enquiry and found that</i>	<i>In such circumstances, courts held that the addition has to be</i>

	<i>investigation wing or found documents provided are insufficient such as bank statements not provided or confirmation not furnished and merely documents related to identity were filed such as PAN, ITR and payment through account payee cheques.</i>	<i>companies are non-existent or after recording statement of the directors has not found sufficiently explained or brought the chain of investment from the coffers of the assessee</i>	<i>sustained such as by not filing the bank particulars (NR Portfolio, NRA Iron & Steel), the assessee did not cooperate in the enquiry on the basis of investigation report (Nipun Builders, M/s Nova Promoters, Seema Jain, Navodaya Castle (P) Ltd., M/s Synergy Finlease (P) Ltd.</i>
5.	<i>AO doubted the premium paid by the investors.</i>	<i>Merely rejected the valuation report or valuation submitted by the assessee.</i>	<i>PCIT v Rohtak Chain Co. (P.) Ltd. 59 [2019] 110 taxmann.com 59 (SC), PB-II</i> <i>Issuing share at a premium is a commercial decision and it is prerogative of Board of Directors of a company to decide premium amount and it is wisdom of shareholder whether they want to subscribe shares at such a premium or not and, ultimately, this is a mutual decision between both companies and their shareholders.</i>

17. He further submitted that on similar facts & circumstances, ITAT, Delhi Bench in its recent decisions has deleted the addition and copies of those orders are placed in separate paper books which are running into 194 and 125 pages, respectively. Therefore, he prayed that the addition made by Ld.AO and confirmed by Ld. CIT(A) u/s 68 of the Act may kindly be deleted and the appeals of the assessee may kindly be allowed.

18. On the other hand, ld. DR of the Revenue submitted that there is no financial strength in the investor companies to subscribe the shares at premium and brought to our notice page 7 of the assessment order wherein Assessing Officer has observed that the investor companies i.e. M/s. Cee Aar Decors Pvt. Ltd., M/s. Rishikesh Buildcon Pvt. Ltd. and M/s. RSM Constructions Pvt. Ltd. having same registered/corporate office addresses. He submitted that even though these investors have confirmed the notices issued by the Assessing Officer still they do not satisfy the conditions prescribed u/s 68 of the Act. Accordingly, he relied on the orders of the lower authorities.
19. In the rejoinder, ld. AR of the assessee submitted that Assessing Officer has completely ignored the valuation report submitted by the assessee. With regard to submissions of the ld. DR that the companies are existing in the same address, he submitted that there is no bar on existence of several companies on the same address and they may have separate offices on the same address. He relied on the decision of coordinate Bench in the case of People Care Hospitals Private Ltd. vs. ITO & Ors. in ITA No.100/Del/2021 & ors. dated 06.11.20224.
20. With regard to AY 2017-18, he submitted that all the issues are similar except ld. CIT (A) has not accepted the additional evidences filed under Rule 46A of the Income-tax Rules, 1962.

21. Considered the rival submissions and material placed on record. In this case, the issue under consideration is issue of share application money for issue of shares along with share premium and the assessee has issued shares along with share premium to M/s. Cee Aar Decors Pvt. Ltd., M/s. Rishikesh Buildcon Pvt. Ltd. and M/s. RSM Constructions Pvt. Ltd. As per the records submitted before us, it shows that assessee has issued share application money in FY 2014-15 (AY 2015-16) and it was credited under trade payable and the relevant shares were allotted during the current assessment year under consideration and assessee has split up the share application money into share capital and share premium, the same was accordingly accounted under share capital and reserves and surplus during the current assessment year. As per the provisions of section 68 of the Act, where any sum found credited in the books of assessee maintained for any previous year and the assessee offered no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the AO is satisfied, the sum so credited may be charged to income-tax. In the given case, the assessee has received the cash during the previous assessment year and the same was credited in the previous assessment year, therefore, no addition can be made during the current assessment year under consideration based on the allotment of shares. Accordingly, the appeal filed by the assessee is allowed.

22. With regard to AY 2017-18, we observed that assessee has issued fresh shares of 1,50,000 shares to Acquatic Exim Pvt. Ltd. at the same rate as issued to the existing shareholders. The assessee also submitted the confirmation, audited Balance Sheet of Acquatic Exim Pvt. Ltd. which is placed on record. From the record, we observed that Acquatic Exim Pvt. Ltd. is having revenue from operation of Rs.15,49,75,300/- and having trading activities and declared a profit of Rs.1,43,641.80. At the same time, we also observed that they have sufficient shareholders found. Therefore, we are inclined to allow the grounds raised by the assessee for the reason that the shares were issued at premium at the same rate which was issued to the existing shareholders. It is also fact on record that assessee has submitted the valuation report under Rule 11UA of the Income-tax Rules, 1962. Therefore, the assessee has subtitled all the conditions specified u/s 68 of the Act. Accordingly, the appeal filed by the assessee is allowed.
23. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on this 12th day of February, 2025.

**Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 12.02.2025
TS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI