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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 49/2025, CM APPL. 12464/2025 & CM APPL. 12465/2025
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

.....Appellant

Through: Mr. Sanjay Kumar, Ms. Monica Benjamin and Ms. Easha Kadian, Advocates.

versus

BDR BUILDERS AND DEVELOPERS PVT. LTD.Respondent
Through: Mr. Salil Aggarwal, Senior Advocate with Mr. Mihir Aggarwal and Ms. Uma Shankar, Advocates.

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Date of Decision: 03.03.2025

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J: (ORAL)

CM APPL. 12465/2025

1. Cause shown is sufficient. Accordingly, the application is allowed. Delay of 16 days in filing the appeal is condoned.
2. The application stands disposed of.

ITA 49/2025

3. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 assailing the order dated 14.05.2024 passed by the learned Income Tax Appellate Tribunal (ITAT) in respect of the respondent/assessee for the Assessment Years (AYs) 2016-17 & 2018-19.



4. It is the case of the appellant/revenue (hereinafter “*revenue*”) that an information dated 30.03.2020 was received from DDIT, Investigation, Unit-7(2), Delhi wherein, it was informed that a survey action on 13.12.2018 under section 133A of the Income Tax Act, 1961 (hereinafter “*the Act*”) was carried out on various companies of BDR groups. On examination of information available on records, it was found that the amount, which was received by the respondent/assessee (hereinafter “*assessee*”) company during the relevant assessment year on account of share capital and security premium, has escaped assessment. Thereafter, a notice under section 148 dated 31.03.2021 was issued to the assessee and the case of assessee was assessed under section 147 read with section 143(3) of the Act on 31.03.2022 at income of Rs.56,10,46,945/- after making addition of Rs.52,26,00,000/- on account of unexplained cash credits received as share capital/premium under section 68 of the Act. Aggrieved with the order under section 147/143(3) of the Act, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) (hereinafter “*the CIT(A)*”), who, *vide* order dated 19.06.2023, deleted the addition of Rs. 52,26,00,000/- made by the Assessing Officer (hereinafter “*AO*”). Against the order dated 19.06.2023 of the CIT(A), the appellant/revenue preferred an appeal before the learned ITAT, but the ITAT dismissed the appeal *vide* order dated 14.05.2024 upholding the order of the CIT(A). Challenging the said impugned judgement of the learned ITAT, the appellant/revenue has preferred the present appeal.

5. Mr. Sanjay Kumar learned Senior Standing Counsel for the revenue at the outset contends that both the learned ITAT as well as the CIT (A) have not appreciated the facts in their correct perspective and have committed an



error of fact leading to wrong application of law and resulting in the impugned judgement. He states that the present appeal involves the following substantial questions of law:

A. Whether on facts and circumstances of the case and in law, is learned ITAT correct in holding that the onus of the assessee is discharged under section 68 of the Act when some of the notice under section 133(6) of the Act remained un-complied?

B. Whether on facts and circumstances of the case and in law, is learned ITAT correct in holding that the creditworthiness, genuineness and identity of the shareholders is proved just because they are existing shareholders?

C. Whether on facts and circumstances of the case and in law, is learned ITAT correct in holding that the creditworthiness, genuineness and identity of the shareholders is proved even when it is seen that the companies who invested in the assessee's company had not carried out any business?

According to learned counsel, question (B), in the present case would be the moot question which has been erroneously decided in favour of the assessee by the CIT(A) and learned ITAT, overlooking the correct finding reached by the AO. He states that both the authorities committed an error in presuming that merely because the investing companies are existing shareholders, the creditworthiness, genuineness and identity is proved while ignoring the finding by the AO that they had not carried out any business at all.

6. Learned counsel for the appellant/revenue draws our attention to the relevant portions of the impugned order to sustain the argument that the AO



had examined the facts obtaining and applied the provisions of section 68 of the Act. In particular he referred to the following paragraph in the impugned judgement of the ITAT while examining the reasons rendered by the AO in his order:

“4...i. That the shareholder has neither produced the detailed ITR nor the net worth of the HUF.

ii. Amount invested is Rs. 21,62,00,000/- whereas the returned income of the shareholder for the instant year is only Rs. 15,85,912/-.

iii. That the bank statement of the shareholder shows a peculiar pattern of huge sums credited and debited throughout the year.

iv. Subscriber has poor financial credentials, weak creditability and no creditworthiness and is therefore not a genuine source from which the assessee company has received funds...”

7. It is the contention of the revenue that the AO had minutely considered the fact that though an investment of Rs.21,62,00,000/- is alleged to have been made, while the returned income of the shareholder for the relevant year was Rs.15,85,912/- only. It was also noticed that the shareholder had neither produced the detailed Income Tax Return (hereinafter referred as “ITR”) nor the net worth of the HUF. The AO also examined the financial status and concluded that the shareholder has poor financial credentials, weak creditability and no creditworthiness and is therefore not a genuine source from which the assessee company has received funds.

8. Additionally, learned counsel for the revenue also contends that the AO had scrutinised the bank statement of the shareholder which reflected a peculiar pattern of huge sums being credited and debited throughout the year. No satisfactory explanation was offered by the shareholder thereby leading to the conclusion of doubt on the genuineness of the source.

9. In order to buttress his submission that the AO had not only



considered the relevant material before him, but also applied his mind, learned counsel referred to the order dated 31.03.2022 passed by the AO.

The relevant paragraphs read thus:

“5.3 From the perusal of this reply, it was observed that during the year under consideration Assessee company had issued 32,66,250 number of shares having face value of Rs. 10 at premium of Rs. 150 each resulting in to increase in share capital of Rs.3,26,62,500/- and security premium of Rs.48,99,37,500/- totalling Rs.52,26,00,0001-. These shares are issued to four allottees, details of them are as under:

<i>S.No.</i>	<i>Name of Allottee</i>	<i>No. of Shares issued</i>	<i>Amount received including</i>
<i>1.</i>	<i>Dinesh Gupta HUF</i>	<i>13,51,250</i>	<i>21,62,00,000</i>
<i>2.</i>	<i>Nimit Builders Private Limited</i>	<i>8,21,250</i>	<i>13,14,00,000</i>
<i>3.</i>	<i>Ram Kumar Gupta HUF</i>	<i>3,18,750</i>	<i>5,10,00,000</i>
<i>4.</i>	<i>Verma Developers Private Limited</i>	<i>7,75,000</i>	<i>12,40,00,000</i>
<i>Total</i>			<i>52,26,00,000</i>

5.4 Further in support of its claim about genuineness, creditworthiness, and identity of allottees, Assessee Company had also submitted following documents related to verification of capital issue:

- Application form for allotment of shares*
- Receipts of Shares from Company issued to shareholder*
- Affidavit from shareholder regarding payment made*
- Bank statement of shareholder regarding verification of payment*
- Confirmation duly signed by shareholder*
- Return and ITR of shareholder for A.Y 2016-17*

5.5 From the perusal of documents submitted by the Assessee company mainly two important points are emerged, firstly source of the payments made by allottee was not wholly verified and identity of these persons are not clear as Shri Rajesh Verma, a dummy director was one of the directors of company M/s Verma Developers Private Limited, which create doubt in mind about genuineness of transactions.



5.6 Further for verification of identity and genuineness of the transactions involved, notice u/s 133(6) of Income Tax Act, 1961 was issued on 16.03.2022 to all above four allottees to file relevant information regarding this transaction for verification purposes. In response of said notice one of the allottee Dinesh Gupta HUF has filed the necessary details vide reply dated 17.03.2022 but till date no reply has been filed by all other allottee namely M/s Nimit Builders Private Limited, M/s Verma Developers Private Limited and Ram Kumar Gupta HUF.”

5.7 In the light of above discussion about taxability of share capital and security premium hereby we are verifying the claim of all four allottee one by one.

1. 1. 1. Dinesh Gupta HUF

Mr. Dinesh Gupta, one of director and promotor of Assessee Company is Karta of Dinesh Gupta HUF. During the year under consideration HUF was allotted 13,51,250/- shares on which Rs. 21,62,00,000/- was received by company as share capital and security premium.

During the assessment proceeding a notice u/s 142(1) of the I.T. Act, 1961 was issued to Assessee requiring it to submit necessary documents related to verification of source of payment regarding share capital of Rs. 21,62,00,000/-. In response to that notice, assessee company has provided following documents in respect of Dinesh Gupta HUF:

- Application form for allotment of shares duly signed by Dinesh Gupta as Karta of HUF
- Receipt of Shares issued by Assessee Company to shareholder showing details of share capital
- Affidavit from shareholder regarding payment made by HUF
- Bank statement of shareholder regarding verification of payment
- Ledger Confirmation of HUF duly signed
- Return and ITR of shareholder for A.Y 2016-17

From the perusal of above documents, it was observed that assessee company has submitted documents to prove the identity, creditworthiness and genuineness of transactions. All the documents are taken on records and not found satisfactory. Further, it was observed from above documents that genuineness of transaction and creditworthiness regarding payment of such huge amount was not verified, hence further notice u/s 142(1) of the I.T. Act, 1961 was issued for proving the creditworthiness and source of payment of Rs. 21,62,00,000/-.

In response of said notice, Assessee company has provided the detailed working of source of payment of Rs. 21,62,00,000/- by making a sheet showing the date wise source of payments made by Dinesh Gupta HUF to Assessee Company for purchase of shares. Further, a notice u/s 133(6) of Income Tax Act, 1961 was issued to Dinesh Gupta HUF requiring him to submit documents related to his transaction done by Dinesh Gupta HUF during the relevant assessment year. In



response of that Dinesh Gupta HUF has submitted following documents:

- *Bank Statements explaining sources of each entry*
- *Income tax Return copy showing income from sale of shares (Source of Investment)*
- *Copy of Assessment order passed in case of relevant assessment year*

From the perusal of documents, it was observed that Assessee has neither produced detailed ITR nor the net worth of the HUF. As it can be seen from the ITR of HUF that the share applicant who had invested Rs. 21,62,00,000/- has declared total income of Rs. 15,85,912/- only for A.Y 2016-17.

Further from the perusal of bank statement it was observed that a peculiar pattern of huge sums is credited and debited throughout the year. Thus, the subscriber to the share capital has poor financial credentials, weak creditability, and no credit worthiness and hence, cannot be considered as a genuine source from which the assessee company has received fund.

Thus, the assessee was not able to prove onus that was placed on it by the provisions of Section 68 to prove the identity, genuineness and creditworthiness of share applicants. This onus was not completely discharged by the assessee.

10. Learned counsel also referred to various portions of the impugned judgement of the learned ITAT as well as the CIT(A). According to him, this re-examination and re-appreciation by both the authorities was perverse and against a well founded fact. Thus, the impugned judgement and that of the CIT(A) ought to be set aside. He also relies upon the judgement of the Hon'ble Supreme Court in ***Principal Commissioner of Income-Tax vs. NRA Iron and Steel Pvt. Ltd.; 2019 (412) ITR 161 (SC)*** to submit that the AO is duty bound to investigate creditworthiness of creditor or subscriber, verify identity and ascertain whether the transactions are genuine or bogus. It is the contention of the Revenue that the AO complied with the mandate of law and recorded findings of fact which ought not have been interfered with by both the lower authorities.

11. *Per contra*, Mr.Salil Aggarwal, learned senior counsel appearing for the assessee stoutly opposed the submissions and supported the order passed



by both the CIT(A) as well as the learned ITAT. Learned senior counsel contends that the facts and findings were not rendered by the AO but by the CIT(A) and rightly re appreciated by the learned ITAT. According to him, the AO's order was bereft of any reasons and was actually cryptic. He states that the CIT(A) in fact examined the entire issue on the anvil of the tests laid down for invocation of section 68 of the Act. He states that these findings were reiterated by the learned ITAT in its impugned judgement. It is his contention that these are concurrent findings of fact which cannot and ought not to be interfered with by this Court.

12. Learned senior counsel contends that the three tests viz., the creditworthiness; the identity of the creditor; and genuineness of transactions are fully satisfied in the present case. He refers to various paragraphs of the impugned judgement to submit that the learned ITAT had examined the details of source of payments made to the assessee company by the shareholders. He also urged that the ITAT also took into consideration that the investors were existing shareholders of the assessee and therefore, identity was neither questionable nor doubtful. The fact that the assessee had also placed the past transactions with the same shareholders before the AO was also considered by the learned ITAT.

13. So far as creditworthiness is concerned, learned senior counsel referred to para 8 of the order passed by the learned ITAT to submit that the creditworthiness of the shareholders has been held to be beyond any doubt both by the CIT(A) as well as by the learned ITAT. According to him, it is the sufficiency of funds at the hands of the shareholders/investors which are to be examined and evaluated and this finding of fact was equally appreciated by both the lower Appellate Authorities.



14. In respect of genuineness of the transactions, learned senior counsel yet again referred to relevant paragraphs of the impugned judgement and that of the CIT(A) to submit that the shareholders had furnished their complete income tax particulars; confirmed that investments are duly accounted for and discernible from their bank accounts; nature and source of funds wherefrom the investments were made were also disclosed. According to him, the mandate of section 68 of the Act was fully and completely discharged by the assessee. Thus, the three tests having been fully complied with by the assessee, the AO could not have doubted the compliance with the mandate of section 68 of the Act.

15. Having heard Mr.Sanjay Kumar learned SSC for the revenue, Mr. Salil Aggarwal learned senior counsel for the assessee, examined the records of the case and perused the impugned judgement, we are unable to agree with the contentions of the revenue. The reasons are as follows.

16. Section 68 of the Act, mandates three tests before the AO can add the investment/transaction as sum chargeable to income-tax as income of the assessee for the relevant year. Those are, (i) the creditworthiness of the creditor/shareholder/subscriber; (ii) the identity of the creditor/shareholder/subscriber; and (iii) genuineness of transactions. In case the assessee has successfully furnished the relevant documents and rendered proper explanation to the AO's satisfaction regarding the triple test, those sums may not be treated as chargeable to income-tax as income of the assessee. What would be "*relevant documents*" and a "*proper explanation*", may vary from case to case and cannot be put in a straight jacket formula, nor would it be appropriate to do so.

17. We find from the records that there are concurrent findings of facts



recorded both by the CIT(A) as well as by the learned ITAT and are neither persuaded to re-examine or re-appreciate such findings all over again, nor is it the scope of section 260A of the Act, wherein Courts are only to examine and consider only “*substantial questions of law*”.

18. Having said that, we would refer and reproduce the relevant paragraphs of the impugned judgement in order to satisfy our conscience that the foundational facts leading to such findings of fact were indeed available with both the Appellate Authorities since the revenue contends that question (B) is a substantial question of law. In the said examination, it would be apposite to extract para 7, 8, 10 and 11 of the impugned judgement dated 14.05.2024 hereunder:

“7. Let us now proceed to examine various details furnished by the assessee in respect of each of the investors. These details are enclosed as under:-

*Dinesh Gupta (HUF) – Pages 771 to 775 of Paper Book
Nimit Builders Pvt Ltd – Pages 906 to 908 of Paper Book
Ramkumar Gupta (HUF) – Pages 945 to 946 of Paper Book
Ramkumar Gupta (HUF) – Pages 947 to 971 of Paper Book
Verma Developers Pvt Ltd – Pages 579 to 770 of Paper Book*

8. It is pertinent to note that some of the individual investors had huge exempt income in their hands which itself proves their creditworthiness to make investments in the assessee company. This is in addition to the fact that the assessee company had already proved even the immediate source of credit for the investors as per their bank statements. Hence source of source of investors is also proved beyond reasonable doubt by the assessee in the instant case. There is absolutely no mandate in the statute that investment should be made only out of taxable income by the investors. What is required is the availability of sufficient funds in their kitty which could explain as a source for making investments in the hands of the investors. This has been proved in the instant case beyond reasonable doubt. The following tabulation would duly prove the immediate source of credit on each day of making investment by the investors in the assessee company:-

Dinesh Gupta HUF

Details of immediate source of payments made to assessee company during the AY 2016-17



S. No.	AMOUNT PAID		IMMEDIATE SOURCE OF AMOUNT PAID		REMARKS	DOCUMENTARY EVIDENCES AT PAGE NO.776 to 905
	DATE	AMOUNT	DATE	AMOUNT		
1.	29.09.2015	1,00,00,000.00	24.09.2015		REFUND OF LOAN DURING THE YEAR FROM M/S RISHI INFRA TECH PVT LTD	CONFIRMATION OF ACCOUNT AT PAGE NO.792
			24.09.2015	69,00,000.00	REFUND OF LOAN DURING THE YEAR FROM M/S RENU PROPTECH PVT LTD	CONFIRMATION OF ACCOUNT AT PAGE NO.793
			28.09.2015	10,81,473.41	SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801 TO 852
			29.09.2015	6,99,991.50	SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801 TO 852
	Total	1,00,00,000.00		1,11,81,464.91		
2	08.10.2015	1,20,00,000.00	30.09.2015		SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801 TO 852
			01.10.2015	40,22,438.43	SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801 TO 852
			06.10.2015	3,01,556.43	SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801 TO 852
			07.10.2015	21,17,994.62	SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801 TO 852
			07.10.2015	30,00,000.00	SALE OF LISTED SHARES	CONFIRMATION OF ACCOUNT AT PAGE NO.853
			08.10.2015		SALE OF LISTED	CONFIRMATION OF ACCOUNT AT



				60,00,000.00	SHARES	PAGE NO.853
	Total	1,20,00,000.00		1,54,41,989.48		
3	09.10.2015		08.10.2015		SALE OF UNLISTED SHARES	CONFIRMATION OF ACCOUNT AT PAGE NO. 853
		70,00,000.00		70,00,000.00		
4	13.10.2015		13.10.2015	66,78,516.97	SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801-852
		49,00,000.00				
5	14.10.2015		14.10.2015	46,66,337.54	SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801-852
		79,00,000.00				
			14.10.2015	25,00,000.00	SALE OF UNLISTED SHARES	CONFIRMATION OF ACCOUNT AT PAGE NO. 853
	Total	79,00,000.00		71,66,337.54		
6.	16.10.2015	1,60,00,000.00	16.10.2015		SALE OF UNLISTED SHARES	CONFIRMATION OF ACCOUNT AT PAGE NO. 853
				62,00,000.00		
			16.10.2015		SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801-852
				95,00,000.00		
			16.10.2015		SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801-852
				22,39,417.31		
	Total	1,60,00,000.00		1,79,39,417.31		
7.	19.10.2015	2,13,00,000.00	16.10.2015		SALE OF UNLISTED SHARES	CONFIRMATION OF ACCOUNT AT PAGE NO. 853
				30,00,000.00		
			17.10.2015		SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801-852
				60,00,000.00		



			17.10.2015		DIVIDEND RECEIVED	BANK STATEMENT AT PAGE NO. 776 TO 791
				2,98,052.00		
			17.10.2015		DIVIDEND RECEIVED	BANK STATEMENT AT PAGE NO. 776 TO 791
				29,03,554.00		
			19.10.2015		SALE OF UNLISTED SHARES	CONFIRMATION OF ACCOUNT AT PAGE NO. 853
				72,00,000.00		
	Total	2,13,00,000.00		1,94,01,606.00		
8.	26.10.2015	2,06,00,000.00	23.10.2015	1,59,572.61	SALE OF LISTED SHARE	BROKERS CONTRACT NOTE AT PAGE NO. 801-852
			26.10.2015	95,00,000.00	SALE OF LISTED SHARE	BROKERS CONTRACT NOTE AT PAGE NO. 801-852
			26.10.2015	45,91,007.50	SALE OF LISTED SHARE	
			26.10.2015		SALE OF UNLISTED SHARES	CONFIRMATION OF ACCOUNT AT PAHP NJO 9^7
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	Total	2,06,00,000.00		2,06,50,580.11		
9.	28.10.2015	84,00,000.00	27.10.2015	15,63,020.00	SALE OF LISTED SHARE	BROKERS CONTRACT NOTE AT PAGE NO. 801-852
			28.10.2015	68,13,958.07	SALE OF LISTED SHARE	BROKERS CONTRACT NOTE AT PAGE NO. 801-852
	Total	84,00,000.00		83,76,978.07		
10	16.11.2015	1,50,00,000.00	16.11.2015	1,50,00,000.00	REFUND OF LOAN DURING THE YEAR FROM M/S	CONFIRMATION OF ACCOUNT AT PAGE NO. 794



					BDR FINVEST PVT LTD	
11	23.12.2015	1,00,00,000.00	23.12.2015	1,00,00,000.00	REFUND OF LOAN DURING THE YEAR FROM M/S RENU PROPTECH PVT LTD	CONFIRMATION OF ACCOUNT AT PAGE NO.793
12	25.1.2016	60,00,000.00	21.1.2016	60,00,000.00	LOAN RECEIVED FROM M/S RHEA DISTRIBUTI ON COMPANY (PROPRIET OR ROOP KISHORE MADAN)	CONFIRMATION OF ACCOUNT, COPY OF ITR ACKNOWLED GMENT AND ASSESSMENT ORDER U/S 143 (3) OF THE ACT PAGE NO. 796 - 800
13	01.02.2016	80,00,000.00	01.02.2016	80,00,000.00	REFUND OF LOAN DURING THE YEAR FROM M/S BDR FINVEST PVT LTD	CONFIRMATION U ^t ACLXJUN 1 [^] AT PAGE NO.794
14	01.02.2016	1,00,00,000.00	01.02.2016	1,00,00,000.00	REFUND OF LOAN DURING THE YEAR FROM M/S BDR FINVEST PVT LTD	CONFIRMATION OF ACCOUNT AT PAGE NO.794
15	01.02.2016	1,40,00,000.00	01.02.2016	1,40,00,000.00	REFUND OF LOAN DURING THE YEAR FROM M/S NISHIT CAPINVEST PVT LTD	CONFIRMATION OF ACCOUNT AT PAGE NO.795
16	02.02.2016	1,16,00,000.00	01.02.2016	1,00,00,000.00	SALE OF LISTED	BROKERS CONTRACT



					SHARES	NOTE AT PAGE NO. 801 TO 852
			01.02.2016	18,00,000.00	BROKERS CONTRACT NOTE AT PAGE NO.801 TO 852	BROKERS CONTRACT NOTE AT PAGE NO.801 TO 852
	<i>Total</i>	<i>1,16,00,000.00</i>		<i>1,18,00,000.00</i>		
17	02.02.2016	1,15,00,000.00	02.02.2016	1,15,00,000.00	REFUND OF LOAN DURING THE YEAR FROM M/S BDR FINVEST PVT LTD	CONFIRMATION OF ACCOUNT AT PAGE NO.794
18	02.02.2016	1,00,00,000.00	02.02.2016	1,00,00,000.00	REFUND OF LOAN DURING THE YEAR FROM M/S BDR FINVEST PVT LTD	CONFIRMATION OF ACCOUNT AT PAGE NO.794
19	03.02.2016	1,20,00,000.00	02.02.2016	16,30,000.00	SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801 TO 852
			02.02.2016	54,00,000.00	SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO. 801 TO 852
			02.02.2016	48,00,000.00	SALE OF LISTED SHARES	BROKERS CONTRACT NOTE AT PAGE NO.801 TO 852
	<i>Total</i>	<i>1,20,00,000.00</i>		<i>1,18,30,000.00</i>		
	<i>TOTAL</i>	<i>21,62,00,000.00</i>		<i>22,19,66,890.39</i>		

NIMIT BUILDERS PRIVATE LIMITED

Details of immediate source of payment made to assessee company during the AY 2016-17

S.	AMOUNT PAID	IMMEDIATE SOURCE OF	REMARKS	DOCUMENTARY
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No.	AMOUNT PAID				EVIDENCES AT PAGE NO.909 to 944	
	DATE	AMOUNT	DATE	AMOUNT		
1	24.09.2015	6,57,00,000.00	24.09.2015	6,04,00,000.00	REFUND OF ADVANCES GIVEN IN EARLIER YEARS AND DURING THE YEARS TO M/S RISHI INFRATECH PVT LTD	BALANCE SHEET OF M/S NIMIT BUILDERS PVT LTD HIGHLIGHTING REDUCTION IN LOANS & ADVANCES FROM 66 CRORES TO 31 CRORES AT THE START OF YEAR TO AT THE END OF THE YEAR AT PAGE NO. 909
			24.09.2015		REFUND OF LOAN	CONFIRMATION OF INCOME
				53,00,000.00	GIVEN DURING THE EARLIER YEAR TO M/S RENU PROPTECH PVT LTD	ASSESSMENT FOR THE AY 15-16 OF M/S RENU PROPTECH PVT LTD WAS COMPLETED UNDER SECTION 143(3) OF THE ACT, ASSESSMENT ORDER U/S 143(3) AT PAGE NO. 929 to 935
	<i>Total</i>	6,57,00,000.00		6,57,00,000.00		
2	23.11.2015	1,32,00,000.00	16.11.2015	80,00,000.00	ADVANCE RECEIVED FOR SALE OF SHARES FROM M/S RAMPRASTHA PROMOTERS AND DEVELOPERS	CONFIRMATION OF ACCOUNT AT PAGE NO. 936



			16.11.2015	55,00,000.00	PVT LTD ADVANCE FOR PURCHASE OF SHARES FROM M/S RAMPRASTHA PROMOTERS AND DEVELOPERS PVT LTD	CONFIRMATION OF ACCOUNT AT PAGE NO. 936
	Total	1,32,00,000.00		1,35,00,000.00		
3	30.11.2015	2,08,00,000.00	30.11.2015	2,13,00,000.00	REFUND OF LOAN GIVEN DURING THE EARLIER YEARS TO M/S RENU PROPTECH	CONFIRMATION OF ACCOUNT, ASSESSMENT FOR THE AY 15-16 OF M/S RENU PROPTECH PVT LTD WAS COMPLETED
					PVT LTD	OF THE ACT ASSESSMENT ORDER U/S 143 (3) AT PAGE NO.
4	03.12.2015	1,29,00,000.00	03.12.2015	1,29,00,000.00	REFUND OF ADVANCE FOR PROPERTIES GIVEN DURING THE EARLIER YEARS TO M/S NISHIT INFRA TECH PVT LTD	CONFIRMATION OF ACCOUNT, BALANCE SHEET OF M/S NISHIT INFRA TECH PVT LTD AT PAGE 937-944
5	05.12.2015	78,00,000.00	05.12.2015	81,00,000.00	REFUND OF ADVANCE FOR PROPERTIES GIVEN DURING THE EARLIER YEARS TO M/S NISHIT INFRA TECH PVT LTD	
6	08.12.2015	10,00,000.00	08.12.2015	1,00,00,000.00	REFUND	



					OFADVANCE FOR PROPERTIES GIVEN DURING THE EARLIER YEARS TO M/S NISHIT INFRA TECH PVT LTD	
	TOTAL	13,14,00,000.00		14,15,00,000.00		

Ram Kumar Gupta HUF

Details of immediate source of payment made to assessee company during the AY 2016-17

S. No.	AMOUNT PAID		IMMEDIATE SOURCE OF AMOUNT PAID		REMARKS	DOCUMENTARY EVIDENCES AT PAGE NO.947 to 971
	DATE	AMOUNT	DATE	AMOUNT		
1	24.09.2015	42,00,000.00	23.09.2015	86,00,000.00	SALE OF UNLISTED SHARES TO M/S SAP COMPUSOFT PVT LTD	COPY OF BANK STATEMENT OF BUYER, COPY OF FORM SH-4/ COPY OF ITR A.Y.2016-17 OF BUYER TOTAL AMOUNT OF RS. 2,86,63,000/- SALE CONSIDERATION SHOWN UNDER THE SCHEDULE CAPITAL GAIN IN COLUMN NO. 5(a) OF SHORT TERM 3,85,82,500/- SALE CONSIDERATION SHOWN IN COLUMN NO. 7(a) OF LONG TERM CAPITAL GAIN. SO IN TOTAL RECEIPTS FROM SALE OF UNLISTED SHARES AMOUNTS TO RS. 6,72,45,500/- AT PAGE NO. 947-971



2	30.09.2015	45,00,000.00	30.09.2015	5,00,000.00	SALE OF UNLISTED SHARES TO M/S SAP COMPUSOFT PVT LTD	
		66,00,000.00		43,00,000.00		
			01.10.2015	23,00,000.00		
	<i>Total</i>	66,00,000.00		66,00,000.00		
4	03.10.2015	50,00,000.00	03.10.2015	50,00,000.00	SALE OF UNLISTED SHARES TO M/S SAP COMPUSOFT PVT LTD	
5	06.10.2015	52,00,000.00	06.10.2015	51,82,500.00	SALE OF UNLISTED SHARES TO M/S SAP COMPUSOFT PVT LTD	
6	20.01.2016	90,00,000.00	20.01.2016	51,82,500.00	SALE OF UNLISTED SHARES TO MRAL SECURITIES PVT LTD	
7	21.01.2016	86,00,000.00	21.01.2016	86,66,300.00	SALE OF UNLISTED SHARES TO MRAL SECURITIES PVT LTD	
8	01.02.2016	79,00,000.00	01.02.2016	79,00,000.00	REFUND OF LOAN FROM M/S BDR FINVEST PVT LTD GIVEN ON 31.12.2015	COPY OF BANK STATEMENT AT PAGE NO. 947-950
	TOTAL	5,10,00,000.00		5,54,48,800.00		

VERMA DEVELOPERS PRIVATE LIMITED

Details of immediate source of payments made to assessee company during the AY 2016-17



S. No.	AMOUNT PAID		IMMEDIATE SOURCE OF AMOUNT PAID		REMARKS	DOCUMENTARY EVIDENCES AT PAGE NO.580 to 770
	DATE	AMOUNT	DATE	AMOUNT		
1	22.09.2015	3,37,00,000.00	22.09.2015	3,37,00,000.00	SHARE ALLOTMENT TO NISHIT CAPINVEST PRIVATE LIMITED	CONFIRMATION OF ACCOUNT ASSESSMENT FOR THE AY 16- 17 OF M/S NISHIT CAPINVEST PVT LTD WAS COMPLETED UNDER SECTION 143(3) OF THE ACT, ASSESSMENT ORDER U/S 143(3) AT PAGE NO. 602 TO 619
2	24.09.2015	2,83,00,000.00	24.09.2015	4,25,00,000.00		
3	23.11.2015	1,34,00,000.00	23.11.2015	1,34,00,000.00	SHARE ALLOTMENT TO RENU PROPTECH PRIVATE LIMITED	CONFIRMATION OF ACCOUNT ASSESSMENT FOR THE AY 16- 17 OF M/S RENU PROPTECH PVT LTD WAS COMPLETED UNDER SECTION 143(3) OF THE ACT, ASSESSMENT ORDER U/S 143(3), CIT APPEAL (7) DELHI ORDER, HON'BLE DELHI ITAT ORDER AT PAGE NO. 636 TO 770
4	08.12.2015	1,78,00,000.00	08.12.2015	1,78,00,000.00		
5	10.12.2015	1,18,00,000.00	10.12.2015	1,18,00,000.00		
6	10.12.2015	90,00,000.00	10.12.2015	90,00,000.00		
7	15.12.2015	1,00,00,000.00	15.12.2015	1,00,00,000.00		
	<i>Total</i>	<i>12,40,00,000.00</i>		<i>13,82,00,000.00</i>		

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10. Further the ld. AR also placed reliance on the decision of Hon^{ble} Calcutta High Court in the case of *Prahlad Bhattacharya vs CIT* reported in 386 ITR 708 (Cal) wherein it was held that it is for the revenue to bring on record contrary material to dislodge assessee's evidences.

11. From the above, it is evident that each of the shareholder had filed confirmations wherein, they have given their complete income tax particulars and have confirmed that they have made the investment from their duly accounted for and disclosed bank accounts and have also explained the nature and source of funds credited in their respective bank accounts out of which the investment was made by them in the assessee company. Each of the shareholders are duly assessed to income tax and the source of the funds invested by them in the assessee company are fully disclosed and accounted for in their own individual/company returns of income. Hence, we have no hesitation to hold that the assessee had duly proved the nature and source of credit within the meaning section 68 of the Act together with 3 ingredients of section 68 of the Act in respect of each of shareholder thereby duly discharging its own cast u/s 68 of the Act."

Plainly, it is *ex facie* apparent that all requisite information and documents regarding the shareholders were available with the AO, yet the conclusion appears to be contrary to record available. The learned ITAT has satisfied itself, albeit, after a thorough examination of material available on record that the assessee had successfully discharged the burden cast upon it under the mandate of section 68 of the Act, and unequivocally concluded that the assessee has complied completely with the conditions of triple test.

19. The aforesaid paragraphs demonstrate the re-examination and re-appreciation of facts/material and record by the two Appellate Authorities which propel us not to interfere with such findings. Suffice it to state that though the AO appears to have examined the material available before him, yet, recorded findings without rendering any reasons in support thereof. This itself would render such findings perverse requiring hierarchical appellate authorities to scrutinise such findings. Both the Appellate Authorities have concurrently found that the shareholders, who were the investors in the relevant years were existing shareholders of the assessee and thus, not



doubting their identities. The creditworthiness was tested on the anvil of some such shareholders having huge exempt income in their individual capacities to offer such investments. In fact it was found to be beyond doubt that such shareholders had sufficiency of funds available which satisfactorily explained the source. The appellate authorities had also taken into consideration the past transactions of the shareholders which were duly disclosed to the AO. The previous transactions furnished to the AO are as under:

“Share capital and share premium for Financial Year 2015-16

	Number of Shares	Share capital Amount (in Rs.)	Share Premium Amount (in Rs.)
Fully paid shares of Rs.10/- each			
Opening as on 01.04.2015	1,61,05,345	16,10,53,450.00	1,15,79,78,750.00
Add: Issued during the year:-			
Further issue of shares	32,66,250	3,26,62,500.00	48,99,37,500.00
Transferred from Partly paid up shares after balance call money received	4,50,000	45,00,000.00	3,37,50,000.00
Reissued Forfeited Shares	8,50,000	85,00,000.00	12,75,00,000.00
Closing as on 31.03.2016	2,06,71,595	20,67,15,950.00	1,80,91,66,250.00

Having rendered reasons on the triple test envisaged in section 68 of the Act by the CIT(A) and learned ITAT, we are not persuaded to interfere with such findings. The submissions of the revenue are unmerited.

20. We also find that the learned ITAT had relied upon the judgement of this Court in *CIT vs. Divine Leasing & Finance Ltd.; 299 ITR 268 (Del)*, and rightly so.

21. The judgement of the Supreme Court in *NRA (supra)* would not enure to the benefit of the revenue for the reason that, in the present case, as noted



above, the assessee has furnished not only all relevant and supporting documents but also offered proper explanation to the satisfaction of the AO. This information, though not found sufficient, but was found to be satisfying the triple test condition mandated in section 68 of the Act, both by the CIT(A) as well as the learned ITAT. While, in *NRA (supra)* from the facts it appears that the assessee therein not only failed to furnish the complete information but also lacked in offering proper explanation. Thus, the said judgement is distinguishable on facts.

22. For the aforesaid reasons, we are unable to persuade ourselves nor could the submissions of the revenue propel us to find any question of law, muchless any substantial question of law arising in the present appeal.

23. Ergo, the appeal is dismissed alongwith pending applications, if any, leaving the parties to bear their own costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MARCH 3, 2025

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