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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 19th August, 2026
Date of Uploading :21st August, 2026

\# **CNR No. DLHC011049792025**

\+ ITA 770/2025

PR. COMMISSIONER OF INCOME TAX 4 NEW DELHI .....Appellant

Through: Mr. Shlok Chandra, SSC along with Ms. Naincy Jain, JSC.

versus

M/S ANSAL PHALAK INFRASTRUCTURE PVT LTD (NOW KNOWN AS NEW LOOK BUILDERS AND DEVELOPERS PVT LTD) .....Respondent

Through: Mr. Sachit Jolly, Sr. Advocate with Mrs. Mansha Anand, Mr. Abhyudaya Shankar Bajpai, Mr. Sohum Dua, Ms. Saloni Ray, Mr. Ghunaim Siddiqui, Ms. Yahavi Sharma and Ms. Manvi, Advocates.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

***Per* DINESH MEHTA, J. (*Oral*)**

1. The revenue has preferred the present appeal assailing the order of the Income Tax Appellate Tribunal, Delhi Bench: 'E' New Delhi (*hereinafter referred to as the 'Tribunal'*), passed in ITA No. 5658/Del/2015 on 18.12.2024, whereby its appeal against the order of the Commissioner of Income Tax (Appeals) (*hereinafter referred to as the 'CIT(A)'*) dated 28.07.2015 was rejected.

2. Narrated in a nutshell, the facts germane for the present case are that the

Assessing Officer (*hereinafter referred to as the 'AO'*) had made an addition of Rs. 55 crores under Section 68 of the Income Tax Act, 1961 *(hereinafter referred to as the 'Act of 1961')* against the assessee for Assessment Year (AY) 2011-12, alleging that investment made by two companies namely M/s New Dimension Holdings Ltd. of Mauritius and M/s Velford Ventures Ltd. of Cyprus, in the respondent-assessee company was unexplained.

3. The backdrop facts are that during the course of assessment, it came to the notice of the AO that the above referred two companies had made investment and subscribed to assessee's shares and Compulsory Convertible Debentures (*hereinafter referred to as 'CCDs'*) to the tune of Rs. 55 crores, which raised a doubt in the mind of the AO. Since the amount involved an international transaction, he made a reference to the Transfer Pricing Officer (*hereinafter referred to as 'TPO'*) while also making a reference to the Foreign Tax and Tax Research (*hereinafter referred to as 'FT&TR'*), who in due course of time sent their reports.

4. The AO, having a suspicion that why would two foreign companies make such a huge investment in the shares of the respondent-assessee, conducted an enquiry and doubted the creditworthiness of those companies and *vide* assessment order dated 31.03.2015 has held that the onus to prove creditworthiness of the amount so received lay upon the assessee and since it failed to discharge such burden, he added the amount of Rs. 55 crores under Section 68 of the Act of 1961 in the hands of the respondent-assessee.

5. The assessee challenged the above assessment order dated 31.03.2015 by way of appeal before the CIT(A), who allowed the assessee's appeal *vide* its order dated 28.07.2015, after going through the record, additional evidence which the assessee had produced during the course of appeal being audited

accounts of M/s Redfort India Real Estate Fund II LLC, Mauritius, being parent investor of the original investor companies, who had invested in respondent-company. Apart from the above, the CIT(A) dealt with the material, which the assessee had produced before the AO and then recorded a categorical finding that these two companies of Mauritius and Cyprus had entered into an agreement with the respondent-assessee due to which even the name of respondent was changed. He noted that an interest @16% p.a. or 16% coupon was paid on the CCDs.

6. The revenue challenged the said order passed by the Appellate Authority before the Tribunal, which affirmed the findings recorded by the CIT(A) by way of the order dated 18.12.2024, which is subject matter of present appeal.

7. Mr. Shlok Chandra, learned Senior Standing Counsel, firstly pointed out that the assessment year in question is 2011-12 i.e., prior to the amendment brought in Section 68 of the Act, 1961 which was introduced with effect from 01.04.2013 and thus, the AO could well ask an assessee to satisfy about the 'source of the source' and then argued that the AO, having doubt in his mind about the genuineness of the investment made by the companies of Mauritius and Cyprus of huge amount of Rs. 55 crores, called upon the respondent-assessee to explain the investment, which the assessee miserably failed. He took the Court through the assessment order dated 31.03.2015 and submitted that the AO having given enough opportunity to the respondent, has recorded a finding that the respondent-assessee has not produced any satisfactory reply to justify that why would companies of Mauritius and Cyprus invest such a huge amount with the assessee, which was a novice in the real estate business.

8. He argued that since the investment remained unexplained, addition under Section 68 of the Act, 1961 was totally justified, and therefore, both the Appellate Authorities have erred in deleting such additions.

9. Mr. Sachit Jolly, learned Senior Counsel, on the other hand, submitted that it is an irony that in spite of the material, and due explanation having been given by the assessee, the AO deliberately did not deal with the same. He took the Court through para nos. 2 and 3 of the assessment order and pointed out that the AO had made reference of TPO's report and he had recorded that the TPO had given no adverse report, so also the fact that the assessee had produced in evidence, copy of agreement between the investor companies and the respondent-assessee. He argued that the factum of 16% CCDs was known to the AO and yet, he had completely ignored such fact and dealt with only that part, which suited his view point rather whims, while ignoring the reply, which served the cause of the respondent-assessee.

10. He, thereafter, took the Court through the order of the CIT(A) and submitted that the Appellate Authority has painstakingly gone through the material available on record and since by that time, the assessee was able to procure the audited balance-sheet of M/s Redfort India Real Estate Fund II LLC, Mauritius, being the investor in those two companies which have invested in respondent-company, the CIT(A) went on to examine the same as well and recorded a finding in assesee's favour that the investment was genuine and duly explained. He submitted that the Tribunal has not only gone through the order of the CIT(A), but has also reproduced relevant part of the order of the Appellate Authority which clearly establishes that the demand so raised by the AO had no legs to stand.

11. Heard learned counsel for the parties and perused the order of the

Tribunal and the part of the Tribunal's order where it has reproduced para no. 4.6 of the CIT(A)'s order. The same reveals that the Appellate Authority has gone through and carefully dilated upon the transaction and recorded finding that the respondent-company was incorporated on 13.09.2010 in the name of Phalak Infrastructure Ltd. with the share capital of 1,00,000 by Ansal Group for carrying out real estate development and the same entered into investment-cum-collaboration agreement with New Dimension Holdings Ltd., Mauritius and Velford Ventures Ltd., Cyprus, and as a part of the collaboration agreement, name of the company was changed to Ansal Phalak Infrastructure Pvt. Ltd. with effect from 03.05.2011 and Article of Association and Memorandum of Association were also revised. It was also found that on execution of the agreement, both the foreign investors invested money in the assessee company-New Dimension Holdings Ltd., Mauritius acquired 25.9% shares of the respondent-company for Rs. 5,70,50,000/-, while Velford Ventures Ltd., Cyprus acquired 14 shares of the respondent-assessee for Rs.2,03,000/- and invested Rs. 49,90,47,000/- in CCDs issued by the respondent-company. It was also found that both these companies are registered in Mauritius and Cyprus, and are taxpayers in their respective jurisdiction. The CIT(A) has also recorded that the respondent-assessee had also filed before the AO, copies of the prescribed Certificate of Foreign Inward Remittance, issued by Hongkong and Shanghai Banking Corporation Limited setting out all details of remittance, purpose of remittance, description of remittance like equity shares application money as well as issue of CCDs. It is also to be noted that the respondent-assessee had filed copies of audited balance-sheet of both the investors companies. In the face of these findings recorded by the CIT(A) and as affirmed by the Tribunal, which findings are based on material available on record and the revenue has not been able to show them to be perverse in any manner. We do not find any question of law emanating from the order passed by the Tribunal.

12. We, therefore, reject the appeal.

13. While dismissing the appeal, we cannot but leave the matter without making an observation about the way and manner in which the AO has dealt with the reply and defence of the assessee. When we look at the order of the CIT(A), we find that the Appellate Authority has dealt with each of the documents filed by the assessee with great detail and care – while giving page no. of the paperbook – while the AO has completely ignored them. He has not even referred to them, let alone dealing with them. We hasten to add that an adjudicatory process enjoins upon an AO to deal with the reply and documents filed by the assessee in an objective manner and his duty as an AO is not only to watch interest of revenue and generate revenue for the country, but also to judiciously consider the reply and pleas including judgments and documents which an assessee relies upon or furnishes. Brushing aside or ignoring documents filed by an assessee leads to breach of principles of natural justice and hits at the procedural fairness and cause injustice which, in the instant case, has been meted out to the assessee.

DINESH MEHTA
(JUDGE)

RAJNEESH KUMAR GUPTA
(JUDGE)

AUGUST 19, 2026/v