

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.- 2476/Del/2018
(Assessment Year: 2013-14)

Anandtex international P.Ltd, Vs. ACIT, circle,
191-192, sector-25, Panipat.
part-II, HUDA,
Panipat 132103
Haryana

PAN No. AAKCA4313M
Appellant

Respondent

Assessee by None
Revenue by Mrs. Kirti Sankratyayan, Sr. DR

Date of hearing: 08/02/2022
Pronouncement on: 24/02/2022

ORDER

PER K. NARASIMHA CHARY, JM.

Aggrieved by the order dated 2/1/2018 passed by the learned Commissioner of Income Tax (Appeals)-Kanal ("Ld. CIT(A)") in the case of the M/s Anandtex international (P) Ltd ("the assessee"), for the Assessment Year 2013-14, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a company and filed the return of income for the assessment year 2013-14 on 28/9/2013

declaring an income of Rs. 4, 37, 43, 060/-. Assessment under section 143(3) of the Income Tax Act, 1961 (for short "the Act") was complete by order dated 18/3/2016 by making an addition of Rs. 3.96 crores under section 68 of the act, Rs. 6 Lacs on account of disallowance of labour charges, loading and unloading expenses, missionary repair and maintenance etc, Rs. 19, 29, 050/-on account of disallowance of Festival, telephone, travelling and sales promotion expenses and a sum of Rs. 7, 94, 315/-on account of disallowance of repair and maintenance expenses.

3. Assessee preferred appeal before the Ld. CIT(A) challenging all the four additions but the Ld. CIT(A), by way of impugned order confirmed all the additions and dismissed the appeal of the assessee. Hence, the assessee is before us in this appeal.

4. When the matter is called, neither the assessee nor any authorised representative entered appearance. It could be seen from the record that the notice sent to the address given in form No. 36 is returned with the endorsement of the postal servant that the addressee left. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Since the assessee does not seem to have adopted any of these methods. No other address of the assessee is available with the registry. In these circumstances, we are of the considered opinion that the matter cannot be adjourned

indefinitely. Basing on the record we proceed to hear the counsel for Revenue and decide the matter on merits.

5. Insofar as the addition of Rs. 3.96 crores, covered by grounds No. 1 to 3 of the appeal, is concerned, during the course of assessment it was noticed that during the year the assessee introduced fresh share application money of Rs. 17 lakhs and share premium at Rs. 6.3 crores. According to the assessee a sum of Rs. 3.96 crores was invested by Sh. Suresh Garg, Director by taking advance from M/s Puja Equity advisors (P) Ltd but in spite of repeated demands and granting several opportunities the assessee failed to produce any documentary evidence in support of genuineness and creditworthiness of the transaction.

6. It was noticed by the authorities below that from the documents relating to the Puja Equity advisors, as produced by the assessee, it was noticed that the amount advanced was not commensurate and consistent with their returned income, the company did not even have an office, the company possess the tangible assets of only Rs. 94, 889/- whereas the company had to press 24 crore worth of investment and loans and advances, the expenditure on staff and salaries was minimal, from the bank statement, the entries are only circulating in nature and the company had no investors/traders/debtors.

7. Learned Assessing Officer therefore doubted the transaction and required the production of M/s Puja Equity advisors (P) Ltd through its Directors along with its books of accounts, bank statements and the source of loan/advance of Rs. 3.96 crores given to Sh. Suresh Kumar Garg for investing in the assessee. Both the authorities recorded that the

ambit of section 68 is wider in case of a closely held company and all the characteristics of the assessee are consistent with those of shell companies operating without or with minimal assets/employees which merely provide accommodation entries and, therefore, inasmuch as the assessee failed to discharge the onus under section 68 of the Act, there is no escape for the assessee from the clutches of section 68 of the act insofar as this amount is concerned.

8. Having taken into consideration all these facts and circumstances, and since there was no change in them, Ld. CIT(A) also concurred with the learned Assessing Officer to hold that the assessee failed to discharge the onus in explaining the source of funds for this amount and we are pleading of helplessness to produce the Directors before the learned Assessing Officer is no excuse. Ld. CIT(A), accordingly, upheld the findings of the learned Assessing Officer and confirmed the addition.

9. Ld. DR submitted that the decisions of the Hon'ble Apex Court in the case of PCIT vs. NRA Iron and Steel (P) Ltd (2019) for 12 ITR 161 (SC) and the decisions of the Hon'ble jurisdictional High Court in the cases of PCIT vs. NDR Promoters Pvt. Ltd. (2019) for 10 ITR 379 (Delhi), CIT vs. NR Portfolio Private Limited (2014) 42 taxmann.com 339 (Delhi), CIT vs. Nova Promoters &Finlease (P) Ltd. 18 taxmann.com 217 etc., are applicable to the facts of the case.

10. We have gone through the record in the light of the submissions made by the Ld. DR. In PCIT vs. NRA Iron and Steel (P) Ltd (supra) and NR Portfolio Private Limited (supra) it is held that it is legitimate for the learned Assessing Officer to look into the issues like - whether the two

parties are related or known to each other, or mode by which parties approached each other? whether the transaction is entered into through written documentation to protect investment? whether the investor was an angel investor? what is the quantum of money invested? how the party believed the credit-worthiness of the recipient? what is the object and purpose of payment/investment? whether the share applicant is in existence and an independent entity? how the financial capacity of the share applicant to invest funds is proved? how the source of funds from which the high share premium was invested is dealt with by the assessee? why the investor companies had applied for shares of the Assessee Company at a high premium? in case the field enquiry conducted by the AO revealed that the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee? whether the assessee discharged their legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO? whether the assessee discharged the onus to establish the credit worthiness of the investor companies? did the assessee do anything more than mere mention of the income tax file number of an investor to discharge the onus under Section 68 of the Act? did the assessee do anything more than mere filing all the primary evidence in discharge of their onus to prove the identity of the investee? etc.

11. When the learned Assessing Officer felt it necessary to verify the things beyond the pale of papers, it is incumbent upon the assessee to cooperate with the learned Assessing Officer in dispelling the doubts, which the circumstances raised in the mind of the learned Assessing

Officer. It is not open for the assessee to say that the learned Assessing Officer shall not enquire into anything beyond the papers that were submitted by the assessee.

12. Orders of the authorities below reveal that the assessee has not complied with the requirements of the learned Assessing Officer in the exercise of forming satisfaction as to the creditworthiness of the share applicants or the genuineness of the transaction. Mere paperwork by the assessee does not take the authorities anywhere, when the learned Assessing Officer suspected the existence of the entities in question and insisted that a higher degree of proof is required in that respect.

13. In view of the decisions of the Hon'ble jurisdictional High Court and Hon'ble Supreme Court in the case of NDR Promoters Pvt. Ltd. (supra) and the decision of the Apex Court in the case of NRA Iron and Steel (P) Ltd (supra) we are of the considered opinion that the action of the learned Assessing Officer was legal and non-production of the persons summoned had rightly led to the inference that the assessee had routed their own money in the books of accounts through the conduit of investor companies. On this premise, we agree with the authorities below and uphold the addition made under section 68 of the Act. Grounds No. 1 to 3 of the assessee's appeal are accordingly dismissed.

14. Coming to the addition of Rs. 6 Lacs covered by grounds No. 4 and 5, it was made by the learned Assessing Officer by making certain portion of the labour charges, loading and unloading expenses and missionary repair and maintenance charges, according to the learned Assessing Officer such payments were made in cash and bills were not properly

vouched and therefore such expenses remained unverifiable. Precisely for this reason, Ld. CIT(A) also confirmed the same. No reasons are forthcoming before us to take a different view. We, therefore, do not find any reason to interfere with the findings of the Ld. CIT(A) and therefore dismiss grounds No. 4 and 5.

15. The next addition challenged under grounds No. 6 and 7, is in respect of Rs. 1 19, 29, 050/-towards the disallowance of 1/8th portion of the expenditure met further car expenses, conveyance, Festival expenses, telephone expense, travelling expense and sales promotion expenses. On this aspect learned Assessing Officer recorded that the log books of car and complete details of telephone calls were not produced by the assessee and according to the assessee is not feasible to produce the same because the vehicles are almost under the direct control of the management. Ld. CIT(A) recorded that the explanation offered by the assessee was only superficial and log books are maintained mandated really in any concern of whatever the size. On this aspect also, no submissions are forthcoming from the side of the assessee to take a different view. We therefore, do not propose to interfere with the findings of Ld. CIT(A) in the impugned order.

16. Lastly addition of Rs. 7, 94, 315/-covered by grounds No. 8 and 9, it represents the disallowance of a part of the expense under the head repair and maintenance on the ground that the bills in respect of the amounts paid in cash were not properly vouched. Ld. CIT(A) recorded that the assessee sought to take shelter under the fact that certain vendors do not maintain printed bills and expenses are internally vouched. According to the Ld. CIT(A) in the absence of any non-

availability of the expense disallowance of a portion of the same is justifiable. In the absence of any material or reason before us to take a contrary view. We decline to interfere with the same. Grounds No. 7 and 8 are accordingly dismissed.

17. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on this the 24th day of February 2022.

Sd/-
(G.S. PANNU)
PRESIDENT

Dated: 24/02/2022

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI