

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 927 & 928/DEL/2019
[Assessment Year: 2013-14 & 2014-15]

Capital Infra Projects Pvt Ltd
C/o M/s RRA Tax India
D -28, South Extension
Part - 1, New Delhi.

Vs

The Dy. C.I.T
Central Circle
New Delhi.

PAN : AAEC 0093 J

[Appellant]

[Respondent]

Date of Hearing : 02.09.2020
Date of Pronouncement : 04.09.2020

Assessee by : Shri Rajiv Khandelwal, CA
Revenue by : Ms. Nidhi Srivastava, CIT- DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above two appeals by the assessee are preferred against the common order of the CIT(A) - 4, Kanpur dated 30.11.2018 pertaining to A.Ys 2013-14 and 2014-15. The underlying facts in issues are identical.

Therefore, both these appeals are disposed off by this common order for the sake of convenience and brevity.

2. The quarrel is in respect of loan received from M/s Pabla Leasing and Finance Pvt. Ltd amounting to Rs. 3 crores in each A.Y treated by the Assessing Officer as unexplained cash credit and, accordingly, additions have been made under section 68 of the Act.

3. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

4. Facts on record show that a search and seizure operation u/s 132 of the Act was conducted on 26.8.2015 on the premises of the assessee comprising IITL Nimbus group of cases.

5. Facts further show that this group is engaged in the business of sale of flats in the territorial area of Ghaziabad, Delhi and Noida. The appellant company was established on 07.06.2010 with only two shareholders, namely, Nimbus Projects Limited and IITL Projects Limited, each holding 50% of the share.

6. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has taken loan from Pabla Leasing and Finance Pvt. Ltd amounting to rupees 3 crores. The Assessing Officer found that there is an enquiry report from the Investigation Unit, Kolkata in the case of some of the companies and report reveals that the said companies have been used by different accommodation entry operators to facilitate accommodation entries in different forms to various beneficiary groups.

7. One of such named company is Pabla Leasing and Finance Pvt. Ltd. According to the report, the Assessing Officer found that Pabla Leasing and Finance Pvt. Ltd has provided accommodation entries on commission basis to IITL Nimbus group of companies. The relevant extract of the report is as under:

The Deputy Director of
Income-Tax (Inv.) - II
4th Floor, A-2D Sector -21,
Noida

Sir.

Sub:Enquiry report for commission u/s 131(l)(d) of the
I.T.Act 1961 in respect of M/s. IITL-Nimbus Group -
matter reading

Ref: *Your letter having* No.DDIT(Inv.HI/ Noida/ Nimbus
/2015-16/190 dated 14. 10 2015.

Kindly refer to the above.

A commission u/s. 131(l)(d) of the Income-tax Act. 1961
dated 14/10/2015 was received by this office to enquire about
the genuineness and existence of the following investing
companies in connection with the search conducted in the case
of Nimbus Group.

1. **M/s Pabla Leasing** and finance Pvt. Ltd., 7 Grant Lane,
Kolkata
2. M/s G:ri Financial Services Pvt Ltd , 68 jessore Road. 3rd
Floor, Flat No.314. Kolkata
3. M/S intellectual Securities Pvt. Ltd., Room No.415A, 4th Floor,
Marshall House, N.5. Road, Kolkata-700001

Further request was made by you to conduct enquiries in respect of other following companies:

1. M/s Padma Estate Pvt. Ltd, Office No 415A, 4th floor, Marshal House, 33/1, N S Road Kolkata-1
2. M/s. Cindy Goodj & Supply Pvt Ltd, Office No. 418A, Floor, Marshal House 53/1 N S Road, Kolkata
- 3 M/s Bhandari Financial Services Pvt Ltd, 121; U.S. Road, 5th Floor Room No - 59, Kolkata
4. M/s. Nippy Trading Pvt. Ltd, 7A Bench Street, New Wing. Room No. 363, 3rd Floor.
5. Kaypee Mercantile Pvt Ltd. 37 Shakespeare Sarani, 4th Floor, Kolkata-17

Accordingly, summonses were issued to the principal officer/directors or all the above companies and it was found that none of the above companies except Bhandari Financial Services Pvt Ltd and Nippy vs. Ltd. existed at their given addresses. It was mentioned on the address at office No 418A, 4th Floor, Marshal House 33/1, Kolkata-700031 that the companies of that address have been shifted to the address No. 277, 3rd Floor, Room No. BQS, Kolkata-700012.

Subsequently, it also became evident from the database that following 3 (three) companies out of *The* above are identified paper companies of known accommodation entry operators.

- "(I) Pad's Lessing and Finance Pvt. Ltd (Entry operator-Ankit Bagri)
(it) Kaypee Mercantile Pvt Ltd. (Entry operator- Deepak Patv/ari)
Tim Intellectual Securities Pvt, Ltd. (Entry operator- Rajesh Agar.val)

Statements of all the above entry operators have been recorded earlier in which they have accepted that they are in. the business of providing different forms of accommodation entries on commission to various beneficiaries using the network of numerous bogus/paper companies. Statements of the said accommodation entry operators are being enclosed for your kind perusal and necessary action.

On visiting the address ax 277, 3.3. Ganguly street, 3rd Floor, Room Na.BGS, Kolkata- 12 a signboard reflecting the names of Intellectual Securities Pvt. Ltd., Pabla leasing and Finance Ltd.. Girl Financial Service Pvt. Ltd, Padma Estate Pvt. Ltd. and Cindy Goods &. Supply Pvt Ltd was noticed at the entrance of the single room office, It was found that few computers were placed *in the room indicating that* some accounts were

being maintained there. However, no business activity-were, visible as to be carried out at that place to the departmental inspectors Sunil Kumar Gayen, and Jayanta Sarka who visited there. It was however reported by the employee of that office Mr Vivek Sharma that all the said 5 companies are having their registered office at that, address. Thereafter, summons in the case Of the said companies were served at that address. However, none of the directors or key persons of the company appeared before the undersigned till date in response.

Submissions were received from all the above entities except Kaypee Mercantiles Pvt Ltd which was not found to be existing at the given address, which are being enclosed for your kind perusal and necessary action.

Observations made during the course of investigation clearly indicate that all these companies have been used by different accommodation entry operator, to facilitate accommodation entries in different forms to various beneficiary groups. Statements of directors/key persons could not be recorded due to their non-appearance. Inspector report is being enclosed for your kind perusal.

8. Taking a leaf out of this report, enquiries were made in the case of the assessee and the assessee was asked to furnish its comments on the enquiry report of the Investigation Unit, Kolkata. The assessee was further asked to produce Directors/Principal Officer of the company for examination on oath. The assessee filed necessary details and reiterated that details have already been filed and the transactions with IITL Nimbus group of companies are bonafide and genuine.

9. The Assessing Officer rubbished the submissions of the assessee and came to the conclusion that in case of credit in the name of third parties, it is the duty of the assessee to prove the identity of the creditors, capacity of the creditors to advance money and genuineness of the transaction. The Assessing Officer was of the firm belief that the assessee has failed to prove the capacity of the creditor namely, Pabla Leasing and Finance Pvt. Ltd. Since, according to the Assessing Officer the assessee failed to prove the credit worthiness, additions have been made u/s 68 of the Act amounting to Rs. 3 crores in each A.Y under appeal.

10. We find that the Tribunal in the case of Nimbus India Ltd ITA Nos. 929 and 930/DEL/2019 for A.Ys 2013-14 and 2014-15, vide order dated 10.02.2020, has accepted all the three crucial factors in the case of Pabla Leasing and Finance Pvt. Ltd, namely, the identity, genuineness of the transaction and credit worthiness. We find that in the case of Nimbus India Limited, quarrel was in respect of addition of 15 crores being investment done by Pabla Leasing and Finance Pvt. Ltd towards the purchase of shares at a premium. After discussing various judicial discussions in light of the fact of investment made by Pabla Leasing and Finance Pvt. Ltd, the Tribunal came to the conclusion as under:

"34. The various other decisions relied on by the Id. Counsel for the assessee also supports his case that no addition can be made u/s 68 of the IT act and in the instant case, when the assessee has substantiated the three ingredients of section 68 of the IT Act and moreover, such amount has been refunded to the investor companies in subsequent years which is much prior to the date of search.

35. So far as the decision relied on by the Id. DR in the case of NRA Iron & Steel (P) Ltd. (supra) is concerned, the same, in our opinion, is not applicable to the facts of the present

case since, in that case, the investor did not appear in response to the summons, the AO got field enquiries conducted in respect of investor companies and notices were not served on such investor companies. None of the investors produced the bank statements to establish the source of funds in making such huge investments and investors were showing meager income in the return. However, in the instant case, the directors/MDs of the investor companies appeared before the AO in response to notice u/s 133(6) and their statements u/s 131 were recorded and they have confirmed to have invested in the shares of the assessee company. The investor companies have produced their bank statements and were showing substantial income and, moreover, the AO, in the preceding or succeeding year in the case of the investor companies have accepted the investment made by them in the shares of the assessee company in the orders passed u/s 153A/143(3). Therefore, the decision in the case of NRA Iron & Steel (P) Ltd. (supra), in our opinion, is not applicable to the facts of the present case.

36. So far as the decision in the case of NDR Promoters Pvt. Ltd. (supra) is concerned, the same also is not applicable in the facts of the present case especially when the directors of the investor companies appeared before the AO whose statements were recorded u/s 131 of the Act and who have confirmed to have invested in the assessee company, all the

investor companies are assessed to tax, their orders have been passed u/s 143(3) in most of the years, the AO of the investor companies are aware of the huge investment made by them in various companies since while computing the disallowance u/s 14A r.w. Rule 8D, the AO has countered the huge opening and closing investment made by them towards share capital for computing the average investment for the purpose of calculation of disallowance u/s 14A r.w. Rule 8D. Therefore, the decision in the case of NDR Promoters Pvt. Ltd. (supra) is also not applicable to the facts of the instant case. The various other decisions relied on by the Id. DR are also not applicable to the facts of the present case and are distinguishable. In this view of the matter, we are of the considered opinion that the addition made by the AO and sustained by the CIT(A) is not justified. Accordingly, we direct the AO to delete the addition made by him u/s 68 of the Act for both the years."

11. As mentioned elsewhere, for the impugned A.Ys under appeal, transactions with Pabla Leasing and Finance Pvt. Ltd have been questioned by the Assessing Officer on the ground that the assessee has failed to establish the credit worthiness. We are of the opinion that since the credit worthiness of this company has been accepted in

the case of flagship company of the appellant, we do not find any merit in this finding of the lower authorities.

12. Further, on perusal of the confirmation of ledger account of Pabla Leasing and Finance Pvt. Ltd., we find that the loan has been repaid on 19.01.2013, which is much earlier than the date of search, which is 26.08.2015.

13. We further find that the statement of Shri Virender Triparti, Managing Director of Pabla Leasing and Finance Pvt. Ltd was recorded under section 131 of the Act on 22.12.2017 and the same is exhibited at pages 109 to 111 of the paper book.

14. Question No 8 of that statement is most relevant here wherein the Managing Director was asked to explain whether his company has made any investment in the form of loan/share capital etc with any of the companies of Nimbus India Limited group.

15. In his reply, the Managing Director categorically stated that his company has given loan of rupees 300 lakhs to M/s Capital Infraproject during F.Y 2012-13 and 300 lakhs in F.Y 2013-14.

16. In his reply, the Managing Director also explained that source of fund for this loan was sale of existing investments. The Managing Director also admitted that the loan has been refunded back.

17. With this clinching evidence, there remains no doubt that the assessee has successfully discharged its onus cast upon it by the provisions of section 68 of the Act. We do not find any merit in the allegation of the lower authorities that Pabla Leasing and Finance Pvt. Ltd is only a paper company providing accommodation entries to the Nimbus India Ltd group of companies.

18. In light of the decision of the Tribunal in the case of flagship company Nimbus India Limited, and further drawing support from the statement of the Managing Director of Pabla Leasing and Finance Pvt., Ltd, we are of the considered view that the assessee has successfully

discharged the onus and, therefore, the additions made u/s 68 of the Act deserve to be deleted.

19. In the result, both the appeals of the assessee in ITA Nos. 927 & 928/DEL/2019 are allowed.

The order is pronounced in the open court on 04.09.2020.

Sd/-

**[KULDIP SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 04th September, 2020

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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