

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.23/Hyd/2022		
Assessment Year: 2011-12		
M/s. Nuland Infrastructure (P) Ltd, Hyderabad PAN:AACCN5235D (Appellant)	Vs.	Income Tax Officer Ward 16(2) Hyderabad (Respondent)
Assessee by:	Shri T. Rajender Prasad, CA	
Revenue by:	Shri Rajendra Kumar, CIT (DR)	
Date of hearing:	02/08/2022	
Date of pronouncement:	04/08/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 8.5.2020 of the learned CIT (A)-4, Hyderabad relating to A.Y.2011-12.

2. There is a delay of 545 days in filing of this appeal by the assessee for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay which is due to the prevailing covid. After hearing both the sides and following the decision of the Hon'ble Supreme Court in the case of Suo Moto Write Petition (C) No.3 of 2020 order dated 10.01.2022 wherein it is held that the period from 15.3.2020 till

28.02.2022 shall stand excluded for the purpose of computing limitation, the delay in filing of the appeal is condoned.

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of undertaking infrastructure activities. It filed its return of income on 21.7.2011 declaring total income of Rs.Nil. Subsequently, the assessment was reopened and notice u/s 148 of the Act dated 3.3.2017 was issued and served on the assessee. However, there was no response from the side of the assessee. Subsequently, notice u/s 142(1) of the Act was also served on the assessee but again there was no response from the side of the assessee. The Assessing Officer, therefore, issued another notice u/s 142(1) of the Act calling for information and the case was posted for hearing on 4.12.2017. However, there was again no response from the side of the assessee. The Assessing Officer, therefore, proceeded to complete the assessment u/s 144 of the I.T. Act, 1961. He noted that the assessee company has received share application money of Rs.7,08,00,000/- during the years. Since all possible efforts made by the Department to afford an opportunity to the assessee for producing the information/submitting objection have gone in vain, the Assessing Officer completed the assessment u/s 144 of the I.T. Act. Since the assessee failed to respond to the statutory notices and nothing was available before him to substantiate with evidence to his satisfaction regarding the identity and creditworthiness of the investors and genuineness of the transactions, the Assessing Officer made addition of Rs.7,08,00,000/- to the total income of the assessee and accordingly completed the assessment u/s 144 of the Act determining the total income at Rs.7,08,00,000/-.

4. Before the learned CIT (A), the assessee filed certain additional evidences based on which the learned CIT (A) called for two remand reports from the Assessing Officer. After considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand reports, the learned CIT (A) sustained the addition made by the Assessing Officer and dismissed the appeal filed by the assessee.

5. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. The Ld. CIT-A erred in law and facts of the case in confirming the order of the Assessing Officer U/S 144 who determined the Total Income at Rs. 708,00,000/- and the consequential tax and interest liability at Rs 602.05,914/-;

2. The Ld. CIT-A ought to have deleted the addition made by the AO of Rs 708,00,000/- to the returned income as the AO had not attributed any reasons for treating the share application money as income;

3. The Ld. CIT-A erred in confirming the order of the AO who had the treated the share application money of Rs 708,00,000 as income of the appellant despite the fact that the amounts had been received through banking channels and got duly reflected in the audited financial statements and in the return of income;

4. The Ld. CIT-A ought to have appreciated the provisions of Sec 68 as stood during the relevant Assessment Year where in the appellant is not required to prove the creditworthiness of the investors;

5. The Ld. CIT-A ought to have appreciated that the appellant had explained the nature and source of the share application money as required under the provisions of Sec 68 as the appellant explained and disclosed that it was share application money and PAN and Address Proofs were submitted”.

6. The learned Counsel for the assessee relying on the following decisions submitted that the since the assessee has proved the identity of the investors and the payments were made through banking channel, therefore, the addition made by the Assessing Officer and sustained by the learned CIT (A) is not in

accordance with law and therefore, the order of the learned CIT (A) should be set aside and the additions made be deleted:

- (i) *CIT vs. Lovely Exports (P) Ltd (2008) 216 CTR 195(S.C)*
- (ii) *CIT vs. Anurag Agarwal (2015)54 Taxmann.com 75(All)*
- (iii) *PCIT V Himachal Fibres Ltd (2018) 98 Taxmann.com 173 (S.C)*
- (iv) *CIT vs. HLT Finance (P) Ltd (2011) 12 Taxmann.com 247*
- (v) *CIT vs. Shree Rama Multi Tech Ltd (2013) 34 Taxmann.com 177*
- (vi) *CIT (Central) vs. Som Tobacco India Ltd (2014) 42 Taxmann.com 310*
- (vii) *CIT-1 vs. Gagandeep Infrastructure (P) Ltd (2017) 80 Taxmann.com 272*
- (viii) *CIT Meerut vs. Nav Bharat Duplex Ltd (2013) 35 Taxmann.com 289*

7. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A). He submitted that the learned CIT (A) has given a finding in respect of each and every investor which is self-explanatory. He submitted that either the investors are showing meagre income or have not filed any return of income. Further, the investors have deposited equivalent money either on the same day or one or two days prior to the date of investment which raises serious doubts.

8. Referring to the decisions reported in 138 Taxmann.com 348 (S.C), 138 Taxmann.com 207 (S.C) and 119 Taxmann.com 285, he submitted that under identical circumstances, the additions made u/s 68 have been upheld. He accordingly submitted that the grounds raised by the assessee should be dismissed.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and

the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the order passed u/s 144 of the Act made addition of Rs.7,08,00,000/- to the total income of the assessee on a/c of share application money received during the year on the ground that the assessee did not respond to the statutory notices nor any documentary evidence was filed before him to substantiate the identity and creditworthiness of the investors and the genuineness of the transactions. We find the learned CIT (A) after calling for two remand reports from the Assessing Officer upheld the addition made by him wherein he has given investor-wise justification for sustaining the addition. We find the learned CIT (A) while giving his justification for sustaining the addition has analyzed thoroughly the credentials of the investors by recording as under:

“The Assessing Officer’s observations as well as my own observation with respect to each investor are enumerated in the table below:

S.No	Name of the person	Amount of money given as share application	Assessing Officer’s comments	Remarks
1	Sri Venkateswarlu	89,50,000	No return filed for A.Y 2011-12. Return for A.Y 2012-13 shows meagre income	The bank statement shows that there are deposits in the Return for AY bank account of the matching 2012-13 shows amounts on the same day or meagre income when payments are made to appellant Company For instance, Rs 70 Lakhs was deposited on 29.03.2011 and the same amount was paid to appellant on the same day. The investor has paid Rs 10 Lakhs on 29.09.2010 and on the same date there is deposit of Rs 10 Lakhs in cash in his account. The bank account statement shows

				similar entries and if such entries are disregarded the balance is meagre.
2	Sri K. Sriharsha	56,50,000	The investor filed return of income showing meagre income	The bank statement shows that there are deposits in bank account of the matching income. amounts on the same day when payments are made to appellant Company. The bank account statement shows similar entries and if such entries are disregarded the balance is meagre
3	Sri D. Srinivasa Rao (M/s. Engenius Consulting India P Ltd)	1,00,00,000	It is claimed by AR that the amount of Rs.1 crore was given by M/s. Engenius Consulting India Pvt Ltd and not by Sri D Srinivas Rao, as mentioned earlier by mistake. The investor has filed return of income showing meagre income. Further there is no mention of the investment in appellant company in the balance sheet of the company.	The Bank statement of M/s.Engenium Consulting India Pvt Ltd shows deposit of Rs.1 crores on 14.5.2010 and next day on 15.5.2010 the same amount was paid to appellant. Besides these two entries the bank a/c statement shows very low balance
4	Sri G. Nageshwara Rao	60,00,000	No return filed	The bank statement shows that there is deposit in the bank account of the matching amounts one day before the day when payments are made to appellant Company Besides this entry the bank account statement shows very low balance
5	Sri G. Surender Reddy	1,22,20,000	No return filed	The bank statement shows that there are deposit in the bank account of the matching amounts same day when payments are made to appellant Company. Besides bank these entries the account statement shows very low balance.
6	Sri Srinivasa Rao	30,00,000	The investor filed	The investor has paid Rs 30

	Kanchiraj		return of income showing income meagre	appellant Lakhs to the appellant Company on 20.09.2010 and two days earlier he had deposited the same amount in his account. Besides these two entries the bank account shows very low balance
7	M/s. Hetu Investment Trading Ltgd	1,00,00,000	No documentary evidence submitted in the case of this investor	
8	M/s.Sanguine Media Ltd	1,50,00,000	No documentary evidence submitted in the case of this investor	

In view of the above discussion, it is obvious that the appellant has failed to satisfy the identity & creditworthiness of the investors and the genuineness of the amount received as share application money. Therefore, the AO was justified in making the addition of Rs 7,08,00,000/- under section 68 of the I.T. Act, 1961. Thus, grounds raised in this regard are dismissed."

10. A perusal of the finding given by the learned CIT (A) shows that either the investors have filed therein return of income showing meagre income or in some cases no returns were filed. Further, there are deposits in the Bank A/c of the matching amount either on the same day or one or two days prior to the transfer of the money to the assessee's A/c. It is the settled proposition of law that for accepting any cash credit, the onus is always on the assessee to substantiate with evidence to the satisfaction of the Assessing Officer regarding the identity and creditworthiness of the investors/creditors and the genuineness of the transaction. In the instant case, the creditworthiness of the investors remained doubtful especially due to non-availability of their financials, declaring of meagre amount in the Income Tax Return or no return of income and deposits of the matching amount in the Bank A/c either on the same day or one or two days prior to the transfer to assessee's Bank A/c. Merely because the investments by the investors are made through Banking Channels, the same cannot be a ground to absolve the assessee

from proving the three ingredients as mentioned earlier. In this view of the matter and in view of the detailed reasoning given by the learned CIT (A) on each and every investor, we do not find any infirmity in the order of the learned CIT (A) in sustaining the addition made by the Assessing Officer. Accordingly, the same is upheld and the grounds raised by the assessee are dismissed.

11. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 4th August, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 4th August, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	M/s. Nuland Infrastructure (P) Ltd Flat No.301, Plot No.107, Anand Nagar Colony, Khairatabad, Hyderabad 500004
2	Income Tax Officer Ward 16(2) IT Towers, AC Guards, Hyderabad 500004
3	CIT (A)-4 ,Hyderabad
4	Pr. CIT-4, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order