

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Shri M.Balaganesh, AM & Hon'ble Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 1614/Kol/2016

Assessment Year : 2012-13

ITO, Ward-13(1), Kolkata

-vs-

M/s Anand Enterprises Ltd.

[PAN: AACCA 1175 F]

(Appellant)

(Respondent)

C.O. No. 56/Kol/2016

(Arising out of I.T.A No. 1614/Kol/2017 )

Assessment Year : 2012-13

M/s Anand Enterprises Ltd.

-vs-

ITO, Ward-13(1), Kolkata

[PAN: AACCA 1175 F]

(Cross Objector)

(Respondent)

For the Appellant : Shri G.Hangshing, CIT DR

For the Respondent : Shri S.M. Surana, Ld. AR

Date of Hearing : 17.09.2018

Date of Pronouncement : 26. 09 .2018

## **ORDER**

**Per M.Balaganesh, AM**

1. This appeal by the Revenue and the Cross Objection by the assessee arise out of the order of the Learned Commissioner of Income Tax(Appeals)-5, Kolkata [in short the ld CIT(A)] in Appeal No. 29/CIT(A)-5/Wd-14(4)/15-16 dated 28.06.2016 against the order passed by the ITO, Ward-14(4), Kolkata [ in short the ld AO] under section

143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 25.03.2015 for the Assessment Year 2012-13.

2. The only issue to be decided in the appeal of the revenue is as to whether the Id. CIT(A) was justified in deleting the addition of Rs. 20,07,60,000/- made u/s 68 of the Act, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a public limited company engaged in the business of trading and investment in shares and securities and the assessee company was incorporated on 30.04.1981. The return of income for assessment year 2012-13 was filed by the assessee on 31.3.2013 declaring total income of Rs. Nil. The Id. AO in para 2 of his assessment order in page 1 observed that the details called for from the assessee were duly submitted together with the relevant information and documents. The same were also subjected to cross verification u/s 133(6) of the Act and summons u/s 131 of the Act were also issued where ever necessary. The Id. AO observed that during the year the assessee company has raised capital by issue of shares. From the accounts of the assessee company, he observed that the assessee had made investment of Rs. 20 crores approximately in shares during the year. The primary facts involved herein are that the assessee company purchased shares of another company from the following parties:

- i) P.S. Communication Pvt. Ltd.
- ii) Jhajharia Computer Pvt. Ltd.
- iii) R.L. Laundry Pvt. Ltd.(Formerly Sunshine Washers Pvt. Ltd.)
- iv) Aryadeep Suppliers Pvt. Ltd.
- v) Pacify Vinimay Pvt. Ltd.
- vi) Virtual Dealmark Pvt. Ltd.

The assessee company did not pay any cash consideration for making these investments in shares and instead issued shares from its company to the aforesaid shareholders in

lieu of purchase consideration for investment in shares. In other words, the shares were issued by the assessee company to the tune of Rs. 20,07,60,000/- for consideration other than cash in lieu of making investment in shares of another company. There was no receipt of any cash or cheque for issue of share capital by the assessee. The assessee pleaded that there was no sum credited in its books of accounts towards share capital. Since no money was received by it towards the same and accordingly pleaded that provisions of section 68 of the Act cannot be made applicable to it. The Id. AO ignored the contentions of the assessee and proceeded to treat the entire receipt of share capital and share premium as ingenuine by holding the shareholders did not have sufficient creditworthiness to make investment in share capital by the assessee. The Id. AO however observed in his order that there was no receipt of cash consideration of share capital and the transaction had happened for the same only through book entries. Accordingly, the Id. AO observed that the assessee had actually introduced unaccounted money in its company through issue of bogus shares to various shareholders. He observed that the entire set of transactions entered into by the assessee shareholder, the assessee or company in which the assessee has invested, as a pre-designed set of transactions executed to introduce unaccounted money in the garb of share capital and share premium. He held that the three necessary ingredients of section 68 of the Act viz. identity of shareholder; creditworthiness of the shareholder and genuineness of the transactions are not proved in the instant case. Accordingly, an addition of Rs. 20,07,60,000/- made u/s 68 of the Act in the assessment. This was deleted by the Id. CIT(A). Aggrieved the revenue is in appeal before us.

4. We have heard the rival submissions. At the outset, we find that the assessee had not raised any share capital by receipt of cash consideration in the instant case. The shares were issued for consideration other than cash in lieu of assessee company making investment in shares in some other company. Effectively, the assessee purchased certain shares from the aforesaid six shareholders and instead of paying cash to them, the

assessee company issued shares in its own company to those shareholders. Hence the assessee had made investments in shares of another company for which consideration was settled through issuance of its shares to those shareholders. Now the crucial point is whether the provisions of section 68 could be invoked in the instant case for making investment towards share capital. There was no receipt of any sum as provided u/s 68 of the Act in the instant case. It would be pertinent here to refer to the decision of Hon'ble Supreme Court in the case of Shri H.H. Rama Varma vs. CIT reported in 187 ITR 308 (SC) wherein it was held that 'any sum' means 'sum of money'. We find that ld. CIT(A) had deleted the addition by observing as under:

*"6. On consideration of the AR's submission, especially the portion reproduced above, it is seen that section 68 of I.T. Act, 1961 does not apply to cases of purchase of share assets and allotment of shares by the appellant when purchase and allotment are under a barter system. The AO has not refuted the appellant's claim that shares were allotted in exchange for acquisition of shares by the appellant from the companies which surrendered such shares to the appellant. Though as per the AO to apply section 68 to make the said addition in the appellant's hand. Transactions purportedly executed by entry operators involve multiple layers and other complexities, introducing delays in introduction of unaccounted cash/money and multiple players being incorporated entities. Measures taken by the AO in the course of the assessment proceeding falls much short of what is required to be done in such case laws, which have evolved on this issue, call for concerted actions on the part of the AO pinpointing utilization of unexplained/unaccounted/untaxed money and the players and the beneficiaries effectively using the weblike scheme to plunder black money. For example introduction and use of black money in the present case may be at a different point of time and in different hands. The AO's action in the present case cannot be upheld in law. I, therefore, delete the additions and grounds of appeal Nos. 3 & 4 are allowed."*

4.1. We find that the Hon'ble Allahabad High Court in the case of CIT vs. Sohanlal Singhania reported in 235 ITR 616 (All) had held in the context of allowability of donation as deduction u/s 80G of the Act that the expression 'any sum paid' used in the said section denotes 'sum of money paid'. Hence if certain shares were donated by a person, then the same would not fall eligible for deduction u/s 80G of the Act. We also find that the Hon'ble Jurisdictional High Court in the case of Jatia Investment Company

(Co.) vs. CIT reported in 206 ITR 718 (Cal) also supports the case of the assessee herein, wherein it was held as under:

*“It is finally emphasised by learned counsel for the assessee that the ultimate result is that the firm becomes a debtor to GB and Co. and the three non-financial companies of the group got discharged. Learned counsel also emphasised that, at the worst, it can be said that the assessee-firm has received valuable assets being the said shares of the equivalent value of the debt taken over by it from the companies, i.e., Rs. 11.20 lakhs.*

*Therefore, the question of cash credit does not come in, there being no actual passing or receipt of cash. In other words, the transactions are mere book entries. It was contended that the fact that the entries passed through the cash book could not detract from or efface the essential nature of the entries. It was also urged that the entries were passed through the cash book so that the repayment of loans by the said three companies could be established before the Reserve Bank of India. But, according to Shri Bajoria, that does not mean that it amounts to an artifice employed to deceive any authorities, because the transactions showing the amount as received in cash and paid away spontaneously and simultaneously were not actual but only notional. He, however, stated that, as far as the question of section 68 is concerned, the nature of the transactions and the entries clearly show that no cash, in fact, flowed. It was further stressed that the transactions are above board. No outsider is involved. The entries were made in the books of the concerns of the same group. The shares in question were also of the companies of the group. There was no attempt at hiding the transactions. Nor is it the case of any of the parties to the transaction that there was any passing of cash. Every party unequivocally stated that the transactions were carried into effect merely by way of adjustments of the said loans and the share transfers.*

*Shri A. C. Moitra, the learned advocate for the Revenue, reiterated the grounds on which the Tribunal has affirmed the addition of the amount of Rs. 11.20 lakhs as unexplained cash credit. He particularly emphasised that the assessee's contention that the entries are only adjustment entries is not acceptable, because the adjustment entries are not made through the cash book. It is an accepted principle of accounting that book adjustments and the entries in effecting them are made by journal entries and not cash entries. He urged that the purported motive of the entries being the reduction of loans of the three limited companies does not explain the whole matter, because the entries are cash entries. The fact remains that, at every stage, the parties showed the payments and receipts of cash even when there was no cash available for such entries. This quite justifies the addition as sustained by the Tribunal.*

*We have perused the assessment order carefully. We find that cash did not pass at any stage though entries were made in the cash book showing payments and receipts ; but since the entries made a complete round, no passing of cash was necessary for the purpose of making the entries. That there was no passing of cash is also admitted by the Income- tax Officer himself. We have already extracted the observation of the Income- tax Officer in paragraph 14 of his assessment order. The Income- tax Officer has*

*clearly opined that all the respective parties did not receive cash nor did pay cash as none had any cash for the purpose. The only point in the assessment order is that the entries not involving the passing of cash should not have found a place in the cash book, but in the ledger account through journal entries. There is another self-contradiction in the Income-tax Officer's finding that, if there was no real cash entry on the credit side of the cash book, but merely a notional or fictitious cash entry, as admitted by him, there is no real credit of cash to its cash book ; the question of inclusion of the amount of the entry as unexplained cash credit cannot arise.*

*One of the grounds of the Tribunal for disbelieving the assessee's case is that the adjustment entries were made by notional cash entries with a view to bringing down the debt-and-capital ratio, i.e., that while being discharged of the debt the said companies also jettisoned their assets, i.e., the shares held by them of equivalent sum without achieving the avowed purpose. Here the Tribunal certainly misdirected itself. The ratio to be reduced is of the loan in relation to the share capital and the reserves. Jettisoning the shares had the desired effect of reducing the borrowed capital.*

*Again, as regards the Tribunal's refusal to take notice of the directions of the Reserve Bank, it is not correct for the Tribunal to hold that the said document was a new evidence in the true sense of the term. The assessee has been consistently pleading before the lower authorities that the entries had to be made in order to bring the companies in conformity with the said direction. Moreover, the direction of the Reserve Bank is a public document within the meaning of section 74 of the Evidence Act, 1872. Documents of a public nature and public authority are generally admissible in evidence subject to the mode of proving them as laid down in sections 76 and 78 of the Evidence Act.*

*In our view, the effect and import of the transactions is that the assessee took over the liability of the aforesaid non-financial companies to GB and Co. in exchange for the shares as aforesaid.*

*In the premises, we answer all the questions, in the affirmative and in favour of the assessee and against the Revenue.”*

4.2. It would be pertinent to note that in the instant case, the Id. AO had not doubted the investment made in shares by the assessee company. There is no dispute raised by the Id. AO with regard to number of shares; value thereon invested by the assessee company. We also find that the Co-ordinate Bench decision of Pune Tribunal in the case of Kantilal and Bros. vs. ACIT reported in 52 ITD 412 (Pune Trib.) also supports the case of the assessee.

4.3. In view of the aforesaid observations, in the facts and circumstances of the case and respectfully following the aforesaid judicial precedents relied upon hereinabove, we hold that the Id. AO had erroneously invoked the provisions of section 68 of the Act to the facts of the instant case, which, in our considered opinion, are not at all applicable herein. This is a simple case of acquiring shares of certain companies from certain shareholders without paying any cash consideration and instead the consideration was settled through issuance of shares to the respective parties. Moreover, in the balance sheet of the assessee company in the schedule to share capital, it is very clearly mentioned by way of note that the fresh share capital was raised during the year for consideration other than cash. Hence we hold that provision of section 68 of the Act are not applicable in the instant case and accordingly the entire addition deserves to be deleted which has rightly been done by the Id. CIT(A) which does not require any interference. Accordingly, grounds raised by the revenue are dismissed.

5. The cross objection filed by the assessee is only supportive of the order of Id. CIT(A) and does not require any specific adjudication.

6. In the result, the appeal of the revenue and the cross objection of the assessee are dismissed.

**Order pronounced in the Court on 26.09.2018**

Sd/-

[S.S. Viswanethra Ravi]  
Judicial Member

Sd/-

[ M.Balaganesh ]  
Accountant Member

Dated : 26.09.2018

SB, Sr. PS

Copy of the order forwarded to:

1. ITO, Ward-13(1), Kolkata, 3<sup>rd</sup> Floor, 110, Shantipally Aayakar Bhawan (Poorva), Kolkata-700107.
2. M/s Anand Enterprises Ltd., LP 80/5/1, Ground Floor, Shop No. 2, 19, Abhoy Guha Road, Liluah, Howrah-711204.
- 3..C.I.T.(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches