

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 283/DEL/2017
[Assessment Year: 2009-10]**

ACIT, Central Circle-27(Erstwhile Central Circle-18), Room No.327, ARA Centre, E-2, Jhandewalan Extn. New Delhi-110055	M/s Anshika Investment Pvt. Ltd. 305, 3 rd Floor Bhanot Corner, Pamposh Enclave, G. K.-1, New Delhi
	PAN-AAACB0113E
Appellant	Respondent

Appellant by	Shri Sanjay Geol
Respondent by	Shri M. P. Rastogi

Date of Hearing	31/07/2019
Date of Pronouncement	31/07/2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the Ld. CIT(A)-29, New Delhi, dated 21/10/2016 pertaining to AY 2009-10.

2. The substantive grievance of the Revenue read as under:-

"1. That on the facts and in the circumstances of the case the Ld. CIT(A), has erred in law and on facts in deleting the addition of Rs.4,00,00,000/- made u/s 68, without appreciating the facts that the assessee failed to establish the identity and creditworthiness of the creditor and genuineness of transaction.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) failed appreciate that the assessee company got credit of Rs.3,00,00,000/- from of share application money/premium M/s Adhyay Equipref Pvt. Ltd. From the bank account of M/s Adhyay Equipref Pvt. Ltd. It is noticed that between 3.4.2008 to 8.4.2008 there have been credits worth Rs.12 crores and on 8.4.2008 funds have been transferred to 3 entities namely M/s A.R. Leasing Pvt. Ltd. M/s Anshika Investment Pvt. Ltd.

And M/s Niksar Finvest Pvt. Ltd. amount to Rs.6 crores, 3 crores and 3 crores respectively. There was negligible balance in the account before and after these transactions. This pattern of bank deposits and withdrawals is generally found in case of entry operators

3. The underlying facts in the issues can be understood from the following observations of the Assessing Officer while framing the assessment order u/s 153A r.w.s. 143(3) of the Act vide order dated 29/02/2016:-

"In this case, original assessment u/s 143(3) was made by ACIT Central Circle-27, New (previously Central Circle-27, New Delhi) on 28/12/2011 which total income was assessed at Rs.4,00,00,000/- after making addition on account of 14A and 68 of the I.T. Act, 1961. The assessee filed appeal against the above addition made by the A.O. The Ld. CIT(A) allowed the appeal of the assessee by deleting entire addition. The department filed appeal against the order passed by the Ld. CIT(A). As the appeal of the Revenue is pending before Hon'ble ITAT, the total income of the assessee is assessed at Rs.4,00,00,000/-."

4. As can be seen from the above observations, the additions have been made since the appeal against the order of the Ld. CI(A) was filed before the ITAT. The ITAT in ITA No.2262/DEL/2013 & five others have considered the dispute and held as under:-

"9. From the above, it is evident that the value of each share is worked out at `40,616/-. Thus, apparently, higher share premium of `39,900/- is justifiable because of limited number of shares of the assessee company who are actual owner of assets of worth more than `60 crores. Moreover, in the earlier year also, the shares were allotted at a premium of `39,900/- per share and in AY 2006-07, the Assessing Officer even got the verification made through the Investigation Wing of Kolkata and the ITAT has accepted the credit in the form of share capital after considering the report of Investigation Wing of Kolkata. Hon'ble Jurisdictional High Court has also upheld the order of the ITAT in assessee's own case for assessment year 2006-07 after taking due note of high share premium. In view of the above, we are of the opinion that considering the facts of the case, the genuineness of the transactions is duly established. In view of the above, we hold that the assessee has duly discharged the onus of proving the credit of share capital in its account and learned CIT(A) was fully justified in accepting the same and in deleting the addition."

5. This order of the Tribunal was challenged before the Hon'ble High Court and the Hon'ble High Court in ITA No.424/2017, order dated 03/07/2017, dismissed the appeal of the Revenue by holding as under:-

“8. The ITAT dismissed the Revenue’s appeal by relying on an earlier on an earlier order of the ITAT in the Assessee’s own case for AY 2006-07. Further, the ITAT discussed the merits of the case and after analysing the record concluded that “the assessee has duly discharged the onus of proving the credit of share capital in its account and learned CIT(A) was fully justified in accepting the same and in deleting the addition.

9. I having heard learned counsel for the Revenue and having perused the record, the Court is satisfied that the conclusion reached by the CIT(A) that the addition under section 68 of the Act was not justified appears to be unexceptionable.

10. No substantial question of law arises from the impugned order of the ITAT. The appeal is dismissed.”

6. Considering the order of the Tribunal read with the order of the Hon’ble High Court, we decline to interfere with the findings of the Ld. CIT(A).

7. In the result, appeal filed by the Revenue is dismissed.

The order is pronounced in the open court on 31/07/2019

Sd/-

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Delhi; Dated: 31/07/2019.

Shekhar, Sr. P.S

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi