

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITANos. 4515, 4516 & 4517/Del/2015
Assessment Years: 2010-11, 2011-12 & 2012-13**

**M/s. Par Excellence Leasing and
Financial Services Pvt. Ltd., D-4,
Rectanmgle-1, Saket District Centre,
Saket, New Delhi**

**vs. ACIT, Central Circle-21,
New Delhi.**

PAN AAACP 0373N

(Appellant)

(Respondent)

Appellant by: None

Respondent by: Smt. Sulekha Verma, CIT/DR

Date of hearing: 02/12/2019

Date of order : 14/01/2020

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the common order dated 15/5/2015 in appeal Nos.68 to 70/14-15 passed by the learned Commissioner of Income Tax (Appeals)-XXVI, New Delhi ("Ld. CIT(A)") for the assessment years 2010-11 to 2012-13, M/s Par Excellence Leasing and Finance Services Private Limited ("the assessee") filed these three appeals on identical grounds. Since all these appeals emanate from a common order, we deem it just and convenient to dispose them of by way of this common order.

2. Brief facts of the case are that the assessee is a private limited company. There is an action under section 132 of the Income Tax Act, 1961 (for short "the Act") at the business premises of ABW group of cases and at the residential premises of their Directors and various documents/books of accounts etc were found and seized during the course of search. During the pre-search enquiries it was found that unaccounted income earned by the ABW group was rooted back in the books of accounts of the different companies of the group through bogus share capital and the share premium. Enquiries were conducted to find out the shareholding pattern of the group companies which indicated that share capital/share premium of the companies were prima facie bogus and received from the companies which are bogus and are only paper companies. While examining the seized material of the group of cases in the capacity of the Assessing Officer of the person searched, learned Assessing Officer found documents belonging to the assessee company in this case also, and therefore, after recording the satisfaction note on 19/1/2014 indicating that the said documents belong to the assessee company and that action under section 153C of the Act was required. Said documents were examined in the capacity of the Assessing Officer of the person other than the searched person and a fresh satisfaction note was prepared on 22/1/2014 indicating the satisfaction that the said documents belong to the assessee company and therefore, provisions of section 153C of the Act were attracted. Notice under section 153C of the Act read with section 153A of the Act was issued and proceedings were taken up accordingly.

3. Details of share capital and share premium obtained by the assessee in the financial years 2009-10 to 2011-12 in the following way:-

S. No	Party	Address	FY 09-10 (AY 10-11)			
			No of Shares	Share Amount @ Rs 10 /share	Share Premium @Rs 190/share	Total (Share Capital + Share Premium)
1	Golden Mercantiles Ltd	A 32, Sector 17, NOIDA, UP	160,000	1,600,000	30,400,000	32,000,000
2	MNR Shares & Inv P Ltd	208, Chanakya Complex, Subhash Chowk, Laxmi Nagar, Delhi	100,000	1,000,000	19,000,000	20,000,000
3	Olympus Vision P Ltd	32/34,5 th Floor, Bombay Chamber,	50,000	500,000	9,500,000	10,000,000
4	One2e Solutions India P Ltd	Dhobi Talao, Mumbai	25,000	250,000	4,750,000	5,000,000
5	Oshine Investments & Fin P Ltd	B-501, Pushpak Aptmts, Western Exp Highway,	175,000	1,750,000	33,250,000	35,000,000
6	Gyaneshwar Trading & Fin P Ltd	Dahisar -East, Mumbai	37,500	375,000	7,125,000	7,500,000
7	Sidh Housing Developers Co		75,000	750,000	14,250,000	15,000,000
8	Artelligence Bioinnovations P Ltd	Amritdham, Suite 5 & 6, Nityanand Nagar, Bakultala, Kolkata	25,000	250,000	4,750,000	5,000,000
9	Stocknet International P Ltd		25,000	250,000	4,750,000	5,000,000
10	Arrow Distribution P Ltd	D 195, Gali No 8, Laxmi Nagar, Delhi	220,000	2,200,000	41,800,000	44,000,000
11	Ashish Mehra		11,630	116,300	2,209,700	2,326,000
12	Amit Pandey		13,035	130,350	2,476,650	2,607,000
	Total		917,165	9,171,650	174,261,350	183,433,000

FY 10-11 (AY 11-12)						
S No	Party	Address	No of Shares	Share Amount @Rs 10 /share	Share Premium @ Rs 190 / share	Total (Share Capital + Share Premium)
1	Prraneta Industries	S 574, 5 th Floor, Ring Road, Surat	75,000	750,000	14,250,000	15,000,000
2	Emporis Projects Ltd	209, Sarthik 2, Ahmedabad	17,500	175,000	3,325,000	3,500,000
Total			92,500	925,000	17,575,000	18,500,000

FY 11-12 (AY 12-13)						
S. No	Party	Address	No of Shares	Share Amount @Rs 10/share	Share Premium @Rs 190/share	Total (Share Capital + Share Premium)
1	Artillegence Bioinnovations P Ltd	Amritdham, Suite 5 & 6, Nityanand	100,000	1,000,000	19,000,000	20,000,000
2	Stocknet International P Ltd	Nagar, Bakultala Kolkata	100,000	1,000,000	19,000,000	20,000,000
Total			200,000	2,000,000	38,000,000	40,000,000

4. After noticing that the no business activities were going on at the address as given in respect of the investor companies and denoting the result of the fieldenquiries which provides that the said companies were just paper concerns which have been used for providing accommodation entries through share capital and share premium, learned Assessing Officer issued notice under section 142 (1) of the Act requesting the assessee company to provide the identity of the parties, their creditworthiness and the genuineness of the transactions. A questionnaire was also issued along with such notice.

5. Assessee's contention was that all the shareholders are corporate entities registered with the Registrar of Companies and duly assessed to tax and that entire money was received by cheques and PAN of the parties were given. Assessee further contended that it has filed complete evidence to establish the identity of the shareholders' existence. According to the assessee since it had provided the PAN and address of the parties, the documents for proving the identity alone is sufficient for examining the test of section 68 of the Act. Assessee was required to produce the controlling persons of the investors along with the details of shares allotted to them. Notices under section 133(6) of the Act were issued, but in some cases those were received back answered whereas in some cases no compliance was received, due to which, the Assessing Officer expressed that the bank accounts could not be examined. Learned Assessing Officer inferred from the facts and circumstances of the case that the companies are declaring income just nominal and their documents relating to Balance Sheet statements, as submitted by the assessee, it could be seen that the companies are just receiving funds from some private limited companies and then transferring the same to other private limited companies which gives the idea that these companies are nothing but paper companies created to conduit companies to facilitate these type of transactions.

6. Learned Assessing Officer analysed the facts in the light of the decision dated 21/12/2012 of the Hon'ble jurisdictional High Court in the case of CIT vs. NR Portfolio Private Limited, Onassis Axles Private Limited vs. CIT in ITA No. 31/2013 and CIT vs. Odian Builders Private Limited and concluded that,-

- i. the investors were found to have no legitimate income for investing in the assessee company;
- ii. the assessee was required to produce the Directors/controlling persons with supportive documentary evidence such as books of account, bank statements to prove identity, creditworthiness and genuineness of transactions, but the assessee failed to discharge the onus upon it; and
- iii. the decisions in the case of NR Portfolio Private Limited (supra) Onassis axil (supra) and Odian Builders (supra) are applicable to the facts of the case on hand.

7. Learned Assessing Officer accordingly held that the share capital credited in the books of accounts of the assessee is unexplained, and has to be added to the income of the assessee under section 68 of the Act.

8. Aggrieved by such findings of the Assessing Officer, assessee preferred appeals before the Ld. CIT(A) in respect of these three assessment years. Having considered the case on its merits on a thorough reappraisal of the material before her, Ld. CIT(A) issued notice for enhancement under section 251 (2) of the Act for all these assessment years 2010-11, 2011-12 and 2012-13 giving an opportunity of being heard to the assessee.

9. CIT(A) found that the assessee was required by the learned Assessing Officer to substantiate its claim with regard to the share capital and share premium by way of queries and was specifically asked to provide the shareholding pattern of the company, the details of share capital, share application, share transfer, name and address of shareholders and also to provide the identity and creditworthiness of the investors and also genuineness of the transaction while drawing the specific attention of the assessee towards the findings of the

investigation wing, Mumbai in the case of the so-called share investors that are common to it and the Ganga Dhar S Shetty group, and which was found to be bogus. Assessee is also required to produce the persons claimed as investors before the learned Assessing Officer for examination and verification of documentary evidences.

10. It is the finding of the Ld. CIT(A) that in response to the various queries raised by the learned Assessing Officer, the assessee merely filed a tabular chart giving the names and addresses of the shareholders, and opening balance, addition during the year and closing balance of the share capital and enclosed only in respect of 9 companies the photo copies of share application forms, board resolution, conformation and Memorandum and Articles of Association, whereas in respect of 7 cases copy of return of income along with the financial statement for the assessment year 2010-11 and 2011-12 was also filed. CIT(A) further noted that while placing reliance on the decision in the case of Lovely Exports Private Limited 319 ITR 5 (SC) assessee pleaded that the shareholders were corporate entities, registered with Registrar of Companies and also duly assessed to tax; and the entire money was received by the account payee cheques and therefore no addition could be made.

11. Ld. CIT(A) further noted that the learned Assessing Officer confronted the assessee by letter dated 17/2/2014 with the findings of this search in respect of ABW group and also the post search enquiries in Mumbai and Delhi where in several cases summons addressed to the so-called investor companies were returned answered by the postal authorities and also the enquiries conducted at the addresses of some of the investor companies which revealed the addresses as residential,

where no business activity was being carried out. Assessee was required to prove the identity and creditworthiness of the parties and the genuineness of the transactions by producing the parties along with the supportive documentary evidences for examination, but, instead of complying with the requirements of the learned Assessing Officer and prove its case, the assessee claimed that the findings were not confronted to it.

12. In the circumstances, Ld. CIT(A) held that the learned Assessing Officer rightly rejected the contentions of the assessee. Further, the assessee was not forthcoming in presenting the facts of its case before the Assessing Officer in a timely, orderly and cogent manner. Given the facts of the case and the manner in which the assessee responded to the queries of the Assessing Officer during the assessment proceedings, Ld. CIT(A) concluded that the claim of share capital and share premium by the assessee was bogus. Ld. CIT(A) further observed that the assessee did not bring on record the basis on which the share premium at par value of Rs. 10/- was completed at the rate of Rs. 190/- per share and the assessee did not care to explain the circumstances in which the various private entities, unrelated to it, found such a proposition attractive to commit funds running into crores of rupees, more particularly on the face of the fact that such investors had not received any written on their substantial investment, as reflected in the books of the assessee. Further considering the nonappearance of the investors before the Assessing Officer to reiterate and establish their claim, given their substantial investments in the assessee company, Ld. CIT(A) held that the test of identity of the parties was failed, the test of creditworthiness is also a complete failure

and test for genuineness of the share capital and share premium contributions also collapsed on account of nonappearance of the parties before the Assessing Officer.

13. Ld. CIT(A) further found that while computing the disallowance for the assessment year 2010-11, learned Assessing Officer considered the disallowance of Rs. 11.45 crores but omitted to consider the investment relating to Sidh Housing Developers Company, StocknetInternational Private Limited, Arrow Distribution Private Limited, Ashish Mehra, and Amit Pandey to the tune of Rs. 6,89,33,000/-. So also, in respect of assessment year 2011-12, Ld. CIT(A) found that the claim relating to Panetta Industries remained unsubstantiated to the tune of Rs.1.5 crores. In respect of assessment year 2012-13, Ld. CIT(A) found that the assessee failed to provide any explanation in respect of StockNetInternational Private Limited to the tune of Rs.2 crores. According to Ld. CIT(A), in respect of these three assessment years, such amounts were also to be added.

14. Finally,while confirming the additions made by the learned Assessing Officer under section 68 of the Act, Ld. CIT(A) enhanced the additions to Rs. 6,89,33,000/-in respect of assessment year 2011-12, Rs. 1.5 crores in respect of assessment year 2011-12 and Rs. 2 crores in respect of assessment year 2012-13.

15. Aggrieved by the conservation of the additions and also making further additions, assessee preferred these appeals. However, 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 stating that the assessee refused to receive the same. When the notice sent by registered mail with the postage prepaid, and it is returned with the endorsement of the postal servant that the assessee refused to receive the same, there is no reason for us not to believe the endorsement of the public servant. There is a presumption under law that judicial and official acts have been regularly performed; and that the common course of business has been followed in particular cases. Unless otherwise proved, there is no reason for us not to believe the endorsement of the postal servant. In the circumstances we find no option but to proceed with the matter on merits basing on the material available on record, after hearing the Revenue.

16. It is the submission of the Ld. DR that the decisions relied upon by the assessee before the authorities below have no relevance to the facts of the case, and more particularly in view of the decision of the Hon'ble jurisdictional High Court in the case of PCIT VS. NDR Promoters Private Limited (2019) 14 ITR 379 and Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel (P) Ltd (2019) 412 ITR 161, mere filing of the documents does not absolve the assessee of the responsibility of proving the three ingredients of section 68, namely, the identity and creditworthiness of the shareholders and the genuineness of the transaction. Ld. DR submitted that the authorities below consistently observed that though the assessee had completed the paperwork meticulously, no reasons are afforded for non-production of the parties. She submitted that record must be had to the fact that field queries revealed that such companies were just and proper concerns which were

used for providing accommodation entries through share capital and the share premium. She drew our attention to the reasons recorded by the learned Assessing Officer at paragraph No. 3.2 of his order as to the status of these companies. She further submitted that the authorities below consistently observed that the nonappearance of the investors before the Assessing Officer to reiterate and establish their claims, given their substantial investments in the assessee company, is yet another relevant fact that militates against the claim of the genuineness of the share subscriptions. She read out the relevant portions of the orders of the authorities below supporting the conclusion that the plea taken by the assessee basing on some paperwork is untrustworthy.

17. We have gone through the record in the light of the submissions made by the Ld. DR. The fact remains that by letter dated 18/3/2014 the learned Assessing Officer required the assessee to produce the controlling persons of the share applicant companies along with supportive documentary evidence for examination, but the assessee though filed certain parties' details, failed to produce them. No valid reasons are forthcoming for such conduct of the assessee. The impugned assessment order speaks that the field enquiries in respect of the share applicant companies reveal that such companies never existed in the given addresses and the people in the vicinity never knew of the same. On the face of this fact finding basing on the field visits, we find it difficult to hold that merely because certain documents are filed by the assessee, the identity and creditworthiness of the share applicants and the genuineness of the transactions stood proved.

18. It is pertinent to note that, in this case, enquiries were made as to the genuineness of the share capital and share premium received by the ABW group from certain companies based at Mumbai and investigation revealed that there was no response inasmuch as the summons well-written and answered by the postal authorities with the remarks that “answered, not known, left” etc. Further during the course of search in respect of the ABW group of companies all documents relating to the investing companies including the blank share transfer forms, Memorandum of Association, Balance Sheet, board resolution passed by Board of Directors of such a investor companies were found and a conclusion was drawn that these companies were nothing but operators engaged in giving accommodation entries. In such context, the learned Assessing Officer required the presence of the controlling persons of such companies along with the supporting documents in order to satisfy himself as to the identity and creditworthiness of such companies and also about the genuineness of the transaction. In such situation, the assessee should have produced such persons for examination by the learned Assessing Officer or at least should have furnished the current address and details of such persons. Without doing so, the assessee cannot insist that merely because certain documents are filed, the identity and creditworthiness of the parties and the genuineness of the transaction, ipso facto, shall be taken to have proved.

19. It is legitimate for the learned Assessing Officer to make enquiries relating to find answers to the questions 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.

20. Orders of the authorities below reveal, and there is nothing contrary on record to show that the assessee has complied with the requirements of the learned Assessing Officer in the exercise of forming satisfaction as to the identity and the creditworthiness of the share applicants or the genuineness of the transaction. Mere paperwork by the assessee does not take the authorities anyway, when the authorities

suspected the existence of the entities that applied and paid for share application and share premium and insisted that a higher degree of proof is required in that respect.

21. 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 NRA Iron and Steel (P) Ltd (supra) we are of the considered opinion that the action of the learned Assessing Officer was illegal and non-compliance with the same had rightly led to the inference that the assessee had rooted their own money in the books of accounts through the fictitious and bogus companies. On this premise we sustain the addition made by the learned Assessing Officer under section 68 of the Act. We further find that the Ld. CIT(A) had followed the procedure established under law for enhancing the additions and such additions are justified by record. Consequently, we dismiss the grounds of appeals.

22. In the result, appeals of the assessee are dismissed.

Pronounced in open court on this the 14th January, 2020.

Sd/-
(G.S. PANNU)
VICE PRESIDENT
Dated: 14/01/2020
'aks'

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER