

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

| | | |
|---|------------------------------------|---|
| ITA Nos.514 to 517/Hyd/2020 | | |
| Assessment Years: 2012-13, 2013-14, 2016-17 & 2017-18 | | |
| Nandan Cleantec Ltd Hyderabad PAN:AABCN1933B (Appellant) | Vs. | Dy. C. I. T. Central Circle 3(3) Hyderabad (Respondent) |
| ITA Nos.558/Hyd/2020 | | |
| Assessment Year: 2013-14 | | |
| Dy. C. I. T. Central Circle 3(3) Hyderabad (Appellant) | Vs. | Rejuvenating Approaches (P) Ltd, Hyderabad PAN:AAF6094R (Respondent) |
| Assessee by: | Shri Pawan Kumar Chakrapani, CA | |
| Revenue by: | Shri Jeevan Lal Lavidiya, CIT (DR) | |
| Date of hearing: | 21/02/2023 | |
| Date of pronouncement: | 28/04/2023 | |

ORDER

Per R.K. Panda, A.M

ITA 514/Hyd/2020 and ITA 515/Hyd/2020 filed by the assessee are directed against the common order dated 10.07.2020 of the learned CIT(A)-11, Hyderabad, relating to A.Y.2012-13 & 2013-14 respectively. ITA Nos. 516/Hyd/2020 and ITA No.517/Hyd/2020 filed by the assessee are directed against the common order dated 10.07.2020 of the learned CIT (A)-11 Hyderabad relating to A.Y 2016-17 & 2017-18 respectively. ITA

558/Hyd/2020 filed by the Revenue is directed against the order dated 10.07.2020 of the learned CIT (A)-11 Hyderabad relating to A.Y 2013-14. For the sake of convenience, all these appeals were heard together and are being disposed of by this common order.

ITA 514/Hyd/2020 – A.Y 2012-13 (Assessee)

2. Facts of the case in brief are that the assessee is a Ltd company engaged in the business of production of biodiesel. It filed its original return of income on 29.9.2012 admitting total income of Rs.2,09,18,070/-. The assessment order u/s 143(3) was passed on 18.3.2016 determining the total income of the assessee at Rs.3,50,93,197/-. Subsequently, a search and seizure action u/s 132 of the I.T. Act was conducted in the case of the assessee and its Directors Sri Moturi Srinivas Prasad and Shri Volam Bhaskar Rao on 20.09.2017. In response to notice u/s 153A of the Act issued on 10.05.2018, the assessee filed its return of income on 13.12.2018 declaring total income of Rs.2,09,18,070/-.

3. During the course of assessment proceedings, the Assessing Officer noted that during the course of search and post search enquiries, the following unexplained withdrawals were found in the hands of the company:

| A.Y | Amount of expenses to be disallowed as bogus (in Rs.) |
|---------|---|
| 2012-13 | Rs. 6,91,80,000 |
| 2013-14 | Rs. 3,60,90,000 |
| TOTAL | Rs.10,52,70,000 |

3.1 He observed that during the search and post search enquiry and later during the assessment proceedings, it was

found that there are credits in the bank a/c of the family members and relatives and sister concerns of Shri Volam Bhaskar Rao in the form of cash deposits whenever there is cash withdrawal from the a/c of M/s. Nandan Cleantec Ltd through bearer cheques. He referred to the statements recorded of Shri Volam Bhaskar Rao, Director of the assessee company, and the statement of the Sr. Branch Manager of Andhra Bank, Zaheerabad Branch and came to the conclusion that whenever there is cash withdrawal from the assessee company through bearer cheques issued, corresponding amounts were deposited in the Bank A/c of the persons/entities relating to the assessee company. He observed that this issue was put across to Shri Volam Bhaskar Rao and Sri Moturi Srinivas Prasad to give the identity and nature of business transactions made with the entities of bearer cheque holders with supporting bills and vouchers which could be relatable to bearer cheque payments debited to M/s. Nandan Cleantec Ltd's Bank A/c or P&L A/c. However, they could not give any verifiable evidence to support the claim of these expenses as attributable to parties/assessee figuring in the bearer cheques. In view of the above, the Assessing Officer made addition of Rs.6,91,80,000/- by recording as under:

“15.0 Accordingly it is concluded that this amount belonging to M/s. Nandal Cleantec Ltd was withdrawn and deposited into other accounts. It was established through enquiries conducted during search, statements recorded of various persons including Director Shri Volam Bhaskar Rao during search and subsequently in the course of assessment proceedings proves that there was some dispute in the management and money has been withdrawn from M/s. Nandan Cleantec Ltd account to various persons/entities. Since this money belongs to M/s. Nandan Cleantec Ltd, the amount of Rs.6,91,80,000/- has been added substantively in the hands of the company. To protect the interest of revenue, the same is being also protectively assessed in the hands of the persons/entities in whose accounts the amount was credited in cash. Penalty proceedings u/s 271(1)(c) is initiated separately for concealment of income”.

4. In appeal, the learned CIT (A) upheld the action of the Assessing Officer by observing as under:

“5.3 I have gone through the facts of the case and the submissions of the appellant. The modus operandi of the appellant was to raise bills on the company on various accounts, withdraw cash from the bank through bearer cheques and deposit the cash in the accounts of related persons/entities. This is clearly brought out by the Investigation carried out during the search and subsequent enquiries including the assessment proceedings. The assessee also accepted the above modus operandi. The same is corroborated by enquiries conducted with bank officials who clearly explained the facts with regard to cash withdrawals through bearer cheques and cash deposits. In view of the above, the addition made by the Assessing Officer is confirmed and the grounds raised by the appellant are dismissed for both the A.Ys. “

4.1 Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee, referring to para 4 & 5 of the assessment order, submitted that the Assessing Officer himself has recorded the fact about dispute between the management. Referring to para 9 & 10 of the assessment order, he drew the attention of the Bench to the answer given by Shri Volam Bhaskar Rao and Shri Moturi Srinivas Prasad in response to various questions put to them while recording the statement u/s 131 of the I.T. Act. He submitted that Shri Volam Bhaskar Rao has provided the details of the amounts withdrawn from the assessee company which was utilized in depositing in the bank account of family members and related entities which was due to the dispute between the management and to secure the interest of the farmers/franchises/other parties which were later paid to the farmers. He submitted that the Assessing Officer after analysing the details available on record and based on the search inquiries satisfied himself about the fact of the case and discussed the

issue of cash withdrawal from the accounts of the assessee at para 11 of the assessment order according to which he himself had found nexus between the amount withdrawn from the bank a/c of the assessee company and deposits made in the accounts of the related parties. Thus, it is presumed that the Assessing Officer has accepted that the amount which was transferred to the sister concerns and relatives of Shri Volam Bhaskar Rao were spent for the business of NCL and the unspent amount was returned to the NCL.

6. He submitted that while completing the assessment proceedings of Rejuvenating Energies (P) Ltd, the proceedings which were initiated and completed by the same Assessing Officer, in the statement recorded by Shri Volam Bhaskar Rao himself stated that the amounts which were transferred to sister concerns were returned back to NCL i.e. the assessee company. Therefore, the allegation made by the Assessing Officer that there is unexplained withdrawal cannot be accepted in view of the fact that the unspent money has flown back to the assessee company. He submitted that when the Assessing Officer himself has accepted the clarification given along with the statement by the Director of the assessee company that the amounts which was transferred to various persons/family members have flown back to the assessee company, the amount of Rs.6,91,81,000/- added by the Assessing Officer substantively in the hands of the assessee company should be deleted.

7. The learned Counsel for the assessee without prejudice to the above submitted that the receipts in the bank account have already been offered to tax and there is no dispute

about non accounting of the amount received by the assessee in its books of account. He submitted that the Assessing Officer has made the addition on the ground of unexplained withdrawal in the hands of the assessee company which by no stretch of imagination can be added as there is no such provision in the Act which provides for such a disallowance. Therefore, the addition made by the Assessing Officer on this account also does not survive. He accordingly submitted that the addition made by the Assessing Officer and sustained by the learned CIT (A) should be deleted as the amounts were transferred to the accounts of the sister concerns/family members for securing the interest of the farmers/franchise/other parties and the unspent amounts have flown back to the assessee, the amounts have already been entered in the books of account and addition cannot be made on account of unexplained withdrawal.

8. The learned DR, on the other hand, heavily relied on the order of the lower authorities.

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 find the AO in the instant case made addition of Rs.6,91,81,000/- as unexplained withdrawal on the ground that the above amount is withdrawn from the Bank account of the assessee company and deposited in the accounts of various family members/group concern and the assessee could not substantiate with evidence to his satisfaction regarding the nature and purpose of such withdrawals. We find the learned CIT(A) upheld the addition made by the Assessing Officer, the reasons of which have already been

reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that the Assessing Officer himself has recorded the dispute between the management that was going on and to secure the interest of farmers/franchise/ other parties, such amounts were withdrawn from the Bank account of the company and the amounts were deposited back in the a/c of various persons/ entities from where the money has been utilized in the business of the company and the unutilized portion has flown back to the Bank A/c of the assessee company. It is also his submission that when the unutilized amount has flown back to the assessee company and the entire bank deposits have been offered to tax and when there is no such provisions in the I. T. Act to tax the withdrawal amount from the Bank Account, therefore, no addition is called for.

10. We find some force in the above argument of the learned Counsel for the assessee. A perusal of the assessment order shows that the Assessing Officer at Page 3 of the order has reproduced the statement recorded of Shri Volam Bhaskar Rao, Director of the assessee company on 24.12.2019 wherein he in reply to question No.4 has stated as under:

Q.4 Please give the year wise details of amount withdrawal/deposits/credits from M/s Nandan Cleantech Limited by you? Also give the details of accounts in which such amounts withdrawal/deposit/credit

Ans. Due to the ongoing management dispute, the withdrawals amounts were deposited in my family members bank accounts and utilized for the purpose of Company to secure interest of the farmers/franchise/other parties. Later out of these deposits, payments were made to farmers from various family members account. As I may not identify the amounts which were withdrawn from the company exactly but all the transactions were done only for the purpose of company and on behalf of company.

The details of the cash utilisation of the same is as follows,

a) Two bank accounts of myself wherein these collected cash were deposited and utilised are as follows,

| A Y | Name of the Bank, Branch & Bank account No. | Cash deposited |
|---------|---|----------------|
| 2012-13 | Andhra Bank, Zaheerabad Branch, A/c No. 105310100023433 | 58,95,000 |
| | Andhra Bank GramenaVikas Bank, A/c No. 730237236346 | 32,00,000 |
| | Axis Bank A/c No. 00800100919517 | 2,00,000 |
| 2013-14 | ICICI Bank A/c No. 03821520111 | 5,85,000 |
| | Total | 98,80,000 |

The cash deposits of ₹98,80,000/- in my account were not returned due to management dispute and also the shareholders have to receive the amounts as per share holders' agreement dated 12.07.2013 and the issue is pending before court also.

b) Two bank accounts of my brother in law Sh M. Kameswara Rao wherein these cash were deposited and utilised are as follows.

| A Y | Name of the Bank, Branch & Bank account No. | Cash deposited |
|---------|---|--------------------|
| 2012-13 | Andhra Bank, Zaheerabad Branch, A/c No. 105310100023390 | 33,07,000 |
| | Andhra Bank, Zaheerabad Branch, A/c No. 105311100000502 – Rama Agro Farms | 94,12,335 |
| | Total | 1,27,19,335 |

Out of the above amounts ₹ 94,70,000/- were utilized for company purpose only by paying the amounts to farmers/franchises/ other parties in Mar'12 & Apr'12 which is apparent from the bank statement. The balance amount of ₹32,49,335/- not returned due to management dispute and also the shareholders have to receive the amounts as per share holders' agreement dated 12.07.2013 and the issue is pending before court also.

The utilisation of amount for company purpose can be seen from the above bank statements during this period.

c) **Two bank accounts of my sister M. Ramadevi wherein these cash were deposited and utilised are as follows.**

| A.Y. | Name of the Bank, Branch & Bank account No. | Cash deposited |
|---------|---|--------------------|
| 2012-13 | Andhra Bank, Zaheerabad Branch, A/c No. 105310100023415 | 16,05,000 |
| 2013-14 | Corporation Bank, Zaheerabad Branch, A/c No. SB/01/001610 | 1,02,00,000 |
| | Total | 1,18,05,000 |

Out of the above amounts, ₹1,10,39,000/-were utilized for company purpose only by paying the amounts to farmers/franchises/ other parties from Aug'12 to Apr'13 and same is apparent from the bank statements. The balance amount of ₹ 7,66,000/-not returned due to management dispute and also the shareholders have to receive the amounts as per share holders' agreement dated 12.07.2013 and the issue is pending before court also.

The utilisation of amount for company purpose can be seen from the above bank statements during this period.

d) **The two accounts of M/s Rejuvenating Approaches Private Limited wherein cash was transferred/collected and again transferred back to the company are as follows.**

| A.Y. | Name of the Bank, Branch & Bank account No. | Cash deposited |
|---------|--|--------------------|
| 2013-14 | Corporation bank account, Zaheerabad Branch, vide A/c No. CBCA/01/000041 | 5,31,41,500 |
| | Andhra Bank, Zaheerabad Branch vide A/c No. 105311100000511 | 1,99,90,000 |
| | Total | 7,31,31,500 |

The amounts transferred back on various dates to M/s Nandan Cleantec company are as follows:

| Date | Name of the Bank | Amount transferred ₹ | From | To |
|--------------|--|----------------------|---|-----------------------------------|
| 26-07-2012 | Andhra Bank, Zaheerabad Branch vide A/c No. 105311100000511 | 4,92,000 | M/s Rejuvenating Approaches Private Limited | M/s Nandan Cleantec Limited |
| 26-07-2012 | | 21,95,000 | | |
| 26-07-2012 | | 1,20,000 | | |
| Total | | 28,07,000 | | |

Out of the above amounts, ₹1,67,27,204/- were utilized on behalf of the company as payments to the farmers/franchises/other parties from Aug'12 to Feb' 13 and ₹5,28,07,000/- were transferred back to the company and remaining balance of ₹35,97,296/- not returned due to the management dispute. The below mentioned amount was transferred from M/s Rejuvenating Approaches to Nurseries and later on given back to M/s Nandan Cleantec Ltd. on 03-12-2012 from the respective franchise accounts. The details are as follows:

| Date | Name of the Bank | Amount transferred ₹ | From | To |
|--------------|---|----------------------|---|------------------------------|
| 01-12-012 | Corporation bank account, Zaheerabad Branch, vide A/c No. CBCA/01/000041 | 1,50,00,000 | M/s Rejuvenati ng Approaches Private Limited | Diverse Agro Nurseries |
| 01-12-012 | | 1,50,00,000 | | Shilpa Agro Nurseries |
| 01-12-012 | | 2,00,00,000 | | Rama Agro Nurseries |
| Total | | 5,00,00,000 | | |

The above amounts were transferred to the Company from the respective franchise accounts and the details are as follows:

| Date | Name of the Bank | Amount transferred ₹ | From | To |
|------------|---|----------------------|------------------------------|-----------------------------------|
| 03-12-2012 | Corporation Bank, Zaheerabad branch, A/c No. CBCA/01/000037 | 1,50,00,000 | Diverse Agro Nurseries | M/s NandanCleant ec Limited |
| 03-12-2012 | Corporation Bank, Zaheerabad branch, A/c No. CBCA/01/000036 | 1,50,00,000 | Shilpa Agro Nurseries | |
| 03-12-2012 | Corporation Bank, Zaheerabad branch, A/c No. CBCA/01/000035 | 2,00,00,000 | Rama Agro Nurseries | |

e) The amount of ₹1,10,10,000/- were deposited in the following bank accounts.

| A Y | Name of the person | Name of the Bank, Branch & Bank account No. | Cash deposited |
|---------|--------------------|---|----------------|
| 2012-13 | V. Sandeep | Andhra Bank, Zaheerabad Branch, A/c No. 105310100023655 | 27,15,000 |
| 2012-13 | V. Sujatha | Andhra Bank, Zaheerabad Branch, A/c No. 105310100023442 | 44,85,000 |

| | | | |
|---------|-------------------------|--|-------------|
| 2012-13 | V. Lakshmi Kanthamma | Andhra Bank, Zaheerabad, A/c No. 105310100023424 | 38,10,000 |
| | | Total | 1,10,10,000 |

The cash deposits of ₹1,10,10,000/-not returned due to management dispute and also the shareholders have to receive the amounts as per share holders' agreement dated 12.07.2013 and the issue is pending before the court also.

The above parties are not personally benefitted out of these transactions. They acted to protect farmers' interest on my request since the management dispute arose in this period.

11. Similarly, the Assessing Officer at para 11.4 of the assessment order has observed as under:

"11.4 Hence, Sri Volam Bhaskar Rao also accepted during the course of summons proceedings that he has used the accounts of his relatives and other sister concern for M/s Nandan Cleantec Ltd. Sri Volam Bhaskar Rao, admitted that funds were withdrawal/deposited in various accounts of relatives and sister concerns of M/s Nandan Cleantec Ltd due to some ongoing internal dispute in the management of M/s Nandan Cleantec Ltd. He also gave certain details of amount withdrawn/deposited and returned back in the M/s Nandan Cleantec Ltd and amount still pending to be given to M/s Nandan Cleantec Ltd. In view of the above, it proves beyond doubt that the deposits belong to M/s Nandan Cleantec Ltd has been withdrawn and deposited in various bank accounts of Mr Volam Bhaskar Rao."

12. From the perusal of the above, it can be seen that the Assessing Officer has concluded that there is certain dispute between the management, the amounts were transferred to the sister concerns and the above amounts were withdrawn/deposited and subsequently the unspent amount has come back to the assessee company.

13. Under these circumstances, we find merit in the argument of the learned Counsel for the assessee that when there was certain dispute between the management of the assessee company, the amounts withdrawn from the Bank Account of the assessee company were deposited in the Bank Accounts of

various related parties from where money was given to farmers/franchises and other parties and substantial amount of the unspent balance were returned back to the account of the assessee company. Since the amounts found credited in the bank account of the assessee company have already been offered to tax and there is no provisions to make addition on the unexplained withdrawal, therefore, the addition of the entire amount made by the Assessing Officer and sustained by the CIT (A) in our opinion is not justified. At the same time, the assessee insisted of paying directly from its accounts has transferred the funds to the accounts of related parties and full details of expenses were not produced before the Assessing Officer/CIT (A). Under these circumstances, it cannot be said that the entire amount withdrawn has been spent wholly and exclusively for the purpose of business of the assessee company. Considering the totality of the facts of the case, disallowance of 15% of the amount withdrawn of Rs.6,91,80,000/-, in our opinion, is reasonable under the facts and circumstances of the case. We, therefore, modify the order of the CIT (A) and direct the Assessing Officer to restrict the disallowance to Rs.1,03,77,000/- as against Rs.6,91,80,000/-. The grounds raised by the assessee are partly allowed.

14. In the result, appeal filed by the assessee is allowed.

ITA No.515/Hyd/2020 – A.Y 2013-14 (Assessee)

15. The grounds raised by the assessee read as under:

“1. The order of the authorities below in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.

2. The Appellant denies himself liable to be assessed on a total income of an amount being Rs. 5,13,76,668/-, as against the loss returned an amount being Rs. 6,50,13,870/-, under the facts and circumstances of the case.

3. *Whether the learned Authorities below are justified in making an addition of Rs. 3,60,90,000/-, by making disallowance under section 37 of the Act, in respect of withdrawals made from the banks by the Appellant, under the facts and circumstances of the case.*

4. *The Appellant denies himself liable to be assessed on interest under section 234B & 234C of the Act, under the facts and circumstances of the case.*

5. *The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

6. *In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."*

16. After hearing both sides, we find the grounds raised in ITA 515/Hyd/2020 are identical to the grounds raised in ITA 514/Hyd/2020. We have already decided the issue and the grounds raised by the assessee have been partly allowed by restricting the disallowance to 15% of the expenses. Following similar reasonings, the disallowance is restricted to Rs.54,13,500/- and the balance amount is deleted. The grounds raised by the assessee are partly allowed.

ITA 516/Hyd/2020 – A.Y 2016-17 (Assessee)

17. The grounds raised by the assessee reads as under:

"1. The order of the authorities below in so far as it is against the Appellant is opposed to law., equity, weight of evidence, probabilities and the facts and Circumstances in the Appellant's case.

2. The Appellant denies himself liable to be assessed on a total income of an amount being Rs. 1,13, 37,000/-, as against the loss returned an amount being Rs. 70,59,688/-, under the facts and circumstances of the case.

3. Whether the learned Authorities below are justified in disallowing the loss of Rs. 70,59,688/-, claimed by the Appellant in the return of income, under the facts and circumstances of the case.

4. Whether the learned Authorities below are justified in making an addition of Rs. 1,13,37,000/-, under section 68 of the Act, under the facts and circumstances of the case.

5. The Appellant denies himself liable to be assessed on interest under section 234A & 234B of the Act, under the facts and circumstances of the case.

6. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

7. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity”.

18. The first issue raised by the assessee in the grounds of appeal relate to the disallowance of loss of Rs.70,59,688/-.

19. Facts of the case, in brief, are that the assessee in response to notice u/s 153A of the Act issued on 10.5.2018 filed his return of income on 13.12.2013 declaring loss of Rs.70,59,688/-. Despite several opportunities granted by the Assessing Officer, the assessee did not produce the books of account and supporting documents/evidences to substantiate the huge expenses debited in the P&L A/c but claimed loss of Rs.70,59,688/- in the return of income filed in response to notice u/s 153A of the Act. In the absence of any documentary evidence to prove the genuineness of the expenditure debited to the P&L A/c the Assessing Officer rejected the various expenditure debited to the P&L A/c and disallowed the loss of Rs.70,59,688/- for the impugned A.Y.

20. In appeal, the learned CIT (A) upheld the action of the Assessing Officer by observing as under:

“6.1 In course of appellate proceedings, the AR has not furnished any information with regard to the above loss and has also not furnished any information to support its claim. No evidences for expenses claimed were found even during the course of search proceedings. In view of the above, the

disallowance made by the Assessing Officer for the A.Ys 2014-15 to 2018-19 is upheld and the relevant grounds raised are dismissed”.

21. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

22. The learned Counsel for the assessee submitted that the assessee being a company, disallowance of the entire expenditure is not justified. He submitted that only a portion of the expenditure can be disallowed on account of non-submission of various details.

23. The learned DR, on the other hand, submitted that once the assessee failed to substantiate with evidence to the satisfaction of the Assessing Officer regarding the various expenses claimed in the P&L A/c, the Assessing Officer was fully justified in disallowance net loss of Rs.70,59,688/-.

24. We have considered the rival arguments made by both the sides and perused the record. It is an admitted fact that despite number of opportunities granted by the Assessing Officer, the assessee did not produce the details of expenditure for which the Assessing Officer disallowed the entire expenditure of Rs.70,59,688/- since no evidence for expenses claimed. Since no evidence was found during the course of search for the impugned A.Y, therefore, various expenses claimed in the P&L A/c cannot be accepted. However, since the assessee is a company and is required to spent certain expenditure to maintain its corporate identity, maintaining office with skeleton staff, an amount of Rs.12.00 lakhs on estimate basis is considered as business

expenditure and the loss of Rs.70,59,688/- made by the Assessing Officer and the CIT (A) is restricted to Rs.58,59,688/-. The assessee gets part relief on the first issue.

25. The second issue raised by the assessee in the grounds of appeal relates to the addition made by the Assessing Officer of Rs.1,13,37,000/-, under section 68 of the Act.

26. Facts of the case, in brief, are that the Assessing Officer during the course of the assessment proceedings observed from the Bank A/c of Corporation Bank that there are 2 credits the details of which are as under:

| Date | Particulars | Cat Che que No. | Debit in (Rs.) | Credit in (Rs.) | Balance in (Rs.) |
|----------|----------------|--------------------------|-------------------|--------------------|------------------|
| 2.5.2015 | By CBC A 01 39 | TRF | | 90,63,000 | 90,73,000 Cr |
| 2.5.2015 | By CBC A 01 39 | TRF | | 22,64,000 | 1,13,37,000 Cr |

27. Since the assessee company could not explain the source and nature of these credits during the assessment proceedings and no substantive evidence was provided by the assessee, the Assessing Officer in the absence of proper explanation regarding the nature and source of credits with supporting documentary evidences to prove the genuineness of the transactions to the extent of Rs.1,13,37,000/-, the Assessing Officer treated the same as unexplained credits u/s 68 of the Act.

28. In appeal, the learned CIT (A) sustained the addition by observing as under:

“7.0 For the AYs 2016-17 and 2017-18, it was noticed that there were cash credits in appellant's bank account maintained with Corporation Bank amounting to Rs.1,13,37,000/- and Rs.36,75,000/ for the AYs.

2016-17 and 2017-18 respectively. The AO in his assessment order, has stated that the assessee has not adduced any evidence with regard to the above credits. In absence of the same, the Assessing Officer has made the addition u/s 68 of the Act.

7.1) In course of appellate proceedings, the appellant has not submitted any information with regard to the source of such cash credits. The appellant is under obligation to prove the identity, genuineness and credit worthiness of the transactions with reference to the credits in the books of account. The Appellant has totally failed to discharge the onus cast on it. In view of the above, the addition u/s. 68 for the above AYs is herewith sustained. The relevant grounds are dismissed.”

29. Aggrieved with such order of the CIT (A), the assessee is in appeal before the Tribunal.

30. We have heard the rival arguments made by both sides, perused the orders of the lower authorities and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case made addition of Rs. 1,13,37,000/- u/s 68 of the I.T. Act on the ground that the assessee could not substantiate the nature of the credit nor substantiate the identity and creditworthiness of persons who have transferred the money and the genuineness of the transaction. We find the learned CIT (A) sustained the addition the reason for which have already been reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that given an opportunity, the assessee is in a position to discharge the onus cast on it by producing sufficient details to prove the identity and capacity of the persons who have issued the cheque and the genuineness of the transaction. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one last opportunity to the assessee to substantiate his case and

decide the issue as per fact and law. The second issue raised by the assessee in the grounds of appeal is accordingly allowed for statistical purposes.

ITA 517/Hyd/2020 – A.Y 2017-18 (Assessee)

31. The grounds raised by the assessee are as under:

“1. The order of the authorities below in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.

2. The Appellant denies himself liable to be assessed on a total income of an amount being Rs. 36,75,000/-, as against the loss returned an amount being Rs. 60,64,967/-, under the facts and circumstances of the case.

3. Whether the learned Authorities below are justified in disallowing the loss of Rs. 60,64,967/-, claimed by the Appellant in the return of income, under the facts and circumstances of the case.

4. Whether the learned Authorities below are justified in making an addition of Rs. 36,75,000/- under section 68 of the Act, under the facts and circumstances of the case.

5. The Appellant denies himself liable to be assessed on interest under section 234A & 234B. of the Act, under the facts and circumstances of the case.

6. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

7. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity”.

32. Ground of appeal No.1 & 6 and 7 being general in nature are dismissed.

33. Ground of appeal Nos 2 & 3 relates to the action of the Assessing Officer in disallowance of loss of Rs.60,64,967/-.

34. After hearing both the sides, we find the above grounds are identical to the ground of appeal No.2 & 3 in ITA

516/Hyd/2020. We have already decided the issue and the grounds raised by the assessee have been partly allowed by considering Rs.12,00,000/- as office expenses for maintaining the corporate identity. Following similar reasonings, we allow amount of Rs.12,00,000/- for this year also. The first issue raised by the assessee is accordingly partly allowed.

35. Ground of appeal 4 relates to the addition of Rs. 36,75,000/- under section 68 of the Act.

36. After hearing both sides, we find the Assessing Officer made the addition of Rs.36,75,000/- u/s 68 of the I.T. Act on the ground that the assessee could not explain the nature and source of the deposit found in Corporation Bank Account nor could give the identity and capacity of the persons who have transferred the money nor the genuineness of the transaction. We find the learned CIT(A) upheld the action of the Assessing Officer reason of which have already been reproduced while deciding the appeal for A.Y 2016-17. We have already decided the issue and the issue has been restored to the file of the Assessing Officer with certain directions. Following similar reasonings, we restore this issue to the file of the Assessing Officer with a direction to give an opportunity to the assessee to substantiate the credits found in the Bank A/c as per the perms of section 68 of the I.T. Act. The Assessing Officer shall decide the issue as per fact and law. We hold and direct accordingly. The 2nd issue raised by the assessee in the ground of appeal is accordingly allowed for statistical purposes.

37. The next issue relates to levy of interest u/s 234A and 234B of the I.T. Act which is consequential in nature and therefore, the same dismissed.

ITA 558/Hyd/200 – A.Y 2013-14 (Rejuvenating Approaches (P) Ltd - Revenue)

38. Grounds raised by the Revenue read as under:

“1. The Id.CIT(A) erred both in law and on facts of the case in allowing relief to the assessee.

2. The Id.CIT(A) erred in deleting the addition of Rs.7,31,41,500/-made u/s 68 of the IT Act towards unexplained cash deposits in the assessee's bank accounts.

4. The Id.CIT(A) erred in concluding that the source of the cash deposits was withdrawals made from the related company, M/s Nandan Cleantec Ltd. when in fact the assessee had failed to discharge its onus to establish the nature and source of the deposits.

4. The appellant craves leave to amend or alter any ground or add any other which may be necessary.”

38. Facts of the case in brief are that the assessee is a company and had not filed its original return of income. A search and seizure action u/s 132 of the I.T.Act 1961 was conducted in the case of M/s. Moturi Srinivas Prasad and others on 20.09.2017. During the search and post search proceedings, the Assessing Officer noted that certain cash deposits were noticed in the bank a/c of the assessee company maintained with Andhra Bank, Zaheerabad Branch bearing Account No.105311100000511. It was found that the assessee company has received credits in its Bank A/c in the form of cash deposits whenever there is cash withdrawal from the account of M/s. Nandan Cleantec Ltd through bearer cheques. Accordingly, after verification from the bank statement, notice u/s 148 of the Act

dated 18.3.2019 was issued calling for the return of income. The assessee in response to the same filed his return of income on 14.6.2019 declaring total income of Rs.2,43,590/-. The Assessing Officer thereafter issued statutory notices u/s 143(2) & 142(1) of the Act to which the AR of the assessee appeared from time to time and filed the requisite details.

39. During the course of assessment proceedings, the Assessing Officer noted that during the course of search proceedings, Shri Volam Bhaskar Rao was asked to explain the issue of bearer cheques to various parties in the case of M/s. Rejuvenating Approaches Pvt Ltd with supporting evidence. In response he had stated that he left the company management in 2012 and handed over all the books and records to new management until his period. He had further stated that he had already filed the audit reports duly endorsed by Board approvals and audit committee approvals and ratification in the general meeting of the company and have properly submitted the records to regulatory authorities. He also stated that with the support of bank statements he could identify the above transactions of the group companies and said that the amounts are paid back properly to the main division i.e. M/s Nandan Cleantec Ltd. Vide his statement recorded u/s 131 on 27.12.2017. he stated that he would submit cash flow statement in two days' time.

40. The Assessing Officer reproduced the statement recorded u/s 131 of the Act in respect of Shri Volam Bhaskar Rao. Subsequently, on being asked by the Assessing Officer Shri Volam Sandeep, Director of the assessee company filed the details of cash deposits in the above Bank Account stating that the cash

deposits so made belongs to Nandan Cleantec Ltd. The Assessing Officer recorded the statement of Shri Volam Bhaskar Rao and thereafter made addition of Rs.7,31,41,500/- by recording the following reasons:

“12. As there is no books of account, the bank statements of M/s Rejuvenating Approached Pvt Ltd are analysed and it was found that there was credits in the following bank accounts for the financial year 2012-13:

| S.No A.Y | Bank Name & Branch | Account No | Total Credits | Total cash deposits Rs. |
|-------------|--|-----------------|---------------|-------------------------|
| 1 | Andhra Bank Zaheerabad Branchh | 105311100000511 | 4,07,91,985 | 1,99,95,000 |
| 2 | Corporation Bank, Zaheerabad Branch | CBC A/01/000041 | 5,31,46,500 | 5,31,46,500 |
| | | TOTAL | 7,31,41,500 | 7,31,41,500 |

13.0 Based on the above facts gathered during the course of search and seizure operation in the Moturi Group of cases (including Volam Bhaskar Rao and M/s Nandan Cleantec Lid) and the subsequent post-search enquiries and information gathered during the assessment proceedings, it appears that the bank account of the assessee company has been used for the purpose of depositing cash, which could have been withdrawn from the account of M/s Nandan Cleantec Ltd, allegedly to siphon the funds of the company for non-business purposes. But, neither the assessee has provided all the details of the same during the course of assessment proceedings nor has he satisfactorily substantiated the same by disclosing all the facts truly and fully before this office. Even books of account and the bank account of M/s Nandan Cleantec Ltd have not been produced to substantiate the same and no other proper explanation has been given for the source of these cash deposits. Since the cash deposits are made in the bank account of the assessee, onus lies on the assessee to satisfactorily explain the nature and source of the same with proper supporting evidence (as required u/s 68 of Income-tax Act, 1961) but the assessee has failed to discharge the same. In view of the above facts, cash deposits of Rs 7,31,41,500/ in the bank accounts of the assessee (as detailed before) are considered as unexplained and added to the income of the assessee u/s 68 of Income-tax Act, 1961. The penalty proceedings u/s 271(1)(c) is initiated separately for concealment of income.

[Addition: Rs 7,31,41,500/-]”

41. The Assessing Officer accordingly determined the total income at Rs.7,33,85,090/- as against the returned income of Rs.2,43,590/-.

42. In appeal, the learned CIT (A) deleted the addition by observing as under:

“6.2) I have gone through the facts of the case and the submissions of the appellant and my observations/findings are as under:

6.2.1) The Assessing Officer has noticed that during the year under consideration, the appellant's bank account was credited with an amount of Rs.5,31,41,500/- and Rs.1,99,90,000/-, thus totaling to Rs.7, 31, 31,500/-. On being questioned about the sources of such deposits, the appellant has stated that funds were withdrawn from Nandan Cleantec Ltd due to some ongoing internal dispute in the management of M/s Nandan Cleantec Ltd and hence the same were edited into its account.

6.2.2) Further, as could be seen from the assessment order Passed in the case of NCL for the AY 2012-13. the Assessing Officer has taxed the transaction in the hands of the NCL, since NCL could not substantiate the payments made through bearer cheques.

6.2.3) The Assessing Officer has thoroughly and independently examined the issue of connection between the amounts withdrawn from NCL and deposits made in the appellant's bank accounts and other related entities and himself has concluded that the bank account of the appellant had been used for depositing cash which was withdrawn from the bank account of NCL. The finding of the AO in the case of NCL in the assessment order for the AY 2012-13 is as under:

"13.0 During search ad post search proceedings certain unexplained cash deposits were noticed in the bank accounts of the persons/entities related to the company M/s Nandan Cleantec Limited and its group companies whenever there is cash withdrawal from the account of M/s Nandan Cleantec Ltd through bearer cheque. This issue was put across to Sri Volam Bhaskar Rao and Sri Moturi Srinivas Prasad to give the identity, nature of business transactions made with the entities or bearer cheque holders with supporting bills and vouchers which could be relatable to bearer cheque payments debited to M/s Nandan Cleantec Ltd's bank account or P&L account. In response to this, they could not give any verifiable evidence to support claim of these expenses as attributable to parties/assessee's figuring in the bearer cheques.

14.0 Further, during the course of search enquiry, copies of the bearer cheques issued from M/s Nandan Cleantec Ltd., were obtained from Andhra Bank, Zaheerabad Branch. On examination of the bearer cheques, it is found that the cheques are signed by Sri Volam Bhaskar Rao in the capacity of managing director of the company M/s Nandan Cleantec Ltd. Further, it is seen that the witness signature were present on the reverse side of the cheque.

15.0 Accordingly, it is concluded that this amount belonging to M/s Nandan Cleantec Ltd was withdrawn and deposited into other accounts. It was established through enquiries conducted during search, statements recorded of various persons including Director

Shri Volam Bhaskar Rao during search and subsequently in the course of assessment proceedings proves that there was some dispute in the management and money has been withdrawn from M/s Nandan Cleantec Ltd account to various persons/entities. Since this money belongs to M/s Nandan Cleantec Ltd., the amount of Rs.6,91,80,000/- has been added substantively in the hands of the company. To protect the interest of revenue, the same is being also protectively assessed in the hands of the persons/entities in whose accounts the amount was credited in Cash.

6.2.4) On consideration of the above, it is seen that the conclusion of AO is that cash was withdrawn from NCL and deposited in the appellant's account. In view of the above, the source stands explained and no addition is warranted in the hands of the appellant. Accordingly, the addition is deleted and the appellant succeeds on this round.

7.0) In the result, the appeal is partly allowed"

43. Aggrieved with such order of the learned CIT (A) the Revenue is in appeal before the Tribunal.

44. The learned DR heavily relied on the order of the Assessing Officer. He submitted that the learned CIT (A) without considering the facts properly deleted the addition which is not justified.

45. The learned Counsel for the assessee, on the other hand, strongly supported the order of the CIT (A). He submitted that the Assessing Officer has recorded the statements of Directors of the assessee company as well as the Directors of Nandan Cleantec Ltd. The Assessing Officer himself has categorically mentioned that whenever there is a cash withdrawal from Nandan Cleantec Ltd, there is an equivalent deposit of amount in the bank a/c of the assessee company. The assessee during the course of assessment proceedings has also explained that the money deposited in the Bank Account of the assessee company belongs to Nandan Cleantec Ltd and thereafter there

was transfer to various parties on behalf of Nandan Cleantec Ltd. He submitted that once it is proved that the amount withdrawn from Nandan Cleantec Ltd is deposited in the bank Account of the assessee company and since both the companies are related concerns having common Directors and common management, therefore, the question of making addition u/s 68 of the Act in the hands of the assessee company is not justified. He submitted that since the learned CIT (A) has given elaborate reasons while deleting the addition, the order of the CIT (A) should be upheld and the grounds raised by the Revenue should be dismissed.

46. We have considered the rival arguments made by both side, perused the orders of the lower authorities and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case made addition of Rs.7,31,41,500/- being amount deposited in Andhra Bank and Corporation Bank Accounts maintained by it on the ground that the assessee could not substantiate with evidence to his satisfaction regarding the nature and source of cash deposits of Rs.7,31,41,500/- in terms of section 68 of the I.T. Act. We find the learned CIT (A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraphs. We do not find any infirmity in the order of the CIT (A) on this issue. We find the Assessing Officer in the instant case after thoroughly examining the bank account of Nandan Clealtec Ltd and the assessee company came to the conclusion that whenever there is cash deposit in the bank account of the assessee company, there is corresponding withdrawal from the account of the Nandal Cleantec Ltd. Once it is proved by the Assessing Officer himself that the money of

Nandan Cleantec Ltd has found its way into the bank accounts of the assessee company and since both these companies are controlled by the same management having common directors, therefore, the addition u/s 68 of the I.T. Act in the hands of the assessee company is not warranted. Since the learned CIT (A) while deleting the addition has considered the same, therefore, in absence of any contrary material brought to our notice by the Revenue, we do not find any illegality or perverts in the order of the CIT (A) on this issue. Accordingly, the order of the CIT (A) is upheld and the grounds raised by the Revenue are dismissed.

47. In the result, appeals filed by the respective assessees are partly allowed and the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 28th April, 2023.

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| Sd/- (LALIET KUMAR) JUDICIAL MEMBER | Sd/- (R.K. PANDA) ACCOUNTANT MEMBER |
|--|--|

Hyderabad, dated 28th April, 2023.

Vinodan/sps

Copy to:

| S.No | Addresses |
|------|--|
| 1 | Nandan Cleantec Ltd, 6 th Floor, Meenakshy House, Road No.7 Banjara Hills, Hyderabad 500034 |
| 2 | Rejuvenating Approaches (P) Ltd, Plot No.1, H.N.8-3-230/A/1 APSFC Officers Colony, Venkatagiri, Hyderabad 500045 |
| 3 | DR, ITAT Hyderabad Benches |
| 4 | Dy.CIT, Central Circle 3(3) Hyderabad |
| 5 | Pr.CIT Central Circle Hyderabad |
| 6 | DR, ITAT Hyderabad Benches |
| 7 | Guard File |

By Order