

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA No. 4527/Mum/2023 (A.Y. 2018-19)

Ayog Infrastructure Pvt. Ltd.,

Shop No. 3, Chintami Plaza Building,

Shokvan, Shiv Vallabh Road,

Dahisar, Mumbai-400 068

PAN: AAKCA3628D

..... Appellant

Vs.

NFAC

Kautilya Bhavan,

Bandra Kurla Complex

Maharashtra - 400 051

..... Respondent

Appellant by	:	Shri Neeraj Mangla, Ld. AR
Respondent by	:	Shri Manoj Kumar Sinha, Ld. DR
Date of hearing	:	07/05/2024
Date of pronouncement	:	26/06/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 29.11.2023 passed u/s. 250 of the Income

Tax Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:-

1. That the assessment order passed by Ld. AO as well as the appellate order passed by Ld. CIT(A) are bad in law and have been passed in contravention of prevailing law as well as facts of the case, therefore liable to be annulled.

2. That the Ld. AO grossly erred in invoking provisions of Sec. 68 of the Act and assessing creditors for purchase of investments of Rs. 6,34,18,870/- as unexplained cash credits.

3. That the assessee company seeks leave to add, alter, modifies or deletes any ground of appeal during the course of appellate proceedings.

2. The Brief facts of the case are that the assessee company filed its return of income declaring NIL income vide acknowledgement dated: 31.10.2018. The case of the assessee was selected for scrutiny under (CASS) on the following issues:

A). Investment/Advances/Loans and B). Business Loss.

Vide balance-sheet of the assessee there is an amount of Rs. 25,73,19,910/- shown as loans/advances, out of which an amount of Rs. 6,34,18,870/- pertains to the year under consideration and assessee was asked to substantiate the transactions in terms of identity, genuineness and creditworthiness. The assessee tried to explain the transaction undertaken by it but, the AO was not satisfied with the explanation and evidences filed by the assessee and added the same u/s. 68 of the Act. The assessee being aggrieved with the same and preferred an appeal before the Ld. CIT (A), NFAC, Delhi, who in turn confirmed the order of the AO. The assessee being further aggrieved with this order preferred this present appeal before us.

3. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith paper book filed and grounds taken. It is observed that during the year under consideration, the assessee company claimed to be entered into the transactions with M/s. Ailish Traders Pvt. Ltd. and M/s. Mina Commosales LLP amounting to Rs. 5,61,28,871/- and Rs. 72,90,000/- respectively. The assessee claims to have purchased shares of two companies from M/s. Ailish Traders Pvt. Ltd. and shares of three companies from M/s. Mina Commosales LLP for the amounts mentioned above. The assessee was asked to prove the transactions in terms of identity, genuineness and creditworthiness. In response the assessee filed ITRs and self-certified balance-sheet along with P&L accounts of both the parties. The same were filed before us also (But before us the assessee filed audited financials of the parties concerned) for our perusal vide paper book dated: 30.04.2024. We have gone through the details of M/s. Ailish Traders Pvt. Ltd. vide pages no. 41 to 60 of paper book filed before us and following observations are there on the same:

- i). ITR filed vide dated: 20.04.2018 declared NIL income;
- ii). Audited balance-sheet vide dated: 11.08.2018 alongwith P&L account and annexures are attached. Here it is pertinent to mention that ITR was filed on 20.04.2018, i.e. the date on which the accounts were not audited as the same were audited on 11.08.2018 only.
- iii). it is also important to mention here that the details of the financials submitted by the assessee before the AO vide dated: 26.04.2021 were non-audited, self-certified by the management of the parties. **We never came across such type of situation where the assessee has audited financials in its**

possession still, furnishing self-certified financials in assessment proceedings and that is too before the Ld. CIT (A) also. It is beyond our understanding that what inspired the assessee to file the audited financial results before us. This conduct itself is enough to dismantle all the arguments of the assessee and to draw a negative inference against the assessee.

iv). M/s. Ailish Traders Pvt. Ltd. is a typical shell company with meager amount of paid-up capital of Rs. 16,69,680/- and huge number of securities premium account of Rs. 39,08,50,320/-. Over the period accumulated losses of the company are Rs. (-) 76, 98, 39,997/-. Effectively company is bank corrupt and lost its status of going concern even if somebody applies the basic accounting principles. The whole game of the company is revolving around the sundry creditors/ advances / loans payable and receivable.

v). During the year under consideration as per schedule 11 of the balance-sheet the assessee received Rs. 14,56,70,369/- from its debtors and repaid Rs. 14,68,76,442/- to its creditors as per schedule 5 (As per the changes in figure of current year and previous year), i.e. there is no scope for any loan to assessee to the tune of Rs. 5,61,28,871/-. We have not noticed any change in any other stream of revenue accrual, which can be given to the assessee. **It can be reasonably hold that there is no genuine transaction between the assessee and M/s. Ailish Traders Pvt. Ltd.** Further, in the audited financials of M/s. Ailish Traders Pvt. Ltd. fund/ cash flow statement is absent for our verification. The assessee filed ledger accounts of the party in its books whereas vice-versa copy of ledger duly confirmed is not furnished at any stage before the authorities below

and before us also. The assessee is failed to the extent that M/s. Ailish Traders Pvt. Ltd. ever held the shares claimed to be bought by the assessee.

4. In view of above all the three essential ingredients namely; identity, genuineness and creditworthiness of the transaction is not proved beyond doubt by the assessee. Additionally, the genuineness and creditworthiness of the transactions may not be satisfactorily determined solely on the basis of the ledger accounts or the ITR of the entities, especially when the identities of such entities are not *bona fide*. The task of unveiling the mischief of the human minds working behind the corporate veil in such cases requires a deeper scrutiny, which goes beyond the periphery of documents ordinarily submitted for the purpose of assessment. An inquiry for ascertaining the creditworthiness and genuineness of financial transactions necessarily requires unknotting of the transactions, by going beyond what is conspicuously available.

5. We have gone through the case laws relied upon by the assessee and found the same were not applicable to the facts of the case. For ready reference we are reproducing herein below the provisions of section 68 of the Act as under:

Cash credits.

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless, —

(a)	the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and
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(b)	<i>such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:</i>
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Provided further that] where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a)	<i>the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and</i>
(b)	<i>such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:</i>

Provided also that nothing contained in the first proviso or second proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

6. Here it is immaterial whether the assessee shown the transaction under the head purchases, current investments or investments, it is hold that the transaction is frivolous in nature and as hold (supra), the assessee is trying to hide its transaction in the guise of fake purchase/ current investments or investments. Considering the peculiar facts and circumstances of the case, it is evident that the transactions are not genuine as stated by the A.O. as well as by the First Appellate Authority. In the instant case, transaction is not genuine but colourable. Hence, we are of the view that the money is routed indirectly into the assessee's account under the garb of the purchase/ loan/ creditor. During the year under consideration the assessee has total Rs. 3,30,18,870.95/- as advances and sundry debtors for sale of investments, whereas total amount recovered during the year under consideration amounting to Rs. 1,00,00,000/- under the head advances and the same were paid simultaneously to M/s. Yantra Natural Resources Ltd. on 21.03.2018 and 22.03.2018 in equal amount of Rs. 50,00,000/-. **This is again**

beyond understanding that the shares of M/s. Yantra Natural Resources Ltd., the assessee is buying on so called credit but to the same investee company the assessee is providing a cash loan of Rs. 1 Cr. In the same year shares amounting to Rs. 3,30,18,870.95/- were transferred to M/s. Vaishali Traders without receiving any cash.

7. All the transactions of sales of shares on due basis were done on at par basis without declaring any profit on the same. All the transactions entered into by the assessee are suspicious in nature at glance itself and no further any explanation by the assessee is sustainable, especially by citing judicial pronouncements. As each case has their own facts and can't be applied genetically on the facts of another case. Facts of the transaction with M/s. Mina LLP is also similar and observations made above vide para 3 are applicable *mutatis mutandis* here also.

8. In nut shell it is hold that in the garb of trade transactions, the assessee is involved in the process of money laundering and the same is chargeable to tax u/s. 68 of the Act. As section 68 of the Act is applicable "***Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:***" Based on above, we do not have any hesitation in sustaining the orders of authorities below and in the result, **the appeal of the assessee is liable to be rejected.**

9. In the result, the appeal of the assessee is fully dismissed.

Order pronounced in the open court on 26th day of June, 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 26/06/2024

Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai