

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "SMC" NEW DELHI)**

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER

**ITA No. 1427/Del./2016
Assessment Year: 2011-12**

Sampark Couriers Pvt. Ltd. 17/3, Mathura Road, Faridabad	Vs.	DCIT Circle-1, New CGO Complex, NH-IV, Faridabad
(Applicant)		(Respondent)
(PAN: AAICS6775M)		

Assessee by: Sh. B.L. Mittal, Advocate

Revenue by: Ms. Bedobina Chaudhari, Sr. DR

Date of hearing	06/03/2017
Date of pronouncement	15/03/2017

ORDER

PER B.P. JAIN, ACCOUNTANT MEMBER:

1. That the assessee is engaged in the business of courier service and the relevant A.Y. is 2011-12. The assessee filed its return of income declaring a total income of Rs. 2,59,550/-. The case of the assessee was selected for scrutiny by issuance of notice under section 143(2) of the Act. The assessment culminated in the order dated 24.03.2014 wherein

the AO made the addition of Rs. 28,83,163/- under section 68 of the Act and Rs. 58,580/- was disallowed under section 40(a)(ia) of the Act.

2. Aggrieved by the order dated 24.03.2014, the assessee went in appeal before the CIT(A). The addition under section 68 of Rs. 28,83,163/- was confirmed and the disallowance of Rs. 58,580/- was deleted vide order dated 07.12.2015.

3. The assessee is in appeal before us against the order dated 07.12.2015 and has raised the following grounds of appeal:-

“1. The Order of the Hon’ble Commissioner of Income tax (Appeals), Faridabad upholding the Order of the Ld. Assessing Officer (AO) i. e. Dy. Commissioner of Income tax, Circle-I, Faridabad, to the extent of addition U/s 68 of the Income Tax Act’1961 is against the facts of the case and bad in Law.

2. The Hon’ble Commissioner of Income tax (Appeals) was wrong in holding the contention of the Ld. Assessing Officer that the amount of Rs.28,83,163/- outstanding as at 31.03.2011 under unsecured loan from M/s Transnational Growth Fund Ltd. was unexplained cash credit U/s 68 of the Income tax Act 1961.

3. That the appellant craves leave to add , alter, amend, modify, substitute, delete any of the ground(s) of appeal at or before the time of the final hearing of the appeal, if necessary.”

4. The assessee during the relevant A.Y. had received Rs. 27,50,000/- from M/s Transnational Growth Fund Ltd. It is revealed from the record that the said company is a part of Sh. Surendra Kumar Jain Group of companies. A search and survey action was carried out in the case of the said group and various incriminating material pertaining to accommodation entries including that of the present assessee were recovered. It was found that the said group was involved in providing accommodation entries to certain parties by floating various paper companies with dummy Directors. The documents seized further reveal that how cash was routed through a middleman into M/s Transnational Growth Fund Ltd. and then transferred to the assessee company through RTGS.

5. The Ld. AR while assailing the impugned order argues that all the transactions between the appellant and the investor companies have been made through banking channels. He further submits that the assessee had discharged its onus by providing the copies of confirmation letter, ITR, Bank statement, PAN Card of the creditor. It is submitted that the creditor company is not a mere paper company and holds reserves and surplus including the share capital to the tune of Rs. 113 crores. The Ld. AR has placed reliance upon various case laws including the judgment

of the Hon'ble Delhi High Court in the case of Pr. CIT Vs. Softline Creations Pvt. Ltd., 387 ITR 636.

6. The Ld. DR on the other hand relied upon the orders passed by the CIT(A) and the AO. It was submitted that notice under section 133(6) of the Act was issued to the creditor company i.e. M/s Transnational Growth Fund Ltd. and also an inspector of the Department was deputed to make local inquiries to verify the identity of the creditor. The inspector in his report has submitted that no company by the name of the creditor existed at the address given by the assessee. Moreover, the assessee despite opportunity given was not able to produce the creditor before the AO.

7. We have heard the rival submissions, perused the record and the judgments relied upon by the parties. Though the assessee had produced the PAN, Bank details, ITR, balance sheet of the creditor company to substantiate the unsecured loan of Rs. 27.5 lacs received by it, however, it was not able to produce the creditor before the AO particularly, in view of the fact that the AO was not able to verify the information furnished. The inspector had given a report that no company existed at the given address. The onus shifted back to the assessee after such report of the inspector had come. The said onus was not discharged by the assessee and the primary requirements of identity, creditworthiness and

genuineness could not be conclusively established as required under section 68 of the Act.

8. In the case of CIT Vs. N.R. Portfolio Pvt. Ltd., ITA No. 134/2012 dated 21.12.2012 under similar circumstances, the Hon'ble Delhi High Court held as under:

“An assessee’s duty to establish that the amounts which the proposes to add back, u/s 68 are properly sourced, does not cease by merely furnishing the names, addresses and PAN particulars, or relying on entries in a Registrar of Companies website. One must remember that in all such cases, more often than not, the company is a private one, and persons from whom loans have been taken are known to it, since they are issued on private placement, or even request basis. If the assessee has access to the loaners/creditors applicant’s PAN particulars, or bank account statement, surely its relationship is closer than arm’s length. Its request to such concerns to participate in income tax proceedings, would, viewed from a pragmatic perspective, be quite strong, because the next possible step from the tax administrators could well be reopening of such investor’s proceedings. That apart, the concept of “shifting onus” does not mean that once certain facts are provided, the assessee’s duties are over. If on verification, or during proceedings, the AO cannot contact the cash creditors, or that the information becomes unverifiable, or there are further doubts in the pursuit of such details, the onus shifts back to the assessee. At that stage, if it falters, the consequence may well be an addition u/s 68”

9. Moreover, in the present case, the documents available with the AO could not be ignored as they reveal the modus operandi of the working particularly in the case of the assessee, as to how with the help of a middleman, cash was first deposited into M/s Transnational Growth Fund Pvt. Ltd. and thereafter to the assessee company through RTGS. In the face of such incriminating documents evidencing the accommodation entry, we find no merit in the present appeal. A reference to the judgment rendered by the Hon'ble Delhi High Court in the case of CIT Vs. Nova Promoters & Finlease (P) Ltd., 342 ITR 2012, would be useful wherein it was held as under:

“The ratio of a decision is to be understood and appreciated in the background of the facts of that case. So understood, it will be seen that where the complete particulars of the cash creditors such as their names and addresses, income tax file numbers, their creditworthiness, share application forms and share holders' register, share transfer register etc. are furnished to the Assessing Officer and the Assessing Officer has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false and cannot be acted upon, then no addition can be made in the hands of the company under sec. 68 and the remedy open to the revenue is to go after the share applicants in accordance with law. We are afraid that we cannot apply the ratio to a case, such as the

present one, where the Assessing Officer is in possession of material that discredits and impeaches the particulars furnished by the assessee and also establishes the link between, self-confessed accommodation entry providers", whose business it is to help assessee bring into their books of account their unaccounted monies through the medium of share subscription/U loans, and the assessee. The ratio is inapplicable to a case, again such as the present one, where the involvement of the assessee in such modus operandi is clearly indicated by valid material made available to the Assessing Officer as a result of investigations carried out by the revenue authorities into the activities of such "entry providers". The existence with the Assessing Officer of material showing that the share subscriptions were collected as part of a pre-meditated plan - a smokescreen conceived and executed with the connivance or"

10. In view of thereof, the grounds raised by the appellant are dismissed

11. In the result the appeal of the assessee in ITA No. 1427/Del/ 2016 is dismissed.

12. Pronounced in the open court on 15.03.2017.

Sd/-

(B.P. JAIN)
ACCOUNTANT MEMBER

Dated: 15.03.2017

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Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT (Appeals)
- 5) DR: ITAT

ASSISTANT REGISTRAR

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