

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

**BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 4701/Del/2011  
AY: 2003-04**

**Ujala Sales Pvt. Ltd.,  
C-127, Preet Vihar,  
New Delhi.  
(PAN: AAACU0476F)  
(Appellant)**

**vs Income Tax Officer,  
Ward 18(2),  
New Delhi.  
(Respondent)**

**Appellant by: Shri C.S. Anand, CA  
Respondent by: Shri Rajiv Ranka, Sr. DR**

**Date of hearing: 28.01.2016  
Date of pronouncement: 18.04.2016**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

The present appeal is preferred by the assessee against the impugned order passed by the Ld.CIT(A)-XXI, New Delhi for assessment year 2003-04 wherein, by order dated 23.8.2011, the First Appellate Authority has upheld the addition of Rs. 5.00 lacs u/s 68 of the Income Tax Act, 1961 (hereinafter called 'the Act').

2. The facts of the case, in brief, are that the assessee company had filed its return of income declaring a total income of Rs. 4,02,170/-. The return was duly processed u/s 143(1) of the Act on 23.03.2004. Later on, a notice u/s 148 of the Act dated

5.3.2010 was issued. Reasons for reopening the case u/s 147 of the Act were recorded as under:-

*“ A special report from Investigation Wing, New Delhi has been received through CIT Delhi VI, New Delhi. As per information the assessee company, M/s Ujala Sales (P) Ltd New Delhi has been beneficiary of accommodation entries being provided by the certain entry operators. On the basis of the information chart forwarded by the DIT (Inv), New Delhi it is seen that the assessee is involved in the following, bogus transactions detailed in the chart forward by the DIT (Inv), New Delhi.”*

Beneficiary Name	M/s Ujala Sales (P) Ltd.
Beneficiary bank name	State Bank of India
Beneficiary bank Branch	Krishna Nagar
Value of entry taken	Rs. 5,00,000/-
Instrument No. By which entry taken	022652 (Ch.No.)
Date on entry was taken	22.11.2002
Name of the A/c holder of entry giving A/c	M/s Sunrise Developers (P) Ltd.
Bank of entry given bank	IDBI Bank
A/c no. Entry giving account	3513

3. The Assessing Officer was of the opinion that the amount of Rs. 5.00 lacs received from M/s Sunrise Developers (P) Ltd. was an accommodation entry because the account from which the amount was transferred was opened on 29.07.2002 and was closed on 17.12.2003. The Assessing Officer also observed that the daily closing balance of the account had mostly remained below Rs. 1000/- only. It is also seen from the assessment order that information u/s 133(6) of the Act was called from M/s

Sunrise Developers (P) Ltd. i.e. the depositor company but the letter calling for information was returned un-served with the remark 'Left'. It is also seen from the assessment order that the assessee was required by the Assessing Officer to produce the Director/s of M/s Sunrise Developers (P) Ltd. along with relevant books of account and documents for examination on oath. However, since none could be produced, the Assessing Officer proceeded to conclude that the depositor company was given this amount by the assessee company to camouflage the transaction as a receipt against allotment of shares and that the genuineness of the transaction could not be proved. Accordingly, the Assessing Officer treated the amount as unexplained and added it back u/s 68 of the Act.

4. Aggrieved, the assessee preferred an appeal before the First Appellate Authority which was dismissed on the premise that the creditworthiness of the depositor could not be proved.

5. Now, the assessee is in appeal before us and has raised the following grounds of appeal:-

*"1. That the reassessment order passed u/s 143(3)/148 on 30.11.2010 deserves to be quashed on various factual & legal grounds, including the issues relating to illegality in initiation of proceedings u/s 147 and limitation.*

2. *That the addition of Rs. 5,00,000/- u/s 68 of the I.T. Act 1961, on a/c of Share Application money received from M/s Sunrise Developers (P) Ltd.. [new name being Tarangi Contractors & Developers pvt.Ltd] through banking channel, vide re-assessment order passed u/s 143(3)/148 of the I.T. Act 1961, on 30.11.2010, is arbitrary, unjust & illegal on various factual / legal grounds.*

3. *That the ld. CIT(A) has erred in confirming the addition of Rs.5,00,000/-, as made by the Id. A.O. u/s 68 of the I.T. Act 1961, on a/c of Share Application money received by the assessee from M/s Sunrise Developers (P) Ltd. [new name being Tarangi Contractors & Developers Pvt Ltd],*

*The ld. A.O. had made such addition on the ground that "the genuineness of the transaction of the creditor has not been proved". by ignoring the documentary evidences. On the other hand the ld. CIT(A) has confirmed such addition by stating that "creditworthiness of the share-holder has not been proved and A.O. after analyzing the bank statement of the shareholder has rightly held that the creditworthiness of the creditor was not proved", while it was not the case of the ld. A.O.*

4. *That on the facts of the case and under the law, charging of interest u/s 234-B of the I.T. Act 1961, was unjustified and illegal.*

5. *That the ld. CIT(A) has not decided the issue relating to interest u/s 234-D of the Income Tax Act, 1961."*

6. At the outset, the Ld. AR submitted that ground no. 1 challenging the initiation of reassessment proceedings was not being pressed. Hence, this ground is dismissed as not pressed.

7. The Ld. AR submitted that during the course of assessment proceedings itself, the assessee had furnished the particulars of the depositor M/s Sunrise Developers (P) Ltd. and various

documentary evidences to support its claim of having received Rs. 5.00 lacs towards share capital. The Ld. AR averred that on the receipt of information from the Assessing Officer that the depositor had not complied with the information sought under section 133(6) of the Act, the assessee had contacted the depositor company and it was revealed that the notice u/s 133(6) had not been received by the depositor company. The Ld. AR also submitted that the apparent reason for the non-service of the notice was that the name had been wrongly mentioned on the notice as 'M/s Sunrise Development Pvt. Ltd.' instead of the correct name 'M/s Sunrise Developers (P) Ltd.' The Ld. AR further submitted that the Assessing Officer was also duly informed that the Directors of the depositor company were out of station and hence could not attend. However, the Assessing Officer did not enforce the attendance of the Directors on any other future date and passed the assessment order straightaway by holding that the genuineness of the transaction could not be proved. The Ld. AR submitted that the following information had been provided by the depositor company to the Assessing Officer vide letter dated 25.11.2010 which was not considered by the Assessing Officer at all:-

- a) Copy of Company Secretary report confirming vide Para 28 change in name from Sunrise Developers Pvt. Ltd. to Tarangini Contractors & Developers Pvt. Ltd for which form 1A was filed on 23 7.2009 with ROC.
- b) Copy of Annual Return filed vide R.No.498727 with ROC Delhi for Balance sheet as on 31.03.2003.
- c) Copy of Audited Balance Sheet and Profit & Loss A/c as on 31.03.2003.
- d) Copy of extract from site of ROC confirming existence of Tarangini Contractors & Developers Pvt. Ltd. (CIN No.- U74899DL1989PTC035078)
- e) Copies of ledger accounts in our account books confirming issue of Ch.No.- 022652 dt. 21.11.2002 drawn on IDBI Bank as application money for issue of shares by Ujala Sales Pvt. Ltd. and further issue of 50,000 Nos. shares of Rs 10 each fully paid on 03.12.2002 for total Rs. 500000/-.
- f) Our confirmation as regards issue of 50,000 shares of Rs. 10 each by Ujala Sales Pvt. Ltd.
- g) Photocopy of relevant portion of bank account with IDBI bank explaining source of Rs.5,00,000/- and issue of Ch.No.022652 dt. 21.11.20D2 for Rs. 5,00,000/- in favour of Ujala Sales Pvt.Ltd.
- h) Photocopy of acknowledgement in Form No-1 of income tax return for A.Y 2003-04 filed on 02.12.2003.

8. It was further stated that the Ld. CIT (A) had dismissed the assessee's appeal by holding that the creditworthiness of

the depositor could not be proved without allowing any opportunity to the assessee on this altogether new ground. The Ld. AR submitted that the addition deserves to be deleted.

9. The Ld. DR submitted that both the Assessing Officer and the Ld. CIT (A) have passed well-reasoned orders and no interference was called for.

10. We have heard the rival contentions and have also perused the records. The Ld. AR has drawn our attention to the Paper Book wherein the various documents forwarded by the depositor company to the Assessing Officer of the assessee have been placed at pages 1 to 10. It is seen that the depositor company has given a confirmation of the investment in shares along with a copy of the Bank Account, copy of the Income Tax Return along with audited balance sheet. A ledger account of the assessee company in the books of account of the depositor company has also been provided which acknowledges that shares had been allotted against the deposit on 3.12.2002. It is seen that the Ld. CIT (A) has nowhere considered these evidences although the assessee had made the submission regarding the same before

him also as is very much evident from the reproduction of the assessee's submissions in the impugned order.

11. It is also seen that the AO has not verified the details furnished by the assessee and the Income Tax records of the investing company. Accordingly, we deem it fit to restore the matter to the file of the Assessing Officer for proper verification of these details after giving the assessee due opportunity to present its case.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

The order is pronounced in the open court on 18.04.2016.

Sd/-

**(R.S. SYAL)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA )**  
**JUDICIAL MEMBER**

Dated: the 18<sup>th</sup> April, 2016  
'GS'

Copy of the Order forwarded to:

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

By order

Asstt. Registrar