

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**KOLKATA BENCH 'A', KOLKATA**

**(Before Shri J. Sudhakar Reddy, A.M. & Shri S.S. Viswanethra Ravi, J.M.)**

**ITA No. 2169/KOL/2014**

**Assessment Year : 2010-11**

D.C.I.T. Cir-33, Kolkata, Income Tax Office, 10B, Middleton Row, 3 <sup>rd</sup> Floor, Kolkata - 700071	Vs	M/s. India Docking & Engineering Co., C/o. K.J. Shah & Co., Kalyan Bhawan, 2, Elgin Road, Kolkata - 700020 <b>PAN No. AAIFI7900B</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**Revenue by : Shri Sourabh Kumar, Addl. CIT**

**Assessee by : Shri Miraj D. Shah, Advocate**

<b>Date of Hearing : 18.04.2017</b>	<b>Date of Pronouncement : 30-06-2017</b>
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**ORDER**

**Shri S.S. Viswanethra Ravi, JM**

This appeal by the revenue against the order dated 26.09.2014 passed by the CIT(Appeals)-XIX, Kolkata for assessment year 2010-11.

2. The brief facts of the case are that the assessee is a firm and engaged in the business of ship repairing. The assessee filed its return of income declaring total income of Rs. 32,65,616/-. Notices under section 143(2) and 142(1) of the Act were issued in response to the assessee filed all the details and evidences along with the books of accounts and bank statements.

3. Ground No. 1 is relating to the addition made by the AO under section 68 of the Act on account of capital introduction.

4. On an examination of records, the AO found that Mr. Pratik Chowdhury, one of the partners has introduced new capital of Rs. 11,63,500/-. The AO asked for details of the said capital introduction. In response, the assessee submitted ledger copy of capital introduction and bank statements of the said partner. The assessee explained the said capital was introduced from their joint account to the account of the assessee. The AO found that the said partner does not have sufficient bank balance and found no cash withdrawal before the cash introduction in the firm's account. For not explaining the nexus between cash withdrawal from bank account and cash introduction in the firm account, the AO added an amount of Rs. 11,63,500/- to the income of the assessee.

5. Before the CIT(A), the assessee challenged of the action of AO. The assessee contended the capital introduced by the said partner were recorded in the books of the firm as well as recorded in the balance sheet of the said partner. To substantiate the same, the assessee filed IT returns, balance sheet, profit & loss account, ledger in the firm in the books of the said partner. On an examination of the said details, the CIT(A) found that the said partner Mr. Pratik Chowdhury has opening balance of Rs. 24,28,963/- in his current account and introduced cash as his capital to current account contribution. The CIT(A) also found entries concerning the same were duly

recorded in the partners books of accounts and the partners confirmed the transaction in the ledger account. Accordingly CIT(A) deleted the same addition made an account of capital introduction. The relevant portion of which is reproduced here-in-below:

*"5.2 I have considered the submissions of the AR of the appellant and perused the assessment order. I have also called for the assessment folder and examined the assessment records. I find that Shri Pratik Chowdhury is assessed to tax under PAN No. ACHPC8701H. He regularly files his income tax returns. For the AY 2010-11 he had disclosed an income of Rs. 4,54,110/- for AY 2011-12 he had disclosed an income of Rs. 5,87,530/-. From the assessment record I find that the current account of the partner Shri Pratik Chowdhury had an opening balance of Rs. 24,28,963/- during the year, he had on various dates introduced cash as his partners capital / current account contribution. The total introduction was Rs. 11,63,500/-. I find that in the books of Shri Pratik Chowdhury the amount of contribution of Rs. 11,63,500/- is duly recorded. The ledger copy is available on the assessment records. I also find that the statement of asset and liability of Shri Pratik Chowdhury is on assessment record in which the introduction of Rs. 11,63,500/- is duly reflected and the closing account of Rs. 38,43,661/- is recorded. This is also available on the assessment records. On perusal of these evidences and the assessment records I find that both the firm and the partner Shri Pratik Chowdhury admitted to the partners contribution of Rs. 11,63,500/-. The said amounts are reflected in the books of accounts of both the parties. Shri Pratik Chowdhury is a regular income tax assessee and is filing his return of income. On perusal of the balance sheet of Shri Pratik Chowdhury I find that he had a capital balance of Rs. 28,04,919/- and over drawn account with Fabcon India and Saileshwar Ship Management and thus he had a sum of Rs. 44,96,687/- available from which he had invested Rs. 38,43,661/- as partners capital with the appellant firm. The AO presumed that the cash introduced in the appellant firm was withdrawn from the Bank Account of Shri Pratik Chowdhury. However I don't find any such statement or claim by the appellant of Shri Pratik Chowdhury before the AO. Thus the AO's finding that there was no withdrawal from bank account of Shri Pratik Chowdhury is irrelevant. Once the basic details and supporting evidences including confirmation, IT Return, Balance Sheet of the partner was filed by the appellant firm I am of the opinion that the onus u/s 68 of the Act was duly discharged by them. I find that the AO failed to make any inquiry with Shri*

Pratik Chowdhury of his AO. No notices were issues, no summons were issued. Without making inquiry or calling the party the AO could not simply brush aside the evidences. I further find that various Courts and Tribunals have deleted similar addition on similar facts. I find that the ITAT Kolkata in the case Sarker Marine Services ITA No. 329 of Kol/2011 deleted the addition on partner's capital introduced in cash by holding: We further find that the issue is also covered by the decision of Hon'ble Allahabad High Court in the case of CIT vs Jaiswal Motor Finance (1983) 144 ITR 358 (All), wherein it has been held that if there are cash credit entries in the books of a firm, in which the accounts of the individual partners exist, and it is found as a fact that the cash was received by the firm from it is partners, then, in the absence of any material to indicate that these were the profits of the firm, it could not be assessed in the hands of the firm. This is so because in such a case the onus placed on the assessee firm by section 68 should be deemed to have been discharged by it. Where certain deposits are found in the books of the firm in the names of its partners and such deposits are treated as income of the respective partners, it is not open to treat again such deposits as income of the firm. In view of the above settled legal position, we are of the firm view that capital introduced by the partner in the absence of finding that these are introduced out of profit of firm, addition cannot be made in the hands of firm. Accordingly, we delete the addition and reverse the orders of lower authorities. Appeal of the assessee is allowed. I also find that the **Hon'ble Allahabad High Court in the case of CIT vs Jaiswal Motor Finance (1983) 144 ITR 358 (All)** deleted the addition with respect to partners capital introduced in cash by holding "It appears to be well settled that if there are cash credit entries in the books of the firm in which the accounts of the individual partners exist and, it is found as a fact that cash was received by the firm from its partners ten in the absence of any material to indicate that they were profits of the firm, it could not be assessed in the hands of the firm. We are, therefore, of the opinion that the Tribunal did not commit any error of law and rightly held that the deposits shown in its accounts were satisfactorily explained." I find that the Hon'ble High Court, Madhya Pradesh in **CIT vs Metachem Industries (2000) 245 ITR 160 (MP)** deleted the addition of partners capital and held that – "where the assessee-firm had explained the credits standing in the name of its partners, the responsibility of the assessee stands discharged. Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. **The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. If that person owns the entry, then the burden of the assessee-firm is discharged. It is open to the Assessing Officer**

*to undertake further investigation with regard to that individual who has deposited the amount". I therefore find that the appellant firm had discharged its initial burden and the AO failing to make any inquiry with the partner could not make addition in the hands of the appellant firm on account of cash introduction by the partner. On examination of the assessment records I find that the entries were duly recorded in the partners books of accounts and the partner confirmed the transaction in the ledger account and the partner was regularly assessed to tax. Considering the case laws and the facts I direct the AO to delete the addition made on this count."*

6. Learned DR relied on the order of AO. Learned AR relied on the order of CIT(A). Heard rival submissions and perused the relevant material available on record. It is observed that all the details regarding capital introduction were produced before the AO and CIT(A). The AO added the said amount for not offering the nexus between cash withdrawal from bank account and cash introduction into the firm's account. The CIT(A) examined that all the details furnished by the assessee in the assessment proceeding. The CIT(A) found the said capital introduction to an extent of Rs. 11,63,500/- were duly recorded in the ledger which is very much available before the AO. The CIT(A) also found the capital introduction duly reflected in the partners books of accounts. In view of the same, we find no infirmity in the order of CIT(A) and accordingly it is justified. Ground No. 1 raised by the revenue is thus dismissed.

7. Ground No. 3 is to be decided is as to whether the CIT(A) justified in allowing the bad debts written off as deduction in the facts and circumstances of the case.

8. On an examination of records, the AO found that the assessee debited an amount of Rs. 24,89,657/- on account of bad debts written off. The AO sought explanation in terms of Section 36(1)(vii) and Section 36(2) of the Act. According to AO, the assessee did not produce any supporting documents explaining the questions raised by the AO in terms of the above referred provisions of the Act and accordingly added the said amount to the income of the assessee.

9. The assessee challenged the same before the CIT(A). The assessee contended that all the details in response to the questions raised by the AO were submitted in assessment proceeding. The assessee also submitted that the impugned addition represents outstanding sales debtors and the same was written off in the books of accounts. The assessee also contended that a detailed break up on bad debts along with the name, address and amount indicating the party-wise along with details of bill no and date were filed before the AO on 14.01.2013. Without considering the same, the AO added the impugned amount. The CIT(A) considering the submissions of the assessee and by relying on a decision of Hon'ble Supreme Court in the case of **TRF Limited vs CIT reported in 323 ITR 397** deleted the addition made by the AO. The relevant portion of which is reproduced here-in-below:

*"6.2 I have considered the submissions of the A/R of the appellant and perused the assessment order. I find that the appellant had filed a submission with respect to bad debt on 14.01.2013. The copy of the submission and its annexures are available on the assessment record. The appellant had filed name, address and amount of the parties on account of whom the bad debt was claimed. The appellant had also filed details of*

*bills, date of bill, amount of bill and work done for the said parties against which the bad debt was claimed. I find that the appellant had written off the bad debt in his books of account, the details of income booked against the parties which were written off as bad debt was provided, the details of the parties with their address was filed. I find that the AO failed to make any inquiry in this regards. I also find that the amount of bad debt written off was representing sales made in earlier years which could not be realised. As the appellant had written off the same in its books of accounts the AO could not challenge such decision. The AO was not correct relying on the fact that what action the appellant was taking to recover the debt. I find that after 01.04.1989 the assessee is only required to write off the bad debt in its books. The Apex Court in the case of TRF Limited vs CIT 323 ITR 397 has held that "After 1<sup>st</sup> April, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. However, in the present case, the Assessing Officer has not examined whether the debt has, in fact, been written off in accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of companies, the provision is deducted from Sundry Debtors. As stated above, the Assessing Officer has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee". I find that the appellant's case is squarely covered by the decisions of the Apex Court in TRF Ltd. case. Considering the case laws and the facts I direct the AO to delete the addition made on this count.*

10. Before us, the learned DR relied on the orders of AO. The learned AR reiterated the submissions made before the CIT(A) and placed reliance on the decision of Hon'ble Supreme Court in the case of TRF Ltd. (Supra). The learned AR supported the order of CIT(A).

11. Heard rival submissions and perused the relevant material available on record. We find that the CIT(A) examined all the details which were filed before the AO and found that the assessee written off the bad debts in his books of accounts. The Hon'ble Supreme Court in the case of TRF

Ltd. as relied by the CIT(A) in his impugned order held that after 1<sup>st</sup> April, 1989 is not necessary for the assessee to establish that the bad debt as become irrecoverable and deduction can be granted if the same is written off in the books of accounts as irrecoverable. Respectfully following the same, we find no infirmity in the order of CIT(A) and accordingly it is justified. Thus ground raised by the revenue is dismissed.

**12. In the result, the appeal of the Revenue is dismissed.**

Order Pronounced in the Open Court on 30-06-2017.

Sd/-  
(J. Sudhakar Reddy)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

Dated: 30-06-2017  
Biswajit

**Copy of order forwarded to:**

- 1 M/s. India Docking & Engineering Co., C/o. K.J. Shah & Co., Kalyan Bhawan, 2, Elgin Road, Kolkata – 700020
- 2 D.C.I.T. Cir-33, Kolkata, Income Tax Office, 10B, Middleton Row, 3<sup>rd</sup> Floor, Kolkata – 700071
- 3 The CIT(A),
- 4 The CIT
- 5 DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata