

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 5263/Del./2013
Assessment Year: 2010-11**

ACIT, Central Circle-13, New Delhi. (Appellant)	vs.	Russian Technology Centre (P) Ltd., A-1/20, Safdurjung Enclave, New Delhi.(PAN-AACCR7102D) (Respondent)
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**C.O. No. 139/Del./2017
(ITA No. 5263/Del./2013)
Assessment Year: 2010-11**

Russian Technology Centre (P) Ltd., A-1/20, Safdurjung Enclave, New Delhi. (Appellant)	vs.	ACIT, Central Circle-13, New Delhi. (Respondent)
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Assessee by	Sh. Ajay Wadhwa, Advocate
Revenue by	Sh. Atiq Ahmed, Sr. AR

Date of Hearing	19.06.2018
Date of Pronouncement	25 .06.2018

ORDER

Per L.P. Sahu, A.M.:

The Revenue has filed the appeal against the order of Id. CIT(A)-I, New Delhi dated 26.07.2013 for the assessment year 2010-11 on the following grounds:

"1. The order of Ld. CIT(A) is not correct in law and facts.

2. On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.99,14,000/- made by A.O. on account of share capital as unexplained credit."

The assessee has also filed a cross objection on the following grounds:

1. That the order under section 143(3) of the Income Tax Act, 1961 dated 04.12.2012 passed by the Ld. Assessing Officer is bad on facts and in law.

2. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the disallowance of advances written off of Rs. 9,04,426/- made by the Ld. Assessing officer despite of the fact that the advances were given in ordinary course of business and the same is allowable either as trading loss under section 28 of the Act, or as a normal business loss under section 37 of the Act.

2. The brief facts of the case are that the assessee filed return of income on 15.10.2010 declaring total loss of Rs.8,72,847/-. In the assessment proceedings, the Assessing Officer observed that the assessee has increased his paid up capital by Rs.99,14,000/- during the year under consideration. The assessee was asked to justify the same vide questionnaire dated 18.01.2012, in response to which, the assessee vide reply dated 15.11.2012 submitted that the share application money was received from following five parties :

- (i). Russian Technology Centre Holdings Ltd.
- (ii). M/s. Special Transport Mashinostroitelny
- (iii). M/s. Kurganshky Mashinostroiterlny Zavod
- (iv). Muromsky Mashinostroitelny Zavod
- (v). Protex Trading Company Ltd.

He also submitted other details such as number of equity shares issued and value in Indian Rupees as under :

S.No.	Name and address of the share holders	Number of Equity shares issued of Rs.10/- each	Rupee Equivalent
1.	Russian Technology Centre Holdings Ltd., Trident Chambers, Wickhams Cay,	941533	9415330

	PO Box 146 Road Town Tortola BVI		
2	Protex Trading Company Ltd., 301 Aarti Chambers, Victoria Mahe, Republic Seychelles	49570	495700
3.	Muromsky Mashinostroitelny Zavod, Murom - 602200	99	990
4.	Special Transport Mashinostroitelny, 42 Shepkina Street, Moscow - 129857	99	990
5.	Kurganshky Mashinostroitelny Zavod, 17 Street Kurgan-640631 Mashinostroitelny	99	990
	Total	9,91,400	99,14,000

The Assessing Officer examined the details and noticed that the details neither prove the creditworthiness of the investors nor the genuineness of the transactions. The Assessing Officer doubted the creditworthiness of the investors and noted that complete details of the investors have not been filed by the assessee. He also noted that all funds have been invested by the foreign companies/entities. Therefore, for want of incomplete details, the AO treated it as unexplained money and added to the income of the assessee.

3. The Assessing Officer further observed that the assessee has written off advances to the extent of Rs.9,04,426/- during the year. The assessee was asked to justify the same. In response, the assessee submitted reply on 04.12.2012 which reads as under :

"Details of advances -written off -

a) Rising star Electronics: Rs.9,04,426/-. The company had given advance to M/s Rising Star Electronics, 53 #-6, Innaciyar 'Puram, Ponnagaram Main Road, Tamil Nadu-628002 for specific projects (development of bedside panel). However, despite repeated efforts from company's side, neither the protocol/product was given to the company, nor the money refunded In light of this, the company had no option but to write off this amount lying in the books.

Ledgers are attached to prove that the money was paid during FY 2007-08 to F 2008-09

Money was paid by account payee cheques / legal tender. Money was advanced during ordinary course of business.

Above writing off was in ordinary course of business, and the same be allowed either under section 28 as trading loss or under section 37 as normal business loss.

Reliance must be placed on (synopsis attached)

*Income tax Officer vs. Ashok Kumar Lalit Kumar ITA 4365/AHD/1990
Bombay Film lab Private Limited (1982) by Bombay Tribunal
CIT vs. Rohtas Industry Limited – Calcutta High Court
CIT vs. Eqitorial Pvt. Ltd.
CIT vs. Ahdulla Bhai Abdulador (1961) 41 ITR 545 (SC)*

The Assessing Officer did not accept the submissions of the assessee and observed that primary conditions for an amount written off to be allowed as expense is that it should have been shown as an income in the relevant Financial Year or earlier financial year. He, therefore, observed that it was an advance as admitted by the assessee himself. He, therefore, disallowed the claim of assessee and added the same to the income of the assessee.

4. In appeal, the assessee made detailed written submissions before the Id. CIT(A), who after considering the submissions of the assessee and relying on assessee's own case in ITA No. 4932, 4933, 5390 and 5391/Del./2011, of coordinate Bench, allowed the appeal of the assessee in respect of addition made u/s. 68 of Rs.99,14,000/-. He however, sustained the addition of Rs.9,04,426/- as advance written off. Aggrieved, the Revenue is in appeal for deletion of addition u/s. 68 and the assessee is in cross objection against sustenance of addition of Rs.9,04,426/-.

5. The ld. DR relied on the order of the Assessing Officer and submitted that the Assessing Officer has rightly made the addition in respect of share capital u/s. 68 and in respect of written off advances. The ld. CIT(A) has given no good reasons in the impugned to delete the addition made u/s. 68 of the Act.

6. On the other hand, the ld. AR of the assessee submitted a written synopsis which is placed on record.

7. We have heard both the parties and have considered the written synopsis submitted by the ld. AR and the paper book. In respect of the appeal of the Revenue, we find that the ld. CIT(A) has decided the issue of addition u/s. 68 in right perspective after following the decision of ITAT in assessee's own case (supra). The findings reached by the ld. CIT(A) read as under :

"I have considered the assessment order and the submissions filed by the appellant. Hon'ble ITAT, Delhi vide its order dated 12.04.2013 in appellant's own case in ITA Nos.4932, 4933, 5390 & 5391/Del/2011 have held as under :

"The availability of balance sheet, certificate of incorporation, confirmations and certificates of good standing etc. filed by the assessee in respect of shareholders establish that they are non-resident entities having independent and legal existence. The moneys have come to assessee through banking channels as is evident from F1RC, which also mentions the purpose of remittance and also the particulars of the remitting bank. FIPB approval that too with a liberty to collect share capital up to 600 crores and ROC compliance etc. clearly indicate the stand of the assessee. In our considered view, the plethora of the evidence filed by the assessee amounts to discharge of primary burden cast on the assessee in terms of sec.68 of the I.T. Act for identity and creditworthiness of the creditors and genuineness of transaction."

And

"Taking into consideration of all the above, we find merit in the argument of the Id. Counsel for the assessee that the primary burden cast on the assessee was duly discharged. The issue of primary onus is to be weighed on the scale of evidence available on the record and the discharge of burden by the assessee is also to be decided on the basis of documents filed by the assessee and facts and circumstances of each case and on that basis a reasonable view is to be taken as to whether the assessee has discharged the primary onus of establishing the identity of share applicant, its creditworthiness and genuineness of the transaction. From the documents filed during the course of assessment and before CIT(A), the independent existence of the share applicants in Russia is clearly established. The assessee's application to FIPB for raising the capital contains all the relevant details which is favourably accepted by the Board, particularly by allowing the assessee to raise further the capital without approaching the FIPB. The transactions are through banking channels. Thus the gamut of evidence does not leave any doubt in the discharge of primary burden of the assessee. On the issue CBDT Circular and Finlay Corporation judgment (supra) also we are in agreement with the Id. Counsel for the assessee that in these circumstances of the case moneys remitted by non-residents through banking channel outside India has to be held as capital receipts, not exigible to tax and cannot be treated as deemed income on the fictions created by sections 68 and 69 of the Act."

4.3 *The appellant's claims with regard to the subscription of share capital are duly supported by necessary evidence. On the other hand, there is no evidence with the revenue to indicate that the share capital subscribed / loans raised is not genuine. Even in the search and seizure conducted on the appellant, no such evidence could be unearthed. In view of the above, and in view of the ruling of the Hon'ble ITAT in appellant's own case cited above, the addition of share capital of Rs.99,14,000/- as unexplained credits is not legally sustainable and is deleted."*

The decision of ITAT has further been confirmed by Hon'ble jurisdictional High Court in ITA Nos. 547, 549 and 555/2013 dated 15.12.2016. There being

no change in the facts and circumstances of the case, and for want of any contrary material on record, we have no reason to take a contrary view as adopted by the coordinate Bench in the above decision of assessee itself. We, therefore, find no infirmity in the conclusion reached by the Id. CIT(A) on this count. Accordingly, the appeal of the Revenue deserves to fail.

8. Adverting to the cross objection of the assessee, we find that though the assessee had filed a written synopsis before us, but during the course of hearing, the Id. Counsel for the assessee candidly admitted the addition made on account of written off advances of Rs.9,04,426/- and therefore, he abstained to make any further arguments on this issue in its cross objection. We, therefore, find no merit in the cross objection of the assessee, are inclined to endorse the view taken by the Id. CIT(A) on this count too. Accordingly, the Cross-objection of the assessee also deserves to be dismissed.

9. In the result, the appeal of the Revenue as well as cross objection of the assessee is dismissed.

Order pronounced in the open court on 25th June, 2018

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 25th June, 2018

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Copy of order forwarded to:

(1) The appellant	(2) The respondent
(3) Commissioner	(4) CIT(A)
(5) Departmental Representative	(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi