

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 6074/DEL/2017 (A.Y 2014-15)**

Sukumar Enterprises Pvt. Ltd. C-30, Panchsheel Enclave, New Delhi PAN: AANCS9800L <b>(APPELLANT)</b>	Vs	ITO Ward 24(3) New Delhi <b>(RESPONDENT)</b>
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**AND**

**I.T.A .No. 6072/DEL/2017 (A.Y 2014-15)**

Sanskriti Traces (P) Ltd. C-30, Panchsheel Enclave, New Delhi PAN: AAQCS8755B <b>(APPELLANT)</b>	Vs	ITO Ward 24(3) New Delhi <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. P. C. Yadav, Advocate</b>
<b>Respondent by</b>	<b>Sh. S. S. Rana, CIT DR</b>

<b>Date of Hearing</b>	<b>22.06.2018</b>
<b>Date of Pronouncement</b>	<b>23.07.2018</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These two appeals are filed by the two separate assesseees against the orders dated 05/09/2017 and 30/08/2017 passed by the CIT(A)-28, New Delhi for Assessment Year 2014-15 on the common issues.

2. The grounds of appeal are as under:-

**(ITA No. 6074/DEL/2017)**

*“That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts.*

1. *That the Ld. CIT (Appeal) has erred on facts and in law by considering the share application money/ share premium of Rs. 1,23,50,000/- as unexplained cash credit u/s.68 of the Income Tax Act, 1961.*
2. *That the Ld. CIT (Appeal) has erred on facts and in law by making addition of Rs. 1,23,50,000/- on substantive basis in the total income of the assessee in spite of the fact that the addition has already been made in the hands of the ultimate beneficiary.*
3. *That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.*
4. *That the Appellant craves leave to add/alter any /all grounds of appeal before or at the time of hearing of the Appeal.*

**ITA No. 6072/DEL/2017**

1. *“That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts.*
2. *That the Ld. CIT (Appeal) has erred on facts and in law by considering the share application money/ share premium of Rs. 10,39,00,000/- as unexplained cash credit u/s.68 of the Income Tax Act, 1961.*
3. *That the Ld. CIT (Appeal) has erred on facts and in law by making addition of Rs. 10,39,00,000/- on substantive basis in the total income of the assessee in spite of the fact that the addition has already been made in the hands of the ultimate beneficiary.*
4. *That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.*
5. *That the Appellant craves leave to add/alter any /all grounds of appeal before or at the time of hearing of the Appeal.*

3. Since the facts are identical in both the cases except the amount of additions, we are taking up ITA No. 6074/DEL/2017 in case of Sukumar Enterprises Pvt. Ltd. as the lead case. Return of income was filed on 23.09.2014 disclosing income at Rs. Nil. Subsequently, the case was selected for scrutiny under CASS and during the assessment proceedings, it was observed by Assessing Officer that the assessee company received Rs.

1,23,50,000/- from different entities during the year and this amount was used to allot shares to these entities for Rs. 50 per share and at a premium of Rs. 40 per share. In view of receipt of fresh capital/application money during the year, assessee was requested by the Assessing Officer to produce the share applicants along with their books of accounts and bank statements. The assessee relied on the fact that the money was raised for investing in group companies namely, M/s. Rockland Hospitals (P) Ltd. and M/s. Rockland Hotels Ltd. Since the proceedings/enquiries in Rockland group were already under Central Circle-11, the assessee requested to keep the assessment proceedings in abeyance. Since there was failure on the part of the assessee to produce the share applicants with the books of account, the Assessing Officer treated it as failure of proving the creditworthiness of such creditors (share applicants).

4. The Assessing Officer held that since the assessee company is a private limited company and has close proximate relationship with the promoters / directors and share holders, therefore, there should not be any difficulty on the part of the assessee to produce somebody from the share applicant companies unless the whole apparatus has been merely a conduit to plough back the unaccounted money of the assessee company in the garb of share application money. The Assessing Officer concluded that the assessee failed to establish the identity, creditworthiness and genuineness of the transactions in respect of its creditors by not producing the share applicants along with relevant details. However, the Assessing Officer observed that since the amount has already been added substantially in the hands of beneficiary i.e. Rockland Hotel P Ltd. and Rockland Hospitals (P) Ltd., it cannot be again added substantially in the hands of the assessee. In view of this, the Assessing Officer concluded that the amount of Rs. 1,23,50,000/- was being taxed in the hands of the assessee on protective basis and would get converted to substantive addition if same is not confirmed / upheld in the hands of ultimate beneficiary. Though the aforesaid addition was made by the Assessing Officer on protective basis but while computing the total income, the Assessing Officer did not include this amount

in the total income of the assessee. The Assessing Officer added the commission @ 2% on the total income of Rs. 1,23,50,000, amounting to Rs. 2,47,000/- holding that the assessee has earned commission by providing accommodation entries to other entities. The Assessing Officer further observed that the total amount of Rs. 1,23,50,000/- received by assessee from different entities includes share application money @ 10/- per share and premium of Rs. 40/- per share. It was further observed by the Assessing Officer that the provisions of Section 56(2)(viib) of the Act are attracted in the case of assessee as it has received consideration in the form of share premium exceeding the market value of the shares. The explanation of the assessee that the addition has already been made u/s 68 in the case of ultimate beneficiary, therefore, it cannot be added again u/s 56(2)(viib) of the Act, was not accepted by the Assessing Officer on the ground that the receipt of excess premium has to be taxed as income from other sources even if it is income from undisclosed sources of some other person routed through accounts of the assessee. As per him, mere routing of such money as excessive premium, vis-à-vis the book value, is enough to attract the provisions of Section 56(2)(viib). Consequently, the excess premium, as calculated by the Assessing Officer at Rs. 90,57,490/- was added by him in the hands of the assessee u/s 56(2)(viib) of the Act. Thus, the income of assessee was assessed at Rs. 90,04,490/- against the nil income disclosed by the assessee in the return of income.

5. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that the present appeal is arising from the order of the CIT (A) dated 05.09.2017 and relates to AY 2014-15. The assessee has raised 5 grounds of appeal. Ground Nos. 1 and 5 are general in nature and in other grounds the assessee has basically challenged the additions of Rs. 1,23,50,000/- added by the Assessing Officer under section 68 of the Act on protective basis and sustained by the CIT (A) on substantive basis. In order to

verify the genuineness of Rs.1,23,50,000/-, the Assessing Officer raised queries to the assessee. The Assessee replied that the amount received was received on behalf of M/s Rock Land Group and has been invested in shares of Rock Land Hospital and in fact the entity M/s Rock Land Hospital (RLH) is the ultimate beneficiary of this amount. Thereafter the AR of the assessee filed order of assessment of M/s RLH from where the Ld. AR pointed out that M/s Rock Land Hospital has offered this amount in its hand. The Ld. AR submitted that the Assessing Officer also accepted the fact that the ultimate beneficiary is Rock Land Group. However, the Assessing Officer made the addition in the hands of the assessee on protective basis.

7. The Ld. AR further submitted that beside protective addition, the Assessing Officer also made an addition of Rs 90,57,490/- u/s 56(vii)(b) of the Act on the ground that assessee received premium on its shares without having net worth and hence the premium is separately taxable in the hands of the assessee u/s 56(vii)(b) of the Act. The Assessing Officer also made an addition of Rs 2,47,000/- on account of notional commission received. The Ld. AR submitted that before the CIT (A), the assessee challenged the order of the Assessing Officer. The CIT(A) held that additions were wrongly made on protective basis they ought to have been made on substantive basis and converted the entire addition on substantive basis.

8. The Ld. AR further submitted that the CIT (A) while converting protective addition into substantive additions has failed to appreciate that in the case of Rockland Hospital, the Assessing Officer has categorically held that money which ultimately comes from the present assessee and other four persons was the Money of Rockland and not of the investors who had invested in the shares of present assessee. However, the CIT (A) held that provisions of section 56(vii)(b) are not applicable and hence he deleted the addition of premium against which the revenue has not filed any appeal. The finding of the AO that the provisions of section 56(2) (viib) are not applicable, which is

given in Para-7.1 of the CIT (A) order.

9. The Ld. AR submitted that assessee and its other concern namely Sanskrit has received and invested the following amounts in RLH group

Name of Company	Capital Received	Capital Transferred	Difference
Sukumar Enterprise	1,23,50,000/-	1,19,99,920/- in Rockland Hospital and Rs.83,00,000/- in Rock Land Hotels for brake-up of this amount see apge No. 28 of PB-2	3,50,080/- claimed by the assessee administrative expenses
Sanskriti	10,39,00,000/-	9,53,49,362/-	2,50,638/- claimed as Administrative expenses.

10. The Ld. AR submitted that M/s Rockland Hospital has received amounts from 5 entities of M/s Rock Land Hospital which are as under:-

Sl No	Name of the Investor	Share capital	Share premium	Total	States of Asst.
1	Purendu Traders	13,92,530/-	1,24,07,442/-	1,37,99,972/-	No addition of premium or commission was made
2	Sulkumar Enterprises	12,10,,890/-	1,07,89,030/-	1,19,99,920/-	Impugned before ITAT
3	Sunskiriti	96,21,530/-	8,57,27,832/-	9,53,49,362/-	Impugned before ITAT
4	AB Medicos	27,73,140/-	2,29,26,677/-	2,56,99,817/-	Allowed by CIT(A) no appeal till date by revenue
5	Ashwin Pharmaceuticals	23,81,410/-	2,12,18,363/-	2,35,99,773/-	No addition of premium or commission was made

The Ld. AR submitted that out of the above five the department made additions in the hands of the Sr. Nos. 2 and 3. In the case of Purnendu Traders and Ashwin Pharmaceuticals i.e. Sr. Nos. 1 and 5, additions were made on protective basis. The Ld. AR pointed out that in hands of Sr. Nos. 1 and 5, no addition has been made either on account of commission or on account of Share premium. The Ld. AR further submitted that in the case of AB medicos the Assessing Officer made addition on substantive basis. However, the CIT(A) deleted the entire addition observing that the same was offered in the hands of M/s Rock Land Hospitals Pvt. Ltd. The Ld. AR submitted that till date no appeal has been filed by the revenue. The Ld. AR further submitted that it is settled position of law that there has to be consistency in the approach of the revenue and there cannot be any different treatment among the two different assessees vis-a-vis same transaction. The Ld. AR relied upon the decision of Crain Uk 359 ITR 268(Del).

11. The Ld. AR submitted that it is an admitted fact that M/s Rockland Hospital has admitted that its own undisclosed income had been routed through these companies, and nothing has been brought on record by the revenue to say that the money received by the assessee is somewhat different and the money which Rock Land owns is different. The Ld. AR submitted that Hon'ble Apex Court in the case of Sumati Dayal vs. CIT 214 ITR 801 very categorically held that while taxing an income under section 68 revenue cannot act unreasonably. The Ld. AR submitted that Hon'ble Allahabad High Court in the case of CIT Vs Abdul Hasib (ITA No. 213/2007 order dated 05.09.2014) after taking note of Hon'ble Apex Court in Sumati Dayal (Supra) held that total impact of an entry is to be seen while making an addition under section 68 of the Act, Hon'ble High Court has held that credit includes debits and hence benefit of debit entries should not be denied. The Ld. AR submitted that so far as the notional addition of commission of Rs 2,47,000 is considered it is submitted that in the case of Rock Land Hospital assessment a detailed analysis of the companies and their profit and loss account has been made by

the AO of Rock Land and it has been categorically mentioned that the Companies immediately transferred the sums of share application money to the Rock Land Hospital Group. It is nowhere mentioned that the Rock Land Hospital has paid them any commission on this arrangement. The Ld. AR pointed out that nothing has been found in search of Rock Land on the basis of which it can be said that Rock Land has paid anything out of books to these companies, which had arranged share application money to the group.

12. The Ld. AR submitted that there is a difference between the amount received and transferred to Rock Land Hospital group. In the case of Sukumar the difference is Rs 3,50,080/- and in the case of Sanskrit it is submitted that the difference is Rs 2,50,638/-. In this regard it is submitted that these amounts were incurred by assessee on maintaining the corporate entity of the Companies. And nothing has been brought on record by the revenue to establish that these are not incurred for the purpose of business. However, the Ld. AR submitted that in the interest of justice the Assessing Officer may be directed to verify the utilisation of these amounts and decide the matter as per law. Discrimination among assessees vis-a-vis same transactions under Income Tax is not permissible. The Ld. AR submitted that in the cases of Purnendu Traders and Ashwin Pharmaceuticals, no addition of this nature has been made while framing assessment under section 143(3) of the Act. Therefore as per the verdict of Punjab and Haryana High Court in case of Jaswant Rai Vs CIT reported in 107 ITR 0477(P&H) no discrimination would be made to the present assessee.

13. In nut shell, the Ld. AR submitted as under: -

- a. Protective addition deserves to be deleted when substantive is already confirmed. Because it is settled law that while invoking section 68 impacts of debit entries would also be seen.
- b. There has to be consistency in the approach of revenue for taxing an amount.

c. There should not be any discrimination among the assesseees of same transactions.

14. The Ld. DR submitted that during the year, the assessee received share application money of Rs. 10,39,00,000. The Assessing Officer made a protective addition of Rs. 10,39,00,000 u/s 68 on the ground that this amount had already been added substantively in the hands of beneficiary i.e. Rockland Hotels P Ltd. and Rockland Hospitals Ltd. The Assessing Officer also made an addition of Rs. 6,28,17,940 u/s 56(2)(viib) on account of excess share premium received. The CIT(A), after giving due opportunity to the assessee, held that entire share capital and share premium received of Rs. 10,39,00,000 was to be taxed as cash credit in the hands of the assessee on a substantive basis since it had failed to prove identity, genuineness of the transaction as well as creditworthiness. The Ld. DR submitted that the CIT(A) has relied upon proviso to section 68 introduced w.e.f 01.04.2013. The Ld. DR further submitted that during the course of assessment, vide notesheet dated 2.08.2016, the assessee was requested to produce the share applicants along with their books of account and bank statements. No details were furnished. It was simply stated that proceedings/inquiries were underway in Rockland Group where the money had been invested. The CIT(A) stated that notices u/s 133(6) were issued to 22 persons in the case of Rockland Hotels P Ltd. and to 27 persons in the case of Rockland Hospitals Ltd. None of these notices were answered. Either those notices were returned back or no reply was received. Accordingly, additions u/s 68 were made in both the Rockland Group of companies against which they have not filed any appeal. Despite being given adequate opportunity, the assessee failed to file any details regarding identity of the investors, genuineness of the transaction as well as creditworthiness. Thus, it has failed to discharge the onus cast upon it. Section 68 of IT Act is a deeming provision under which addition is required to be made if the assessee offers no explanation about the nature and source thereof or the explanation offered by the assessee is not, in the opinion of the Assessing Officer, satisfactory with

regard to any sum found credited in the books of the assessee. In the present case, the assessee failed to offer explanation with documentary evidence to the satisfaction of the Assessing Officer. The Ld. DR submitted that it does not matter how this money was spent or invested. The investment of similar amount in the hands of Rock Land Group does not affect taxability in the hands of the assessee. There is no question of making protective addition in the hands of the assessee when it has failed to offer explanation regarding identity of the investors, genuineness of the transactions as well as their creditworthiness. In view of the above facts, appeal of the assessee deserves to be dismissed. The Ld. DR relied upon the following decisions with regard to addition made u/s 68 of Income Tax Act:

1. CIT Vs MAF Academy fP.) Ltd (361 ITR 258)
2. CIT Vs Navodava Castle Pvt Ltd (2014) 367 ITR 306 (Del)
3. Navodava Castle Pvt Ltd Vs CIT (2015-TIQL-314-SC-IT)
4. Konark Structural Engineering (P.) Ltd. Vs DCIT T20181 90 taxmann.com 56 (Bombay)
5. Prem Castings (P.) Ltd. Vs CIT f20171 88 taxmann.com 189 (Allahabad)
6. CIT Vs Nipun Builders & Developers (P.) Ltd (30 taxmann.com 292. 214 Taxman 429, 350 ITR 407. 256 CTR 34)
7. CIT Vs Nova Promoters & Finlease (P) Ltd (18 taxmann.com 217, 206 Taxman 207. 342 ITR 169. 252 CTR 187)
8. CIT Vs Ultra Modern Exports (P.) Ltd (40 taxmann.com 458, 220 Taxman 165)
9. CIT Vs Frostair (P.) Ltd (26 taxmann.com 11, 210 Taxman 221)
10. CIT Vs N R Portfolio Pvt Ltd T2013l 29 taxmann.com 291 (Delhi)/[2013] 214 Taxman 408 (Delhi)/(2013) 263 CTR 456 (Delhi)
11. CIT Vs Empire Bulltech (P.) Ltd (366 ITR 110)
12. CIT Vs Focus Exports (P.) Ltd (51 taxmann.com 46 (Delhi)/[2015] 228 Taxman 88)
13. PCIT Vs Bikram Singh IITA No.55/20171 (Delhi)

15. We have heard both the parties and perused all the records. Ground No. 1 and 5 are general in nature in both the appeals hence dismissed. As regards to Ground No. 2 to 4, the same are relating to the protective addition made in

the hands of the assessee. The amount received was received on behalf of M/s Rock Land Group and has been invested in shares of Rock Land Hospital and in fact the entity M/s Rock Land Hospital (RLH) is the ultimate beneficiary of this amount. This fact was admitted by the Assessing Officer in the Assessment Order itself, therefore, he made protective additions. The issue to prove identity, genuineness of the transaction as well as creditworthiness does not arise in the present case as both the assessee established that the amount was that of M/s Rock Land Hospital which was admitted by the said group in their assessment proceedings on which substantive addition was made and taxes has been paid as per the submission of the Ld. AR during the course of hearing. But the CIT(A) held that additions were wrongly made on protective basis and converted the entire addition on substantive basis. The factual aspect that the ultimate beneficiary was M/s Rock Land Hospital was never doubted by the CIT(A) as well. Thus, the CIT(A) erred in making this addition on substantive basis. Besides this, the Assessing Officer has also admitted that the ultimate beneficiary was M/s Rock Land Hospital and from the perusal of the Assessment Order in case of Rock Land Hospital, these facts are substantiated by the Ld. AR. During the course of Assessment Proceedings, the Assessing Officer has not taken the cognizance that M/s Rock Land Hospital was already scrutinized for the said additions and admitted that the entire amount was that of Rock Land Hospital Group only. Therefore, Assessing Officer as well as the CIT(A) was not correct in making the additions on protective/substantive basis. Nothing has been found in search of Rock Land on the basis of which it can be said that Rock Land has paid anything out of books to these companies, which had arranged share application money to the group. As regards the issue of difference in the amount received and transferred to Rock Land Hospital group, in the case of Sukumar the difference is Rs 3,50,080/- and in the case of Sanskriti, the difference is Rs 2,50,638/-. From the records it can be seen that these amounts were incurred by assessee on maintaining the corporate entity of the Companies. The Assessing Officer has not brought on record to establish that these are not incurred for the

purpose of business. It is pertinent to note that while passing Assessment orders in cases of Purnendu Traders and Ashwin Pharmaceuticals, there is no addition of this nature made while framing assessment under section 143(3) of the Act. Thus, the Revenue cannot take different stand in respect of these two assessee. Therefore, CIT(A) as well as Assessing Officer was not correct in making substantive/protective additions in the hands of the assessee's herein. Since the Ld. AR/assessee admitted that there is difference in the amount received and transferred to Rock Land Hospital group of Rs. 3,50,080/- in case of Sukumar and Rs. 2,50,638 in case of Sanskriti, the same needs to be verified by the Assessing Officer. Therefore, we direct the Assessing Officer to verify this difference as per the findings given hereinabove. The issue is remanded back to the file of the Assessing Officer. Needless to say the assessee be given opportunity of hearing by following principles of natural justice. Ground Nos. 2 to 4 in both the appeals are partly allowed.

16. In result, both the appeals are partly allowed for statistical purpose.

**Order pronounced in the Open Court on 23rd July, 2018.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 23/07/2018  
*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	12.07.2018
Date on which the typed draft is placed before the dictating Member	12.07.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	23.07.2018
Date on which the final order is uploaded on the website of ITAT	23.07.2018
Date on which the file goes to the Bench Clerk	23 .07.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	