

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

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 2196/Del/2015
Assessment Year: 2005-06**

R.L. Agencies Pvt. Ltd., 118, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi. PAN- AABCR 6010P (Appellant)	vs.	DCIT, Central circle 12, New Delhi (Respondent)
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Appellant by	Sh. Surender Kumar, FCA
Respondent by	Sh. S.R. Senapati, Sr. DR

Date of Hearing	18.07.2018
Date of Pronouncement	30.07.2018

ORDER

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

This is an appeal filed by the assessee against the order ld. CIT(A)-24, New Delhi dated 16.02.2015 for the assessment year 2005-06 on the following grounds :

1. That the order dated 16-02-2015 passed u/s 250 of the Income-tax Act, 1961 by the Learned Commissioner of Income-Tax (Appeals) 24, New Delhi is against law and facts on the file in as much as he was not justified in adding back a sum of Rs. 6,40,622/- on the basis of the contents of a printout of a pen drive allegedly recovered from the possession of Sh. Chetan Gupta, a Director of the Appellant Company and received from the Punjab Vigilance Bureau by the Income -tax Authorities on the ground that the entries in such pen drive allegedly amount to unexplained cash credits within the meaning of section 68 of the Income-Tax Act, 1961 by ignoring the fact that alleged pen drive has not been recovered from and does not belong to the Appellant Company.

2. That the order dated 16-02-2015 passed u/s 250 of the Income-tax Act, 1961 by the Learned Commissioner of Income-Tax (Appeals) 24, New

Delhi is against law and facts on the file in as much as he was not justified in upholding the action of the Ld Assessing Officer in resorting to the reassessment proceedings u/s 148 and the notice issued under that section in bad in law in as much as the requisite conditions for resort to the reassessment provisions were not fulfilled and satisfied in the instant case.

2. The brief facts of the case are that the assessee filed its return of income on 27.10.2005 declaring total loss of Rs.71,89,337/-. Subsequently, the assessment was reopened u/s. 147 after recording the following reasons :

"Return of loss for the AY 2005-06 was filed by the assessee on 27/10/2005 vide acknowledgment no, 1511000326 declaring total loss of Rs. 71,89,337/-. Return filed by the assessee was processed u/s 143(1)(a) of the Income Tax Act, 1961 on 18/04/2006.

2. A search operation was carried out by the Punjab Vigilance Bureau on 17/05/2007 in the case of Sh. Chetan Gupta at his business premises situated at 118, Ansal Bhawan, K.G. Marg, New Delhi. During search, a Pen Drive was found from the possession of Sh. Chetan Gupta, who is one of the Directors of Assessee Company. In the said pen drive, ledger accounts of different parties were found to be maintained by Sh. Chetan Gupta. Printouts of the Year wise ledger accounts had been taken by the Punjab Vigilance Bureau from the Pen .Drive and were sent to the Income Tax Department. It has been alleged by the Punjab Vigilance Bureau that Sh. Chetan Gupta was maintaining unaccounted money of various persons/entities in the said Pen Drive.

3. As per information available in this office, the assessee during the relevant previous year entered into financial transactions of expenditure and investments which are not entered in the books of accounts of the assessee and are also not in commensuration with the declared sources of income as per particulars of income declared in the return of income filed for the AY 2005-06.

4. As per details available on page 57 of the Annexure, there are credits of Rs. 2,09,380/- with particulars "TRFTO KOTHIA/C" in the account maintained in the name of "RL AGENCY EXP. " There are debits of Rs. 4,31,242/- in the aforesaid account which appear to be expenses made on various heads which are not entered in the books of account of the

assessee company for the year under consideration and not declared in the return of income. The amount of undisclosed expenditure made by the assessee is covered within the provisions of section 69C of the Income Tax Act, 1961. In view of the facts of the case, it is crystal clear that expenditure of Rs. 4,31,242/- has been made from the undisclosed sources and the same have not been entered in the books of accounts of assessee company, being reasons that as per information available, Sh. Chetan Gupta is maintaining unaccounted accounts in the said Pen Drive. Page 57 on which unaccounted entries are appearing is placed contra.

5. *In view of the facts, as discussed above, I have reasons to believe that in the case of the assessee, for the AY 2005-06, a total amount of Rs. 6,40,622/- has escaped from assessment within the provisions of section 147 of the Income Tax Act, 1961 by reason of the failure on the part of the assessee. "*

3. In response to statutory notices, the assessee filed a detailed reply, as reproduced in the assessment order, inter alia, stating that all the entries relating to the alleged pen drive have already been considered in the matter of Shri Chetan Gupta and therefore, the same entries/transactions cannot again be considered in the hands of the assessee company. The Assessing Officer, however, being not satisfied with the detailed reply of assessee, and after working out the peak credit of Rs.6,40,000/- of different accounts and made addition thereof in the hands of the assessee u/s. 68 of the Act and accordingly, reduced the declared loss of the assessee to Rs.65,48,715/-. The appeal filed by the assessee before the Id. CIT(A) stood dismissed vide impugned order. Aggrieved, the assessee is in appeal before the Tribunal.

4. At the outset, the Id. AR submitted that the case of the appellant is squarely covered in favour of the assessee from the following orders of Co-ordinate Bench of Tribunal on merits of the case, wherein on the basis of same pen drive, the additions have been deleted in other group cases of assessee:

- (i). M/s. R.L. Exports International vs. ACIT(ITA Nos.2364 & 2365/Del/2015- AY 2001-02 & 2002-03 – dated 17.02.2016).
- (ii). M/s. RL Exports International vs. DCIT (ITA No. 2195/Del/2015- A.Y. 2005-06 – order dated 17.02.2016.
- (iii). Chetan Gupta vs. DCIT (ITA No. 1788 & 2389/Del./2016 – A.Y. 2005-06 – order dated 07.06.2018)

The assessee did not argue on the legal issue challenging the validity of reopening of assessment u/s. 147/148 of the Act, as taken in the grounds of appeal.

5. On the other hand, the ld. DR relied on the orders of the authorities below and submitted that the peak credit taken by the Assessing Officer should be upheld.

6. After hearing both the side and perusing the entire material available on record and the decisions of Tribunal cited by assessee, we observe that the only dispute which needs adjudication at this stage pertains to the addition made by the Assessing Officer on account of peak credits worked out on the basis of pen drive of Rs.6,40,622/- is taxable in the hands of the assessee or not. In this context, on perusal of various decisions of Tribunal as referred to above, we find that the peak credits of the transactions in the pen drive stood accepted by one Shri Chetan Gupta as its income. Therefore, the addition made in the hands of assessee company on the same basis cannot be sustained. Once the said peak credits have been added in the hands of Shri Chetan Gupta, the same cannot be again added in the hands of assessee company. Similar view has been taken by SMC Bench of Tribunal in assessee's group cases M/s. R.L. Export International vs. DCIT (ITA Nos. 2364 & 2365/Del/2015 for A.Y. 2001-02 & 2002-03 and ITA No. 2195/Del/2015 for

A.Y 2005-06. Our aforesaid view also stands supported by the decision of Tribunal in the case of Chetan Gupta vs. DCIT (ITA No. 1788/Del/2016 and 2389/Del/2016 for A.Y. 2005-06). No contrary material is placed on record on behalf of the Revenue. We, accordingly, do not find any justification to sustain the addition made by the authorities below in the hands of Assessee Company. Therefore, the appeal of the assessee deserves to be allowed.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 30th July, 2018.

Sd/-
(Bhavnes Saini)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 30th July, 2018

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Copy of order forwarded to:

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi