

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM**

I.T.A. No. 5559/Mum/2015  
(Assessment Year: 2006-07)

M/s. World Wide Commodities Trading P. Ltd. 407, Adamji Bldg., 4 <sup>th</sup> Floor, 413, Narshi Natha Street, Masjid Bunder (W), Mumbai-400 009	Vs.	The Income Tax Officer, Ward 7(3)(4), Mumbai
PAN/GIR No. AAACB 4900 H		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Appellant by</b>	:	Shri Girish Dave & Shri Tanzil R. Padvekar
<b>Respondent by</b>	:	Shri V. Vidhyadhar
<b>Date of Hearing</b>	:	07.06.2018
<b>Date of Pronouncement</b>	:	21.08.2018

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals) dated 28.10.2015 and pertains to the assessment year 2006-07.

2. The grounds of appeal read as under:

1. The learned Commissioner of Income Tax, (Appeals) -1 4, Mumbai erred in confirming the addition made by the learned A.O. on account of advance received from foreign parties a sum of Rs.1,37,26,111/- and also erred in confirming the disallowance of expenses of Rs.4,37,344/-.

1.1 Your appellant submits that your appellant has given the full details regarding the advances received from foreign parties against the supply of goods. Your appellant has given the full details regarding the names and addresses of the parties from whom advances have been received.

- 1.2 Your appellant further submits that your appellant has given the full details regarding the expenses claimed by your appellant.
2. Your appellant, therefore, submits that the addition made on account of advances received to be allowed and the expenses claimed by your appellant be allowed in full.
3. The assessee has also filed additional ground. The assessee's prayer in connection to the additional ground reads as under:

1. The Appellant's appeal was fixed for the final hearing on 23<sup>rd</sup> January, 2018 before the Hon'ble Bench at serial no.3. It is submitted that on the same date the appellant filed application for admission of the additional ground. The Appellant has taken the following additional ground.

ADDITIONAL GROUND

"The action of the Assessing Officer not allowing set off brought forward losses and depreciation of the preceding years to the A.Y.2006-07 against the addition of unexplained cash credits is erroneous and bad in law when admittedly the said addition is towards regular business activity of the Assessee".

After hearing the Parties, the Hon'ble Bench was pleased to admit the additional ground and also set aside the matter to the file of Ld. CIT (Appeals).

2. It is submitted that the additional ground raised by the Appellant is on the issue of not allowing the set off of brought forward losses and depreciation. The Appellant has also taken grounds on merit challenging the additions made by the Ld. Assessing Officer to the extent of Rs. 1,37,26,111/- as well as disallowance of expenses of Rs.4,37,344/-, which were confirmed by the Ld. CIT(Appeal).

3. The Appellant submits that if the Appellant fails to get the relief on merit then only the additional ground may need to be decided. If the appellant gets the relief on merit then additional ground may become infructuous. The Appellant submits that adjudication of the main grounds are necessary by the Hon'ble Bench as the Ld. CIT(A) has decided the main / issues against the Appellant assessee. It is, therefore, prayed that the case may be reheard in the interest of justice and may be posted for fresh hearing on the grounds taken on merit.

Apropos ground relating to addition on account of advance from foreign parties amounting to Rs.1,37,26,111/-.

4. Brief facts of the case are during the year under consideration, the assessee has received foreign remittance under the head 'Export Advances' credit at Rs.1,37,26,111/-. On Assessing Officer's enquiring in this regard, the assessee submitted the details and

submitted that the entire amount of Rs.1,37,26,111/- has been received in ordinary course of business activities of the company and from reputed foreign parties. The remittance transactions are routed through bank and are against exports, which has not materialized due to certain disputes between the parties. The assessee company further contended that the entire export advances received from the foreign parties is a security refundable deposit which is still payable to the respective parties, in case the ordered goods are not shipped to the overseas parties. The assessee company further claimed that the said entire amount is shown as Current Liability and the same is still payable as on date. However, the Assessing Officer was not satisfied. The Assessing Officer during the course of assessment proceedings noted that this amount has been received as export advances though the assessee failed to disclose identity/genuineness of the parties from whom such huge advances has been received. Despite repeated queries, the assessee only contended that it is representative cum indenters of S. Norton & Co., UK. No further evidence whatsoever, regarding identity of the parties from whom such huge amount has been received, have been furnished to the Assessing Officer. He further noted that no export has been made against advances received and neither advances were repaid till date. The Assessing Officer, therefore, added the amount u/s.68 of the I.T. Act. 1961.

5. Before the Id. Commissioner of Income Tax (Appeals), the assessee reiterated the submissions made during the assessment proceedings and contended that they have not exported materials due to certain dispute with the parties from whom the advances were received for exports. That it is further, submitted that the amount received was

refundable, though, however, it is still payable to the respective parties. That it is submitted that the assessee is an authorized representative/indenters of S.Norton & Co., UK. That it received business queries from Adanbrah Trading LLC UAE and Pan tar General Trading Company, LLC, UAE and assessee requested these parties to send security deposits. That it is further contended that the assessee identified various lots for the clients however, these clients neither inspected or authorized the assessee to procure the material and ship it. That no further details are submitted.

6. Considering the above, the Id. Commissioner of Income Tax (Appeals) did not find any merit in the submissions of the assessee. He upheld the addition by observing as under:

Very strangely, in this case, the appellant claimed to have been received foreign remittance allegedly for making export in the AY.2006-07, however as admitted by the appellant itself such clients never inspected the lots to be exported to them, even after paying huge amount of Rs.1,37,26,511/- to the appellant. These parties also never claimed the advances back and the appellant is showing the same as refundable, though till date, i.e. even after 9 years or so, no such repayment has been made. Just because the amount is received through bank, it does not absolve of assessee to prove the genuineness of the transaction, identity of the clients and their creditworthiness. No detail has been filed before the AO to prove the identity/creditworthiness of the parties or genuineness of the transactions, despite repeated queries. Even during the appellate proceedings, the details filed are very sketchy and it does not prove proper identity of the so called/ creditors or creditworthiness of parties, as no supporting evidence is filed. Keeping in view the over all facts of the case, the additions made by the AO is confirmed.

7. Against the above order, the assessee is in appeal before us.

8. We have heard both the counsel and perused the records. The Id. Counsel of the assessee submitted that the assessee has received advance in the assessment year 2005-06

from two parties. He submitted that complete details have been given. The advance is still lying that the sum has not been returned yet. So far these parties have not claimed a refund. That the export could not take place as these parties were supposed to send personnel to examine the materials but nobody has been sent so far. The Id. Counsel of the assessee referred to the paper book and submitted for the detailed reply and evidence submitted before the Assessing Officer.

9. Per contra, the Id. Departmental Representative relied upon the orders of the authorities below.

10. Upon careful consideration, we may gainfully refer to the reply of the assessee to the Assessing Officer submitted in paper book pg. no. 25. This is a letter dated 06.03.2013 addressed to the Assessing Officer in connection with his letter dated 19.04.2013 regarding the receipt of Rs.1,37,26,111/- as advanced payment towards export:

At the outset we would like to inform you that the advances aggregating to Rs. 1,37,26,111 against exports were received in the ordinary course of the business activities of the Company. No goods could be exported against these advances due to circumstances beyond the control of the Company.

The details of the parties from whom the above amounts were received which were credited to our bank accounts are attached herewith. From these details you will notice that the remittances were from well reputed overseas parties and the funds have also been duly credited to our regular bank accounts. We have also attached herewith the copies of the Foreign Inward Remittance Certificates indicating the names of the party, amount of remittance and also the purpose of remittance. Please refer to Annexure 1 to this letter for the details. These details and supporting evidences will clearly establish the sources of funds and genuineness of the purpose of the various amounts credited to our account.

We are also attaching herewith the details of Current Liabilities forming part of our annual accounts since 2006 from which you will notice that we have consistently maintained that the security deposits received as advances against export of goods aggregating to Rs. 1,37,26,111 are refundable to the parties in case we are not able to ship the goods ordered by the overseas parties. Refer Annexure 2 to this letter.

The brief details of the above transactions are as follows.

1. Adanbrah Trading LLC, Sharjah, U.A.E.

We had received inquiries for supply of heavy melting scrap and auto shredded scrap from the above party.

Based on their inquiry we sent the following to them:

- a. Sales confirmation dated 24.05.2005 for supply of 5000 mt +/-10% Heavy Melting Steel Scrap @US \$ 260.00 pmt = US \$ 13,00,000 and
- b. Sales confirmation dated 15.06.2005 for supply of 7000 mt +/-10% Auto Shredded Steel Scrap @ US \$ 265.00 pmt = US \$ 18,55,000.

We further requested them to send security deposit of US\$ 1,00,000 against the first item and US\$ 1,50,000 against the second item. We identified various lots which we thought will meet the party's requirements and also sent the specifications of the lots so identified. We also requested the party to arrange inspection of the lots so identified.

In spite of our repeated requests the above party did not arrange for necessary inspection nor did it authorise us to procure and ship the material identified by us. The matter dragged on for a long time and in the meanwhile our bank accounts were seized by Income Tax Authorities sometime during 2006 to recover their dues.

2. Qantar General Trading LLC, Dubai, U.A.E

We had received inquiries for supply of heavy melting scrap from the above party.

Based on their inquiry we sent to them a Sales confirmation dated 1<sup>st</sup> February, 2006 for supply of 20000 mt +/-10% Heavy Melting Steel Scrap @US \$ 246.00 pmt = US \$ 49,20,000 and supply of 10000 mt +/-10% Shredded Steel Scrap @US\$ 258.00 pmt = US \$ 25,80,000.

We further requested them to send security deposit of US\$ 3,75,000. We received US\$ 64,768 only by way of security deposit and in spite of our repeated request the above party did not send the balance amount towards security deposit. However we identified various lots which we thought will meet the party's requirements and also sent the specifications of the lots so identified. We also requested the party to arrange inspection of the lots so identified.

In spite of our repeated request the above party did not arrange for necessary inspection nor did it authorize us to procure and ship the material identified by us.

The matter dragged on for a long time and in the meanwhile our bank accounts were seized by Income Tax Authorities some time during 2006 to recover their dues.

We received US\$ 64,768 only by way of security deposit and in spite of our repeated request the above party neither sent the balance amount towards security deposit nor opened the requisite L/C and we could not proceed with the shipments.

11. Further, the assessee gave copies of sales confirmations which are mentioned on PB pg. nos. 28-34.

12. Further, Annexure 1 to the letter to the Assessing Officer, the assessee submitted the details of remittances received which is mentioned in PB pg. 34 as under:

Details of remittances received towards advance against Exports during 2005 and 2006

S.No.	Name and address of the remitter	Amount of Remittance in US\$	Amount of Remittance in Indian Rupees	Date of credit in Bank account
1.	Adanbrah Trading LLC P.O. Box-30375, Sharjah, U.A.E.	49,963.00	21,72,891.00	09.06.2005
2.	Adanbrah Trading LLC P.O. Box-30375, Sharjah, U.A.E.	49,954.00	21,73,998.00	18.07.2005
3.	Adanbrah Trading LLC P.O. Box-30375, Sharjah, U.A.E.	49,954.00	21,73,998.00	18.07.2005
4.	Adanbrah Trading LLC P.O. Box-30375, Sharjah, U.A.E.	99,963.00	43,48,391.00	08.08.2005
5.	Qantar General Trading Co. LLC, P.O. Box- 64364 Dubai, U.A.E	64,768.00	28,58,212.00	09.02.2006

13. Further in PB pg. 35, the assessee gave a detail of Foreign Inward Remittances Certificate (FIRC) for remittances received as Annexure to the reply to the Assessing Officer which reads as under:

Annexure 2 to letter dated 6<sup>th</sup> May, 2013

Details of FIRC's received for remittances received towards advance against Exports during 2005 and 2006

Sr. No.	Name and address of the remitter	Amount of Remittance in US \$ and equivalent Indian Rupees	Date of credit in Bank account	Name & address of the Bank and account number	FIRC No. and Date
1.	Adanbrah Trading LLC P.O. Box-30375, Sharjah, U.A.E	US \$ 49,963.00 Equivalent Indian Rupees 21,72,891.00	09.06.2005	Indusind Bank Ltd, Indusind House, 425, D.B. Marg, Mumbai-400 004 Current Account No. 001-702591-050	001EXPAD05105009/ Serial No. 4324 dt. 10.06.2005
2.	Adanbrah Trading LLC P.O. Box-30375, Sharjah, U.A.E.	US \$ 49,954.00 Equivalent Indian Rupees 21,73,998.00	18.07.2005	Same as above	001EXPAD05105936/ Serial No. 4388 dt. 19.07.2005
3.	Adanbrah Trading LLC P.O. Box-30375, Sharjah, U.A.E.	US\$49,954.00 Equivalent Indian Rupees 21,73,998.00	18.07.2005	Same as above	001EXPAD05105939/ Serial No. 4387 dt. 19.07.2005
4.	Adanbrah Trading LLC P.O. Box-30375, Sharjah, U.A.E.	US \$ 99,963.00 Equivalent Indian Rupees 43,48,391.00	08.08.2005	Same as above	001EXPAD05106426/ Serial No. 512 dt. 09.08.2005
5.	Qantar General Trading Co. LLQ P.O. Box-646364 Dubai, U.A.E	US \$ 64,768.00 Equivalent Indian Rupees 28,58,212.00	09.02.2006	Same as above	001EXPAD06021045/ 10.02.2006

14. From the above details, we find that the complete detail of the sums received have been furnished including the identity and address of the parties. The sums have been received under the proper manner under Foreign Inward Remittances Certificate from banking channel. Hence, there is no doubt on record regarding the name, address, identity and the credentials of the parties. The same is clear and unambiguous. In such circumstances, how it can be said that the details have not been given is not

understandable. It is not the case that the Assessing Officer has issued any notice to these parties which have remained unresponded. The details submitted include sales confirmation under which the sums have been sought as advance. Hence, by no stretch of imagination, the amount received is liable to be added as unexplained credit u/s. 68 of the Act.

15. Section 68 of the Income Tax Act, 1961 reads as under:

Cash credits.

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

17. From the above, it can be construed that the sums are liable to be added u/s. 68 when the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory. We find that in catena of cases it has been expounded that to satisfy that the addition is not liable to be made u/s. 68, the assessee needs to prove the identity, creditworthiness and genuineness of the transaction.

18. In the present case, all the three ingredients have been duly satisfied. Hence, these sums are not liable to be added u/s. 68. The authorities below have neither brought out the details submitted in their orders nor disputed any part of it, but they have only highlighted the fact that the sales have not yet taken place and the amount have not been refunded. In explanation, the assessee has submitted that the customers were supposed to send personnel to inspect the goods which have not been done so far. It is also been submitted that the parties have also not asked for a refund. Further, the assessee has

stated that due to funds being blocked as per Income Tax Department's action in attaching the bank account, the assessee has also not been able to refund on its own. Nothing has been brought on record by the Revenue to dislodge these submissions. In our considered opinion, these factors by no stretch of imagination can lead anyone to repel the document submitted regarding the identity, creditworthiness and genuineness of the transaction without bringing cogent material on record to the contrary. It is more so, when no examination or enquiry has been done by the Assessing Officer on these details. It is not the case of the Assessing Officer that any of the details submitted has been proved to be false or that the parties have not responded. Hence, in our considered opinion, this addition made u/s. 68 cannot be sustained. Accordingly, we set aside the orders of the authorities below and admit the addition.

Apropos the ground relating to disallowance of expenses of Rs.4,37,344/-:

19. Brief facts on this issue is that the Assessing Officer noted that the assessee was not carrying out any sort of business activity during the year under consideration and further no supporting documents whatsoever, for the expenses claimed has been furnished before the Assessing Officer. Therefore, the Assessing Officer allowed only statutory expenses like bank charges, professional tax, electricity charges etc. and disallowed the balance expenses in absence of any documentary evidence.

20. Before the Id. Commissioner of Income Tax (Appeals) also the assessee did not give any supporting evidence for the disallowance by the Assessing Officer. Hence, the Id. Commissioner of Income Tax (Appeals) affirmed the action of the Assessing Officer.

21. Before us also the Id. Counsel of the assessee did not make any cogent submission to counter the disallowance made by the authorities below. Accordingly, in absence of any submission and evidence, we do not find any infirmity in the orders of the authorities below on this issue and this issue is decided against the assessee.

22. As regards the additional ground raised by the assessee, as admitted by the Id. Counsel of the assessee himself, the same would stand infructuous in view of our decision in ground no. 1 hereinabove. Accordingly, the same is dismissed as infructuous.

23. In the result, this appeal by the assessee stands allowed.

*Order pronounced in the open court on 21.08.2018*

Sd/-

(Sandeep Gosain)  
Judicial Member

Mumbai; Dated : 21.08.2018

Roshani, Sr. PS

Sd/-

(Shamim Yahya)  
Accountant Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai