

**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. 2332 /Del/2011 & 6125/Del/2013
Assessment Year: 2002-03**

Ranutrol Industries Ltd., 414, New Delhi House, 27, Barakhamba Road, New Delhi PAN- AAACR1597C (Appellant)	vs.	Income-tax Officer, Ward 15(2), New Delhi (Respondent)
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Appellant by	Sh. Salil Aggarwal, Shailesh Gupta, Advocates
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	06.09.2018
Date of Pronouncement	11.09.2018

ORDER

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

ITA No. 2332/Del/2011 pertains to addition made against the assessee u/s. 68 of the IT Act and the appeal No. 6125/Del/2013 challenges the penalty imposed u/s. 271(1)(c) of the IT Act, consequent upon the addition u/s. 68. For the sake of convenience, we first take up the quantum appeal of the assessee challenging the addition u/s. 68 of the Act.

2. How, this appeal came up for hearing before us is self explanatory from the following chart of events :

S. No.	Date	Event
1.	30.10.2002	Return of Income filed for the impugned assessment year.
2.	26.02.2004	Assessment Order passed under section 143(3) of the Act for the impugned assessment year.
3.	27.03.2009	Notice under section 148 of the Act along with reasons recorded.
4.	30.11.2009	Copy of impugned reassessment order under section 147/143(3) of the Act.
5.	28.02.2011	Copy of impugned order passed by learned CIT (A).
6.	18.05.2012	Copy of order passed by Hon'ble ITAT dismissing the appeal of assessee.
7.	17.10.2013	Copy of order passed by Hon'ble ITAT in miscellaneous petition by Hon'ble JM.
8.	02.12.2013	Copy of order passed by Hon'ble ITAT in miscellaneous petition by Hon'ble AM.
9.	Jan 2014	Copy of reference for nomination of third member in miscellaneous petition and questions so framed by Hon'ble JM.
10.	13.02.2014	Copy of questions so framed by Hon'ble JM for reference to third member in miscellaneous petition.
11.	25.07.2014	Copy of order passed by Third Member, recalling the order so passed on 18.05.2012.
12.	03.11.2014	Copy of order passed by Hon'ble Bench giving effect to Hon'ble Third Member's order and refixing the case for hearing.
13.	31.05.2016	Copy of order passed by Hon'ble ITAT allowing the appeal of assessee.
14.	04.05.2018	Copy of order passed in miscellaneous petition filed by department, recalling the order so passed on 31.05.2016.

In pursuance to the order dated 04.05.2018, recalling the order passed on 31.05.2016 by the Tribunal, the present appeal has again come up for hearing on merits before us.

3. During the course of hearing before us, the Id. Counsel for the assessee candidly admitted that the proceedings initiated u/s. 147/148 are legally valid and he did not press the legal grounds raised in this behalf. Now, the only

question which remains to be adjudicated by us in this appeal is whether the Id. Authorities below are justified in making/sustaining the addition made u/s. 68 of the IT Act. The grounds raised by the assessee read as under :

1. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the order of assessment framed u/s 147/143(3) in as much as pre conditions as envisaged under section 147 of the I.T. Act are not fulfilled so as to clothe the AO with the jurisdiction to reopen the assessment.*
2. *That the learned Commissioner of Income Tax (Appeals) in doing so has further failed to construe the correct purport of the provisions contained in section 149 (1) (b) which provides the time limit for the notice u/s 148 of the I.T. Act.*
3. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the mere fact that merely an information has been received by the Assessing Officer from DIT (Inv), which by itself could not have been a valid ground to initiate proceedings under section 147 of the Act as the same did not constitute any tangible and relevant material for formation of reason to believe that income of the appellant has escaped assessment, particularly having regard to the fact that the same was unsupported by any valid material.*
4. *That the learned Commissioner of Income Tax (Appeals) erred both in law and on facts in sustaining an addition of a sum of Rs. 13, 00, 000/- without any jurisdiction or basis in as much as the same amount could not be regarded under any stretch of imagination as undisclosed income of the assessee. In doing so, the learned Commissioner of Income Tax (Appeals) has based his conclusion on wholly irrelevant material considerations which are legally unsustainable in law.*
5. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in coming to a conclusion that the cheques received of Rs.13,00,000/- were accommodation entries, whereas, the cheques were received in normal carrying out of business, on account of cancellation of order in respect of purchase of machinery.*

5.1 That the learned Commissioner of Income Tax (Appeals) ignored the fact that the cheques were issued as advance for purchase of machinery, which were merely received back, as no machine was supplied by the suppliers.

5.2 That the learned Commissioner of Income Tax (Appeals) ignored the basic fact that such cheques were issued for purchase of machinery and money originated from assessee's own bank account. There was no question of any undisclosed money involved so as to make any addition.

6. That the learned Commissioner of Income Tax (Appeals) further erred in charging interest under section 234B, 234D and 244 of the I.T. Act.

4. During the course of assessment proceeding, the Assessing Officer noticed that the assessee had received a sum of Rs.13 lacs from two parties as per following details :

AMOUNT	DATE	NAME OF ENTRY PROVIDER	NAME OF BANK	BRANCH OF BANK
400000	7-Mar-02	TECHNOCOM ASSOCIATES PVT.	SBP	DG
500000	13-Mar-02	DIVISION TRADING P. LTD.	SBP	DG
400000	2-Feb-02	TECHNOCOM ASSOCIATES PVT.	SBP	DG

5. In order to justify the impugned receipts, the AR of the assessee reply before the Assessing Officer on 06.08.2009 as under :

“It was noticed from the list of entries that the assessee iM/s Ranutrol Industries Ltd. had taken following accommodation entry from the following person (entry operator) as per details hereunder:-

Amount	Date	Name of entry provider	Name of bank	Branch of bank
400000	7-Mar-02	Technocom Associate Pvt. Ltd.	SBP	DG
500000	13-Mar-02	Division Trading Pvt. Ltd.	SBP	DG

400000	2-Feb-02	Technocom Pvt. Ltd.	Associate	SBP	DG
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- 1) *We had placed an order to M/s. Technocom Associates Pvt. Ltd. for supply of Automatic Core Making Machine with accessories to cast brass up to 3 kgs. In one shot on 26.07.2001 and paid a sum of Rs.8.00 lac on 2/08/2001 vide cheques no. 443990 dated 2/8/2001 drawn on IndusInd Bank Barakhamba Road New Delhi. Due to certain reasons/non supply of machinery M/s. Technocom Associates Pvt. Ltd. had refunded the advance in two installment vide cheques no. 020420 dated 1/2/2002 Rs.4,00,000 drawn on State Bank of Patiala Darya Ganj, New Delhi-110002 and a cheques no. 020417 dated 6/3/2002 for Rs.4,00,000/- drawn on State Bank of Patiala, Darya Ganj, New Delhi.*
- 2) *We have placed an order to M/s. Division Trading (P) Ltd. for supply of one Automatic Die Casting Machine with accessories to cast brass up to 3 Kgs. in one shot on 11/06/2001 and paid a sum of Rs.5,00,000/-. On 22/6/2001 as an advance vide cheques no.443967 dated 22/6/2001 drawn on IndusInd Bank Ltd. Barakhamba Road, New Delhi. Due to certain reasons/ none supply of machinery M/s Division Trading (P) Ltd had refunded the advance vide cheques no.942219 dated 11/3/2002 for Rs. 5,00, 000/- drawn on State Bank of Patiala Darya Ganj, New Delhi-110002.*

In support of the above mentioned transaction, we are enclosing the photo copy of bank statement for encashment of cheques issued to the parties and received from the parties. We are also enclosing the copies of the letters issued to the parties for supply of machinery and duly acknowledged by the parties.

Our case is different from the other case as we have not taken any accommodation entry. It was purely a business transaction."

The Assessing Officer pointed out to the assessee that the cheques said to have been issued of Rs.8 lacs and Rs.5 lacs in favour of above stated to companies, were not appearing in their bank accounts maintained with State Bank of Patiala, Daryaganj, New Delhi. In this regard, the assessee submitted a certificate

from its bankers, i.e., IndusInd Bank dated 27.11.2009 stating that the amount has been encashed by the above named to companies. Assessing Officer also observed that both the parties while giving cheques to the assessee of the impugned amount, have deposited cash of the equivalent amount in their bank accounts as noted in the assessment order. Keeping in view the fact that the alleged cheques issued by the assessee were not reflecting in the bank accounts of both the parties and deposit of cash of equivalent amount in their bank account, led the Assessing Officer to hold that the amount received by the assessee was an accommodation entry. He, therefore, made addition of Rs.13 lacs u/s. 68 of the Act, being unexplained credit in the hands of the assessee.

6. In appeal, the Id. CIT(A) decided the issue as under :

5. Ground no. 4 is directed against the addition of Rs. 13,00,000/- u/s 68 of the Act. As per the facts of this case, information was received by the AO from the Investigation Wing relating to accommodation entry received by the appellant company from two parties, viz. M/s Technocom Associates Pvt. Ltd. (Rs. 4,00,000/- plus Rs. 4,00,000/-) and M/s Division Trading P. Ltd. (Rs. 5,00,000/-) totaling Rs. 13,00,000/-. In the course of the assessment proceeding, it was contended by the Id. AR that the above amounts had been given by cheques dated 11.06.2001 and 02.08.2001 on IndusInd Bank to the aforesaid parties for supply of machinery and the amounts, were refunded back by the parties due to certain reasons/non supply of machinery. However, it was found by the AO that the cheques stated to have been given by the appellant have not been deposited in the bank account of the above parties. The certificate of appellant's bankers also only shows that the said cheques were encashed on 25.06.2001 and 04.08.2001 which means that these were bearer cheques and there is no proof of amounts going to the above two parties. Further, the bank statement of the said parties shows that equal amount of cash was deposited on the very same day, i.e. 02.02.2002, 07.02.2002 and 13.03.2002 in State Bank of Patiala before the said parties made the payment by cheques to the appellant. The AO, accordingly, treated the above amount of Rs. 13,00,000/- as unexplained and added it u/s 68 of the Act.

5.1 During the appellate proceeding, the Id. AR vide written submission has merely reiterated the above contentions made before the AO. The Id. AR vide order sheet entry dated 27.12.2010 was asked to submit the following details :

> "Proof of cheques having been deposited in the accounts of the parties.

- > How the appellant came to know the said parties.
- > Proof of parties engaged in manufacturing/supplying the machineries.
- > Details of correspondence with the said parties.
- > Is there any dealing with the said parties before or after the above transaction.
- > Procedure the above parties.”

5.1.1 In response to the above, the Id. AR vide letter dated 04.01.2011 has submitted as under:

“In continuation our letter dated 25th February, 2010, we are submitting the following information as verbally desired by your goodselves:

1. *We had issued the cheque to the parties as Advance for purchase of machinery. We do not know which banks they deposited these cheques. We had already deposited the Bank Certificate from our banker for encashment of these cheques.*
2. *We come to know about these parties through our friends.*
3. *We have no proof to know that these parties had manufactured the machines or they were trading of these machines.*
4. *We have only correspondence for purchase order and advance for payment which were duly acknowledged by these parties.*
5. *There is no dealing with these parties after cancellation of order for purchase of machinery*
6. *We are not in a position to produce these parties because the dealing took place in the year 2001-02. You can summon these parties Yourself since the addressed are already available with you.*

Our case is different from the other case as we have not taken any accommodation entry. It was purely a business transaction. We first paid the money and then got our money refunded.”

5.1.2 From the above, it is clear that the appellant does not have any proof that the cheques claimed to have been issued by the appellant to the above parties were deposited in their accounts. The appellant has no knowledge that the above parties were ever engaged in manufacturing or supply of the alleged machines and the appellant cannot produce any evidence in this regard. The appellant cannot explain as to how it came to know those parties except saying that it came to know about the parties through friends. The appellant does not have any correspondence with the above parties relating to placing the purchase orders and cancellation thereof. There is no dealing with the said parties either prior to or subsequent to the above alleged payment of advance. The appellant also expressed-its inability to produce the above parties. All the above facts have been admitted by the appellant.

5.2 Under the facts and circumstances as discussed above, it is clear that the appellant has failed to discharge its onus with regard to explaining the nature and source of the above credits. The appellant has also failed to establish the identity of the parties, genuineness of the transaction and creditworthiness of the parties. The contention of the appellant with regard to advance payment for machinery and refund

thereof is completely false. Considering the above and the settled law on the issue, I have no hesitation in confirming the impugned addition of Rs. 13,00,000/- u/s 68 of the Act.”

7. The ld. AR reiterated the submissions made before the authorities below and submitted that the money was given from the assessee’s bank account as advance for supply of machinery to both the parties. He invited our attention to the correspondence made by the assessee with the above two parties which are placed at paper book pages 12 to 15. He also drew our attention to the bank certificate issued by bank on which the amount was stated to have been paid through cheques which is placed at PB-23. Since both the parties could not supply the requisite machineries to the assessee, they refunded the amount of Rs.13.00 lacs through their cheques, which has wrongly been treated as accommodation entry by the ld. Authorities below. He has relied on the decision of Hon’ble Delhi High Court in the case of CIT vs. Real Time Marketing (P) Ltd., 306 ITR 35.

8. The ld. DR, on the other hand, relied on the orders of the authorities below.

9. We have heard the submissions of both the parties and have gone through the entire material available on record. It is notable that the ld. AR of the assessee could not be able to rebut the findings reached by the ld. CIT(A) that the assessee had no evidence to prove that the cheques issued by him were credited to the bank accounts of the alleged sellers of the machinery. The correspondence referred to by the assessee is an exparte correspondence and there is no reply thereof from the side of any of the above two parties. There is

also absence of any evidence to show that the negotiation so made was cancelled. The assessee also failed to controvert the finding of the Id. Authorities below that the assessee failed to prove that the above two parties were engaged in manufacture and sale of machinery. Once, the negotiation of purchase of machinery was cancelled with the above two parties, the assessee also failed to substantiate that he had made purchase of such machinery from any other parties or not subsequently. The Bench asked the Id. AR to disclose the total turnover of the assessee, which he also failed to give any detailed thereof. The bank certificate of the assessee's bank account no doubt states about the encashment of two cheques by the above two parties, but this certificate nowhere reveals as to in which bank account, the said cheques were credited. Once, the receipt of amounts alleged paid by the assessee to the sellers is not proved, no credence can be placed on the alleged refund thereof in the hands of the assessee. In presence of all these facts, coupled with the fact that the cash deposit of equivalent amounts was found in the bank accounts of the two parties before issuing the cheques, the Id. Authorities below, our opinion, have committed no error while making addition in the hands of the assessee u/s. 68 of the Act holding the transaction as accommodation entry. In view of the above facts, the assessee failed to prove the three ingredients of section 68, i.e., identity of the creditors, creditworthiness thereof and genuineness of the transactions. Simply because the assessee received the amounts through cheques would not prove the transaction as genuine, as the nature of amount, i.e., being refund of the amounts already paid as advance for purchase of machinery, as stated by the assessee, does not stand proved by any cogent evidence on record. The decision relied by the assessee in the case of Real Time

Marketing Pvt. Ltd. (supra) does not render any help to the assessee, as in the present case, the cash deposit in the bank accounts before issuing cheques, is not the sole ground for making addition u/s. 68 of the Act. As a result, the appeal of the assessee deserves to be dismissed.

10. Adverting to the penalty appeal, though none of the parties made any effective arguments, but we are of the opinion that assessment proceedings and penalty proceedings are two different proceedings, which need separate considerations of all material facts. While initiating the penalty proceedings, the Assessing Officer is required to be more specific as to the offense committed u/s. 271(1)(c) of the IT Act, i.e., concealment of particulars of income or furnishing of inaccurate particulars of income. We have gone through the notice dated 30.11.2009 issued by the Assessing Officer u/s. 271(1)(c) r.w.s. 274 of the Act which contains the offense committed by assessee as “concealed the particulars of income or furnished the inaccurate particulars of such income”. In view of above narration of notice, the Assessing Officer was not specific as to the offense committed by the assessee. In the penalty proceedings, the Assessing Officer has imposed the penalty for concealing the particulars of income. Once, the Assessing Officer itself was not specific as to under which limb, the Assessing Officer was going to penalize the assessee or to seek explanation of the assessee, no penalty can be imposed against the assessee u/s. 271(1)(c) of the Act. This Bench of ITAT in the similar situation, has deleted the penalty in the case of Sh. Lakshya Seth vs. ITO (ITA No. 852/Del/2016 vide order dated 16.05.2018) after following the decision of Hon’ble Karnataka High Court in the case of SSAs Emerald Meadows, 73 taxmann.com 241 supported by Hon’ble

Supreme Court. The findings of the Tribunal read as under :

“4. After considering the rival submissions, we are of the view that penalty is not leviable in the matter. The A.O. issued show cause notice dated 28th March, 2013 before levy of the penalty against the assessee in which the A.O. has recorded as under :

“have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3, 4 and 5.”

4.1. These facts, therefore, clearly show that notice issued by the A.O. for levy of penalty under section 271 (1)(c) of the Act to be bad in law as it did not specify in which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing inaccurate particulars of income. The entire penalty proceedings are, therefore, vitiated and no penalty is leviable. On this score itself similar view is taken by Hon ble Karnataka High Court in the case of CIT vs. M/s. SSAs Emerald Meadows 73 taxmann.com 241. This decision is confirmed by the Hon ble Supreme Court reported in 73 taxmann.com 248. In this view of the matter, the orders of the authorities below are set aside and penalty is cancelled.”

Respectfully following the above decision of co-ordinate Bench, we find no good reason to sustain the penalty in the peculiar facts and circumstances of the case. Accordingly, the penalty appeal filed by the assessee deserves to be allowed.

11. In the result, the appeal in ITA No. 2332/Del/2011 is dismissed and appeal in ITA No.6125/Del/2013 is allowed.

Order pronounced in the open court on 11th September, 2018.

Sd/-

Sd/-

(Bhavnes Saini)
Judicial member

(L.P. Sahu)
Accountant Member

Dated: 11th September, 2018

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