

**IN THE INCOME TAX APPELLATE TRIBUNAL
(MEERUT CAMP, MEERUT)**

**BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4346/Del./2016
(ASSESSMENT YEAR : 2011-12)**

DCIT
Circl-2
Meerut
Uttar Pradesh

Vs.

M/s. Samco Auto India (P) Ltd.
Delhi Road,
Meerut

Appellant

**(PAN : AABCS9883P)
Respondent**

ASSESSEE BY : Sh. P.S.Kashlap, Adv.
REVENUE BY : Shri Yogesh Sharma, Sr.DR

Date of Hearing : 07.01.2019

Date of Order : 29.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant Dy. Commissioner of Income Tax, Circle-2, Meerut (hereinafter referred to as 'the revenue') by filing the aforesaid appeal, sought to set aside the impugned order dated 25/05/2016 passed by Ld. Commissioner of Income Tax(Appeals)-Meerut qua the Assessment Year 2011-12 on the grounds inter alia that :

1. Whether in the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) has erred in law and fact in deleting the addition of Rs. 95,00,000/- made by the Assessing Officer u/s 68 of the I.T. Act, 1961, ignoring the fact that the companies which had advanced unsecured loans to the assessee had declared very low incomes in their ITRs,

thus casting a doubt upon the genuineness of the transaction.

2. *Whether in the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) has erred in law and fact in deleting the addition made by the A.O. without taking into consideration the fact that in spite of several opportunities provided to the assessee, neither did the assessee produce the Principal Officers of the three lender companies in spite of summon issued to them u/s 131 of the I.T. Act. 1961 nor did it file any documentary evidence to prove the veracity and the genuineness of the said transactions.*

3. *Whether in the facts and circumstances of the case, the order of the Id. Commissioner of Income Tax(A), Meerut may be set aside and that of the AO be restored.*

4. *That the appellant craves leave to add, modify and or delete any ground(s) of appeal.*

2. Briefly stated that facts necessary for adjudication of the controversy at hand are : Assessing Officer framed the assessment u/s 147 of the Act by making addition of Rs. 95,00,000/- on account of unexplained unsecured loan availed by the assessee from (i) Amrit Sales Promotion Pvt. Ltd. – Rs. 50,00,000/- (ii) Welco Overseas Pvt. Ltd. - Rs. 20,00,000/- (iii) Transnational growth fund – 25,00,000/- respectively u/s 68 of the Act on failure of the assessee to prove their identity, creditworthiness and genuineness of the transaction.

3. Assessee carried the matter before Ld. CIT(A) by way of filing the appeal who has deleted the addition by partly allowing the appeal. Feeling

aggrieved the revenue has come up before the Tribunal by way of filing the present appeal.

4. Undisputedly assessee has availed of unsecured loans of Rs. 95,00,000/- (50,00,000 + 20,00,000+25,00,000 = 95,00,000/-) from Amrit Sales Promotion Pvt. Ltd., Welco Overseas Pvt. Ltd. and Transnational growth fund respectively. It is also not in dispute that the assessee has filed copy of Income Tax return, Bank Account confirmed copy of account from its books of accounts, bank statement and copy of Form 16A to prove the fact that assessee has deducted TDS on interest payment to the aforesaid party.

5. When assessee has duly discharged its initial onus by proving the identity of the creditors by filing their copy of ITR, Bank Accounts, the addition u/s 68 of the Act cannot sustain merely on the ground that assessee has failed to produce them despite issuance of summons u/s 131 of the Act.

6. Hon'ble Gujarat High Court in case cited as **256 ITR 360 Dy. Commissioner of Income Tax vs. Rohini Builders** decided the identical issue in favour of the assessee that when assessee has discharged initial onus lay on it in terms of Section 68 by providing their complete address, bank statement and the assessee has also proved on record confirmed copy of account of his creditors from its books of account, bank statement and copy of form 16A showing that assessee has deducted TDS on interest payment to the creditors addition u/s 68 of the Act is not sustainable. The operative part of the findings returned by Hon'ble High Court in case of Rohini Builders (Supra) are extracted as under :-

“The assessee was a firm engaged in the business of

dealings in land. During the assessment year under consideration the assessee had taken loans from various parties and during the course of assessment proceedings, the assessee had furnished the loan confirmations giving full addresses, GIR numbers/permanent account numbers, etc., of all the depositors. The Assessing Officer however issued summons to some of the creditors and also conducted inquiries into the genuineness or otherwise of the loans taken by the assessee. After considering the evidence, the Assessing Officer made an addition of Rs. 12,85,000 to the returned income of the assessee. This was confirmed by the Commissioner of Income-tax (Appeals). On further appeal to the Tribunal the Tribunal held that the phraseology of section 68 of the Income-tax Act, 1961, was clear, that the Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year, that the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year", that the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as income of the assessee. The Tribunal found that the assessee had discharged the initial onus which lay on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers/permanent account numbers and the copies of assessment orders wherever readily available, that it had also proved the capacity of the creditors by showing that the amounts were received by the

assessee by account payee cheques drawn from bank accounts of the creditors and the assessee was not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source. Thus taking into consideration the totality of the facts and circumstances of the case, and, in particular the fact that the Assessing Officer had not disallowed the interest claimed/paid in relation to these credits in the assessment year under consideration or even in the subsequent years, and tax had been deducted at source out of the interest paid/credited to the creditors, the Tribunal held that the Departmental authorities were not justified in making the addition of Rs. 12,85,000. On appeal to the High Court :

Held, that considering the facts and circumstances of the case narrated by the Tribunal and the law explained by it, the appeal was liable to be dismissed.

[The Supreme Court has dismissed the special leave petition filed by the Revenue against this judgment : see [2002] 254 ITR (St.) 275 –Ed.]

7. More over assessee has established the identity and creditworthiness of the creditors as well as genuineness of the transaction by bringing on record the fact that the loans in question were taken and repaid through banking channel and TDS thereon was duly deducted and all the three creditors were assessed to Income Tax.

8. In view of what has been discussed above, we are of the considered view that Ld. CIT(A) has rightly deleted the addition, hence, finding no illegality or perversity in the impugned order of present case filed by the assessee is hereby allowed.

Order pronounced in open court on this 29th January, 2019.

**Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated: 29/01/ 2019
BR**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVI, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**

Date of dictation	15.01.2019
Date on which the typed draft is placed before the dictating Member	16.01.2019
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	29.01.2019
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	

