

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No. 7166/DEL/2018
[Assessment Year: 2013-14]

WEL Intertrade Pvt Ltd.
No. 5, E. Block,
Local Shopping Centre
Masjid Moth, New Delhi

Vs.

The A.C.I.T
Circle - 27(2)
New Delhi

PAN: AAACW 0187 F

[Appellant]

[Respondent]

Date of Hearing : 15.05.2019
Date of Pronouncement : 03.06.2019

Assessee by : Shri C.S. Aggarwal, Sr. Adv.
Shri Ravi Pratap Mall, Adv

Revenue by : Shri Abhishek Kumar, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 9, New Delhi dated 20.09.2018 pertaining to assessment year 2013-14.

2. The solitary grievance raised by the assessee is that the CIT(A) erred in confirming an aggregate addition of Rs. 4.50 crores made u/s 68 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

5. Brief facts relating to this case are that while framing assessment order u/s 143(3) of the Act dated 28.03.2016, on perusal of the balance sheet of the assessee, the Assessing Officer found that the assessee has received unsecured loans from the following three entities:

i)	Glorious Holding Pvt Ltd	Rs. 1.50 crores
ii)	Kallol Kutir Pvt Ltd	Rs. 1.50 crores
iii)	New KMS Finance Ltd	Rs. 1.50 crores

6. The assessee was asked to establish the identity, genuineness and credit worthiness of the aforesaid parties.

7. In response, the assessee submitted confirmations of the parties, copies of income tax returns, relevant pages of the bank statements, balance sheets and profit and loss account

of the aforementioned three companies. The relevant details, as extracted by the Assessing Officer, at page 2 of his order is as under:

Name	PAN	Address	Income declared in ITR/ Tax payable	1. Share Capital 2. Share Premium 3. Accumulated Profit as on 31.3.2013	Revenue from operations
Glorious Holding Pvt Ltd	AACCG4244K	3, Saklat Place, Kolkata - 700072	2,10,687/65,103	1. 2,28,79,000 2. 72,94,21,000 3. 2,27,573	46,43,721
Kallol Kutir Pvt Ltd	AABCK3979L	40, Weston Street, Bowbazar, Kolkata - 700012	8378/2589	1. 6,30,000 2. 2,30,30,000 3. 197	2,23,562
New KMS Finance Ltd	AABCN8389D	Ram Garh Road, Vijaypur, Jammu - 180012. Jammu & Kashmir	29110/9000	1. 1,47,26,800 2. 72,00,02,000 3. (2,27,114)	3,90,137

8. The Assessing Officer was of the opinion that these three companies have no business activities and their respective balance sheets do not reflect any creditor/debtor/fixed assets/inventories. The assessee was further asked to justify that the funds extended to the assessee company were earned through any real business activity.

9. In its reply, the assessee once again summarised the balance sheets of each of these companies and stated that the said funds extended to the assessee during the year were through disinvestment of non-current equity investments held by the lender companies.

10. The Assessing Officer was not convinced with the reply of the assessee and was of the opinion that the submissions of the assessee do not throw any light on the actual source of funds. The Assessing Officer concluded by holding that the assessee has failed to discharge the onus cast upon it by provisions of section 68 of the Act by observing as under:

- "These creditor companies have shown very low/nil returned income.
- The Reserve and Surplus account of these companies consists of mostly share premium received. There is negligible accumulated profit in reserve and surplus.
- They have negligible revenue from operations in comparison to reserves & surplus and is mainly in the nature of interest income on loans. It is pertinent to mention that In the case

M/s Kallol Kutir Pvt Ltd and M/s KMS Finance Pvt Ltd the entire revenue from operations is the interest earned on the unsecured loan extended to the assessee company during the year. This is evident from the two tables produced above.

- Bank statements of these creditor companies show a maze of debit/credit entries of identical or equivalent amounts, which appear to be on account of round tripping of money before passing on to beneficiaries like the assessee. The amounts used to extend unsecured loans to the assessee company were deposited in bank accounts of parties on same day or on proximate days. The opening and closing balance of their bank accounts is negligible. This is a prima facie sign of entry operation.
- The B/s and Profit & Loss A/c of these companies reflects no sundry creditors, sundry debtors, inventories and fixed assets. This is primarily a sign of no genuine business activity undertaken by these companies.
- It is uncertain as to what is the relation of these companies with the parties from whom money is being circulated before the present entries. All these companies have given unsecured loan from the funds taken from other companies."

11. The Assessing Officer proceeded by making further enquiry and the notices u/s 133(6) of the Act were issued to all the three companies on 29.02.2016. The Assessing Officer observed that all such notices have been received back as unserved.

12. Since the notices returned back unserved, enquiry was conducted through the commission u/s 131(1)((d) of the Act dated 04.03.2016 issued to the DDIT (Inv), Unit 2(4), Kolkata to examine the identity, genuineness and creditworthiness of the transactions entered into by the assessee company with M/s Glorious Holding Pvt Ltd.

13. The DDIT (Inv), submitted a detailed report in which it was stated that M/s Glorious Holding Pvt Ltd is managed and controlled by a known entry operator of Kolkata Shri Binod Agarwala. It was also stated that this company runs only on paper and does not have any substantial business operations. Alongwith his report, the DDIT (Inv), annexed a copy of the statement of Shri Binod Agarwala recorded during the course of survey operations on 07.02.2015.

14. The Assessing Officer confronted the report of the DDIT (Inv), to the assessee and also provided copies of summons issued u/s 131 of the Act to the Principal Officers/Directors of the three companies and the assessee was asked to explain as to why the unsecured loan of Rs. 1.50 crore received from M/s Glorious Holding Pt Ltd should not be treated as unexplained cash credit u/s 68 of the Act. The assessee was further asked to explain that in view of the balance sheet and profit and loss account of other two companies, namely Kalol Kutir Pvt Ltd. and New KMS Finance Ltd reflected lack of genuine business activity and since the notices u/s 133(6) of the Act have been received back unserved and summons issued u/s 131 of the Act and served upon the directors of the companies remained uncomplied with, why the unsecured loans of Rs. 1.5 crore received from each of these two companies be not treated as unexplained cash credits u/s 68 of the Act.

15. In its reply, the assessee contended that the statement of Shri Binod Agarwala is a very general statement and does not deal with specific entry given by Glorious Holding Pvt Ltd

to the assessee by cheque against payment of interest which is being paid by the assessee company regularly by account payee cheques. Finding contradiction in the statement of Shri Binod Agarwala, the assessee immediately requested to submit Shri Binod Agarwala for cross examination. The assessee strongly submitted that it has discharged the initial onus cast upon it by provisions of section 68 of the Act and no adverse inference should be drawn.

16. The submissions of the assessee were dismissed by the Assessing Officer who was of the opinion that it is not necessary that in a survey operation, a list of all beneficiaries of entry provider companies may be obtained. The Assessing Officer observed that the report of the DDIT (Inv), is self-explanatory. After relying upon certain judicial decisions, the Assessing Officer completed the assessment by making an addition of Rs. 4.50 crores being the aggregate amount of Rs. 1.50 crores each received from the three companies and made addition of Rs. 4.50 crores u/s 68 of the Act.

17. The assessee strongly agitated the addition before the CIT(A) and reiterated that it has successfully discharged the onus cast upon it by virtue of section 68 of the Act. Strong reliance was placed on the documents furnished during the course of scrutiny assessment proceedings to substantiate that initial onus has been discharged.

18. After considering the facts and detailed submissions, the ld. CIT(A) observed that the Assessing Officer during the proceedings had duly verified and analysed the documents submitted by the assessee. The first appellate authority concurred with the findings of the Assessing Officer that the lenders have miniscule amount of revenue and negligible income in their Income tax returns. The first appellate authority further observed that even the report of the DDIT, INV alongwith the statement of Shri Binod Agarwala clearly establishes that the lenders have provided accommodation entries, and, therefore, the assessee has failed to discharge the initial onus.

19. The CIT(A) further observed that he himself had examined the documents produced before the Assessing Officer and came to the conclusion that instead of supporting the case of the appellant, these documents only reinforce the findings of the Assessing Officer which are based on his detailed and wide analysis of the facts and circumstances of the case and is in congruence with the detailed set of observations and factors pointed out by the DDIT INV Wing. The CIT(A) was convinced that the appellant has not been able to provide any evidence or document to prove the observations of the Assessing Officer to be wrong. After referring to various judicial decisions, addition of Rs. 4.50 crores was confirmed. Hence this appeal.

20. The representatives of both the sides were heard at length. The case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules. Judicial decisions relied upon were carefully perused.

21, At the very outset, we are of the considered opinion that whether the onus has been discharged is purely a question of fact and, therefore, the judicial decisions relied upon by representatives of both the sides, will be considered only on the facts of the case in hand discussed herein below.

22. Facts on the basis of which additions have been made, as culled out from the orders of the authorities below and as highlighted by the ld. DR, can be summarised as below:

- i) Notice issued u/s 133(6) returned unserved/ summons served u/s 131 remained uncomplied with.
- ii) Income of the lenders is miniscule and does not commensurate with the amount lended by them to the appellant
- iii) Report of the DDIT, INV, alongwith the statement of Shri Binod Agarwala conclusively prove that the lender companies are involved in providing accommodation entries.

23. We will now address on all these issues one by one as under:

- i) Notice issued u/s 133(6) returned unserved/ summons served u/s 131 remained uncomplied with.

It is true that the notice issued u/s 133(6) of the Act returned unserved as observed by the Assessing Officer at page 4, para 4.3.1 of his order. But we fail to understand how the summons u/s 131 of the Act were served upon from the very same address. The Assessing Officer has contradicted himself on this count. Once the summons were served upon the principal officers /directors of the lender company, the Assessing Officer should have exercised the power vested upon him for forceful attendance. But the Assessing Officer did not exercise any such power and simply based his assessment on the basis of notices served u/s 133(6) of the Act, which were returned unserved.

- ii) Income of the lenders is miniscule and does not commensurate with the amount lended by them to the appellant

24. In our considered opinion, the income may be a criteria for deciding the issue. But the income is not to be all and end all of everything. For example, a person having a salary of Rs. 12 lakhs per annum purchases a flat for Rs. 50 lakhs. Merely on the basis of his level of income, the addition of Rs. 50 lakhs cannot be made as unexplained investment without understanding the facts. It may be possible that the person might have taken a housing loan of Rs. 45 lakhs and that source would justify his investment. Similarly, income of the lender company cannot be the sole basis for making addition without going into the facts and without understanding the financial statements of the lender companies.

Glorious Holding Pvt Ltd

25. The balance sheet of this company, exhibited at page 122 of the paper book reveals that it has non-current

investments in the form of trade investments as unquoted equity shares amounting to Rs. 63,38,30,000/- as on 31.03.2012 [immediately preceding F.Y.] and the same stands at Rs. 52,19,30,000/- as on 31.03.2013 [the year under consideration], which means that this company had liquidity available amounting to Rs. 11,19,00,000/-.

26. Further, the income from the revenue operations as per the profit and loss account at page 123 of the paper book shows the revenue from operations at Rs. 46,43,721/-. This clearly establishes the source of lending of Rs. 1.50 crores to the appellant company. Further, this company's details of loans and advances made during the year has been at Rs. 21,24,23,973/- as per exhibit 127 of the paper book on which this company has earned interest of Rs. 46,43,721/-. Therefore, it cannot be said that this company is not doing any business activity. Moreover, the source of this company is clearly established from its financial statements, as mentioned hereinabove to justify the lending of Rs. 1.50 crores to the appellant company.

Kalol Kutir Pvt Ltd

27. The balance sheet of this company shows non-current investments of Rs. 2,36,00,000/- as on 31.03.2012 which has come down to Rs. 86,00,000/- as on 31.03.2013, which shows the availability of liquid funds of Rs. 1,50,00,000/-, which is sufficient to justify the lending of Rs. 1.50 crores to the appellant company. These facts are exhibited at pages 143 and 145 of the paper book.

New KMS Finance Ltd

28. The balance sheet of this company at page 166 of the paper book shows non-current investment on 31.03.2012 at Rs. 73,04,65,000/-, which has come down to Rs. 71,50,65,000/- on 31.03.2013, which shows the availability of liquid funds of Rs. 1,54,30,000/- which clearly justifies the lending of Rs. 1.50 cores to the appellant company.

29. Moreover, the bank statements of these companies clearly show that the transactions have been done through

banking channel [RTGS] and in fact, all the loans taken by the appellant company have been repaid in due course of time, which can be understood from the following chart:

Name of the lender company	Date	Amounts raised as loan	Date of refund	Mode of refund	Amount of interest paid	Mode of interest paid
				Cheque no		Cheque no
M/s Glorious Holdings Private Limited	21.03.2013	Rs. 50,00,000/- Rs.	20.12.2014	294724	29,589	121289
	26.03.2013	50,00,000/- Rs.	04.02.2015	061021	5,32,603	112774
	30.03.2013	50,00,000/-	15.02.2016	853707(RTGS)	5,44,438	001401
			20.02.2016	853722(RTGS)	5,44,438	061056
					5,32,602	060968
					5,38,520	018337
					5,44,438	294773
					5,42,957	(RTGS)
				4,63,068	061021	
				4,48,767	294857	
M/s Kallol Kutir Private Limited	14.02.2013	Rs. 50,00,000/- Rs.	20.12.2014	294725	2,01,205	362600
	26.02.2013	50,00,000/- Rs.	04.02.2015	061025	5,32,603	112780
	07.03.2013	50,00,000/-	21.01.2016	853697(RTGS)	5,44,438	001402
			16.02.2016	853709(RTGS)	5,44,438	061057
			18.02.2016	853723(RTGS)	5,32,602	060966
					5,38,520	018334
					5,44,438	294775(RTGS)
					5,42,957	294749(RTGS)
				4,63,562	689544(RTGS)	
				4,48,767		
M/s New	25.01.2013	Rs. 50,00,000/-	20.12.2014	294726	3,21,534	362586
KMS Finance Private Limited	30.01.2013	Rs. 50,00,000/-	04.02.2015	061033	29,589	121290
	06.02.2013	Rs. 25,00,000/-	16.02.2016	853708(RTGS)	5,32,603	112778
	06.02.2013	Rs. 25,00,000/-	18.02.2016	853721(RTGS)	5,44,438	001399
					5,44,438	061063
					5,32,602	060967
					5,38,520	018336
					5,44,438	294776
					5,42,957	294731
					4,63,562	294856
					4,48,767	689559

30. Considering the facts as explained hereinabove, we do not find any merit in discarding the financials of the lender company.

iii) Report of the DDIT, INV, alongwith the statement of Shri Binod Agarwala conclusively proves that the lender companies is involved in providing accommodation entry.

31. At para 4.3.1 at page 4 of the assessment order, the Assessing Officer refers to the commission u/s 131(1)((d) of the Act dated 04.03.2016 issued to the DDIT (Inv), Unit 2(4), Kolkata to examine the identity, genuineness and creditworthiness of the transactions entered into by the assessee company with M/s Glorious Holding Pvt Ltd. with the registered address at Kolkata. It is pertinent to mention here that the Assessing Officer did not ask to enquire anything about the other two companies, namely, Kalol Kutir Pvt Ltd and New KMS Finance Limited.

32. The report of the DDIT, INV is at pages 90 to 91 of the paper book. A bare perusal of the same shows tht the DDIT simply reported what he has seen from the data base of Kolkata based entry operators prepared by the Directorate that M/s Glorious Holdings Pvt Ltd is managed and controlled by a non entry operator Shri Binod Agarwala and, thereafter, he has simply annexed the statement of Shri Binod Agarwala recorded u/s 133A proceedings during the course of operations on 2.2.2015 in the case of Geeta Bali Merchant and M/s Glorious Holding Pvt Ltd. It can be seen that the DDIT, instead of making any investigation himself, he simply relied upon the statement recorded somewhere else, which is placed at pages 92 to 102 of the paper book.

33. A perusal of the statement shows that there is no direct question relating to the amount of loan given by Glorious Holding Pvt Ltd to the appellant company. The entire statement revolves around the admission that Shri Binod Agarwala, through various companies, is providing entries to the beneficiaries but nowhere he has mentioned that the appellant company is one of the beneficiaries. As mentioned

elsewhere, the statement was recorded by some survey party at some place which has been annexed by the DDIT in his report submitted pursuant to the commission issued to him u/s 131(1) of the Act and the same has been used by the Assessing Officer for making the addition. On a specific request made by the assessee, during the course of assessment proceedings for presenting Shri Binod Agarwala for cross examination, was denied. We fail to understand the evidentiary value of such statement.

34. Summons served by the Assessing Officer to the Principal Officer/Director of the three companies are placed at pages 103 to 105 of the paper book and in each of the summons, the following were required:

- i) Identify proof showing the identity
- ii) Copy of Income tax return for A.Y 2013-14 alongwith computation of income.

- iii) Source of unsecured loan given to Well Intertrade Pvt Ltd during A.Y 2013-14.
- iv) Copy of bank account from which unsecured loan transaction took place between the lender company and the appellant company

35. As mentioned elsewhere, though the summons were serviced, but were not complied. The Assessing Officer should have forced the attendance of Principal officer/Director, which was well within his powers but not exercised. The documents required by the Assessing Officer were very much before him during the assessment proceedings itself.

36. We have already discussed the source of funds available with lender companies from which the loan of Rs. 1.50 crores each would have been lended by the lender companies, as explained elsewhere. Bank statements are available at pages 120 of the paper book in respect of Glorious Holding Pvt Ltd, at page 134 is the bank statement of Kalol Kutir Pvt Ltd and

page 156 is the bank statement of New KMS Finance Pvt. Ltd. These bank statement clearly show that the transactions have been done through banking channel and no cash was found to be deposited prior to issue of cheques. Therefore, it cannot be said that the appellant company has purchased cheques by paying cash.

37. The factual matrix, as explained hereinabove, with respect to documentary evidences clearly establish that not only the assessee has discharged the onus cast upon it, but has also demonstrated the source of source. Moreover, as mentioned elsewhere, the entire loan amount has been repaid by the appellant company alongwith interest. It would not be out of place to mention here that interest paid on loan for the year under consideration has been allowed as expenditure by the Assessing Officer. Further, in so far as the addition in respect of loan from Kalol Kutir Pvt Ltd and New KMS Finance Ltd are concerned, the Assessing Officer has made additions simply on the basis of report of the DDIT, INV read with the statement of Shri Binod Agarwal.

38. Considering the facts of the case in totality, we are of the considered opinion that the appellant company has successfully discharged the onus cast upon it by virtue of provisions of section 68 of the Act alongwith the demonstrative evidences and hence, the additions sustained by the CIT(A) have to be deleted. We direct accordingly.

39. In the result, the appeal filed by the assessee in ITA No. 7166/DEL/2018 is allowed.

The order is pronounced in the open court on 03.06.2019.

Sd/-

**[K.N. CHARY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 03rd June, 2019.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

Date of dictation	
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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	
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