

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No. 1787/Hyd/2018
Assessment Year: 2013-14

Sri Sunil Kumar,
Hyderabad.

vs. Income-tax Officer,
Ward – 11(3), Hyderabad

PAN – AATPK 8161 F

Appellant

Respondent

Assessee by: Shri S. Rama Rao
Revenue by: Shri Dinesh Paduchuri

Date of hearing: 01/07/2019
Date of pronouncement: 03/07/2019

ORDER

PER S. RIFAUR RAHMAN, AM:

This appeal filed by the assessee is directed against the order of CIT(A) – 5, Hyderabad dated 05/06/2018 for AY 2013-14.

2. Brief facts of the case are, assessee, a proprietor of M/s Mahadeva Steels, filed its return of income for the AY 2013-14 on 19/09/2013 admitting an income of Rs.10,15,340/-. Subsequently, the case was selected for scrutiny, accordingly, notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, the assessee filed relevant information as called for.

2.1 During the assessment proceedings, the AO found that the assessee has received a loan of Rs. 20,00,000/- from M/s Srinivasa Traders. When details were called for, assessee submitted that it is a trade credit and the amount was returned

within the same year, hence, he did not maintain any details of the creditor. Based on the information available on the bank statement, AO collected information from City Union Bank and as per the information, the cheques were presented through AP Vardhaman Mahila cooperative Bank Ltd., Balanagar Branch. Accordingly, information was called from AP Vardhman Bank and the Bank informed that the account under consideration belongs to Shri Pavan Kumar Goel, Proprietor of M/s Srinivasa Traders. Subsequently, AO issued summons to Shri Pavan Kumar Goel on 10/03/2016 asking for relevant information about the transaction with the assessee. In response, Shri Pavan Kumar Goel filed a letter dated 11/03/2016 wherein he requested for time to furnish the above information. However, he has not furnished any information. Since there was no response from Shri Pavan Kumar Goel, notice u/s 142(1) was issued to the assessee asking for clarification and to file confirmation from Shri Pavan Kumar Goel. In response, assessee submitted as below:

“ With reference to above, we would like to submit that Assessee has received an advance of Rs. 20 Lakhs from M/s Srinivasa Traders through account payee cheque No.688870 for Rs 10 Lakhs on 10/05/2012 and through account payee cheque no.688871 for Rs 10 Lakhs on 16/05/2012 towards supply of steels and after few months the same account of Rs 20 Lakhs was returned back to M/ s Srinivas Traders through account payee cheque no.2350 on 04/08/2012 for Rs 10 Lakhs and through account payee cheque No.2411 on 06/09/2012 for Rs 10 Lakhs as the customer was not willing to purchase materials. Assessee is not able to produce the confirmation from M/s Srinivas Traders as the transactions were done two years back. In fact one gentleman personally came to give advance placing oral order. which is the normal system in steel trade. If my client clearly remember due to increase in market rate or his own buyer cancelled order, same gentleman came to cancel order and collected cheques as refund. Thus, no occasion arisen to note down any address of M/ s Srinivas Traders. However we are furnishing copies of Bank statements of the assessee in which both the

entries of receipts and payment of Rs.20 Lakhs were reflected.”

Since the assessee could not file confirmation from M/s Srinivasa Traders and not satisfied with the submissions of the assessee, AO made addition u/s 68 of the Act by treating the above loan amount of Rs. 20 lakhs as unexplained cash credit.

3. Aggrieved with the above order, the assessee preferred an appeal before the CIT(A).

4. Before the CIT(A), the assessee reiterated the submissions as made before the AO.

5. The CIT(A) remanded the matter to the AO and the AO in his remand report supported findings in the assessment order and submitted that assessee has not submitted any new evidence in support of his claim.

6. After considering the submissions of the assessee and the remand report of the AO as well as bank statement of M/s Srinivasa Traders, the CIT(A) confirmed the addition made by the AO by observing as under:

“The perusal of the bank account very clearly shows that the party deposits cash of an amount of Rs. 10,00,000/- to Rs. 20,00,000/- on a periodic basis. Even for the cheques issued to the appellant on the previous day that is 09.05.2012 and 15.05.2012 a sum of Rs. 10,00,000/- each was deposited in cash before the issue of cheques on 10.05.2012 and 16.05.2012 to the appellant. This party has an account of an accommodation entry provider, wherein there are several instances of such deposits and withdrawals leaving an everyday balance of a very small sum of money. Thus, it seems that the appellant needed funds which were received from this entry provider by giving him unaccounted cash and received a cheque in return.

It is further seen that the appellant made a cheque payment on 04.08.2012 which was transferred to Shiv Steel of an identical amount of Rs. 10,00,000/- and on 06.09.2012 the amount of Rs. 10,00,000/- given by the appellant was withdrawn in an equal amount of cash on 07.09.2012.

Mr Pavan Kumar Goel never appeared before the AD nor did the appellant produce the said party. The person Mr. Pavan Kumar Goel, Proprietor Srinivasa Traders is not into any active business but for giving entry to various parties. Most of the transactions are with Shiv Steels which also appears to be the party into an active business of providing accommodation entry. Though the appellant has merely given the identity of the credit received but no bonafides, genuineness and the creditworthiness of the transaction have been proved. Rather the bank statement of the party indicates that the person is an entry accommodation provider and nothing else. Therefore, this is a case of receiving accommodation entry of Rs. 10,00,000/- each cumulating to Rs. 20,00,000/- as on 16.05.2012 and therefore the sum has to be taxed u/s 68. There is no bearing on this peak unaccounted cash ix] s. 68 just because the unaccounted sum received in the form of cheques were returned back to the entry provider and received back as unaccounted cash on a subsequent date. This view is further supplemented by the fact that the appellant had a huge overdraft. as on 09.05.2012 with the bank which it had to liquidate and also the appellant was in need of funds for payment on 18.05.2012 and the bank position on 16.05.2012 was not sufficient to meet such payments. The appellant only reverse the entry on 04.08.2012 when it was not in need of funds and similarly the balance 10,00,0001 - was refunded in cheque to be received in unaccounted cash as the funds as on 06.09 .2012 were sufficient in the bank."

7. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

"1) The order of the learned Commissioner of Income-tax (Appeals) is erroneous both on facts and in law.

2) The learned Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs.20,00,000/- made

by the Assessing Officer by treating the advance of Rs.20,00,000/- as unexplained cash credit assessable u/s 68 of the I.T. Act.

3) Any other ground or grounds that may be urged at the time of hearing.”

8. Before us, Id. AR submitted that assessee has taken a trade advance from the Trader in steel. During the same year, the transaction could not be materialized and the advance was returned back since the transaction was cancelled and it is a regular practice in the steel business that some middleman will place the order on behalf of the customer and bring the advance. Once the transaction is completed, the delivery will be given to the customer. When it is cancelled the funds will be returned back to the customer through middleman. He submitted that since this transaction was cancelled/completed, the assessee could not keep the track of the supplier. He submitted that the same was explained to the AO and the AO himself verified the transaction and found that the advances were received from Shri Pavan Kumar Goel and the same was returned to Shri Pavan Kumar Goel. He submitted that this fact was established by the AO himself and the identity of the person has already established by the AO himself. With regard to sources, he submitted that at the time of receipt, the payer has enough money in the bank account and the assessee has received the payment through bank, therefore, sources were also established. With regard to genuineness, he submitted that it is a trade advance and the fund was already returned back to the trader from whom the funds were received. Since the transaction was not materialized, the assessee could not or able to produce the creditor or file any confirmation letter, as already two years were elapsed at the time assessment itself. The assessee was unable to comply with the direction of AO.

9. On the other hand, Id. DR submitted that the AO has brought on record the reasons for making the above addition. He submitted that it is the primary onus on the assessee to bring on record the evidences. In this case, assessee could not bring on record any evidence in support of this transaction in his books. It is the AO, who has verified and brought on record that the funds were received from Shri Pavan Kumar Goel. However, assessee was not able to submit any confirmation letter, even though, he has trade link and he should have known the customer. He submitted that when the assessee is not in a position to get confirmation letter, it clearly shows that the transaction is not genuine. Further, he submitted that CIT(A) has brought on record that it is only bogus entry and Shri Pavan Kumar Goel is the entry operator, who facilitated the assessee in this transaction and detailed reasons were brought on record by the CIT(A). In support of his submission that the initial onus is only on assessee, he relied on the following cases:

1. Dhanalaxmi Steel Re-rolling Mills Vs. CIT, [1997] 228 ITR 780 (AP)
2. K. Gopi Vs. DCIT, IT(SS)A No. 29/Hyd/2011, order dated 24/01/2013.

10. Considered the rival submissions and perused the material on record. No doubt, assessee has received advances through AP Vardhaman Bank from M/s Srinivasa Traders and subsequently assessee has returned the advances to such party. Since the assessee has not filed any confirmation letter, AO himself, verified this transaction in detail by issuing summons to the bank and it was found that the advances were received from M/s Srinivasa Traders. Since this transaction was made through banking channel, the trader i.e. the payer and recipient is established as far as the credit

in the books of the assessee is concerned. With regard to creditworthiness of the lender, it is established that the Trader Shri Pavan Kumar Goel is also in the business of steel and his bank account clearly shows that he has business transactions and enough funds were available in his bank account to make such payment.

10.1 With regard to genuineness of the transaction, we notice that CIT(A) has brought on record that Shri Pavan Kumar Goel's bank statement clearly indicates that he makes cash deposits and on the next day he issues cheques to the assessee on both the occasions. CIT(A) has not brought on record any evidence that this cash was through assessee only and, on other hand, he only presumes that the cash was paid through assessee since assessee's bank balances were not good at that point of time. Addition cannot be made merely based on the presumptions. In our view, the assessee has established (no doubt by AO on suspicion) that the funds were received from M/s Srinivasa Traders. Therefore, the source is already established. But, Id. CIT(A) found discrepancies in the books of account of the payer i.e. M/s Srinivasa Traders. This is nothing but assessee was asked to establish the source of source. As per judicial precedents, assessee cannot be asked to establish the source of sources. In our considered view, Accommodation entries were arranged or carried out by Shri Pavan Kumar Goel. It is Shri Pavan Kumar Goel, who is to be investigated and brought on record since there is no evidence on record to establish that the assessee has arranged cash and took cheque from Shri Pavan Kumar Goel. Therefore, in our considered view, assessee has taken loan or trade advance from Shri Pavan Kumar Goel and repaid the same subsequently. Unless and until there is a cogent material brought on record to establish that accommodation entry

services were actually utilized by the assessee himself, addition cannot be made u/s 68 merely based on the presumptions and conjectures. However, since the Id. CIT(A) has found that there is possibility that assessee may have indulged in such transaction. For the sake of justice, we remit this issue back to the file of AO to verify the transaction of M/s Srinivasa Traders and also whether that the cash transactions made by Mr. Pavan Kumar Goel belongs to the assessee itself. Then only, AO can make addition u/s 68, i.e. only with cogent material and not based on assumption. Accordingly, the case is remitted back to the AO to do the assessment de-novo.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on 3rd July, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 3rd July, 2019.

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Copy forwarded to:

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4. *Pr. CIT - 5, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*