

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

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
SH. KULDIP SINGH, JUDICIAL MEMBER**

ITA No.461/Del/2016
Assessment Year: 2011-12

DCIT Central Circle-18 New Delhi	Vs	Landcraft Developers Pvt. Ltd., 309, 3 rd Floor, Plot No.13, Parmesh Corporate Towers Community Centre, Karkardooma, Delhi-110092 PAN No.AABCL1391F
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Nidhi Srivastava, CIT DR
Respondent by	Sh. Raj Kumar, CA

Date of hearing:	15/07/2019
Date of Pronouncement:	10/10/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the revenue is directed against the order dated 26.11.2015 of the CIT(A)-29, New Delhi relating to A. Y. 2011-12.

2. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 30.09.2011 declaring total income of Rs.2,87,82,139/- (wrongly mentioned by the AO as 15.10.2010). A search and seizure operation u/s. 132 of the IT Act was carried out on 23.08.2012 in M/s. Land Craft group of cases. The case of the assessee was also covered u/s. 132 (1)

of the IT Act. In response to notice u/s. 153 A of the IT Act the assessee filed its return of income declaring total income of Rs.2,87,82,139/-.

3. During the course of assessment proceedings the Assessing Officer noted from the various details filed by the assessee that it has received an amount of Rs. 2 crores as unsecured loan from M/s. Raffle Mercantile P. Ltd. and Rs. 20 lacs as share application money from M/s. Purushottam Vinimay P. Ltd. To substantiate the above two amounts, the assessee filed confirmation and bank statement of M/s. Raffle Mercantile P. Ltd. and M/s. Purushottam Vinimay P. Ltd. and copy of their balancesheet alongwith relevant schedules showing the investment. The Assessing Officer asked the assessee to substantiate the identity, genuineness and credit worthiness of the above two parties and asked the assessee to explain as to why said amount should not be taxed u/s. 68 of the IT Act, 1961 being unexplained credit. The relevant portion of the reply of the assessee which has been reproduced by the Assessing Officer in the body of the assessment order reads as under :-

5.1 For Rs.2,00,00,000/- received from M/s. Raffle Mercantile Pvt. Ltd.

“That the following amount has been received in A. Y.2011-12

Rs.95 lacs on 28.08.2010

Rs.85 lacs on 30.08.2010

Rs.20 lacs on 30.08.2010

Rs.2.00 crores

Rs. 2.00 crore recd. In A. Y. 2011-12 have been returned back in A.Y.2014-15. Documents attached.

Certified Ledger Account of Raffle in the books of assessee for A. y.2014-15.

That the source of Rs.2 crore in A. Y.2011-12 in 3 cheques Rs.1.25 crore 55 lacs & 25 lacs being immediate proceeding credits in the bank St. of Raffle.

Rs.1.25 crores on 28.08.2010- source of this credit being receipt of repayment of loans given to Smt. Kala devi Educational Society in earlier years.

Rs.55 lacs & 25 lacs on 30.08.2010 – source of these credits being receipt of repayment of loans given to Shankar enterprises given in earlier years.”

6.1 For Rs. 20,00,000/- received from M/s Purshottam Vinimay Pvt Ltd. It is submitted by the assesee-

". ..That the money has been given vide following cheques
Rs. 15 Lacs vide chq. On 24.12.2010

Rs. 5 Lacs vide chq. on 28.12.2010

...First chq. of Rs. 15 Lacs on 24.12.2010 - the source of immediate preceeding credit in bank is 2 chqs. of Rs. 7 Lacs & 9 Lacs both credited on 24.12.2010.

The source of these 2 chqs. of Rs. 7 Lacs & 9 Lacs is Loan received from M/s Nine News Ltd. The documents already filed vide Para 22 are

- Bank Statement of PURUSHOTTAM VINIMA YPVT. LTD.
- Confirmation from M/s Nine News Ltd.

...2nd Chq. of Rs. 5 Lacs on 28.12.2010 - the source of immediate preceeding credit in bank is, the balance of Rs. 1 Lac left over out of receipts of 2 chqs of Rs. 7 Lacs & Rs. 9 Lacs as explained in Para 2 Above & Rs. 4 Lacs credited on 27.12.2010

The source of this Rs. 4 Lacs is Loan received from. M/s Nine News Ltd. The

documents already filed vide Para 22 are

- Bank Statement of PURUSHOTTAM VINLMA Y PVT. LTD

4. However, the Assessing Officer was not satisfied with explanation given by the assessee. So far as the amount received from M/s. Raffle Mercantile P. Ltd. is concerned he noted that the investment in Land Craft Developers Private Limited has been routed through a Sham Enterprises i.e. M/s. Raffle Mercantile P. Ltd. which is registered out of Kolkata. The credentials of the said company are found to be dubious as the money or the funds which were utilized by M/s. Raffle Mercantile P. Ltd. to invest first in Kala Devi Education Society and Shankar Enterprises and later on Land Craft Developers were arranged from bogus / fictitious entry providing companies which are based out of Kolkata. He noted that before transferring the funds to a company, the funds were arranged through one or two entities and then the same were transferred to the beneficiary on the same or the next two or three following dates leaving normal balance in the account which is a typical characteristic of entry providing company by creating a web of companies which are used only to transfer funds. On verification of the financials of M/s. Raffle Mercantile P. Ltd. he noted that the income and turnover of the company are very meager. Therefore, it is not possible on the part of M/s. Raffle Mercantile P. Ltd. to invest such huge amount in the assessee company. Further the amount which was received out of repayment of its loan given to Kala Devi Education Society and

Shankar Enterprises is beyond economic logic since the company has not earned a single paise as interest although such huge amounts were given as advance for a considerable time. Rejecting the various explanation given by the assessee the Assessing Officer held that the unsecured loan / share application money received by the assessee in its books of account is clearly the income of the assessee which has been introduced in the garb of share application money/ unsecured loan. He, therefore, invoking the provision of section 68 of the IT Act made addition of Rs. 2 crores to the total income of the assessee.

5. So far as the amount of Rs.20 lacs received as share application money from M/s. Purushottam Vinimay P. Ltd. is concerned here also the Assessing Officer observed from the balance sheet of the said company that it is not doing any business and there are no fixed assets. According to the Assessing Officer the various information supplied by the assessee do not inspire any confidence, so far as the credit worthiness of the share applicant is concerned and the genuineness of the transaction. Rejecting the various explanation given by the assessee, the Assessing officer made addition of Rs. 20 crores to the total income of the assessee u/s. 68 of the IT Act. Thus, the Assessing Officer determined the total income at Rs.5,07,82,139/-.

6. In appeal the Ld. CIT(A) deleted both the additions by observing as under :-

11.2 I have carefully gone through the submissions of the appellant and have considered the facts and evidences on record. As per assessment order addition has been made as the genuineness of transaction and creditworthiness/capacity to invest by the investor is found suspicious and credit in the account of investor just before giving money has raised doubt. There was no substantial turnover or profits in the hands of both the lenders. It has been stated in the assessment order that:-

"the share subscriber do not have its own profit making apparatus and was not involved in any business activity. It merely rotated money, which was coming through bank accounts. Further, the beneficiary i.e. the assessee has not given any share dividend or interest to the said subscriber. The profit motive in this case is entirely absent. Any person who would invest money or give loan would certainly seek return or income or consideration.

6.7 Since the information by the assessee does not inspire any confidence in the creditworthiness of the alleged share applicant which in turn casts serious doubt over the genuineness of the transactions of share capital."

11.3 As mentioned earlier, the appellant has received loan of Rs 2 crores from M/s Raffle Mercantile P. Ltd. and Rs.20 lacs as share application money from M/s Purushottam Vinimay P. Ltd. which is claimed to have been repaid subsequently.

11.4 On perusal of various details submitted, it is observed that in the case of M/s Raffle Mercantile P. Ltd., Rs.2 crores has been advanced by it is out of the funds received from Kala Devi Educational Society. The appellant has provided the confirmation

of account from Kala Devi Educational Society, 17/5, Rolland Tower, The Mall, Kanpur for 2 years. The payments have been made to Raffle Mercantile P. Ltd. through cheques and source of the funds in the hands of Kala Devi Educational Society is also duly explained as shown in its bank account details. Further funds received by Raffle Mercantile P. Ltd. is through M/s Shankar Enterprises, (Rs.80 lacs) for which the bank account has been provided alongwith the copy of return filed for the AY 2011-12 and confirmation from the party.

11.5 In the case of M/s Purushottam Vinimay P. Ltd., it is observed that Rs.7 lacs and Rs.9 lacs has been received by it as loan on 24.12.2010 from M/s Nine News Ltd. and Rs.4 lacs has also been received as loan on 28.12.10 from M/s Nine News Ltd. The confirmation and ITR acknowledgment of M/s Nine News Ltd. is also submitted. In fact during assessment proceedings the appellant has produced the confirmation letter from M/s Purushottam Vinimay P. Ltd., providing further confirmation from M/s Nine New Ltd. and its bank account. However, nothing contrary has been brought on record by the AO to substantiate that these are sham transactions and not genuine. The AO was of the view that the creditworthiness and genuineness of the transaction has not been proved by the appellant.

11.6 Looking to the documents/details provided it emerges that the persons providing loans and share application money has duly confirmed the same. The payments have been received through cheques for which the source have been duly explained. In fact the source of the source is also explained. It is true that the lenders may not have substantial tran sact inns-m -terms of-

revenue-receipts.-or profits but it is duly established that the funds have been received in the form of deposits/loans or repayments thereof in the case of source persons. Thus the lender entities have sufficient balances in the shape of investment/loans/advances to provide the same to the appellant, which has also not disputed by the AO. All the transactions are through banking channels and nowhere it is found that funds has been deposited in cash by the lending entities. Therefore, the doubt raised by the AO does not get substantiated.

11.7 The onus cast upon the appellant under section 68 of the Act with respect to the identity, creditworthiness and genuineness of transaction has been explained by the Hon'ble Supreme Court in CIT vs. Lovely Exports P. Ltd. 216 CTR 295. In the present case, not only the source but the source of source have also confirmed to have provided loans alongwith their credence such as PAN, ROI etc. The investigation made by investigation wing has also not come out with any adverse findings. Therefore, the onus on the appellant has been duly discharged to prove the creditworthiness and genuineness of transaction. Support is also drawn from the decision of Hon'ble Delhi High Court in the case of CIT vs. Anshika Consultants P. Ltd. in ITA No.467/2014 dated 16.04.2015. The genuineness and the creditworthiness is duly found explained and hence the addition made under section 68 is uncalled for, due to the discussions made in foregoing paragraphs.

11.8 Further, a search had been conducted at the premises of the appellant and no incriminating documents or other assets were found or seized to indicate that the appellant had in fact routed its own money through these persons. The peculiar fact of

this case may have caused suspicion in the mind of AO but despite having conducting the search on the premises of the appellant, no evidence or other material could be gathered to hold that the appellant had routed its own money.

11.9 This is also noted that the representative of the lending entities were presented before the AO. It is also observed that the loan amount was subsequently repaid.

11.10 It has been stated by the appellant that in paragraph 5.4 and 6.6 of the assessment order, AO has mentioned about the "unqualified admission of the assessee company" regarding the addition, which is incorrect. No such admission has been made by anybody on behalf of the company and they are vigorously contesting the addition.

11.11 The AO in his report has stated that this expression in the assessment order is with respect to the introduction of share capital of Rs.2.20 crores, not found satisfactory by the AO and used in that context which is otherwise not connected with any type of admission by the appellant. Therefore, the said expression of AO in the assessment order is not considered as any such admission of undisclosed income by the appellant.

11.12 In view of the totality of the facts and circumstances as well as judicial precedents as discussed, the addition of Rs.2.20 crores made by the AO under section 68 is deleted.

7. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal by raising the following grounds :-

- 1. That on the facts and in the circumstances of the case, the Ld.*

CIT(A) has erred in law and on facts in deleting the addition of Rs. 2,00,00,000/- u/s 68, on account of unexplained unsecured loan from M/s Raffle Mercantile Pvt. Ltd., by holding that identity, genuineness and creditworthiness has been established without appreciating the fact that M/s Raffle Mercantile Pvt. Ltd. is a paper entry providing company with no real business and neither the capacity to advance loan nor the genuineness of the above loan transaction has been established.

2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the additions of Rs. 20,00,000/- u/s 68, on account of unexplained share application money from M/s Purshottam Vinimay Pvt. Ltd. by holding that identity, genuineness and creditworthiness has been established without appreciating that fact that M/s Purushottam Vinimay Pvt. Ltd. is a paper entry providing company with no real business and neither the capacity to provide share application money nor the genuineness of the above transaction has been established.*

3. *That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*

4. *That the grounds of appeal are without prejudice to each other.*

5. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.*

8. The Ld. DR strongly challenged the order of the CIT(A) in deleting the additions made by the Assessing Officer. She submitted that both the companies on their own do not have any assets nor have shown any business. Therefore, without doing any business and not having any assets of their own it is highly improbable that these companies have the capacity to advance such huge funds. Although the Ld. CIT(A) has called for remand report, however, there is no finding by the CIT(A) as to how and why he has admitted the additional evidences in violation of provisions of section 46 A. Further this company is a Kolkata based company and funds have been transferred to the assessee within a few days of the receipt of the same from other companies/concerns which clearly prove that these are all entry providing companies. Therefore, it is nothing but assessee's own money which has been introduced by it in the garb of unsecured loan or share application money.

9. Further the address of Kaladevi Educational Society and M/s. Raffle Mercantile Private Limited are same. Therefore, this substantial evidences have to be considered and merely by relying on the excellent power work done by the assessee the addition cannot be deleted. Relying on various decision including the decision of Hon'ble Delhi High Court in the case of NDR Promoters vide ITA No.49/2018 order dated 17.01.2019 and the decision of Hon'ble Supreme court in the case of NRA Ispat vide ITA No.1731/Del/2016 order dated 30.04.2019, she submitted that the order of Ld. CIT(A) be set aside and the

addition made by the AO be upheld.

10. The Ld. AR for the assessee on the other hand heavily relied on the order of the CIT(A). So far as the admission of additional evidences by the CIT(A) is concerned he submitted that the Assessing Officer has not objected to the admission of additional evidences and no such ground has been taken by the revenue on this issue. Therefore, the Ld. CIT (DR) is not correct in challenging the admission of the additional evidences by the CIT(A). So far as the merit of the case is concerned he submitted that the assessee has not only proved the source but also proved the source of the source. Further the amount received as unsecured loan has been returned to the lenders in the subsequent years.

11. He submitted that in this case notice u/s. 133 (6) were issued to both the parties who had replied to the same. Further enquiry was conducted u/s. 131 /133 (6) directly by the Investigation Wing Delhi and Investigation Wing at Kanpur. During the course of assessment proceedings the Assessing Officer had also issued notice u/s. 133 (6) to M/s. Raffle Mercantile Private Limited and they have also furnished the reply. There is no negligence anywhere either from the side of the assessee or from any of the lenders/ Investors. So far as the inference by the Assessing Officer that the company are Kolkata based company and they do not have any income is concerned, the Ld. Counsel for the assessee submitted that the company has shifted from Kolkata to Kanpur and is no longer a Kolkata

based company. Further income cannot be a criteria for giving loan or investing in share capital of a company as long as the company possesses sufficient funds.

12. Referring to page 1 to 16 of the paper book the Ld. Counsel for the assessee drew the attention of the bench to the various documents such as copy of account of Purushotam Vinnimay Private Limited in the books of Land Craft, copy of the bank statement of the above company, their income tax acknowledgement, confirmation from M/s. Nine News Limited who had given unsecured loan to M/s. Purushotam Vinnimay P. Ltd. and copy of account of Purushotam Vinnimay Private Limited in the books of the company. He accordingly submitted that the amount received from Purushotam Vinnimay Private Limited towards share application money cannot be added u/s. 68 of the IT Act.

13. So far as the amount of loan / advance received from Raffle Mercantile Private Limited is concerned the Ld. Counsel for the assessee referring to page 1 to 49 of the paper book drew the attention of the bench to the following documents :

1. *Copy of letter dated 26.03.2015 alongwith explanation*
2. *Letter to AO dated 20.03.2015 by Raffle confirming the transaction alongwith source thereof.*
3. *Share certificate issued by assessee to Raffle*
4. *Audited Balance Sheet of A.Y.2011-12*
5. *Schedule -4 of Audited Balance Sheet of A.Y.2011-12*
6. *Bank Statement of Raffle of PNB Bank for the period*

01.04.2010 to 05.05.2011.

7. *Confirmed copy of account of Raffle Mercantile Pvt. Ltd. for A. Y.2011-12 in books of Assessee*
8. *Summons u/s. 131 dated 27.05.2013 issued by DDIT Kanpur*
9. *Summons u/. 131 dated 21.01.2013 issued by DDIT Delhi*
10. *Reply dated 29.01.2013 in response to summons u/. 131 dated 21.01.2013 to DDIT Delhi*
11. *Abstract of order sheet of AO.*
12. *Certified ledger a/c of Raffle in the books of assessee for A.Y.2014-15*
13. *Affidavit of Raghvinder Garg (directed to Raffle)*
14. *Confirmed ledger a/c. of Raffle in the books of Smt. Kala devi Educational Society of A.Y.2009-10*
15. *Confirmed ledger a/c. of Raffle in the books of Smt. Kala devi Educational Society of A.Y.2010-11*
16. *Bank statement of Smt. Kala Devi Educational Society showing receipt of Rs. 75 lacs.*
17. *Confirmed ledger a/c. of Raffle in the books of Smt. Kala devi Educational Society of A.Y.2011-12*
18. *Bank Statement of Kaladevi showing payment of Rs.1.25 crores to Raffle for A.Y2011-12*
19. *Confirmed ledger a/c of Raffle in the books of Shanker of A. Y.2011-12*
20. *Bank statement of Shanker showing payment of Rs. 80 lacs (Rs.55 + Rs. 25) to Raffle.*
21. *ITR acknowledgment of Shanker Enterprises for A.Y.2011-*

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22. *Sub. To CIT(A) dated 24.08.2015*

23. *RR dated 16.10.2015*

24. *Sub. to CIT(A) dated 05.11.2015 (Rejoinder to RR)*

14. He accordingly submitted that when the assessee has not only proved the source but also the source of the source and the amount has been refunded to M/s. Raffle Mercantile during the assessment year 2014-15, therefore, addition of the same u/s. 68 of the IT Act is not correct.

15. Relying on various decisions he submitted that when the assessee has refunded the loan obtained by it in subsequent year addition of the same in the hands of the assessee u/s. 68 of the IT Act is not proper. Without prejudice to the above, the Ld. Counsel for the assessee submitted that it is not the onus of the assessee to prove the source of the source. Referring to the proviso to section 68 of the IT Act which has been added w.e.f. 01.04.2013 which provides for the responsibility of the assessee to prove the source of the source also, he submitted that this proviso is applicable only w.e.f 01.04.2013. Insertion of this proviso w.e.f. 01.04.2013 proved that the source of the source was not required to be proved in assessment year 2011-12. Therefore, no adverse inference can be drawn against the assessee. He accordingly submitted that the addition made by the Assessing Officer has rightly been deleted by the CIT(A) and, therefore, the order of the CIT(A) has to be upheld.

16. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case has made addition of Rs. 2 crores being the amount received from M/s. Raffle Mercantile Private Limited as unsecured loan and another Rs. 20 lacs being the amount of share application money from M/s. Purushotam Vinnimay P. Ltd. While doing so the Assessing Officer noted that M/s. Raffle Mercantile Private Limited has invested in Land Craft Developers P. Ltd. from money obtained from Kaladevi Education Society and Shankar Enterprises through sham transactions. Further the assessee failed to substantiate the credit worthiness of the said company. So far as the share application money received from M/s. Purushotam Vinnimay P. Ltd. is concerned, the AO noted that the assessee failed to discharge the onus of establishing beyond doubt, the genuineness and the creditworthiness of M/s. Purushotam Vinnimay P. Ltd. We find the Ld. CIT(A) deleted both the additions, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Dr that the Ld. CIT(A) without considering the circumstantial evidences has deleted the addition which is not justified in the facts of the case.

17. It is the submission of the Ld. Counsel for the assessee that assessee has not only proved the source of the source but has also proved all the three ingredients as per the provision of

section 68 of the IT Act i.e. the identity and creditworthiness of the lenders/ share applicants and the genuineness of the transactions. It is also his submission that merely because the companies have not earned enough income during the year the same cannot be a ground to disbelieve the creditworthiness of the above two companies especially when they have sufficient funds at their disposal to invest in the assessee company.

18. In the light of the above argument we have to decide as to whether the Ld. CIT(A) was justified in deleting both the additions. So far as the amount of share application money received from M/s. Purushotam Vinnimay P. Ltd. is concerned we find neither the assessee nor the revenue authorities have the benefit of the decision of Hon'ble Supreme Court in the case of NRA Ispat (supra) and decision of the Hon'ble Delhi High Court in the case of NDR Promoters (supra) which specifically deal with the issue of share application money received from the companies which do not show sufficient income in the return of income filed by them. We, therefore, deem it proper to restore the issue of share application money received from M/s. Purushotam Vinnimay P. Ltd. to the file of the AO for fresh adjudication of the issue in the light of the decisions cited (supra). The AO shall decide the issue in accordance with law after giving a reasonable opportunity of being heard to the assessee.

19. So far as the amount of Rs.2 crores received from M/s. Raffle Mercantile Private Limited is concerned, we find from the various details filed by the assessee as per paper book that the money was given by Raffle Mercantile Private Limited towards

share application money whereas the addition has been made on account of unsecured loan. Further as stated by the Ld. Counsel for the assessee the amount has been refunded in the assessment year 2014-15. The facts are not coming out clearly from the submission made by the assessee vis-a-vis the order of the AO and the CIT(A) as to whether the same is towards share application money or unsecured loan. A perusal of the page-18 of the paper book shows that Land Craft Developers P. Ltd. has issued 14,80,000/- equity share of Rs. 10/- each. Therefore, if the shares have been allotted, how this could be refunded in A. Y. 2014-15 needs verification. If the same is unsecured loan and if the same has been refunded to the lender during A.Y.2014-15 i.e. much prior the completion of the assessment, the same also needs verification at the level of the AO and in that case it cannot be added in the light of various decisions cited by the Ld. AR. The decisions of the Hon'ble Supreme Court in the case of NRA Ispat (supra) and NDR Promoters (supra) cited in the preceding paragraphs will also be equally applicable to the facts of the present issue. Considering the totality of the facts of the present case and in the interest of justice we deem it proper to restore the issue of unsecured loan received from Raffle Mercantile Private Limited to the file of the AO for deciding the issue afresh and as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the revenue are accordingly allowed for statistical purpose.

20. In the result, the appeal filed by the revenue is allowed for

statistical purpose.

Order pronounced in the open court on 10.10.2019.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:-10 .10.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating 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	
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	10.10.2019
Date on which the file goes to the Bench Clerk	11.10.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	