

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' SMC Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA No.85/Hyd/2019 & SA No.241/Hyd/2019		
Assessment Year: 2014-15		
M/s. Baron Metals Ltd, Hyderabad PAN:AACCB8752B (Appellant)	Vs.	Income Tax Officer Ward 1(3) Hyderabad (Respondent)
Assessee by:	Sri P. Murali Mohana Rao	
Revenue by:	Sri A.S. Sant, DR	
Date of hearing:	04/11/2019	
Date of pronouncement:	11/11/2019	

ORDER

This is assessee's appeal for the A.Y 2014-15 against the order of the CIT (A)-1, Hyderabad, dated 23.08.2018. The only issue involved in this appeal is the addition of Rs.5.00 lakhs made by the AO towards unexplained investment by way of cash deposits into the Bank A/c of the assessee.

2. Brief facts of the case are that the assessee company, engaged in the business of manufacturing of basic iron and steel products, filed its return of income for the A.Y 2014-15 on 22.11.2014 admitting an income of Rs.20,000/-. During the assessment proceedings u/s 143(3) of the Act, the AO observed from the Bank statement of the assessee that, cash of Rs.5.00 lakhs was deposited on 7.4.2013. When the assessee was asked to explain the source of such cash deposit, the assessee submitted that it was deposited by M/s. Kumar's Metallurgical

Corporation Ltd to obtain Demand Draft in favour of the CTO for the same value on the same day. The AO observed from the Bank statement that 5 Demand Drafts of Rs.1.00 lakhs each got cancelled on 13.4.2013 and also that a cheque was issued in favour of Mrs. Ishita Aggarwal for Rs.5.00 lakhs which was cleared on 13.04.2013. Taking note of the fact that though the cash was deposited by M/s. Kumar's Metallurgical Corporation Ltd for taking the Demand Draft, the AO has noted that the DD was not returned to them but instead has been transferred to Mrs. Ishita Agarwal on the very same day on which the DD was cancelled. The AO, therefore, asked the assessee to adduce evidence in support of the above claim of cash allegedly given by M/s. Kumar's Metallurgical Corporation Ltd. Since the assessee could not furnish any evidence and did not appear before the AO, thereafter the AO treated the sum of Rs.5.00 lakhs as unexplained cash deposit and brought it to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us by raising the following grounds of appeal:

"1. The Ld. Commissioner. of Income Tax (Appeals) [hereinafter referred to as "the Ld. CIT(A)] erred both on facts and in law in dismissing the appeal of the appellant against the order u/s 143(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], dt. 28.12.2016 passed by the ITO, Ward-1(3), Hyderabad [hereinafter referred to as the "Assessing Officer/ AO"]

2. The Ld. CIT (A) erred in dismissing the appeal of the appellant on the issue of addition of Rs. 5,00,000 made by the AO towards unexplained investment by way of cash deposit in bank account without appreciating the facts of the case and merely stating that the confirmation submitted Rs. 1,50,000 by the appellant is not correct and

creditworthiness of M/s Kumar's Metallurgical Corporation Limited was not proved.

3. The Ld. CIT (A) erred in dismissing the appeal of the appellant on the issue of addition made by the AO towards unexplained investment by way of cash deposit in bank account, without affording reasonable opportunity of being heard.

4. The Ld. CIT(A) ought to have appreciated the fact that the AO erred in making an addition towards unexplained investment without affording reasonable opportunity of being heard to the appellant.

5. The Ld. CIT (A) ought to have appreciated the information and the evidence submitted by the appellant and allowed the appeal.

6. The Ld. CIT (A) ought to have appreciated the fact that the AO erred in making addition towards unexplained investment, without making any independent enquiries of his own and gather evidence in support of his contentions.

7. The Ld. CIT (A) erred in upholding the addition made by the AO towards unexplained investment, by rejecting the information and the evidence furnished by the appellant without even conducting any enquiries to prove them to be bogus.

8. The Ld. CIT (A) ought to have appreciated the fact that the cash deposited does not belong to the appellant and the same was deposited by M/ s. Kumar Metallurgical Corporation Limited for the purpose of obtaining Demand Drafts in favour of the Commercial Tax officer since there was problem with its Bank Account and accordingly the DDs were obtained by the appellant.

9. The Ld. CIT (A) ought to have appreciated the fact that the appellant proved the identity and creditworthiness of the person who had deposited cash into the Bank account of the appellant and also proved genuineness of the transaction along with supporting documents.

10. The Ld. CIT (A) ought to have appreciated the fact that the A.O made addition towards unexplained investment, without any material proof on hand in support of his contentions and the Ld. CIT (A) further erred in upholding such addition.

11. The appellant may add or alter or amend or modify or substitute or delete and or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal”.

4. The learned Counsel for the assessee has submitted before us the confirmation from M/s Kumar's Metallurgical Corporation Limited for the deposit of the sum of Rs.5.00 lakhs and also the I.T. Returns of the said company. He also submitted that it is not disputed that the assessee had taken 5 DDs in favour of the CTO on behalf of M/s Kumar's Metallurgical Corporation Limited and on cancellation of the DD's on the direction of M/s Kumar's Metallurgical Corporation Limited only, the assessee has transferred the amount by way of cheque to Mrs. Ishita Agarwal. He submitted that neither the AO nor the CIT (A) have considered this contention of the assessee and have summarily rejected the assessee's claim. He, therefore, prayed for setting aside of the assessment order.

5. The learned DR, however, supported the orders of the authorities below and submitted that the assessee has only made a claim without any substantial evidence and therefore, the assessment order is to be upheld.

6. Having regard to the rival contentions and the material on record, I am of the opinion that the assessee has all along been taking a stand that the sum of Rs.5.00 lakhs is deposited by M/s Kumar's Metallurgical Corporation Limited for taking out DDs as they are facing problem of cash liquidity and also in dealing with their Bank A/c. This fact has not been disputed by any of the authorities below. However, the assessee has transferred the said sum to Mrs. Ishita Agarwal instead of returning it to M/s Kumar's Metallurgical Corporation Limited, which has created doubts in the minds of the AO and the CIT (A) about the genuineness of the assessee's claim. The assessee has also not filed any evidence in

support of this contention. Therefore, I am inclined to remand the issue to the file of the AO for the limited purpose of verifying the claim of the assessee that there existed any liability of the assessee to the extent of Rs.5.00 lakhs and that the transfer of the sum of Rs.5.00 lakhs to Mrs. Ishita Agarwal was at the request of M/s Kumar's Metallurgical Corporation Limited, and if it is found to be correct, then no addition towards the unexplained cash credit of Rs.5.00 lakhs shall be made.

7. In the result, assessee's appeal is allowed for statistical purposes.

8. Since the appeal itself has been heard and is disposed of by way of an order today, the Stay Application filed by the assessee has become infructuous and is accordingly dismissed.

Order pronounced in the Open Court on 11th November, 2019.

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, dated 11th November, 2019.

Vinodan/sps

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- 3 CIT (A)-1 Hyderabad
- 4 Pr. CIT – 1 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order