

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI V.DURGA RAO, JUDICIAL MEMBER**

I.T.A. No. 436/HYD/2014

Assessment Year: 2006-07

Badrinath Steels Private Limited,
HYDERABAD
[PAN: AACCB9596P]

Vs

Income Tax Officer,
Ward-1(1),
HYDERABAD

(Appellant)

(Respondent)

For Assessee : Shri Sunil Kumar Jain, AR
For Revenue : Shri Nilanjan Dey, DR

Date of Hearing : 28-11-2019
Date of Pronouncement : 04-12-2019

ORDER

PER D.KARUNAKARA RAO, A.M. :

This appeal of assessee is directed against the order of the Commissioner of Income Tax (Appeals)-II, Hyderabad, dated 02-12-2013, for the AY.2006-07.

2. The Ground(s) of Appeal raised by assessee are extracted as under:

"1. From the facts and circumstances, the order of the learned Assessing Officer was wholly bad, illegal and unjustified, The learned CIT(A)-II, Hyderabad has made addition of Rs.41,52,000/- treating the Share Application Money as unexplained cash credit u/s.68 of the Income Tax Act, 1961.

a) *The CIT(Appeals) Hyderabad has wrongly upheld the addition made by the AO i.e., treating the Share Application Money as unexplained cash credit amounting to Rs.41,52,000/-”.*

3. Briefly stated relevant facts include that the assessee-company, engaged in the business of steel trading, filed its return of income for the AY.2006-07 on 06-11-2001 declaring NIL income. In the scrutiny assessment, the Assessing Officer (AO) made an addition of Rs.68,52,000/- u/s.68 of the Income Tax Act [Act] on account of share application money, without premium. During the course of scrutiny proceedings, the AO noted that there is a share application money of Rs.80,52,000/-. The following companies/persons subscribed to the share application money for shares of Rs.1,000/- face value with a premium of Rs.9,000/-. The details are as under:

S.No	Name (M/s. S/Shri/Smt)	Rs.
1.	Kasturi Reddy	8,00,000
2.	P. Sambasiva Rao	27,02,000
3.	Buniyad Chemicals Ltd.,	20,00,000
4.	Talent Infoway Ltd.,	20,00,000
5.	Durbal Corp.	1,50,000
6.	Pawan Kumar Sharma	2,00,000
7.	Ratan Sharma	2,00,000

4. During the assessment proceedings, the AO asked the assessee to furnish the background facts of each subscriber and the transactional details of the share capital introduced by each of them. There is a reference to Mr.Mukesh Choksi, Director of M/s.Mahasagar Securities Private Limited and other companies, Mumbai and various other companies. M/s.Buniyad Chemicals Ltd., & Talent Infoway Ltd., are part of his group. These companies subscribed share capital to the part of eight companies/persons,

listed above. There is a discussion about each of the subscriber and their capacity, the nature of shell companies, accommodation entries, investment etc. Another subscriber by name Shri Pawan Kumar Sharma was also summoned and his statement was recorded. After completing the assessment, the AO summed up his findings and the same are extracted as under:

“6.0 The objections raised, by the assessee have been considered but are not accepted in the light of the findings as discussed below:

1. The Bank account extracts of the two companies show the following entries.

A/c No.000405022074 of Talent Infoway Ltd. in ICICI Bank '

<i>Sl</i>	<i>Date</i>	<i>Particulars</i>	<i>Withdrawals Rs.</i>	<i>Deposits Rs.</i>	<i>Balance Rs.</i>
<i>1</i>	<i>15-09-2005</i>	<i>Buniyad</i>	<i>1000000.00</i>	<i>--</i>	<i>13494.00</i>
<i>2</i>	<i>19-09-2005</i>	<i>By Cash Bahety</i>	<i>--</i>	<i>500000.00</i>	<i>513494.00</i>
<i>3</i>	<i>19-09-2005</i>	<i>Trfr from DK Brothers</i>	<i>--</i>	<i>500000.00</i>	<i>1013494.00</i>
<i>4</i>	<i>20-09-2005</i>	<i>Badrinath Steels Pvt. Ltd</i>	<i>1000000.00</i>	<i>--</i>	<i>13494.00</i>

A/c No.000405022074 of Talent Infoway Ltd. in ICICI Bank

<i>Sl</i>	<i>Date</i>	<i>Particulars</i>	<i>Withdrawals Rs.</i>	<i>Deposits Rs.</i>	<i>Balance Rs.</i>
<i>1</i>	<i>11-10-2005</i>	<i>Inw.Rtn chgs</i>	<i>276.00</i>	<i>--</i>	<i>13,218.00</i>
<i>2</i>	<i>15-10-2005</i>	<i>Trfr from Bahety</i>	<i>--</i>	<i>1000000.00</i>	<i>10013218.00</i>
<i>3</i>	<i>15-10-2005</i>	<i>Badrinath Steels Pvt. Ltd.</i>	<i>1000000.00</i>	<i>--</i>	<i>13218.00</i>

The Bank accounts of Bahety Enterprises (6279050006598) and D K Brothers (00070501124) in ICICI Bank, Kolkata were obtained. It was seen from the account of Bahety that there was a balance of Rs.1446.00 on 14.10.2005 followed by cash deposit of Rs.10,05,000/- on 15.10.2005 which was transferred to Talent Infoway's a/ c on the same date. In the account of D K Brothers, there are cash deposits totaling Rs. 23 lakhs

(approx) on 16.10.2005 and 17.10.2005 out of which cheques were issued to various parties including Talent Infoway on 19.09.2005.

A/c No. 000405022108 of Buniyad Chemicals Ltd. in ICICI Bank

Sl	Date	Particulars	Withdrawals Rs.	Deposits Rs.	Balance Rs.
1	11-10-2005	Inw. Rtn chgs	276.00		10339.50
2	14-10-2005	Trfr from 627905006598 (Bahety Enterprises)	--	900000.00	910339.50
3	14-10-2005	Trfr from Manasi exim Pvt. Ltd.	276.00	100000.00	1010663.50
4	14-10-2005	Inw. Rtn chgs	276.00	--	1010063.50
5	17-10-2005	Badrinath Steels Pvt. Ltd.	1000000.00	--	10063.50

The Bank account of Bahety showed that there was a deposit of cash of Rs.9,00,000/- on 14.10.2005 which was transferred by cheque to Buniyad's a/c. Similarly, the bank account of Manasi Exim (627905006805) in ICICI Bank, Kolakata showed that there was a credit of Rs.25,40,000/- with the narration "Trfr from :various" out of which cheques were issued to Buniyad and one other party.

The striking similarity in the transactions in the Bank accounts of the above entities which are the immediate and next to immediate source of the share application money is not a coincidence. This appears to be a well organized activity of providing accommodation entries to bring unaccounted monies into the system in a circuitous way to escape the tax radar.

2. Mr. Mukesh Choksi, promoter and Director of Talent Infoway Ltd. and Buniyad Chemicals Ltd. had confessed that these two companies were indulging in providing accommodation entries. Though the name of the assessee is not appearing in the statement recorded from the Director, it is part of the evidence found during the search operation in that case.

3. As in the other cases, the source for the investments made by the 2 companies are funds deposited in their accounts immediately prior to the investment. The funds were deposited by entities like Bahety Enterprises, D K Brothers, Manasi Exim Pvt. Ltd. etc. which were not existing at their known addresses and whose genuineness is under question as per enquiries conducted by way of personal visit by Inspector to their premises in Kolkata. Notices issued u/s 133 (6) of the Act to these parties seeking information regarding transactions with Talent Infoway Ltd. and Buniyad Chemicals Ltd. came back unserved.

4. As per information available on internet, Buniyad Chemicals Ltd. is in liquidation w.e.f 09.07.1999.

5. Premium of Rs.9,000/- fixed for the shares is without any reasonable basis and was obviously aimed at facilitating the introduction of large amount of unaccounted monies in the names of a handful of persons.

6. The flow of funds from dubious entities such as Bahety Enterprises, D K Brothers, Manasi Exim Pvt. Ltd. into companies like Talent Infoway Ltd. and Buniyad Chemicals Ltd. which were then introduced as share application money into the assessee company clearly proves that unaccounted monies of the assessee have been routed in a circuitous manner to escape tax scrutiny and introduced into the books in the guise of share application money. That the name, PAN and address of the investors was furnished or that the money was received through account payee cheques is immaterial in the light of the overwhelming evidence as discussed above”.

4.1. Eventually, the AO made addition of Rs.68,52,000/- out of the total sum of Rs.80,52,000/-. The contents of para 6 are relevant and the same reads as under:

“6.0 For reasons stated above, the share application money invested by Pawan Kumar Sharma (Rs.4,50,000/-), Ratan Sharma (Rs.4,50,000/-), Anil Kumar Sharma (Rs.2,52,000/-), P. Sambasiva Rao (Rs.27,00,000/-), Talent Infoway Ltd. (Rs.20,00,000/-) and Buniyad Chemicals Ltd., (Rs.10,00,000/-) totaling Rs.68,52,000/- is treated as unexplained cash credits u/s.68 in the hands of the assessee and is assessed accordingly”.

5. Aggrieved with the above findings of AO, the assessee preferred an appeal before the CIT(A).

6. In the initial paras of the CIT(A)’s order, there was a discussion of the companies of Shri Mukesh Choksi, search proceedings and the outcome of the said search proceedings. There was also a discussion about fraudulent transaction among the said accommodation entries, nature of shell company of Shri Mukesh Choksi. The CIT(A) extracted the statement of Shri Mukesh Choksi

in his order. In para 3.2, there was a discussion about the re-opening of the assessment and the present assessee to his transactional nexus with the company of Shri Choksi. The CIT(A) analysed each of the subscribers, contributed the said sum of Rs.68,52,000/- in para 4 onwards. At the end of the proceedings, the CIT(A) allowed assessee's claim so far as the subscription by Shri Sambasiva Rao is concerned. Rest of the share application subscriptions in favour of M/s.Talent Infoway Ltd., M/s.Buniyad Chemicals, Shri Pawan Kumar Sharma, Shri Ratan Kumar Sharma and Shri Anil Kumar Sharma, added by the AO, were confirmed by the CIT(A) in her detailed order. Thus, the CIT(A) partly allowed the appeal of assessee, confirming the addition of Rs.41,52,000/- against the addition of Rs.68,52,000/-.

7. Aggrieved with the above order of CIT(A), the assessee is in appeal before the Tribunal, raising the Grounds mentioned above.

8. At the outset, Ld.Counsel for the assessee submitted that for adjudication, there are total of six creditors, who contributed the share capital to the company and the same is as under:

S.No	Name (M/s. S/Shri/Smt)	Rs.
1.	P. Sambasiva Rao	27,00,000
2.	Talent Infoway Ltd.,	20,00,000
3.	Buniyad	10,00,000
4.	Pavan Kumar Sharma	4,50,000
5.	Ratan Kumar Sharma	4,50,000
6.	Anil Kumar Sharma	2,52,000
	Total:	68,52,000

Out of the that, the CIT(A) already granted relief in respect of investment by Shri Sambasiva Rao to the extent of Rs.27 Lakhs. The Revenue is not in appeal on this issue. To that extent, the investment of share application money introduced by Shri Sambasiva Rao is now a settled issue. That leaves five other subscribers of share capital for adjudication before us. Subscriber-wise adjudication is taken up in the proceeding paragraphs of the order.

8.1. Referring to investment by two companied connected to Shri Mukesh Choksi (i.e., M/s.Buniyad Chemicals Ltd., and M/s.Talent Infoway Ltd.), Ld.Counsel for the assessee submitted that there took place various developments subsequent to the events of search action u/s.132 of the Act and the impugned statement of Shri Choksi. Further in connection with Shri Choksi and the said two companies, Ld.Counsel for the assessee submitted that the statement given by Shri Choksi stands retracted and the number of orders of the Tribunal were passed in cases of those people, who have taken similar benefit of the entries from the various companies of Shri Choksi including that of M/s.Buniyad Chemicals and M/s.Talent Infoway Ltd. Further, it is the submission of the Ld.Counsel for the assessee that he is not in a position to produce any such decisions for the time being. However, Ld.AR mentioned that if those appeals are considered, the addition is made by the AO will undergo change so far as the genuineness of the transaction of the capacity of the companies to subscribe for the share application money.

Referring to rest of the three subscribers, Ld.Counsel for the assessee argued vehemently that the order of the CIT(A) is to be reversed and relied heavily on the submissions made by the assessee before the First Appellate Authority.

9. On the other hand, Ld.DR for the Revenue relied on the orders of the AO and the CIT(A).

10. We shall now take up each of the subscribers and the decision thereof in the following paragraphs:

M/s.Talent Infoway Ltd., and M/s.Buniyad Chemicals:

It is an undisputed fact that these two companies belonging to Shri Mukesh Choksi Group of Companies and M/s.Mahasagar Securities Private Limited. Much amount of litigation existed relating to these companies and the accommodation entries provided by the Group of companies of Shri Choksi. Number of orders are in existence as on date. However, both the Counsels failed to file any of such orders of the Tribunal on similar facts. It is a settled legal proposition laid down by the Hon'ble High Court of Delhi in the case of CIT Vs. N.R.Portfolio (P) Ltd., [264 CTR 258] (Delhi). The relevant lines at para 31 of the Hon'ble High Court's order are as under:

*“31. It would be incorrect to state that the onus to prove the genuineness of the transaction and creditworthiness of the creditor stands discharged in all cases **if payment is made through banking channels**. Whether or not onus is discharged depends upon facts of each case. It depends on whether the two parties are related or known to each; the manner or mode by which the parties approached each other, whether the transaction was entered into through written documentation to protect the investment, whether the investor professes and was an angel investor, the quantum of money, creditworthiness of the recipient, the object and purpose for which payment/investment was made etc. These facts are basically and primarily in knowledge of the assessee and it is difficult for*

revenue to prove and establish the negative. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus. The facts of the present case noticed above speak and are obvious. What is unmistakably visible and apparent, cannot be spurred by formal but unreliable pale evidence ignoring the patent and what is plain and writ large”.

That there is a requirement of going deep into the transactional genuineness and not to be carried away by mere bank transactions and the other documentations. In this kind of transactions, shifting of onus to the AO involves huge exercise by the assessee. Accordingly, AO is directed to apply the ratio laid down by the Hon'ble High Court in the said order. Assessee is also directed to furnish relevant orders of the Tribunal, involving Shri Choksi on one side and M/s.Buniyad Chemicals and M/s.Talent Infoway Ltd., on the other. AO shall pass proper speaking order, after granting a reasonable opportunity of being heard to the assessee. The Grounds raised by assessee in this regard are treated as allowed for statistical purposes.

11. Contribution of share capital to the company by the remaining three persons i.e., Shri Pavan Kumar Shar, Shri Ratan Kumar Sharma and Shri Anil Kumar Sharma:

Shri Pavan Kumar Sharma:

He invested an amount of Rs.4.5 Lakhs. The payments are involved under Mercantile Co-operative Urban Bank Ltd., Secunderabad (A/c No.7891). There are cash deposits in the said account. The account was opened in the year 2005 and source of income of Shri Pavan Kumar Sharma is only the commission income. Shri Pavan Kumar Sharma was summoned and his statement was recorded.

The CIT(A) noted that that are cash deposits made just before the cheques were issued. Returned income for the AY.2006-07 is only Rs.97,180/-. The same is the pattern in the cases of Shri Ratan Kumar Sharma and Shri Anil Kumar Sharma.

In the case of Shri Anil Kumar Sharma, though the assessee relied on various decisions such as CIT Vs. Lovely Exports Pvt Ltd., (2008) [216 CTR 195] (SC), the CIT(A) held that the said decision is not applicable to the facts of the present case and relied on the decision of the Hon'ble High Court of Delhi in the case of CIT Vs. Titan Securities Ltd., (2013) [84 CCH 184] (Delhi HC).

11.1. Finally, the CIT(A) confirmed the additions made by the AO in favour of these three persons i.e., Shri Pavan Kumar Shar, Shri Ratan Kumar Sharma and Shri Anil Kumar Sharma. Relevant para of the CIT(A)'s order is extracted here under:

“10.4. Going by the above amendment it is must for the share subscribers to offer the explanation about the nature and sources of share capital to the satisfaction of the Assessing Officer.”

12. Before us, Ld.Counsel for the assessee relied heavily on the submissions made before the AO and the CIT(A).

13. On the other hand, Ld.DR for the Revenue dutifully relied on the orders of the AO and the CIT(A).

14. On examination of facts narrated above and on hearing both the parties, we find ‘the all is not well’ with the transactions involved in these three cases under consideration. We find that neither the creditors are substantially creditworthy nor the transactions are

satisfactorily genuine. The issue is now settled by the legal proposition of law as per the decision of the Hon'ble Delhi High Court in the case of CIT Vs. N.R.Portfolio (P) Ltd., (supra) in the matters of this kind. Mere bank transactions are coupled with existence of well structured documents is not adequate when there is cash deposits into the bank account few days before the date of issue of the cheque to the assessee. These questions are not answered even before us. Therefore, there is a failure on the part of the assessee to demonstrate the genuineness of the transaction and creditworthiness of the subscribers to the share capital. Considering the same, we are of the view that the decision of the CIT(A) in this regard is fair and reasonable and does not call for any interference. Accordingly, we sustain the addition made by the AO and confirmed by the CIT(A). The Grounds raised by assessee in this regard are dismissed.

15. In the result, the appeal of assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 4th December, 2019

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Hyderabad, Dated 4th December, 2019

Copy to :

- 1. M/s.Badrinath Steels Private Limited, 1-8-673, 4th Floor, Industrial Estate, Azamabad, Hyderabad.*
- 2. The Income Tax Officer, Ward-1(1), Hyderabad.*
- 3. CIT(Appeals)-II, Hyderabad.*
- 4. CIT-I, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*