

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.3686/M/2015  
Assessment Year: 2010-11**

M/s. Fino Fintech Foundation Tarun Bharat, Plot No.38/39, Sector No.30, Near Sanpada Railway Station, Navi Mumbai – 400 075 <b>PAN: AABCF 1125D</b>	Vs.	ITO 8(1)(4), Mumbai - 400051
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Ashish Kumar, A.R.  
Revenue by : Shri Satish Rajore, D.R.

Date of Hearing : 30.08.2019  
Date of Pronouncement : 28.11.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 31.03.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The assessee has raised the following grounds of appeal:

"1) The order of the CIT(A) is against the facts and circumstances of the case and against the preponderances of probability of the circumstantial evidences.

2) Whether on the facts and circumstances of the case, the CIT(A) is justified in confirming the addition of Rs.47, 15, 244/- u/s 68 made by A.O which is against the submission made by the Appellant Company during the course of assessment proceedings.

3) Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the order of the Id. A.O. in disallowing an amount of Rs.

89,69,869/- being service charges incurred for the services rendered by Financial Information Network & Operation Ltd(FINO) for the purpose of business of the appellant. The appellant submits that the amount incurred was for the purpose of carrying on the appellant's business and same is admissible and may please be allowed.

4) On the facts and circumstances of the case, the CIT (A) erred in confirming the addition of Rs.89, 69, 869/- made by Id. A.O on his own assumptions and presumption that the appellant Company reduced the taxable Income and tax liability which is not correct.

5) For these and other reasons which may be adduced at the time of hearing, the appellant prays before Your Honour to delete the addition confirmed by the CIT(A) to meet the justice end.

6) Appellant craves leaves to add, to alter, to amend and to delete any other grounds during the course of hear."

3. The ground No.1 is general in nature and needs no adjudication.

4. The issue raised in ground No.2 is against the confirmation of addition of Rs.47,15,244/- by Ld. CIT(A) as made by the A.O under section 68 of the Act.

5. The facts in brief are that the AO during the course of assessment proceedings observed that assessee is carrying businesses of banking and financial services and is carrying out its business in the rural area as per RBI directions. The AO noted that assessee has also appointed agents to carry out cash transactions on day to day basis and for that purpose the assessee company has obtained deposits from the authorised agents ranging from of Rs.5,000/- to 10,000/-. During the course of assessment proceedings the assessee was asked to furnish the name and addresses of such agents as the amounts shown as outstanding on account of security deposits was Rs.47,15,244/-. The AO also issued notice under section 133(6)

to 35 agents out of which all the notices were returned back by the Postal Authority except to Ujwal Yadav and Dev Prakash. Accordingly, the AO asked the assessee to produce the said parties for verification of genuineness of the transactions failing which the same would be treated as unexplained cash credit which was replied by the assessee vide letter dated 27.07.2012 by submitting that assessee was incorporated under Companies Act under section 25 after following guidelines from Reserve Bank of India with the sole aim of providing business correspondent services on behalf of banks in the rural areas. The assessee submitted that the Government of India has taken it a prime objective to bring the maximum of the rural population under banking channel so that their savings could be channelised into banking system. Under this model the banks appoint "Not for profits" organizations to do banking activities in the rural areas. The business correspondent engages people from villages itself to act as Customer Service Point (CSP) on its behalf. The appointed person is given a hand held device called as Point of Transaction (POT) Machine. The said POT is updated on daily basis by connecting to the server using internet connectivity of the banks with the balances in the individual banks of that particular area. The reply of the assessee filed before the AO is extracted as under:

"As discussed personally, Fino Fintech Foundation, a section 25 company, was incorporated in line with Reserve Bank of India's guidelines with a sole aim of providing business correspondent services on behalf of banks in the rural area. Government has taken it a prime objective to bring the maximum of the rural population under the banking channel so that their saving can be channelized into the banking system as also they are provided support of banks to meet their credit requirements. Under the model, banks appoint "not for profit" organization to do the banking activities in the rural area. The BC engages people from the villages itself to act as Customer Service Point (CSP) on their behalf. The person appointed is given a hand held device called as Point of Transaction (POT) machine. The POT is updated on daily basis by connecting to the server using internet connectivity of

banks with the balances in individual's bank account of that particular area People in the rural areas, desirous of doing the bank account operation of withdrawal and deposit of cash approaches to the CSP and by inserting the cards in the POT, and by putting his figure print on the cards can do the desired transaction Thus, the CSP is required to maintain cash in hand which is kept with him for facilitating withdrawal of cash in the field. The one of the condition of the appointment as CSP is that he is required to provide security deposit as he is in custody of the POT machine as also he handles cash in the field. On his disengagement, on full and final settlement, the amount of security deposit is returned back to the CSP. Provide below summary of the amounts collected and also refunded during the current financial year as well as subsequent financial years for your reference:

<i>Financial year</i>	<i>Opening</i>	<i>Addition</i>	<i>Refund</i>	<i>Closing</i>
2009-10	4791334		-	4716334
2010-11	4716334	20253800	1522800	23447334

From the above, you will please observe that there are additions as well as refunds on account of CSP's disengagements. Please note that as on date we have a filed force of 18110 CSP's in various states in the extreme rural and backward area of the country. As regards samples selected by for confirmation of deposits, we wish to inform you that out of those 70 CSP's. 32 have already be disassociated with us and the security deposit have already been refunded by way of issuing account payee cheques. Payments details in respect of 10 remaining CSP's are being compiled from the field and shall be shared separate/y Two of them, who directly responded, though have shared some grievances, have not denied having provided the security deposit to the company as such their confirmations may please be taken on record. Please note that the CSP's are daily wage earners: their livelihood is dependent on the payouts we do which is in the meagre range of Rs.750/- to Rs.1500/- per month, as such were dismayed on receipt of the notices and thus either refused to receive or did not reply to the notice. In view of this we would request you to please do away with the requirement of their physical presence as they will result into disturbance in the transacting activities and a/so their absence will not be taken into the right sense which may have bearing on the image of the concerned bank as well. Still, if you want to get their physical presence, we may produce some of the active CSP's who are based in the nearby areas to substantiate our submission.

Please note that appointment of CSP is the basic requirement of the business model we are into. Collecting security deposit is just to ensure that they handle the equipment properly as also give the account of cash transacted on time. As such we hope this explains the credits which are genuine and cannot in any case, be treated as unexplained credit.

4.3 In response to this office letter dt.05.12.2012, the assessee company vide letter dt.04.01.2013 further submitted as follows:

"Further, to our letter dt.27.12.2012 wish to inform you that people are hesitant to appear before the Income Tax Officer and inspite of every efforts we could arrange only one of the active CSP Mr. Rajesh Kumar Vishwakarma to present before you for verification. You may please record his statement to your satisfaction. As stated earlier, security deposit is a precondition to the business model we are into: thus we can produce CSP's who are working in the nearby Thane, Bhiwandi and other Maharashtra location for the confirmation of the security deposits being provided by them as per the business model."

6. Finally, the AO rejected the contention of the assessee by holding that the notices under section 133(6) of the Act could not be served and therefore genuineness of the transactions remained in doubt and held that the said security deposits as unexplained cash credit under section 68 of the Act and consequently added the entire amount to the income of the assessee.

7. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by observing as under:

"2.3 Decision

After careful perusal of the assessment order and written submissions of the A/R of the appellant it has been observed that the addition of Rs.47,57,441 /- has been made by the AO u/s 68 on account of security deposits obtained by the appellant from its authorised agents for which the appellant has failed to prove that these have been actually received from the agents. The appellant has filed an appeal on this issue.

According to the AO the appellant was informed by him vide letter dated 05.12.2012 that requisition u/s 133(6) was sent to the parties for verification of the genuineness of security deposits claimed to have been received by the appellant company but all notices were returned by the postal authorities except in the case of two parties mentioned at sr.no.9 & 25 in the detailed reproduced supra. The appellant has filed two detailed replies in response to the notice which have also reproduced supra. The appellant also produced Mr. Rajesh Kumar Vishkarma but his postal address was different then the postal address in the records of the company. The person who was produced as Rajesh Kumar Vishkarma did not confirm the deposit given to the company. His statement has been enclosed with the assessment order as Annexure 1. The AO has also relied on the reply of Sh. Dev Prakash in response to notice u/s 133(6) in which he has not confirmed the payment of deposit to the appellant. During the course of appellate proceedings the A/R of the appellant has relied on the written submissions placed on record

during the course of assessment proceedings and has further asked for opportunity to produce the customer service point (CSP) who has deposited the security to prove the genuineness of the transactions. He has relied on the judgement of Kanpur Coal Syndicate in which it has been held that the CIT(A) has powers co-terminus with the AO.

The assessment record and the contentions of the A/R of the appellant has carefully perused and it has been observed that the appellant has miserably failed to prove any credible evidence either before the AO during the course of assessment proceedings or before me during the course of appellate proceedings to prove the source of security deposit. The explanation of the appellant that the security deposit were obtained from the persons who were appointed at Customer Service Point to collect the deposits is without any documentary evidence or material to accept the explanation of the appellant. The request of the A/R of the appellant to allow another opportunity to produce the persons appointed as CSP cannot be accepted at this stage as sufficient opportunities were provided to the appellant by the AO during the course of assessment proceedings and the appellant has also failed to give any explanation that why the CSP's from whom security deposit was obtained could not be produced before the AO. Hence the addition made by the AO is confirmed and the grounds of appeal no.2 is dismissed."

8. After hearing both the parties and perusing the material on record, we observe that the AO has added the amount of security deposits received from customer service point engaged by the assessee company at the local level in the villages. It is undisputed that the assessee is a business correspondent (BC) which has been launched by the RBI to expand the banking network in the rural areas and villages where it is not economical for the banks to open branches in full-fledged manner. Only those companies registered under section 25 of the Act can act as business correspondent to assist banks to do these activities. The system of operation of this scheme is that an agent is provided with a handheld device called point of transaction machine (POT). The customer service point begins his day by updating the POT machine with the records of the beneficiary by connecting the POT with bank server and thus the account holder can transact withdrawal or deposit of money in his/her account by inserting his biometric card which is

similar to ATM. In this system the beneficiary has to validate his identity by putting his figure print on POT rather than inserting pin. The customer service point has to connect with the POT with the banks server and transfer the transactions to bank server on daily basis. The money so collected will be handed over to the company's representative on regular interval. This was the modus operandi for doing this business. In order to become (CSP) customer service point a person is required to deposit certain amount with the assessee as security deposit in order to safeguard the interest of the assessee against any embezzlement. The said interest deposit is to be refunded once the person is disengaged from CSP activity . The cost of POT machines is approximately Rs.18,000 to Rs.25,000. The AO has made addition mainly on account of non production of CSP. It was also contended before us that confirmations of the CSP could not be produced in view of the huge number and also the fact that CSPs were daily wage earner and pay out is very meager which ranges between 750 to 1500 per month. Considering the peculiar nature of the business and circumstances in which the assessee operates, we are of the view that the addition under section 68 can not be made in respect of security deposits which is accumulated over the years on the ground that no confirmations were produced especially when the cause is to spread banking facilities in the far flung areas . The assessee is doing non profit business and bridges the gap between the banks and the rural masses which are residing in the difficult terrain where the banks can not open their full-fledged branches because of economic consideration. We further note that out of 70 business correspondents, the 32

were already left and their security deposits were refunded by account payee cheques. Under these circumstances, we are of the view that addition made by the AO is wrong and can not be sustained as it is not a case of accepting the huge money from the other companies or corporates or hawala transaction. The order of Ld. CIT(A) is set aside and the AO is directed to delete the addition.

9. The issue raised in 2<sup>nd</sup> ground of appeal is against the confirmation of disallowance of Rs.89,69,869/- as made by the AO towards service charges incurred for the services rendered by Financial Information Network and Operation Ltd. (FINO) for the purpose of the business of the assessee.

10. The facts in brief are that the assessee has debited in the P&L account, enrolment expenses amounting to Rs.8,96,98,699/- and accordingly asked the assessee to furnish the details and evidences in support of the admissibility of the same. The company replied vide letter dated 11.03.2013 wherein it is submitted that the enrolment relates to the set of activities performed through various agencies in the field, the activities involved data entry, digitalization and semi skilled individuals or through various entities providing such services. One time activity i.e. enrolment of beneficiary is done in FINO. The said activity involved arranging the operators in the mandated field, collecting demographic and biometric and particulars of beneficiaries. The data are printed on a smart card and biometric particulars are recorded in the memory chip and card is used for carrying out of activities of POT machines, providing reporting work to assessee company upholding master

data on daily basis through server etc. As per agreement dated 26.02.2009 entered into by the assessee with FINO Ltd., the assessee and FINO are to work in co-ordination for providing end to end solution for IT enabled disbursement of payments. As per the agreement the field support services were to be provided by the assessee whereas technical support services are to be provided by FINO. The AO has estimated as excess expenses at Rs. 10/- on account of over lapping services by the assessee and FINO and accordingly the agreement was held to be collusive agreement. In other words Rs.10/- per customer is paid by assessee to FINO and accordingly the AO worked out at the excessive claim at Rs.89,69,869/-. According to the AO the said payments were subjected to TDS provisions and expenditure was incurred for obtaining services/assessee's execution of work which is allowable expenditure based on the said agreement with the FINO. The TDS and service tax was properly paid. The AO made the addition after making a detailed discussion in para 5 in the assessment framed.

11. In the appellate proceedings, the Ld. CIT(A) confirmed the order of AO by holding and observing as under:

"3.3. After careful perusal of the assessment order and written submissions of the A/R of the appellant it has been observed that the AO has estimated the amount of Rs.10 per customer as excess expenses on account of over lapping services and after giving a categorically finding that it is a collusive arrangement to reduce the tax liability, but the A/R of the appellant has also not provided credible evidence to justify the expenditure. The contention of the A/R of the appellant that it is a settled law that the AO cannot step into the shoes of the appellant is a vague statement which cannot be of any help to the appellant.

Hence the addition made by the AO is confirmed and the grounds of appeal no.3 & 4 are dismissed."

12. After hearing both the parties and perusing the material on record, we observe that the assessee has entered into an

agreement with FINO. Under the said agreement , the assessee company is to provide field support services and FINO is to provide technical support services. According to the AO the services rendered by the assessee and FINO are overlapping and both are rendering the same services. The AO estimated the overlapping expenses at Rs.10/- per customer being excess and termed the agreement as collusive to reduce the tax liability by ignoring the fact that the assessee is a non profit making company registered under section 25 of the Act and has no profit motive. We find that on these payments to FINO, the assessee has duly deducted TDS and deposited the same to the government treasury. Similarly, the service tax was duly paid and there is no dispute that the said receipt has shown as income by the FINO. Moreover, the authorities below have failed to bring on record any concrete evidence on record to show that these are sham transactions entered into by the assessee with FINO to circumvent the tax liability. Under these circumstances and facts, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

13. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 28.11.2019.**

**Sd/-**  
**(Sandeep Gosain)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 28.11.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.