

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3580/Del/2017
Assessment Year: 2013-14

M/s. Metalrod Ltd., B-97, All Haven Building, Ring Road, Wazirpur Indl. Area, Delhi	Vs.	ITO, Ward-16(4), C.R. Building, New Delhi.
PAN :AAACM8295Q		
(Appellant)		(Respondent)

Appellant by	Shri K.P. Garg, CA
Respondent by	Ms. Rakhi Vimal, Sr.DR

Date of hearing	08.01.2020
Date of pronouncement	15.01.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against the order dated 12.05.2017 passed by the ld. Commissioner of Income-tax (Appeal)-6, Delhi. [In short 'the Ld. CIT(A)'] for Assessment Year 2013-14, raising following grounds:

- 1. The learned CIT(A) has erred on fact and in law in sustaining the addition of Rs.13,31,867/- u/s 68 under the head, 'Advance from Customers', being the balance outstanding as on 31.03.2013 in the running account of the holding company "RCI Industries & Technology Ltd."*

2. *The appellant craves leave and sanction of the Hon'ble ITAT to file additional evidence, if so required for proper prosecution of the case.*
3. *The appellant craves leave to and permission of the Hon'ble ITAT to add to or alter any of the grounds of appeal at any time upto the final decision of the appeal.*

2. Briefly stated facts of the case are that the assessee company was engaged in business of trading of metals but during the year under consideration, no trading activity was carried out. The assessee filed return of income on 25.09.2013, declaring NIL income. The case was selected for scrutiny and notice u/s 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and complied with. The scrutiny assessments u/s 143(3) of the Act was completed on 16.02.2016 after making certain addition/disallowances.

2.1 On further appeal, the ld. CIT(A) partly allowed the appeal of the assessee. Aggrieved with the additions sustained, the assessee is in appeal before the Tribunal.

3. In support of the grounds raised, the ld. Counsel of the assessee filed a paper-book containing pages 1 -33 and submitted that the assessee has discharged its onus under section 68 of the Act and, thus, the addition of Rs.13,31,867/- sustained by the ld. CIT(A) is not justified. The ld. Counsel referred to pages 16 to 18 of the paper-book with detailed narration of the transaction of money received and paid to M/s. RCI Industries and Technologies. He submitted that in view of the nature and source of the credit explained, no addition is called for.

4. The ld. DR, on the other hand, relied on the order of the ld. CIT(A) and submitted before the lower authorities that the

assessee failed to explain the nature of the credit received in books of account. She submitted that in the bank account of the RC Industry & Technology, the deposits immediately before the payment to the assessee need examination.

5. We have heard the rival submissions and perused the relevant material on record. The Assessing Officer made disallowance under section 68 of the Act for the closing balance of the credit amounting to Rs.6,58,33,93/- under the head “advance from customers”. The details of the transaction under the head “advance from customer” reproduced by the AO is extracted as under:

<i>Name of Creditor</i>	<i>Opening Balance</i>	<i>Transactions - Received during the year</i>	<i>Amount paid during the year</i>	<i>Closing, Balance</i>
<i>ACB Matrix Solutions Ltd,</i>	<i>2,04,66,044</i>	<i>0</i>	<i>0</i>	<i>2,04,66,044</i>
<i>Blossom Impex RvL Ltd.</i>	<i>1,21,29,714</i>			<i>1,21,29,714</i>
<i>Kay Kay Exirn Pvt. Ltd,</i>	<i>2,80,90,068</i>			<i>2,80,90,068</i>
<i>RCI Industries & Technologies Ltd,</i>	<i>-2,34,086</i>	<i>1,15,66,850 (sic)</i>	<i>1,00,00,000 (sic)</i>	<i>13,31,867</i>
<i>S Aggarwal & Co.</i>	<i>38,15,500</i>			<i>38,15,500</i>
<i>TOTAL</i>	<i>6,42,66,340</i>	<i>1,15,66,850 (sic)</i>	<i>1,00,00,000 (sic)</i>	<i>6,58,33,193</i>

5.1 Before the Id. CIT(A), the assessee challenged that except in the case of RCI Industries & Technologies Ltd., no addition to the credit is appearing and all the remaining amount are opening capital of the creditor, for which no addition could have been made u/s 68 of the Act. In view of the detailed submissions of the assessee, the Id. CIT(A) sustained addition of closing balance of

Rs.13,31,867/- against RCI Industries & Technology observing as under:.

“3.2.3 *The facts of the case and the submissions of the appellant have been carefully considered. During the course of assessment proceedings, Assessing Officer noticed that total long term liabilities of appellant was Rs.6,58,33,193/-/-. Assessing Officer asked appellant to submit details with complete postal address, PAN, opening balance, amount received during the year, amount repaid during the year, balance confirmation, purposes of such advances, reasons for not refunding the same when no business carried out during the year. Appellant submitted details and also filed confirmation of one party, RCI Industries & Technology Ltd. Since appellant was not carrying business since year 2001, it is not having any stock with it and no manufacturing activity is carried on, one thing creates doubt on genuineness of transaction why customers have given advance. Further, appellant was unable to produce purpose, terms & conditions of advances, hence, Assessing Officer treated it as unexplained cash credits under the guise of advances from customers and added Rs. 6,58,33,193/-. Appellant submitted that total long term liabilities as on 31-3-2013 was Rs. 6,58,33,193/- and same was Rs. 6,45,01,327/- in last year, hence, addition during the year was of Rs. 13,31,867/- only. Further, said change was in balances of RCI Industries and Technology Ltd. for which it has filed confirmation, therefore, addition made by the Assessing Officer is not sustainable.*

The total long term liabilities as on 31-3-2013 was Rs. 6,58,33,193/- and same was Rs. 6,45,01,327/- in last year, hence, addition during the year was of Rs. 13,31,867/- only, therefore, addition of Rs. 6,58,33,193/- made by the Assessing Officer is not sustainable. The primary requirements, which should be satisfied in such type of cases is, identification of lender, creditworthiness of lender and genuineness of the transactions. These three requirements have to be tested not superficially but in depth having regard to the human probabilities and normal course of human conduct. On perusal of details filed by the appellant during the course of assessment proceedings, it is found that shareholding of RCI Industries and Technology Ltd. in appellant-company as on 31-3-2012 and 31-3-2013 was of 58.76 per cent. Being a related party, it was not difficult for appellant to obtain confirmation of RCI Industries and Technology Ltd. On going through the confirmation of RCI Industries and Technology Ltd. filed by appellant, it becomes clear that opening balance of said party was of (-)Rs. 2,34,986.88/-. Receipts during the year was of Rs. 15,66,854/- which led to the closing balance of Rs.13,31,867/- during the year which has been

shown as advanced from customers when there is no such correspondence in this regard. It is a simple receipts in current account and nothing to do with advance from customers. This factum creates doubt on genuineness of transaction of advances from a customer, namely, RCI Industries and Technology Ltd. Appellant also could not furnish reason why advance of crore of rupees made when no business has been carried out since 2001. Thus, addition of unexplained cash credit is restricted to Rs. 13,31,867/-. In this regard, reliance is placed on following judicial decisions:

In R.K. Auto Engineering Pvt. Ltd. Vs. Income Tax Officer ITA No. 305/Del/2012 dt. 6-5-2015, it was held that admittedly, the amount of Rs. 4,00,000/- was received, Rs. 2 lakhs each from M/s Nishant Finvest P. Ltd. and M/s Performance Trading & Investment by account payee cheques and the confirmation letters had been filed. But it did not mean that the Assessing Officer was prevented from probing the matter further based on the information filed by the assessee. It was noticed by the Assessing Officer that the transactions in question were merely book entries and the allegation made against the assessee company is that the assessee had provided cash to M/s Nishant Finvest P. Ltd. and M/s Performance Trading & Investment, who after depositing the cash in the bank account had issued cheques in favour of the assessee company which means that the cash deposited in the bank account of those concerns really belonged to the assessee. That fact was proved by deposit of cash in equivalent amount in the bank accounts of those two concerns preceding the issue of cheques in favour of the assessee. The appellant failed to rebut that allegation. The appellant also failed to produce the Directors of those concerns before the Assessing Officer. In other words, the appellant also failed to prove the genuineness of the transactions in the light of the fact that those concerns were alleged to be indulged in providing book entries. It is settled proposition of law that just because credits were accepted by account payee cheques and confirmation letters were filed, the transactions could not be called sacrosanct. The assessee had failed to discharge his onus that was lying upon it in proving the credits under the provisions of Section 68 of the Act and therefore, addition of Rs. 4 lakhs was confirmed.”

5.2 Before us, the ld. Counsel has filed copy of ledger account of the RCI Industries & Technology in books of accounts of the assessee on page 12 of the paper-book, which is reproduced as under:

Dear Sir/Madam,

Date : 8-Apr

Sub: Confirmation of Accounts
1-Apr-2012 to 31-Mar-2013

Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period.

Kindly return 3 copies stating your I.T. Permanent A/c No., duly signed and sealed, in confirmation of the same. Please that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown below.

Date	Particulars	Debit Amount	Date	Particulars	Credit Amount
12-Apr-2012	Bank	5,00,000.00	1-Apr-2012	Opening Balance	2,34
20-Apr-2012	Bank	5,50,000.00	25-Apr-2012	Bank	1,00,00
30-Apr-2012	Bank	1,00,00,000.00			
30-Apr-2012	Bank	1,00,000.00			
24-Jul-2012	Bank	16,854.00			
3-Sep-2012	Bank	4,00,000.00			
		1,15,66,854.00			
				Closing Balance	1,02,34
		1,15,66,854.00			13,31
					1,15,66

I/We hereby confirm the above

Yours faithfully

For RCI Industries & Technolog



Authorized Signatory

PAN: AAACR5127G

5.3 The assessee has also filed copy of the ledger account of assessee in the books of account of M/s. RCI Industries & Technology, which is not signed by the party. The assessee has filed details of the nature of transaction as under:

Sr. No.	Date	Amount	Entry Type	Explanation
1.	12-Apr-12	5,00,000/-	Receipt	Amount received to give Donation to St. Monica Charitable & Educational Trust
2.	20-Apr-12	5,50,000/-	Receipt	Amount received to pay conversion charges of the land located at Wazirpur, Delhi to MCD (Receipt Attached)
3.	25-Apr-12	1,00,00,000/-	Payment	There was temporary requirement of funds in RCI, hence amount was paid by bank by overdrafting the account of Metalrod and the funds were received back after 5days.
4.	30-Apr-12	1,00,00,000/-	Receipt	Please refer explanation 3 as above
5.	30-Apr-12	1,00,000/-	Receipt	Amount received for the monthly interest debit
6.	29-Jul-12	16,854/-	Receipt	Amount paid by RCI on behalf of Metalrod for the valuation of the property located at Wazirpur Delhi (Bill attached)
7.	03-Sep-12	4,00,000/-	Receipt	Amount received to pay House Tax of the land & Building located at Wazirpur, Delhi to MCD (Receipt Attached)

5.4 The ld. counsel claimed that details of the nature of entries were explained before the Assessing Officer and all documents supporting the same were also filed before the Assessing Officer. However, on perusal of the order of the lower authorities, we do not find any reference of any such explanation. In the facts and circumstances of the case and in the interest of justice, we feel appropriate to restore this issue to the file of the Assessing Officer to decide afresh in accordance with law after providing adequate opportunity of being heard to the assessee. Order accordingly.

6. In the result, the appeal is allowed for statistical purposes.

Order is pronounced in the open court on 15th January, 2020.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 15th January, 2020.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi