

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 423/Kol/2021**  
**Assessment Year : 2015-16**

M/s Transport Wings (Cal)Pvt. Ltd. (PAN: AABCT 2033 Q)	Vs.	ITO, Ward-1(1), Kolkata
Appellant		Respondent

Date of Hearing	05.05.2022
Date of Pronouncement	13.05.2022
For the Appellant	Shri Soumitra Choudhury , Advocate
For the Respondent	Smt. Ranu Biswas, Addl. CITDR

**ORDER**

**Per Shri Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax(Appeals)-NFAC-Delhi [hereinafter referred to as ‘CIT(A)’] dated 03.08.2021 for the assessment year 2015-16.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon’ble Supreme Court in the case of Miscellaneous Application No. 665 of 2021 in SMW(C ) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The issue raised in ground no. 1 & 2 are general in nature and need no specific adjudication.

4. The issue raised in ground no. 3 is not pressed. Therefore the ground is dismissed as not pressed.

5. The issue raised in ground nos. 4 & 5 are against the order of Ld. CIT(A) confirming the addition of Rs. 76,27,649/- as made by the AO on account of unexplained cash credit u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

6. Facts in brief are that during the course of assessment proceedings, the AO observed from the annual audited accounts that the assessee has long term borrowing at Rs. 1,13,88,854/- as on 31.3.2015 vis-à-vis Rs. 62,87,757/- as on 31.03.2014. The AO further noted that the short term borrowing has also increased from Rs. 3,49,94,572/- to Rs. 3,75,21,122/- during the same period and thus overall increase in the borrowed funds was Rs. 76,27,649/-. Accordingly the AO called upon the assessee to explain the same, however the assessee did not respond to the notice or appear personally. Again a show cause notice No. 672 dated 8.12.2017 was issued to the assessee fixing the date of compliance on 15.12.2017 which again remained non-complied with. Finally the AO added the same as unexplained cash credit u/s 68 of the Act for the reason that assessee has failed to prove the identity, creditworthiness and genuineness of the lenders.

7. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by not condoning the delay by observing that the delay in filing the appeal was due to negligence on the part of the assessee.

8. After hearing the rival parties and perusing the material on record, we note that the AO has made the addition Rs. 51,01,097/- u/s 68 of the Act of long term borrowings as unexplained cash credit which represented the loans taken from Scheduled Banks, Non-Banking Financial companies the details whereof is given in the audited balance sheet. Similarly the AO made disallowance of Rs. 25,26,552/- as unexplained cash credit in respect of increase in cash credit limit from Bank of India. After examining the records before us, we have failed to understand as to how the loans from NBFCs borrowed on long term and short term basis were treated as unexplained cash credit. We also note that all these evidences and records comprising

loan confirmations, audited financial accounts, statement of interest paid and also the submissions made before AO as well as Ld. CIT(A) were before the authorities below but these authorities have failed to appreciate the facts correctly. We find that the assessee has borrowed long term funds from NBFCs which were duly shown in the balance sheet note no. 3 and similarly short term borrowing from Bank of India in the form of cash credit was shown in note no. 3. We are of the considered view that the borrowings from NBFC, Bank can not be treated as unexplained cash credit u/s 68 of the Act which was done by the AO simply on the basis of increase in these borrowings as shown in the balance sheet with doing any verification of evidences filed by the assessee. Similarly the First Appellate Authority has dismissed the appeal on hyper technical ground of non-condoning the delay of 13 days which is against the principle of natural justice and fair play. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the addition of Rs. 76,27,649/- .

9. The issue raised in ground no. 6 is against the addition of Rs. 12,73,925/- as made by the AO u/s 68 of the Act by treating the increase in other current liability as on 31.3.2015 vis a vis 31.3.2014 in the audited balance sheet.

10. Facts in brief are that the AO observed on the basis of submissions of the assessee that it has shown of Rs. 65,63,805/- under the head current liability as on 31.03.2015 vis-à-vis Rs. 52,90,880/- in the preceding year and thus the other current liability has increased by Rs. 12,72,925/- and finally added the same as bogus liability u/s 41 of the Act. The issue was not decided by Ld. CIT(A) in the appellate proceedings as the appeal was dismissed for not condoning the delay.

10. Having heard rival parties and perused the material on record, we find that the AO, on the basis of details filed during the assessment proceedings, noted that there is an increase in other current liability to the tune of Rs. 12,72,925/- as on 31.03.2015 vis-à-vis the corresponding amount under the head other current liability as on 31.03.2014. The AO simply added the difference i.e. increase in other current liability as unexplained without pointing out any mistake or the fact that liability has ceased

justifying the addition u/s 41 of the Act. We note from the details filed before us that the assessee has filed all the details before the authorities below from page no. 98 to 100 but instead of finding anything wrong therein, the AO simply added the increase over the last year which is wrong and against the provisions of the Act. Under these circumstances, we find that the addition as made by the AO is unsustainable in law and accordingly we direct the AO to delete the disallowance by setting aside the order of Ld. CIT(A).

11. The issue raised in ground no. 7 is against the disallowance of 1% of lorry hire charges amounting to Rs. 18,63,232/- on an ad hoc basis.

12. Facts in brief are that the AO, on the basis of written submissions filed by the assessee and evidences therewith, observed that the assessee has shown freight income of Rs. 20,41,54,521/- as against lorry hire charges paid of Rs. 18,63,23,230/-. Finally the AO has made addition on the ground that the assessee has not cooperated in the assessment proceedings and the possibility of inflation of expenses could not be ruled out and accordingly disallowed a sum of Rs. 18,63,232/- on estimation basis being 1% of total hire charges paid and added the same to the income of the assessee. The Ld. CIT(A) did not consider the issue as the appeal was dismissed by not condoning the delay.

13. After hearing both the parties and perusing the material on record, we note that AO has simply made an ad hoc addition on the basis of presumptions and assumptions by observing that the inflation of expenses could not be ruled out and thus added 1% of total hire charges paid which comes to Rs. 18,63,232/- to the income of the assessee without pointing out any defect or deficiency in the documents filed by the assessee. In our considered view the disallowance on estimation basis is not permissible under the Act unless the AO has given specific finding as to defects in the books of accounts of the assessee justifying the disallowance. The case of the assessee is squarely covered by the decision of Hon'ble Co-ordinate Bench of Kolkata in the case of *Biswanath Agarwala vs. ACIT in ITA No. 461/Kol/2016 for AY 2011-12 order dated*

21.03.2018 and in the case of *Animesh Sadhu vs. ACIT in ITA No. 11/Kol/2013 for AY 2008-09 order dated 12.11.2014* wherein the co-ordinate bench has held that no disallowance can be made for inability to do independent verification. The Co-ordinate Bench has also held that only specific expenditure which is unverifiable and un-vouched could be disallowed. In the present case also the AO has failed to point out the particular expense which is un-vouched and unverifiable and therefore addition made by the AO cannot be sustained. Accordingly we direct the AO to delete the disallowance by setting aside the order of Ld. CIT(A).

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

Order is pronounced in the open court on 13<sup>th</sup> May, 2022

Sd/-  
(Sonjoy Sarma)  
Judicial Member

Sd/-  
(Rajesh Kumar)  
Accountant Member

Dated: 13<sup>th</sup> May, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Transport Wings (Cal)Pvt. Ltd., 10, Phears Lane, Kolkata-700012
2. Respondent – ITO, Ward-1(1), Kolkata
3. The CIT(A)- NFAC-Delhi
4. Pr. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata