

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SRI PRASHANT MAHARISHI, AM AND SRI SANDEEP SINGH KARHAIL, JM

ITA No. 4953/Mum/2017

(Assessment Year 2012-13)

Suncap Commodities Private Limited 302, 3 rd Floor, Kumar Plaza, Kalina Kurla Road, Near Kalina Masid, Santacruz (East), Mumbai-400 029	Vs.	The Dy. Commissioner of Income-tax, Circle-1(3)(1), 540, 5 th Floor, Aayakar Bhavan, MK Road, Mumbai-400 020
(Appellant)		(Respondent)
PAN No. AACCN2950K		

Assessee by	:	None
Department by	:	Sri Shekhar L. Gajbhiye, CIT DR

Date of hearing:	08.03.2022
Date of pronouncement :	07.06.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Suncap Commodities private limited (the appellant/assessee) against the order passed by The Commissioner of Income Tax (Appeals) – 3, Mumbai [the LD CIT [A]] dated 22/05/2017 for assessment year 2012 – 13 raising following grounds of appeal.

"1. The order of CIT(A)-3, Mumbai dated 22.05.2017 dismissing the appeal preferred by the appellant is bad in law, contrary to facts, totally erroneous, completely unjustified and perverse par excellence.

2. *The order of CIT(A)-3, Mumbai confirming the additions of Rs.50,41,57,505/- and Rs.21,00,00,000/- is opposed to facts and law.*

3. *The order of CIT(A)-3, Mumbai suffers from complete non-appreciation of material facts and total non-application of mind besides non-understanding and appreciation of the principles of law.*

4. *The CIT(A)-3, Mumbai failed to understand the true meaning and purport of contracts of novation which can even be oral and need not be reduced into writing and what is required is the consent and concurrence of the parties by recording the transactions.*

5. *The CIT(A)-3, Mumbai failed to appreciate the substance and essence of the transactions and he was more concerned with the forms and frills.*

6. *The CIT(A)-3, Mumbai failed to appreciate when there is a perfect understanding between the contracting parties to the contract of novation, the external paraphernalia as adumbrated by him are totally immaterial.*

7. *The CIT(A)-3, Mumbai was more bothered about the stamping of the document instead of understanding and appreciating the consensus between the parties forgetting for a moment the collection of short fall in the stamp duty is the duty of the State Government.*

8. *The CIT(A)-3, Mumbai was more concerned about non-enforceability of contract between the parties instead of understanding and appreciating the true purport of the transactions and in the case of the appellant there was no dispute whatsoever between the parties.*

9. *The CIT(A)-3, Mumbai failed to understand that there was lawful consideration which was adequate in the contract of novation.*

10. *The CIT(A)-3, Mumbai failed to appreciate that book / adjustment/journal entries cannot constitute cash credits within the meaning of section 68 of the Income-tax Act, 1961 and also well established ratios propounded and decided by the courts.*

11. *The CIT(A)-3, Mumbai ought to have held that if Stephen Financial Services Pvt. Ltd. and Manali Properties & Finance Pvt. Ltd. are entry providers and shell companies, the additions ought to have been made in the books of Dunlop India Ltd. and Falcon Tyres Ltd. and not in the hands of the appellant.*

12. *The CIT(A)-3, Mumbai intentionally ignored the facts that Dunlop India Ltd. and Falcon Tyres Ltd. borrowed monies from Stephen Financial Services Pvt. Ltd. and Manali Properties & Finance Pvt. Ltd, during the period 2008 to 2011 and therefore cash credit if any under section 63 ought to have been in the books of Dunlop India Ltd /Falcon Tyres Ltd. and not in the hands of the appellant.*

13. *The CIT(A)-3, Mumbai failed to understand if there is any infraction/violation of law in any documentation, it is for the authorities concerned to take action and Income-tax Department has no role to play in such cases.*

14. *The CIT(A)-3, Mumbai failed to understand that if the transactions are null and void and having no legal effect and unenforceable then he should have completely ignored the transactions and should not have brought any amounts to tax by making astronomical additions.*

15. *The CIT(A)-3, Mumbai ought to have appreciated that violations of law if any would affect the parties to the contract and not the Income-tax Department.*

16. *Extraneous and irrelevant materials (paragraph 7.5 to paragraph 7.12 and paragraph 7.19 at page 18 of 19 of the order), being news reports have clouded CIT(A)-3, Mumbai's vision and thereby he became totally prejudiced and looked at the matter with jaundiced eyes. The CIT(A)-3, Mumbai was influenced by the newspaper reports which have no evidentiary value whatsoever.*

17. *The CIT(A)-3, Mumbai brushed aside the facts that none of the entity was confronted by the Enforcement Directorate under Prevention of Money Laundering Act and there was no show cause notice or proceeding or arrest or confiscation of any asset*

and the story spun by India Today has become sacrosanct for the CIT(A)-3, Mumbai.

18. The CIT(A)-3, Mumbai ought to have confronted the appellant with the true certified copy of the purported report of Enforcement Directorate instead of directing the appellant to refer to the newspaper story of India Today vide his letter at page 18 of 19 of the order and such newspaper reports cannot be the basis for assessment or appeal proceedings.

19. The CIT(A)-3, Mumbai failed to understand that undisclosed income introduced in the books either by way of cash or cheque is treated as income under section 68 and not journal, book, adjustment entries arising out of understanding and agreement between the parties.

20. The CIT(A)-3, Mumbai failed to appreciate the appellant took over the debts payable to Stephen Financial Services Pvt. Ltd, and Manali Properties & Finance Pvt. Ltd and in turn it was allotted equity shares of Dunlop India Ltd. and Falcon Tyres Ltd. which are listed and quoted in the Bombay Stock Exchange.

21. The case laws cited by CIT(A)-3, Mumbai at page 14 of 19 have no relevance to the facts and circumstances of the appellant's case.

22. The CIT(A)-3, Mumbai was wrong in confirming the order of DCIT-13)(1), Mumbai dated 27.03.2015.

23. The CIT(A)-3, Mumbai, to add colour to his order which is otherwise totally devoid of merit and substance uses expressions like "sham financial entity, entry provider" hawala company" shell company" benami company" "paper company" "accommodation entry providers" "sham transactions for the purpose of creating prejudice in the minds of the higher authorities.

24. The observation of the CIT(A)-3, Mumbai in page 14 of 19 "such accommodation entry are used by the appellant as a tax evasion tool by way of bringing unaccounted money in books without payment of taxes" contradicts the theory of shell / paper companies as repeatedly stated by the CIT(A)-3, Mumbai.

25. The CIT(A)-3, Mumbai in page 9 of 19 states that there was no lawful consideration for the contract of novation but in the same breath in page 11 of 19 states that the assessee has got valuable shares worth Rs.50.42 crores and Rs.21 crores which shows a complete dichotomy in his approach."

02. Brief facts of the case shows that assessee is a company dealing in various types of commodities and shares, mainly it trades in chili. It filed its return of income on 28/9/2012 declaring a total loss of ₹ 4,768,824/-. The return of income was processed u/s 143 (1) of the act. Subsequently the case of the assessee was picked up for scrutiny and notice u/s 143 (2) of the act was issued on

6/8/2013. During the course of assessment proceedings, the learned assessing officer found that M/s falcon Tyres Ltd had assigned a loan to the assessee company being interest free of ₹ 21 crores. Similarly Dunlop India Ltd has also assigned interest free loan of ₹ 50.41 crores without mortgage of security etc. Thus, there was a credit in the books of account of the assessee of ₹ 21 crores in the name of Manali Properties and Finance Limited and ₹ 50.41 crores in the name of Stephen financial services private limited. Therefore the assessee was questioned about the credit of the above sum. The AO issued notices u/s 133 (6) to both the parties on 23/2/2015, which remained Unanswered. Assessee was also asked to produce the above parties however none appeared. Further show cause notice was issued on 2/3/2015 in response to which the replies were received in tapal. Thereafter the learned assessing officer proceeded to assess both the above transactions as bogus, non genuine for following reasons .

03. in case of M/s Manali properties and finance private limited, Falcon tyres Ltd had assigned the loan to assessee which is interest free loan of ₹ 21 crores without any mortgage or security pledged by the assessee with Manali properties and finance private limited. Assessee is also not a related party. The return of Manali properties and finance private limited shows current loss of ₹ 81.95 lakhs and meager share capital of ₹ 4.13 crores. Manali

properties and finance Ltd was found to be a Calcutta-based party and does not have any business but carrying on share financing activity and merely an entry provider for these kind of unsecured loans. Learned AO also found that assessee has signed a tripartite agreement on non Judicial stamp paper of Rs 100/- which does not have any registration mark or even not notarized before any competent authority. Therefore the AO held that the amount of above loan of ₹ 21 crores assigned by Falcon tyres Ltd is non-genuine. Accordingly, addition u/s 68 was made.

04. Similarly, M/s Dunlop India Ltd had assigned a loan of Stephen financial services private limited to the assessee, being interest free in nature, without any mortgage or security amounting to ₹ 50.41 crores. It has also the similar modus operandi as compared to Manali properties and finance private limited. Stephen financial services has shown a current loss of ₹ 777/- and having a share capital along with reserve and surplus of Rs 190 crores which forms of security premium of ₹ 188.10 crores. Accordingly assessing officer also made an addition u/s 68 of the income tax act of ₹ 504,157,505/- with respect to the about transaction.
05. Accordingly the total income was computed at ₹ 709,388,680/- against the returned loss of ₹ 4,768,824/- by an assessment order dated 27/3/2015 passed u/s 143 (3) of the act.

06. Assessee preferred an appeal before the learned CIT – A who passed an order dated 22/05/2017 dismissing the appeal of the assessee. The learned CIT – A who considered the whole issue as per paragraph number 7.2 onwards of his order as under:-

""7.2 I have carefully considered the rival submissions and the facts of the case. The appellant has termed the two Deed of Assignment as "contract of novation" as recognized by the Indian Contract Act, 1872. To understand the term 'Novation' and its implications on appellant's case, following discussion would be helpful:

a) Meaning of Novation":

"Novation" is defined by the Black's Law Dictionary, 8th Edn., 2004 as "The act of substituting for an old obligation a new one that either replaces an existing obligation with a new obligation or replaces an original party with a new party."

As per Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005 at pp. 3253 54, "A novation is new contractual relation. It is based upon a new contract by all the parties interested."

Section 62 of the Indian Contract Act, 1872 sets out the general parameters for novation. The pertinent part of said Section reads as follows:

"Effect of novation, rescission and alteration of contract - If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."

The essential feature of novation of contract is that when a contract is substituted, the rights under the original contract are relinquished or replaced by the new contract. In every novation, there are four essential requisites:

- (1) A previous valid obligation;*
- (2) the agreement of all the parties to the new contract;*
- (3) the extinguishment of old contract; and*
- (4) the validity of the new one.*

Since the novation is a new contract, it must possess the essential elements of a contract.

b) Whether the contract of novation is chargeable to Stamp Duty:

Sub-section (14) of Section 2 of the Indian Stamp Act, 1899, defines the term "Instrument" as under:

"Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded."

In Novation, since a new contract is substituted for an old one and the new agreement extinguishes the rights and obligations that were in effect under the old agreement, it falls under the definition of the term "instrument" as defined under the Indian Stamp Act, 1899. Hence, a novation agreement is an 'instrument' under the Indian Stamp Act, 1899.

Section 3 of the Indian Stamp Act, 1899 sets out the instruments chargeable with duty, the relevant part of which is as under:

"Subject to the provisions of this Act and the exemptions contained in Schedule 1, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say- (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899."

In appellant's case, the Instrument i.e. the Deed of Assignment is being executed for the first time not having been executed previously, hence, chargeable to stamp duty under Indian Stamp Act, 1899.

The effect of not paying proper stamp duty is that the Deed of Assignment executed by appellant becomes non-enforceable in law.

7.3 Having discussed the above, it needs to be examined whether the appellant's Deed of Assignment is a "Contract" at all. All contracts are agreements but all agreements are not contracts. In order to become a contract, an agreement must possess the essential elements of contract.

As per Section 10 of Indian Contract Act, 1872, "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."

Consideration means 'something in return'. In every legal contract, there must be something in return. An agreement is legally capable to be enforced only when each of the parties to it gives something and gets something. The consideration should not be unlawful, illegal, immoral or opposed to public policy.

As per Paper Book (Page 239-241) submitted by appellant, the relevant clauses of Deed of Assignment dated 09.02.2012 between Manali (Assignor), Suncap (Assignee, the appellant herein), & Falcon (Borrower) showing the consideration paid by appellant are as under:

"1. The Assignor has agreed to assign a sum of Rs. 50,41,57,505/- (Rupees Fifty crore forty-one lacs fifty-seven thousand five hundred five only), ("Assigned Loan") out of the total outstanding loan amount of Rs. 1,44,04,50,000/-, to the Assignee. The Assignee, as a consideration for the Assigned Losses, has agreed to pay a sum of Rs. 50,41,57,505/- (Rupees Fifty crore forty-one laes fifty-seven thousand five hundred five Only) to the Assignor by 31" October, 2012 or earlier.

2. In consideration of a sum of Rs. 50,41,57,505/- ((Rupees Fifty crore forty-one lacs fifty-seven thousand five hundred five Only) to be paid by the Assignee to the Assignor (which the Assignor hereby agrees and acknowledges), the Assignor as beneficial owner of the Loan hereby assigns and transfers to the Assignee, the Assigned Loan due and owing to the Assignor along with the rights, interest and obligations therein."

A plain reading of above clauses shows that the consideration payable by the appellant to Manali is Rs. 50,41,57,505/- which is agreed to be paid by 31st October, 2012 or earlier. The appellant in his books has credited the above amount to Manali debited to Falcon. This entry by itself cannot be called the consideration paid to Manali for taking over its loan to Falcon, since the appellant has not got any additional incentive in passing such entry in its books. In fact the appellant has just undertaken to recover the loan

from Falcon and pay the full amount to Manali. Hence, it cannot be said that the appellant has paid any lawful consideration to Manali, and therefore, the Deed of Assignment cannot be construed a valid contract under Indian Contract Act, 1872.

The appellant has not submitted the other Deed of Assignment dated 14.01.2012 amongst Stephen, Suncap & Dunlop, in the Paper Book. However, the relevant clauses for consideration are assumed to be on similar lines as above.

7.4 The aforesaid discussion proves that the appellant's Deed of Assignment is neither a valid contract nor is enforceable in law. Also, as validly observed by the AO, a debt assignment activity is not permissible unless a securitization company or a reconstruction company had been constituted in accordance with the provisions of securitization Act. Also, the AO has validly observed that the registration of charge was compulsory as per Section 125 & 135 of the Companies Act, 1956, and in absence thereof, the same would be void against the liquidator or any other creditor. Hence, from any angle, the appellant's Deed of Assignment has no sanctity in the eyes of law.

7.5 Now let's examine the factual intention of appellant behind passing such debit/credit entries in its books. It is in public domain that Enforcement Directorate (ED) has found money laundering traces in book of accounts of Falcon & Dunlop, which is very

much concentrated on the subject transactions under present appeal. Both these companies were controlled by Pawan Kumar Ruia, the chairman of Kolkata based Ruia group.

7.6 In 2008, ICICI Bank had given a loan to two Pawan Kumar Ruia companies - Shalini Properties and Developers Pvt. Ltd and SPR Resorts Ltd. against the mortgage of a 58.5 acre plot in Athipattu village near Chennai. Dunlop India Ltd (DIL) had sold this plot in 2007 to a subsidiary, Dunlop Properties Pvt. Ltd, which in turn mortgaged it a year later with ICICI Bank for credit facilities obtained by above two Ruia Group companies. Also, substantial shares of Falcon Tyres Ltd. (FTL) and Dunlop were pledged as additional collateral with ICICI Bank. The loan amount was around Rs 575 crore.

7.7 After a long legal battle, the Kolkata High Court had passed a winding up order for DIL in 2012 wherein the High Court had exposed the fraud committed by Pawan Kumar Ruia (PKR) group and ordered the properties to be transferred back to DIL. The PKR group feared that the high court order would make ICICI Bank insecure and force them to use the second collateral by invoking the shares of FTL and DIL. If invoked, ICICI Bank would have controlling stake and power to change the management in these companies. So to overcome this threat, PKR group had planned money laundering to the tune of Rs 200 crore.

7.8 *Modus operandi* was as usual. As per the investigation report, Manali Properties and Finance Pvt Ltd a PKR group company created a loan of Rs 165 crores in the book of accounts of FTL. Instead of asking the company to repay, PKR assigned this loan to three hawala companies i.e. Suncap Commodities Ltd, Regus Impex Private Ltd and Salputri Commerce Pvt Ltd. The deed of assignment had been induced with conversion clause wherein Falcon Tyres Ltd could issue new shares worth Rs 165 crores to these three companies instead of paying back the loan. As per the plan it reduced the collateral security pledged with ICICI bank to minority and simultaneously managed Rs 165 crores hawala and money laundering between Manali Properties and the three companies.

7.9 Later on, FTL made a preferential allotment of shares to these three companies upon an alleged conversion of outstanding loans. On Feb 9, 2012 - Manali Properties had assigned portions of the debt of Rs 144 crores as under i.e. Suncap Commodities Limited (Rs 50, 41, 57.505), Regus Impex Private Limited (Rs 50, 41, 57.506) and Salputri Commerce Private Limited (Rs 43, 21, 34,985). In addition, an identical model was executed with Dunlop India Ltd, wherein Dunlop shares of Rs 60 crores (approx) were allotted to these three companies. Thus, the total transactions under ED investigation with the three companies amounted to Rs 204 crores.

7.10 ED in its report said, "It needs to be enquired as to how the company with the paid up capital of Rs 1.11 crore could afford to give a loan to the tune of Rs 144 crores on interest free basis. Surprisingly, the loan is given to a group company. If the sources of funds at Manali Properties are investigated this whole transaction would prove to be a circular transaction." As per the investigation details, it is also clear that the company chooses to issue preferential shares against the loan due to Manali, especially when there was no demand upon them to pay the loan, and the loan amount was not carrying any interest burden. On the contrary, by issue of shares of Rs 144 crores, the management (which has taken decision to issue shares) diluted their shareholding, wherein they become minority shareholder after the issue of shares. Whereas, the three unknown shell companies having no presence or expertise in the tyre industry held majority stake of the company, without claiming any seat on the board of the company.

7.11 As per the report, even in the case of a group company i.e. M/s Stephens Financial Services Pvt. Ltd, loans which were receivable from DIL were also assigned around the same time to the three said companies using the same modus operandi.

7.12 Report concludes, there has been huge transfer of assets/loans to benami and hawala companies of the tune of Rs 2000 crore wherein assets of Public Ltd were transferred to shell companies and further book

entries were passed for the payment of the diminished transaction value, thus no monetary transaction or gain to the transferor company.

7.13 As per information on records, after making the said debit/credit entries in books, the appellant has got allotted the listed shares in Falcon/ Dunlop against their debits, however there is nothing to show how the credit entries in name of Manali/ Stephen are settled, or if at all settled in near future. In net, the assessee has got valuable shares worth Rs. 50.42 crores & Rs. 21.00 crores without having to make any actual payment in the year under consideration. The virtual financing for such shares is made by Manali/ Stephen, to whom the appellant do not have to pay any interest and also no security is given by appellant to said companies. By any stretch of imagination, such an arrangement cannot be construed to be on any commercial terms, especially when the appellant do not have any relationship with Manali/ Stephen. Therefore, the genuineness of transaction with said parties is not proved.

7.14 Now coming to credit worthiness of Manali/ Stephen, the AO has discussed their financials in assessment order. Manali had shown current year loss of Rs. 81.95 lakhs and having a meager share capital along with reserves & surplus for year ended 31.03.2012 at Rs. 4.13 crores. It was a Kolkata based party and had shown trade payables of Rs. 155.96 crores which according to AO proved that the said

party had no business but only a sham financial entity and appeared to be merely an entry provider for these kind of unsecured loans & advances transactions. Stephen had shown current year loss of Rs. 777/- and had share capital along with reserves and surplus for year ended 31.03.2012 at Rs. 190 crores, and in this case the reserves and surplus was made up of Share Premium account worth Rs. 188.10 crores. It according to AO meant that said company had no means and no profits were generated out of business activities and appeared to be merely an entry provider for these kind of unsecured loans & advances transactions. I find that given the above stated financial position of Manali/ Stephen, the AO's conclusion is not far-fetched. In present case, the credit worthiness of Manali/ Stephen is not proved since their financials do not support the large funds in their respective hands.

7.15 It is not unknown that huge Trade Payables without carrying any corresponding revenue generating activity, or huge Share Premium grossly disproportionate to net-worth of a company are common phenomena noticed in books of accommodation entry providers. Normally some paper companies are floated by accommodation entry providers/ their associates, which give large amounts of finance to beneficiaries free of interest, and the source of such money is not generally not traceable from any genuine business activity. In such cases, it is not uncommon to presume that the source of

money is the unaccounted money of the beneficiary himself, which must have routed through paper companies in various forms and finally the money reaches in books of beneficiaries as unsecured loan/ share premium etc. Since the credit worthiness of parties & genuineness of transaction is never proved in such cases, the provisions of Section 68 can very well be invoked.

7.16 The appellant has contended that it has credited Manali/ Stephen by way of journal/ book adjustment entry and no flow of cash was there to the appellant. During appellate proceedings, the appellant has relied upon some case laws, i.e. Jatia Investment Co. v. CIT 206 ITR 718 (Cal), ACIT v. Kerala Transport Company 50 ITD 189 (Ker.), ACIT v. Mahendra Kumar Agarwal 142 TTJ 35 (Jaipur). I have gone through these judgments and find the facts of appellant's case to be distinguishable, as discussed below:

a) In the case of Jatia Investment Co. (supra), the cash book showed that there was merely a circulation of cash ending at the point it began, the cumulative effect being the assessee became a debtor to GB & Co. in place of three companies of the group. The fact that there was no passing of cash was also admitted by the Income-tax Officer himself. The adjustment entries were made by notional cash entries with a view to bringing down the debt-and capital ratio. The said three companies discharged

their debt on liability side and jettisoned their assets i.e. share held by them of equivalent sum on asset side. In these circumstances, it was observed by hon'ble High Court of Calcutta that the effect and import of the transactions was that the assessee took over the liability of the aforesaid non-financial companies to GB & Co. in exchange for the shares as aforesaid. Therefore, it was held that the amount of loan in question could not be treated as assessee's income from undisclosed sources.

b) In the case of Kerala Transport Co. (supra), the sister concern had received the debit entry with corresponding credit to partners' accounts. In such case, it was observed that no cash came into the business or went out of the business by means of such entries.

c) In the case of Mahendra Kumar Agarwal (supra), the assessee had made only a journal entry by debiting Rajesh Sales Corporation and credited the assessee's current account wrongly and this wrong entry was rectified later on. Also it was found that the identity and credit worthiness of Rajesh Sales Corporation was not in doubt. In such case it was held that the word "sum" appearing in section 68 is of paramount importance, and the words "any sum" cannot be taken as parallel to "any entry". It was further held that the provisions of s. 68 are

deeming provisions and therefore, onus is on the Department to prove that any sum was credited to the books of the assessee.

7.17 In the present case, there is no apparent consideration paid to loan creditors i.e. Manali/Stephen, and moreover such huge loans are interest-free and from a non related party. It seems to be a clear case of accommodation entry credited in appellant's books in name of Manali/Stephen. The non-use of banking channel while making the entry does not change the basic fact that the sum has been found credited in the books of assessee, and explanation offered by assessee is not found to be satisfactory. Such accommodation entries are used by the appellant as a tax evasion tool by way of bringing unaccounted money in books without payment of taxes. In the case of Mcdowell & Co Ltd (1985) 154 ITR 148, the Hon'ble Supreme Court has held that "Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

7.18 In the case of CIT v Durga Prasad More 82 ITR 540, the Supreme Court has held that "Taxing authorities are not required to put on blinkers while looking at the documents produced before them. They are entitled to look into the surrounding

circumstances to find out the reality of the recitals made in these documents.". In present case, the surrounding circumstances prove that the contents of Deed of Assignment do not speak the whole truth, and there is something behind the scene which has prompted the parties to enter into such arrangement.

7.19 The appellant was given show cause vide this office letter dated 23.01.2017 which reproduced for ready reference:

By Registered Post/Speed Post

*Office the
Commissioner of Income Tax (Appeals)-3,
Room No. 359, M.K. Road, Aaykar Bhavan,
Mumbai- 400 020*

*No. CIT(A)-3/Show Cause /2016-17/ Date:
23.01.2017*

*The Principal Officer,
M/s Suncap Commodities Ltd.
302, 3rd Floor, Kumar Plaza,
Kalina Kurla Road, Near Kalina Market,
Santa Cruz East, Mumbai-400 020.*

*Subject:- Show Cause notice Under Section 250
of the I.T. Act, 1961 PAN:-AACCN2950K AY.
2012-2013 CIT(A)-3/DCIT-1(3)(1)/IT-62/2015-
16- regarding –*

*1. In your precise Grounds of Appeal, you
have termed the two Deed of Assignment as*

"Contract of Novation", as recognized by the Indian Contract Act, 1872. The essential feature of Novation of contract is that when a contract is substituted, the rights under the original contract are relinquished or replaced by the new contract. Since the Novation is a new contract, it must possess the essential elements of a contract.

As per Section 10 of Indian Contract Act, 1872, "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.....".

In your case, it can be understood that the amount of Rs. 50,41,57.505/- & Rs. 21,00,00,000/- credited to M/s Manali Properteis and Finance Private Limited and M/s Stephens Financial Services Private Limited are not real consideration since equivalent debit entry in name of M/s Falcon Tyres Ltd. And M/s Dunlop India Ltd is taken over from them. Hence, please explain what real consideration is paid to M/s Manali Properteis and Finance Private Limited and M/s Stephens Financial Services Private Limited under these two Deed of Assignment, and in absence of which how the said Deed of Assignment do not become invalid.

2. *The Deed of Assignment are executed on stamp paper of Rs. 100 each. It however appears that the same is covered by the term 'Instrument' defined in ub-section (14) of Section 2 of the Indian Stamp Act, 1899, which reads as*

"Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded."

Also, the said Instrument is being executed for the first time not having been executed previously, hence chargeable to stamp duty under Indian Stamp Act, 1899. The effect of not paying proper stamp duty is that the Deed of Assignment becomes non-enforceable in law. Please offer your comments on the above.

3. *Please explain how the credit entries in name of M/s Manali Properteis and Finance Private Limited and M/s Stephens Financial Services Private Limited are settled subsequently, along with their confirmed account statement.*

4. *Consequent upon executing the Deed of Assignment, you have acquired shares worth Rs. 50.42 crores & Rs. 21.00 crores of M/s Falcon Tyres Ltd. And M/s Dunlop India Ltd., whereas no actual payment is made to the creditors i.e. M/s Manali Properties and Finance*

Private Limited and M/s Stephens Financial Services Private Limited. Therefore, you have got these shares without having to make any actual payment. Also, no interest is paid to the creditors i.e. M/s Manali Properteis and Finance Private Limited and M/s. Stephens Financial Services Private Limited and these are not your related parties. Such an arrangement does not seem to be on commercial terms. Hence, please prove the genuineness of transaction with said parties.

5 As discussed in Assessment Order, M/s Manali Properteis and Finance Private Limited had shown current year loss of Rs. 81.95 lakhs and having a meager share capital along with reserves & surplus for year ended 31.03.2012 at Rs. 4.13 crores. It was a Kolkata based party and had shown trade payables of Rs. 155.96 crores which proved that the said party had no business but only a sham financial entity and appeared to be merely an entry provider for these kind of Unsecured Loans & Advances Transactions.

Similarly, M/S Stephens Financial Services Private Limited had shown current year loss of Rs. 777/- crores and had share capital along with reserves and surplus for year ended 31.03.2012 at Rs. 190 crores, and in this case the reserves and suplus was made up of Share

Premium Account worth Rs. 188.10 crores. It meant that said company had no means and no profits were generated out of business activities and appeared to be merely an entry provider for these find of Unsecured Loans & Advances transactions. The above facts do not prove the credit worthiness of M/s Manali Properteis and Finance Private Limited Manali and M/s Stephens Financial Services Private Limited. Please offer your comments to the above.

6. *In relation the transactions covered under appeal, certain information about ED investigation is gathered from the news reports appearing in Public Domain (Internet), which states that Enforcement Directorate (ED) has found money laundering traces in Book of Accounts of M/s Falcon Tyres Ltd and M/s Dunlop India Ltd.*

"In 2008, ICICI Bank had given a loan to two Pawan Kumar Ruia companies - Shalini Properties and Developers Put. Ltd and SPR Resorts Ltd. against the mortgage of a 58.5 acre plot in Athipattu village near Chennai. Dunlop India Ltd (DIL) had sold this plot in 2007 to a subsidiary, Dunlop Properties Pvt. Ltd, which in turn mortgaged it a year later with ICICI Bank for credit facilities obtained by above two Ruia Group

companies. Also, substantial shares of Falcon Tyres Ltd. (FFL) and Dunlop were pledged as additional collateral with ICICI Bank. The loan amount was around Rs 575 crore.

After a long legal battle, the Kolkata High Court had passed a winding up order for DIL in 2012 wherein the High Court had exposed the fraud committed by Pawan Kumar Ruia (PKR) group and ordered the properties to be transferred back to DIL. The PKR group feared that the high court order would make ICICI Bank insecure and force them to use the second collateral by invoking the shares of FTL and DIL. If invoked, ICICI Bank would have controlling stake and power to change the management in these companies. So to overcome this threat, PKR group had planned money laundering to the tune of Rs. 200 crore.

Modus operandi was as usual. As per the investigation report, Manali Properties and Finance Pvt Ltd a PKR group company created a loan of Rs 165 crores in the book of accounts of FTL. Instead of asking the company to repay, PKR assigned this loan to three hawala companies i.e. Suncap Commodities Ltd, Regus Impex

Private Ltd and Salputri Commerce Pvt Ltd. The deed of assignment had been induced with conversion clause wherein Falcon Tyres Ltd could issue new shares worth Rs 165 crores to these three companies instead of paying back the loan. As per the plan it reduced the collateral security - pledged with ICICI bank to minority and simultaneously managed Rs 165 crores hawala and money laundering between Manali Properties and the three companies.

Later on, FTL made a preferential allotment of shares to these three companies upon an alleged conversion of outstanding loans. On Feb 9, 2012-Manali Properties had assigned portions of the debt of Rs 144 crores as under i.e. Suncap Commodities Limited (Rs 50, 41, 57,505), Regus Impex Private Limited (Rs 50, 41, 57.506) and Salputri Commerce Private Limited (Rs 43, 21, 34,985). In addition, an identical model was executed with Dunlop India Ltd, wherein Dunlop shares of Rs 60 crores (appox) were allotted to these three companies. Thus, the total transactions under ED investigation with the three companies amounted to Rs 204 crores.

ED in its report said, "It needs to be enquired as to how the company with the paid up capital of Rs 1.11 crore could afford to give a loan to the tune of Rs 144 crores on interest free basis. Surprisingly, the loan is given to a group company. If the sources of funds at Manali Properties are investigated this whole transaction would prove to be a circular transaction." As per the investigation details, it is also clear that the company chooses to issue preferential shares against the loan due to Manali, especially when there was no demand upon them to pay the loan, and the loan amount was not carrying any interest burden. On the contrary, by issue of shares of Rs 144 crores, the management (which has taken decision to issue shares) diluted their shareholding, wherein they become minority shareholder after the issue of shares. Whereas, the three unknown shell companies having no presence or expertise in the tyre industry held majority stake of the company, without claiming any seat on the board of the company.

As per the report, even in the case of a group company i.e. M/s Stephens Financial Services Pvt Ltd, loans which

were receivable from DII. were also assigned around the same time to the three said companies using the same modus operandi.

Report concludes, there has been huge transfer of assets/loans to Benami and Hawala Companies of the tune of Rs. 2,000 crore wherein assets of Public Ltd were transferred to shell companies and further book entries were passed for the payment of the diminished transaction value, thus no monetary transaction or gain to the transferor company.

The above news report is available on following link:

<http://indiatoday.intoday.in/story/ruia-suryamani-financing-rbi-pawan-kumar-ruia--dunlop-india/1/322904.html>

You are hereby required to give your comments on above news report explaining full facts with supporting evidences. Also, please explain the present status of said investigation.

7. In view of the above facts and circumstances of the case, you are hereby Show Cause to satisfactory explain the said sham transactions with supporting evidences. You are further

show cause as to why appropriate adverse inference should not be drawn based on information available on records/in public domain against you and why your Grounds of Appeal should not be dismissed.

Your case is fixed for hearing on 27.02.2017 at 11.00 am

*-sd-
(SS KEMWAL)
CIT (A)-3, Mumbai*

7.20 In response to the show cause notice the appellant preferred to reply by speed post letter dated 23.02.2017 received in this office on 24.02.2017 which has been considered while passing this order. Appellant has reiterated its earlier version and did not produce any supporting evidence in support of the grounds of appeal. In view of above discussion, it is crystal clear that appellant has not proved the nature and the source of Rs. 50,41,57,505/- & Rs. 21,00,00,000/- by any means and hence the said amounts were correctly added back to the total income of the assessee as unexplained cash credit u/s 68 of the I.T. Act. Therefore addition of Rs.50,41,57,505/- & Rs. 21,00,00,000/- are confirmed as I did not find any reason to interfere in the finding of the AO. Hence, Grounds No. 2 to 5 are dismissed.

8. In the result, the appeal for A.Y. 2012-13 is dismissed."

07. Assessee being aggrieved with the order of the learned CIT – A preferred in appeal before us raising 25 grounds. Many times appeal has been called for hearing , however none appeared before us on several of the occasions. Subsequently the revenue was asked to serve notice to the assessee. On 7 March 2022, the Id AO placed before the bench report stating that notice has been afixed on the last known address of the assessee. The report of the notice was also placed on record wherein it is stated that assessee is not available at the given address and staff of that office also did not accept the notice saying that the notice does not belong to them and they do not know the present whereabouts of this company. In view of this facts, we do not have any other option but to decide the appeal of the assessee on the merits of the case as per information available on record.
08. The learned departmental representative submitted that over and above the issue decided by the learned lower authorities, there is also an order passed by The Securities Exchange Board Of India [SEBI] u/s 11 (1) 11 (4) and 11 B (1) of The Securities And Board Of India Act 1990 to read with Section 12 A of The Securities Contracts Regulation Act 1956 wherein it has been found in the matter of Falcon tyres Ltd and Dunlop India Ltd that assessee with respect to the above two assignment of loans is also in violation of the provisions of that Section. He referred to paragraph number 39.3. 1 with respect to

the assessee wherein it has been stated that the balance sheet for financial year 2011 – 12 of the assessee shows that it had negative net worth which further deteriorated. It had only assets of advances given as a share application money from Rs nil to ₹ 714,157,505/- in Falcon Tyres Limited and Dunlop India Limited . The assessee was doing the business of trading of goods such as chilly. Both the companies from whom the loans have been assigned were found to be bogus, further the parties who assigned the loans are also found to be in violation of the respective laws. In view of this it was stated that both the transaction are non genuine, bogus and are correctly added u/s 68 of the act by the learned AO and upheld by the learned CIT – A. he further submitted that Loan were obtained from bogus companies by Falcon Tyres Limited and Dunlop Tyres Limited. Such loans were assigned to the assessee. In the books of assessee there is credit of Manali and Stephen and Debit of Falcon and Dunlop. The share were then issued to the assessee by falcon and Dunlop. So this is circuitous non genuine route adopted.

09. We have carefully considered contentions of the learned departmental representative as well as the findings of the learned that lower authorities. The facts clearly shows that Stephen financial services private limited advanced the loan to Dunlop India Ltd. The Dunlop India Ltd did not repay the same but assigned to the assessee. Thus the amount was credited in the books of the assessee by the

assignment deed and Account of Stephens Pvt Ltd credited in the books of assessee and resultant debit of Dunlop India Limited. Instead of debiting the account of Dunlop Limited, assessee debited it as advance against allotment of shares. Assessee executed a tripartite agreement and took the responsibility of the above loan of Stephens financial services private limited from Dunlop India Ltd without any consideration or placing any security with Stephen financial services private limited. There was no interest contemplated to be paid by the assessee on such loans. The loan advanced by Stephen financial services private limited, assigned to the assessee by Dunlop India Ltd, original borrower, was to the tune of ₹ 504,157,505/-. The fact shows that Dunlop India Ltd obtained loan of ₹ 623,946,000/- from Stephen financials Ltd which was also partly assigned to other companies other than the assessee.

010. Similarly Manali properties and finance private limited advanced loan to Falcon Tyres Ltd. Falcon Tyres Ltd assigned the loan outstanding of ₹ 21 crores payable by it to Manali properties and finance Ltd to the assessee. Similar modus operandi was employed by executing a tripartite agreement on a stamp paper of Rs 100/-. The assessee did not place any security or loan was bearing any interest. Falcon Tyres Ltd also obtained a loan of 144,40,50,000/- from the above company and part of

which is assigned to the assessee and balance to other companies.

011. The above fact clearly shows that huge unsecured loans obtained by Dunlop Limited and Falcon tyres Ltd were assigned to the companies like assessee. In case of Dunlop and falcon Tyres Limited along with Mr pavan Kumar Ruia , Suneel Bhansali, S. Ravi, Damodar Dani and Mohanlal Chauhan were found to be involved in violation of securities and exchange board of India regulations along with the assessee and several other companies wherein the above assignment of loan was used for preferential issue of shares in the above two companies. The whole transactions were orchestrated by Dunlop and Falcon to violate the provisions of minimum public shareholding criteria in those companies under SEBI Laws. The assessee was used as a conduit company along with other companies to do the same. Mr Ruia and Mr Bhansali were part of the Board of Directors of Dunlop and Falcon. The complete history of transaction is also mentioned in the order of SEBI dated 24 March 2021. Over and above this, the finding of the learned CIT – A also notes in paragraph number 7.5 that Enforcement Director has also found money-laundering traces in the books of Falcon and Dunlop. Both these above companies are controlled by Mr Pawan Kumar Ruia. Therefore, amounts credited in the books of accounts of assessee lack genuineness. In view of above facts, we do not find



any infirmity in the orders of the lower authorities in confirming the addition of ₹ 504,157,505/- and of ₹ 21 crores u/s 68 of the Act. Accordingly, we confirm the orders of the lower authorities.

012. All the grounds of the appeal filed by the assessee are dismissed. Hence, appeal of the assessee is dismissed.

013. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 07.06.2022.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 07.06.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai