

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member

I.T.A No.691/Kol/2022  
Assessment year: 2015-16

Southern Road Carriers Ltd.....Appellant  
P-9, New CIT Road, Central,  
Kolkata-700073.  
[PAN: AACCS8837N]

vs.

DCIT, Circle-13(2), Kolkata.....Respondent

**Appearances by:**

Shri S. K. Pransukha, FCA, appeared on behalf of the appellant.

Shri Vijay Kumar, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 15, 2023

Date of pronouncing the order : August 11, 2023

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 03.11.2022 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

*"1. That the CIT(A) has erred both in law and on facts by confirming the addition of Rs.1,06,74,500/- made by Assessing Officer for treating share capital issued as unexplained cash credit u/s 68.*

*2. That the CIT(A) has like-wise erred both the law and on facts by confirming the addition made by Assessing Officer amounting to Rs.14,60,000/- being differential value of sale consideration and stamp duty value of the property sold.*

3. *That the appellant craves leave to add to amend or withdraw all or any ground or grounds of appeal at the time or before the hearing of the appeal.”*

3. Ground No.1 – The assessee vide Ground No.1 has contested the confirmation of addition of Rs.1,06,74,500/- made by the Assessing Officer by treating the share capital received by the assessee as unexplained cash credits u/s 68 of the Act.

4. The brief facts of the case are that during the assessment proceedings, the Assessing Officer noted that the assessee had allotted shares 1,06,74,500/- (face value of Rs.57,70,000/- + premium of Rs.49,04,500/-) to various shareholders. The Assessing Officer issued notices u/s 133(6) to the shareholders to verify the transactions. After receiving the reply from the shareholders, the Assessing Officer observed that the following four shareholders were major shareholders who were the relatives of the directors of the assessee company:

| Sl no. | Name                      | Gross income as per ITR | Shares amounting to(including premium) |
|--------|---------------------------|-------------------------|--|
| 1      | Anuradha Chirpal          | 1,88,921                | 758,500                                |
| 2      | Arun Kunar Anil Kumar HUF | 13,68,895               | 35,70,500                              |
| 3      | Nikita Chirpal            | 3,67,648                | 12,58,000                              |
| 4      | Sarala Devi Chirpal       | 194,533                 | 9,43,500                               |
|        | Total                     | 21,19,997               | 65,30,500                              |

The Assessing Officer further noted that on perusal of bank statement of the assessee and that of the aforesaid four shareholders, it revealed that the assessee had made a payment to the shareholders and the

shareholders consequently from next day made the payment back to the assessee. On being asked to explain in this respect, the assessee explained that all the aforesaid four shareholders were existing shareholders of the assessee company and that they had earlier given loans to the assessee company, who were repaid by cheque to comply with the provisions of section 269T of the Act. Thereafter, the said shareholders paid back the amount through cheque towards share application money. That there was no doubt about the identity and creditworthiness of the shareholders. That the shareholders were close relatives of the Directors of the assessee company, who have duly confirmed the transactions. However, the Assessing Officer did not get satisfied with the above reply of the assessee and treated the entire amount of share application money of Rs.1,06,74,500/- as unexplained cash credits u/s 68 of the Act.

5. The Id. CIT(A) confirmed the additions so made by the Assessing Officer.

6. Before us, the Id. Counsel for the assessee has submitted that the assessee is a transport company. The turnover of the assessee during the year was of Rs.11 crores. The assessee manages its funds by taking loans/share capital from its shareholders. The Id. Counsel for the assessee, referring to the page 20 of the paper-book, has submitting that the 13 shareholders to whom the shares were allotted during the year under consideration, were its existing shareholders. The Id. Counsel has referred to page 17 of the paper-book to show that there were existing loans outstanding of the said 13 shareholders as on 01.04.2014 at Rs.50.50 lakhs. The additional loan of Rs.37 lakhs was received during the year. The total loan amount of Rs.78 lakhs was repaid by the assessee by cheque to the said shareholders. Thereafter, the assessee

received the share application money + premium of Rs.1,06,74,500/- from its creditors and 57700 shares were allotted to them. A perusal of the chart given by the assessee would reveal that almost the same amount of loan, which was refunded by the assessee, has been reinvested by the said creditors/shareholders except 'Arun Kumar Anil Kumar HUF' who was refunded of Rs.11.50 lakhs, but, reinvested the amount of Rs.35 lakhs. Similarly, Smt. Sarala Devi Chiripal had received Rs.7 lakhs refund, but invested Rs.9.43 lakhs. There is no major difference of the amount relating to any of the other shareholders. Therefore, in respect of 11 shareholders, there cannot be doubt about their identity and creditworthiness. Moreover, the transactions have been fully explained and confirmed by the shareholders, therefore, there is no doubt about the genuineness of the transaction. So far as, the increase in investment of Rs.2 lakhs by Smt. Sarala Devi Chiripal, the same is meagre amount and hence, doubt cannot be raised about the creditworthiness of the said shareholder also. Now, coming to the amount invested by 'Arun Kunar Anil Kumar HUF', the said investor admittedly is closely related to the assessee company. The gross income of the said creditor as per ITR, as mentioned by the Assessing Officer himself is 13.68 lakhs for the year under consideration. The said 'Arun Kunar Anil Kumar HUF' has duly confirmed the transactions. In response to the notice issued u/s 133(6) by the Assessing Officer, the said Arun Kunar Anil Kumar HUF has duly enclosed the copy of their cash book, photocopy of bank pass book, photocopies of application of shares, photocopy of their profit & loss account, Balance sheet and ITR form for the financial year 2014-15 and it was duly confirmed that they have invested in the assessee company from their own sources. The Assessing Officer has not pointed out any defect or infirmity in the evidences furnished by the assessee as well as by the said shareholder.

We, therefore, do not find any justification on the part of the lower authorities to make/confirm the impugned additions and the same are, accordingly, ordered to be deleted.

7. Ground No.2 – Vide Ground No.2, the assessee has contested the confirmation of addition of Rs.14,60,000/- being differential value of sale consideration and stamp duty value of the property sold by the assessee.

8. The Id. Counsel for the assessee, in this respect, has brought our attention to the submission made before the Assessing Officer to submit that it was explained to the Assessing Officer that the land was situated at Ichhapuram and the value of land was very less as compared to the stamp duty rate. The land was sold as a distress sale as there was no taker available for the land in question and the company was in need of funds. That the Assessing Officer was requested to appoint departmental valuation officer to assess the market value of the land, however, the Assessing Officer did not refer the matter to the departmental valuation officer. The Id. Counsel for the assessee has, therefore, submitted that since the market value of the land was less and therefore, the Assessing Officer was not justified in making the impugned additions by comparing the sale value with the stamp duty value. The Id. Counsel, in this respect, has relied upon the decision of the Jurisdictional Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT in GA No.3686 of 2013 ITAT No.221 of 2013 vide order dated 13.03.2014, wherein, the Hon'ble High Court has made the following observations:

*“For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar 1Or the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen / taxpayer. There is no reason why the machinery*

*provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.”*

9. Since, in this case, the assessee, right from the very beginning, had claimed that the market value of the land was less and that there was no taker of the land and the land was sold as a distress sale, the assessee had duly requested to the Assessing Officer to appoint a departmental valuation officer, which request was not acceded to by the Assessing Officer and there is no rebuttal to the contention of the assessee that the market value of the land was less than the stamp duty value, therefore, we do not find justification on the part of the lower authorities in making/confirming the impugned additions and the same are accordingly ordered to be deleted.

10. Ground No.3 is general in nature.

11. In the result, the appeal of the assessee stands allowed.

***Kolkata, the 11<sup>th</sup> August, 2023.***

Sd/-  
**[Rajesh Kumar]**  
लेखा सदस्य /Accountant Member

Sd/-  
**[Sanjay Garg]**  
न्यायिक सदस्य /Judicial Member

Dated: 11.08.2023.

RS

*Copy of the order forwarded to:*

1. Southern Road Carriers Ltd
2. DCIT, Circle-13(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches