

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

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER  
AND  
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No.1925/Del/2013  
Assessment Year: 2010-11

|  |            |                                       |
|--|------------|---------------------------------------|
| Kamal Industry HUF,<br>589-590, Choudhary Wara,<br>Rewari. | <b>Vs.</b> | DCIT, Central Circle-II, New<br>Delhi |
| <b>PAN : AAAHK9491F</b>                                    |            |                                       |
| <b>(Appellant)</b>   |            | <b>(Respondent)</b>                   |

|               |   |
|---------------|---|
| Appellant by  | S/sh. Satyen Sethi & Arta Trana Panda,<br>Advocates |
| Respondent by | Sh. Naveen Chandra, CIT(DR)                         |

|                       |            |
|-----------------------|------------|
| Date of hearing       | 22.05.2017 |
| Date of pronouncement | 31.05.2017 |

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal by the assessee is directed against the order dated 08/03/2013 of Ld. Commissioner of Income Tax (Appeals)(Central), Gurgaon, raising sole ground of appeal, which is as under:

*“That on the facts as well as in law the learned CIT(Appeals) Central, Gurgaon, was not justified in confirming the addition of Rs.2,19,59,977/- under section 68 of the Income Tax Act, 1961.”*

2. The facts in brief of the case are that the premises of the assessee company were subjected to search and seizure action under section 132 of the income tax Act, 1961 (in short the Act) on 30/07/2009 along with other connected assessees including the assessee namely %Gupta metal sheet private limited+. The assessee filed return of income declaring total income of Rs.5,82,900/- on 08/09/2010. Notices under section 143(2) and 142(1) of the Act was issued and served upon the assessee within stipulated period. The Assessing Officer observed that the assessee company was dealing in nonferrous metal. The Assessing Officer made addition of Rs.2,19,59,977/- in respect of following creditors holding the same as unexplained in terms of section 68 of the Act:

| Sl. No. | Name of the creditors | Amount           |
|---------|-----------------------|------------------|
| 1.      | Yamuna Traders        | 15,05,000/-      |
| 2.      | Ganpati Traders       | 19,80,000/-      |
| 3.      | Shiwalik Enterprises  | 18,46,64,977/-   |
| Total   |                       | Rs.2,19,59,977/- |

3. The Ld. CIT-A upheld the addition with following observations:

*“6.2 The addition of Rs. 2,19,59,977/- has been made u/s 68 which lays down three basic ingredients\* to be met by the assessee viz. the proving of the identity, the genuineness of the transaction and credit-worthiness of the creditors. Now going by the contention of the assessee that an ITI had been deputed to make necessary inquiry, to my mind merely points the existence of the concerned party. In other words identity of the concerned party can be said to be proved, even though no details of PAN; copy of return income/ balance-sheet etc were provided. The - other ingredients, whether fulfilled or not, requires to be seen from the facts as emerging from the records. The Inspector of Income*

*Tax had obtained bank statements and other documents. The AO noted that from the bank statements it was apparent that withdrawals were made in cash consequent to the deposit of the cheques. In addition the rationale of the creditor operating bank accounts in Rewari while residing 500 km away was neither tenable nor practical. Furthermore why account payee cheques were not drawn to safe guard misuse as feared by the parties concerned defied logic too. But I find the assessee has not tried to repudiate the observations which formed the basis of the impugned addition by filing documentary evidences. The explanation put forth during appellate proceedings does not in any way give any confidence. It is for the assessee to furnish convincing reasons with material substantiation to controvert the findings of the AO. Thus I am afraid the credit worthiness as well as the genuineness of the transactions remains unsubstantiated. By merely showing transactions through banking channels and entries in the books of accounts cannot be said to be sufficient proof on the part of the assessee. The assigning of blank signed cheques with the assessee by the creditor cannot be considered a normal business practice. In fact, no prudent business man would resort to assigning not only one but many loose signed blank cheques with any other person. Needless to say the three ingredients of Sec.68 are to complement: each other, which is not so in the case at hand Thus the assessee has failed to discharge the initial onus cast upon him as required under the provisions Sec.68. The cases relied upon do not help the assessee either as the facts are different and the AO was right in raising a presumption as the explanations put forth by the assessee was not satisfactory. Therefore, considering the facts of the case, the addition made by the AO is confirmed.”*

4. Before us, the Ld. counsel of the assessee submitted that the additions made are opening balances of the sundry creditors and same cannot be made in the year under consideration. The Ld. consul further relied on the order of the Tribunal in the case of M/s Gupta metal sheet private limited in ITA No. 1926 /Del/2013 for assessment year 2010-11, wherein the Tribunal has restored the matter back to the Assessing Officer for verification whether credits pertain to the assessment year in

consideration or not. The Id. counsel submitted that issue in the year under consideration might also be restored to the Assessing Officer for verification of the fact, whether the credits pertain to the year under consideration or earlier years.

5. The Ld. Sr. DR, on the other hand, relied on the order of the lower authorities.

6. We have heard the rival submission and perused the relevant material on record. We find that in identical facts and circumstances in the case of M/s Gupta Metal Sheet Private Limited (supra), the Tribunal has restored the issue to the file of the Assessing Officer with following findings:

*“7. We have heard the rival submissions of the parties and perused the material on record. We would like to first deal the fourth proposition of the learned AR. The learned AR states that the assessee has already discharged its Burdon of proof regarding identity of the creditor, genuineness of the transaction and creditworthiness of the creditor, however, the learned CIT(DR) has disputed this statement of the AR. We find from the order of the Id. CIT(A) that as regards to the identify, even permanent account number (PAN) or was balance sheet etc. of the assessee were not provided. As regards to genuiness of the transaction, , the same was in doubt from the observation of the AO that cash used to be withdrawn after deposit of cheque by the assessee. We find that no documents have been submitted by the assessee in support of the creditworthiness of the creditor. Thus according to us the assessee has failed to discharge its Burdon of proof for requirement of section 68 of the Act regarding the creditor. In view of the facts and circumstances, we are of the opinion that in the interest of justice, the assessee should be provided one more opportunity to discharge its burden of proof in respect of the creditor. Accordingly, we restore the matter to the file of the Assessing Officer for deciding the issue afresh in accordance to law. Needless to mention that the assessee shall be provided sufficient opportunity of being heard. As regards to the third proposition of the Id AR that the provision of section 68 of the Act are not applicable over the purchases, in view of the judgment of the CIT Vs Panchamdas Jain (supra), is concerned , we*

*find that the fact in the case of CIT Vs Panchamdas Jain (supra) purchases were not held bogus by the AO and thus the Hon'ble Court held that in absence of holding the purchases as bogus , the was not correct in holding the purchases on credit as unexplained u/s 68 of the Act. But, whether purchases have been doubted in the case of the assessee or not is not clear from the facts before us and, thus we hold that as we have already restored the matter to the file of the Assessing Officer, the AO is directed to examine whether the purchases in the case have been found bogus or not and thereafter, he is directed to take action in view of the judgment of the CIT Vs Panchamdas Jain (supra) accordingly. As regards , the second proposition of the Id AR that part of the purchases from the creditor are only held as unexplained, we hold that the issue of examination whether the purchases in dispute are explained or not has been restored to the file of the AO for determination afresh, the proposition is thus rendered infructuous and not require our adjudication. As regards to the first proposition that the purchases in dispute pertained to earlier assessment year is concerned, we find that the issue has already been restored to the file of the Assessing officer for examination afresh, we direct the Assessing Officer to examine the issue as in which year the purchases in question were credited.....”*

7. In the present appeal, the Assessing Officer or the Ld. CIT-A, in their orders has not given finding whether the credits in question pertain to the year under consideration or pertain to earlier years. In our view, If the credits in question pertained to earlier years, no addition could have been made in the year under consideration. In the facts and circumstances of the case, we feel it appropriate to restore the issue to the file of the Assessing Officer for verification, whether the amount added under section 68 of the Act are opening balances of the creditors and if that is so, then directed to decide the issue in view of our finding above. If the credits pertain to the year under consideration, then the action should be taken in terms of section 68 of the Act, following the finding of the Tribunal in the case of M/s. Gupta Metal Sheet Pvt. Ltd. (supra). It is needless to mention that assessee shall be afforded

reasonable opportunity of hearing. Accordingly ground of the appeal is allowed for statistical purpose.

8. In the result, appeal of the assessee is allowed for statistical purpose.

The decision is pronounced in the open court on 21<sup>st</sup> May, 2017.

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated: 21<sup>st</sup> May, 2017.  
RK/-(D.T.D)

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

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi