

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "G" : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.6306/Del./2018  
Assessment Year 2013-14

The Income Tax Officer, Ward – 22 (4), C.R. Building, New Delhi.	vs.,	M/s. Satvik Logistics Pvt. Ltd., 27, Sadhana Enclave, New Delhi – 110 017. PAN AAPCS5418Q
(Appellant)		(Respondent)

For Revenue :	Shri Bhopal Singh, Sr. DR
For Assessee :	Shri Ved Jain And Shri Ashish Sachdeva, Advocates

Date of Hearing :	03.11.2021
Date of Pronouncement :	26.11.2021

**ORDER**

**PER R.K. PANDA, A.M.**

This appeal filed by the assessee is directed against the order dated 20.07.2018 of the Ld. CIT(A)-31, New Delhi, relating to the A.Y. 2013-2014.

2. Facts of the case, in brief, are that assessee is a company engaged in the business of building and leasing-

out warehouse and also earns rental income from leasing-out warehouse. It filed its return of income on 28.09.2013 declaring income of Rs.4,00,450/-. The return was processed under section 143(1) and thereafter, the case was selected for scrutiny under CASS. Statutory notices were issued to the assessee and the assessee appeared before the A.O. from time to time and filed the requisite details.

2.1. During the course of assessment proceedings, the A.O. noted that assessee has taken unsecured loans/ advances of Rs.4,32,56,550/-. He, therefore, asked the assessee to prove the identity and creditworthiness of the loan creditors and the genuineness of the transaction. In response to the same, the assessee furnished certain documents like copy of the ITR, confirmation and audited financials of all the parties. The A.O. on perusal of the details of one of these parties namely M/s. Paras Steel Trading Company, which is the proprietor ship concern of Shri Kush Kumar, observed that the said person is showing meager income in comparison to the loan given. From the income tax return for the A.Y. 2013-2014 of Shri Kush

Kumar he noted that he has shown an amount of Rs.4,02,577/- as income whereas he has given unsecured loan of Rs.3,67,88,550/-. Therefore, it is highly improbable and impossible and also beyond imagination for any one to give a loan which is nearly 90 times of his current annual income. Further the net worth of the proprietorship concern is not sound which has a mere net worth of Rs.16,27,732/- as on 31.03.2013. According to the A.O, no prudent businessman would loan up more than 50% of business funds by giving interest free advance. He further noted that as per the DVAT website the license/registration of M/s. Paras Steel Trading Company had been cancelled by the DVAT Authorities.

2.2. To verify the existence of the above party i.e., M/s. Paras Steel Trading Company at the address as per the confirmation letter issued by him, the A.O. deputed his Inspector to conduct local enquiries. The Inspector reported that the said party is non-existent at the given address. In view of the above, the A.O. held that identity of the loan creditor is not established. He, therefore, issued show cause

to the assessee to explain as to why the said advance should not be treated as non-genuine. The assessee filed a detailed submission to the various allegations made by the A.O. and stated that no addition should be made. However, the A.O. was not satisfied with the arguments advanced by the assessee. Relying on various decisions and observing that the assessee failed to discharge the onus cast on him to prove the three ingredients of Section 68 of the I.T. Act, 1961 i.e., identity and creditworthiness of the loan creditor and genuineness of the transaction, the A.O. made addition of an amount of Rs.3,67,88,550/- received as unsecured loan from the said party to the total income of the assessee treating the same as unexplained cash credit.

3. In appeal, the Ld. CIT(A) deleted the addition by observing as under :

6.4. Records of the A.O. were requisitioned and were examined.

7. Based upon my examination and analysis, I find that the A.O. has incorrectly noted at para 5.5 of the assessment order that the appellant had received share application money. The appellant never received any share application money

from anybody. The appellant had received advance for warehouse from proprietary concern M/s Paras Steel Trading Company (proprietary concern of Shri Kush Kumar). This fact has not been controverted by the AO in his remand report pursuant to his having carried out enquiries consequent to my directions u/s 250(4) dated 27.10.2017.

I also note that this being an advance is not a payment hit by the provisions of section 194C of the Act, since the appellant who is the recipient of this advance is not a contractor himself, but the owner.

I have already noted that the AO made the addition in a hurry without granting sufficient opportunity to the appellant. The AO, in her assessment order has noted that the advance giver entity M/s Paras Steel Trading Company (proprietary concern of Shri Kush Kumar) had given share application money (Please see para 5.5 of AO's order), where as the amount given was not share application money but was an advance for a specific purpose.

The AO in his report has incorrectly noted that the credit worthiness of M/s Paras Steel Trading Company is not established as the value of total assets is merely Rs. 16,27,732/-. I find that the value of the total assets of the said M/s Paras Steel Trading Company (proprietary concern of Shri Kush Kumar) is Rs. 8,84,28,749/- and not Rs. 16,27,732/-.

I also find that the AO has incorrectly noted in para 5.11 of her assessment order, that confirmation letter was not filed by the assessee. From a reading of para 4 of the assessment order it is clear that confirmation letter was actually filed.

The AO, in her order, has noted that the credit worthiness of Shri Kush Kumar (proprietor of M/s Paras Steel Trading Company) is not established as copies of ROI etc. for the last 3 years have not been filed. In this connection, I note that the said advance giver M/s Paras Steel Trading Company (proprietary concern of

Shri Kush Kumar) has been assessed u/s 143(3) of the I. T Act, 1961 for A.Y. 2012-13 and A. Y. 2013-14 and even for A.Y. 2014-15. In these assessment orders only routine and non substantive additions have been made. Copies of these 3 assessment orders were duly presented before the AO in the remand proceedings. In the remand proceedings, notice u/s 133(6) of the Act issued to M/s Paras Steel Trading Company (proprietary concern of Shri Kush Kumar) was duly complied with. In the remand proceedings before the AO, VAT challans of M/s Paras Steel Trading Company for the relevant period were duly provided. In fact, the appellant has, in remand proceedings before the AO, produced VAT payments challans and VAT returns showing payment of VAT amounting to Rs. 20,07,242/- (after set off of input credit). The appellant before me and the before the AO has duly provided copy of bank statement showing flow of funds. All these lead to the inference that the advance received from M/s Paras Steel Trading Company (proprietary concern of Shri Kush Kumar) amounting to Rs. 3,67,88,550/- cannot be treated as unexplained cash credit within the meaning of section 68 of the I.T. Act, 1961.

Further, during the course of appeal proceedings (and also in remand proceedings before the AO), the appellant sought to present details regarding the source of funds in the hands of the advance giver M/s Paras Steel Trading Company (proprietary concern of Shri Kush Kumar). These details are in the form of bank statement and scrutiny assessment order of that entity M/s Rathi Stelmax Seria Trading Company. M/s Rathi Stelmax Seria Trading Company, a proprietary concern, had given funds to M/s Paras Stel Trading Company, the proprietary concern of Shri Kush Kumar. However, the relevant entity for my consideration is only the said M/s Paras Steel Trading Company, details / credit worthiness pertaining to which has been examined and found genuine and acceptable.

In view of aforesaid detailed analysis, and examination of facts, I infer the that the amount received by the appellant from M/s Paras Steel Trading Company (proprietary concern of Shri Kush Kumar) cannot be treated as unexplained cash credit within the meaning of section 68 of the Income Tax Act, 1961.

8. In final analysis, the addition made by the AO amounting to Rs. 3,67,88,550/- Is hereby deleted.

4. Aggrieved with such order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds :

1. *“Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting addition made by the A.O. u/s 68 of the I T Act, 1961 on the grounds of unexplained credits in the form of unsecured loans.*
2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in treating the transaction to be genuine overlooking the fact that the assessee claimed the funds to be advance received from another entity for construction of warehouses which were to be given on rent and as such there was no commercial viability of recovery of such advances by M/s Paras Steel Trading Company.*

3. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in certifying that the creditworthiness of M/s Paras Steel Trading Company had been established only on the basis of the fact that it was doing business whereas the net worth of the company was only Rs.16.27 lakh and that the amount shown as advance recoverable from assessee company in its books was further received from other parties which only inflated the balance sheet figures.*
4. *The appellant craves leave to add, alter or amend any of the ground(s) of appeal before or during the course of hearing of the appeal.”*
5. The Ld. D.R. strongly supported the order of the A.O. He submitted that when the A.O. has given a categorical finding that assessee failed to satisfy the three ingredients of Section 68 of the I.T. Act to the tune of Rs.3,67,88,550/-, the Ld. CIT(A) was not justified in deleting the addition.

6. Learned Counsel for the Assessee, on the other hand, strongly supported the order of the Ld. CIT(A). He submitted that the A.O. made an addition under section 68 of the I.T. Act, 1961 on the ground that assessee failed to fulfill the three ingredients of Section 68 of the I.T. Act i.e., identity and creditworthiness of M/s. Paras Steel Trading Company and genuineness of the transaction. Referring to Page Nos.72 to 78 of the Paper Book, Learned Counsel for the Assessee submitted that the above party appeared before the A.O. in response to the notice under section 133(6) of the I.T. Act issued by him and filed his reply with various evidences before the A.O. This fact is also evident from the copy of the remand report dated 27.02.2018 issued by the A.O. wherein he has confirmed that the party appeared before him. He submitted that the A.O. has conducted physical enquiry by deputing his Inspector and the Inspector has also submitted his report stating that M/s. Paras Steel Trading Company is doing business at the premises 1356, (II), 5811, Loni Road, Shahdara, Delhi – 110 032. He submitted that the remand report dated 16.02.2018

which is available in the paper book at Page Nos.112-116 was obtained by the assessee from the A.O. by filing letter dated 07.08.2021 for certified copy/true copy. So far as the genuineness and creditworthiness of the said party is concerned, he submitted that the A.O. completely ignored the fact that the amount was advanced through banking channel. Further, M/s. Paras Steel Trading Company was assessed to tax under section 143(3) for the very same assessment year and no adverse inference has been observed against the said assessee. He submitted that the amount received by the assessee has been subsequently repaid in the subsequent assessment year. Further the turnover of M/s. Paras Steel Trading Company is at Rs.22,65,23,321/- and the same was completely ignored by the A.O. The books of M/s. Paras Steel Trading Company are audited and the same have not been doubted either by the A.O. of the assessee or the A.O. of M/s. Paras Steel Trading Company. He submitted that that there is no allegation by the A.O. that assessee has obtained any accommodation entry. No information has been received

from the Investigation Wing or any other Department against the assessee or M/s. Paras Steel Trading Company. He accordingly submitted that the order of the Ld. CIT(A) being in accordance with Law should be upheld and the grounds raised by the Revenue should be dismissed.

7. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. in the instant case has made an addition of Rs.3,67,88,550/- received as advance from Shri Khush Kumar proprietor of M/s. Paras Steel Trading Company on the ground that assessee failed to substantiate with evidence to his satisfaction regarding the identity and creditworthiness of the said party and genuineness of the transaction. According to the A.O. the income of Shri Khush Kumar for A.Y. 2013-2014 was very meager who has shown an income of Rs.4,02,577/- only whereas he has given unsecured loan of Rs.3,67,88,550/-. Further, the VAT registration of M/s. Paras Steel Trading Company was

cancelled by the DVAT Authorities and the net worth of the proprietorship concern of Shri Khush Kumar is merely Rs.16,27,732/-. Therefore, according to the A.O. it is highly improbable that a person could give so much amount as advance to the assessee. We find the Ld. CIT(A) deleted the addition made by the A.O, the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. We find in response to notice under section 133(6) the proprietor of M/s. Paras Steel Trading Company Shri Khush Kumar appeared before the A.O. and filed various details and has confirmed to have given an advance of Rs.3,67,88,550/- to M/s. Satvik Logistics Pvt. Ltd., i.e., Assessee. He has also filed copy of account along with confirmation of the same. The relevant observation of the A.O. in the remand report is reads as under :

*“Office of the  
Income Tax Officer  
Ward 22 (4), Room No.225C, 2<sup>nd</sup> Floor,  
C.R. Building, I.P. Estates, New Delhi – 110 002*

To  
The Commissioner of Income Tax  
(Appeal)-31, New Delhi  
E-2, ARA Centre, Jhandewalan Extn.,  
New Delhi – 110 055.

(Through Addl. CIT Range, 22, New Delhi)

Sub:- Appeal in the case of M/s. Satvik Logistics Pvt. Ltd.,  
Appeal No.281/17-18 for A.Y. 2013-14- PAN AAPCS5418Q-  
Reg.

Kindly refer to your letter No.CIT(A)-31/Del/ME/2017-  
18/729 dated 27.10.2017 on the above cited subject. The  
requisite report in the matter is submitted herewith.

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In response to the said notice Sh. Khush Kumar Prop. M/s.  
Paras Steel Trading Co. furnished reply vide letter dated  
10.11.2017 as under :

“1. I would like to state that the amount of  
Rs.3,67,88,550/- was given to M/s. Satvik Logistic  
Pvt. Ltd., 27, Sadhna Enclave, New Delhi – 110017  
(PAN No.AAPCS5418Q) as a advance for

*construction of warehouses during the F.Y. 2012-13. I am enclosing copy of account along with confirmation of the same as annexure 'A'.*

- 2. No goods sold to M/s. Satvik Logistic Pvt. Ltd., and as such no bill raised during the financial year 2012-13.*
- 3. Details of advance with date, cheque no. and amount are given as annexure 'B'. All cheques are drawn on Bank of Baroda, Sansad Marg, New Delhi.*

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*Submitted please.*

*Yours faithfully,  
Sd/- Prakash Chand  
Income Tax Officer,  
Ward 22(4), New Delhi."*

7.1. Therefore, the identity of M/s. Paras Steel Trading Company cannot be doubted in view of the appearance of the said party before the A.O. This is further corroborated by the report of the Inspector who conducted

physical enquiry as per the directions of the A.O. and has stated that M/s. Paras Steel Trading Company is doing business at the premises 1356, (II), 5811, Loni Road, Shahdara, Delhi – 110 032. Further the A.O. in the instant case has passed assessment order under section 143(3) for the A.Y. 2013-14 in the case of Shri Khush Kumar copy of which is placed at Page Numbers 44 and 45. The A.O. in the order passed under section 143(3) on 24.02.2016 has determined the total income of assessee at Rs.4,00,450/-. Further the accounts of M/s. Paras Steel Trading Company are audited and neither the A.O. of Shri Khush Kumar, Proprietor of M/s. Paras Steel Trading Company has raised any doubt nor the A.O. of the assessee has raised any doubt regarding the turnover of M/s. Paras Steel Trading Company which is at Rs.22,65,23,321/-. There is also no allegation either by the A.O. or by Investigation Wing or any other Department against the assessee or M/s. Paras Steel Trading Company that the assessee has obtained any accommodation entry. In this view of the matter and in view of the detailed reasoning given by the Ld. CIT(A) on this

issue, we do not find any infirmity in the order of the Ld. CIT(A). We, therefore, uphold the order of the Ld. CIT(A) and the grounds raised by the Revenue are dismissed.

8. In the result, appeal of the Revenue dismissed.

Order pronounced in the open court on 26.11.2021.

Sd/-  
[Ms. SUCHITRA KAMBLE]  
JUDICIAL MEMBER

Sd/-  
[R.K.PANDA]  
ACCOUNTANT MEMBER

Delhi; Dated 26<sup>th</sup> November, 2021.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.