

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
& SHRI RAM LAL NEGI, JUDICIAL MEMBER)**

**ITA. No: 110/RPR/2017 &
S.P. No. 03/RPR/2018
(Assessment Year: 2012-13)**

LNS Industries Ltd. Head Office: 46 Motilal Nehru Nagar (East) Bhilai, Dist.- Durg, C.G. (Appellant)	V/S	The Dy. Commissioner of Income Tax -1(1), amdi Nagar HUDCO Bhilai, Dist.- Durg, C.G. (Respondent)
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PAN: AAACL9414E

**Appellant by : Shri R. B. Doshi, C.A.
Respondent by : Shri Sanjay Kumar, D.R.**

(आदेश)/ORDER

Date of hearing : 08 -03-2018
Date of Pronouncement : 16 -04-2018

PER N.K. BILLAIYA, ACCOUNTANT MEMBER

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A)-II, Raipur dated 24.03.2017 pertaining to A.Y. 2012-13.

2. The only grievance of the assessee is that the ld. CIT(A) erred in confirming the addition of Rs. 4.90 crores made by the A.O. as unexplained cash credit u/s. 68 of the Act.
3. During the course of the scrutiny assessment proceedings and on perusing the balance sheet of the assessee, the A.O noticed that the balance sheet shows share application money at Rs. 18,85,50,572/- pending for allotment of shares. The details of outstanding share application money are as under:-

1	<i>Shri Abhinav Khasgiwala</i>	<i>Rs. 2,48,000/-</i>
2	<i>Shri Ansar Ahemad Saiyad</i>	<i>Rs. 7,00,00,000/-</i>
3	<i>Shri J.K. Jain</i>	<i>Rs. 50,000/-</i>
4	<i>Shri J.N. Gupta</i>	<i>Rs. 1,77,32,205/-</i>
5	<i>Shri Narendra Agrawal</i>	<i>RS. 1,00,000/-</i>
6	<i>Shri Nimish Agrawal</i>	<i>Rs. 8,30,000/-</i>
7	<i>Smt. Neha Agrawal</i>	<i>Rs. 9,00000/-</i>
8	<i>Smt. Rekha Agrawal</i>	<i>Rs. 45,70,917/-</i>
9	<i>Smt. Ruhi Agrawal</i>	<i>Rs. 25,00,000/-</i>
10	<i>Shri Sunil Agrawal</i>	<i>Rs. 5,62,46,450/-</i>
11	<i>MSA Consultants</i>	<i>Rs. 3,04,00,000/-</i>
12	<i>R.K. Enterprises</i>	<i>Rs. 50,00,000/-</i>
	<i>Total</i>	<i>Rs. 18,85,50,572/-</i>

4. The A.O. found that out of the total share application money of Rs. 4.90 crores was received during the year under consideration from Shri Sunil Agrawal, NRI Director of the assessee company.
5. Since this amount was received during the year under consideration, the A.O. asked the assessee to justify the credit in the light of the provisions of Section 68 of the Act. The assessee filed necessary details along with the confirmation and the details of the payments received from Shri Sunil Agrawal along with his bank statements. It was explained that the money was transmitted from Dubai to India.

6. After perusing the documentary evidences brought on record in support of the share application money received from the Director, Shri Sunil Agrawal, the A.O. was not convinced and was of the firm belief that the claim of the assessee company that share application money was deposited by Shri Sunil Agrawal has not been proved. The basis for forming this belief was that the A.O. was of the opinion that Shri Sunil Agrawal could not establish the source of the funds deposited in his bank account. Addition of Rs. 4.90 crores was made u/s. 68 of the Act.
7. The assessee strongly agitated the matter before the Id. CIT(A) but could not succeed. The First Appellate Authority was of the opinion that the Assessing Officer has given sound reasons for making the addition and therefore no interference was called for.
8. Before us, the Id. counsel for the assessee reiterated what has been stated before the lower authorities relying upon various documents brought on record in the form of a paper book. Per contra, the Id. D.R. strongly supported the findings of the lower authorities.
9. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute insofar as the identity of Shri Sunil Agrawal is concerned. Shri Sunil Agrawal is a Director of the assessee company and his identity has not been questioned. The transactions have been done through banking channels. Money has been transmitted from Dubai as per relevant provisions of the relevant Act. Genuineness of the transaction is also not in doubted. The only reason given by the revenue authorities for making the addition is that the capacity of Shri Suni Agrawal has not been proved. The

revenue authorities have questioned the source of the funds found in the bank account of Shri Sunil Agrawal. At the very outset, we have to mention that the proviso added to section 68 of the Act is applicable from 01.04.2013 i.e. A.Y. 2013-14 and therefore not applicable to the subject assessment year as held by the Co-ordinate Bench of Mumbai in the case of Gagandeep Infrastructure Pvt. Ltd. in ITA 5784/Mum/2011 which was subsequently confirmed by the Hon'ble High Court of Bombay in 394 ITR 680.

10. Now let us examine the documentary evidences brought on record and examined by the revenue authorities. The statement showing remittance details is as under:-

LNS Industries Ltd.
Statement showing remittance from Sh. Sunil Agrawal in F.Y. 2011-12

Foreign Remitter Bank Details						Amount Received in Sh. Sunil Agrawal Account					Payment from Sh. Sunil Agrawal to LNS Industries Ltd.			
Sr. No.	Ch NO. /RTGS	Date	Received Form	Currency	Amount	Ch No. /RTGS No.	Bank Name	Date		Amount	Bank Name.	Ch. No./RTGS No.	Date	Amount
						220518	Axis Bank Ltd.	06.05.2011		300000				
						220534	Axis Bank Ltd.	21.05.2011		300000	Axis Bank Ltd.	223385	31.05.2011	700000
						220590	Axis Bank Ltd.	06.09.2011		100000	Axis Bank Ltd.	223389	19.01.2012	120000
1	OT02091106211446	21.06.2011	Sunil Agrawal, Standard Chartered Dubai	USD	100000	OT02091106211446	Standard Chartered NRE	23.06.2011	Standard Chartered Dubai	445900	Standard Chartered NRE	ON36801107050186	05.07.2011	160000
2	OT02091106282427	28.06.2011	Agrawal, Standard Chartered Dubai	USD	320000	OT02091106282427	Standard Chartered NRE	04.07.2011	Standard Chartered Dubai	14345600	Standard Chartered NRE	ON36801110180182	18.10.2011	270000

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3	OT02491 1101812 08	18.1 0.20 11	MSA Tradin g FZC, Stand ard Charte red,Ab u Dhabi	AED	200 000	OT02491 1101812 08	Stand ard Char tere d NRE	19.1 0.20 11	MSA Trad ing FZC, RAK	265 745 4	Stand ard Cahr tere d NRE	821476	17.1 1.20 11	250 000 0
4	OT02491 1102418 29	24.1 0.20 11	MSA Tradin g FZC, Stand ard Charte red,Ab u Dhabi	AED	200 000	OT02491 1102418 29	Stand ard Char tere d NRE	25.1 0.20 11	MSA Trad ing FZC, RAK	265 957 4	Stand ard Cahr tere d NRE	821478	24.1 1.20 11	200 000 0
5	OT02791 2013002 56	21.0 1.20 12	Sunil Agraw al, Stand ard Charte red Dubai	USD	900 00	OT02791 2013002 56	Stand ard Char tere d NRE	30.0 1.20 12	Stand ard Char tere d Dub ai	449 280 0	Stand ard Cahr tere d NRE	821479	30.0 1.20 12	500 000 0
6	BKIDH12 0458026 82	14.0 2.20 12	Habib Bank AG Zurich, Dubai	INR	195 566 9	BKIDH12 0458026 82	Stand ard Char tere d NRE	14.0 2.20 12	Habi b Ban k AG Zuri ch, Dub ai	195 566 9	Stand ard Cahr tere d NRE	OT36801 2013104 06	31.0 1.20 12	450 000 0
7	BKIDH12 0548808 81	23.0 2.20 12	Habib Bank AG Zurich, Dubai	INR	799 990 0	BKIDH12 0548808 81	Stand ard Char tere d NRE	23.0 2.20 12	Habi b Ban k AG Zuri ch, Dub ai	799 999 00	Stand ard Cahr tere d NRE	SCBHL12 0470025 86	16.0 2.20 12	200 000 0
8	BKIDH12 0548891 58	23.0 2.20 12	Habib Bank AG Zurich, Dubai	INR	678 140 7	BKIDH12 0548891 58	Stand ard Char tere d NRE	23.0 2.20 12	MSA Trad ing FZC, RAK	678 140 7	Stand ard Cahr tere d NRE	SCBHL12 0540045 22	23.0 2.20 12	800 000 0
9	BKIDH12 0559007 10	24.0 2.20 12	Habib Bank AG Zurich, Dubai	INR	324 494 7	BKIDH12 0559007 10	Stand ard Char tere d NRE	24.0 2.20 12	MSA Trad ing FZC, RAK	324 494 7	Stand ard Cahr tere d NRE	SCBHL12 0580038 58	27.0 2.20 12	100 000 00
									Tota l	492 963 51				490 200 00

11. Deposits at Serial No. 1 & 2 has come from Standard Chartered Bank, Dubai as per the following bank statements:-

<i>Sunil Kumar Agarwal & / Or Rekha Agarwal</i>		<i>Standard Chartered Bank Branch : Dubai Enquiry Te. No. : 600522288 Stmt No. /Date : 1 of 1/ 29 June 11 Currency : USD Account Type : Current Account Account No. : 01203387401</i>		
<i>Date</i>	<i>Description</i>	<i>Withdrawal</i>	<i>Deposit</i>	<i>Balance</i>
<i>1 June 11</i>	<i>Balance Brought Forward</i>			<i>249975.00</i>
<i>18 June 11</i>	<i>IT02091106180314 HANYUS33XXX PEAK STAR TRADING CO.(L.L.C), (GOVTBUS TRF AGST CHEQUE RECEIVED TRF TO A/COF BUSINESS ASS</i>		<i>221562.00</i>	<i>338517.77</i> <i>471537.00</i>
<i>20 June 11</i>	<i>OT02091106180933 TT CHARGES</i>	<i>7.00</i>		<i>471530.00</i>
	<i>OT02091106180933 2033874</i>	<i>21000.00</i>		<i>450530.00</i>
<i>21 June 11</i>	<i>SUNIL KUMAR AGAR Txn date : [23/06/2011</i>	<i>100000.00</i>		<i>350530.00</i>
<i>28 June 11</i>	<i>OT02091106282427 SUNIL KUMAR AGAR</i>	<i>320000.00</i>		<i>30530.00</i>

12. Deposit at Serial No. 3 has come from Standard Chartered Bank, Abu Dhabi Branch as under:-

<i>M.S.A Trading FZC</i>		<i>Standard Chartered Bank Branch : Abu Dhabi Enquiry Te. No. : 600522288 Stmt No. /Date : 1 of 1/ 20 Oct 11 Currency : AED Account Type : Current Account Account No. : 01605953801</i>		
<i>Date</i>	<i>Description</i>	<i>Withdrawal</i>	<i>Deposit</i>	<i>Balance</i>
<i>14 Oct 11</i>	<i>Balance Brought Forward</i>			<i>342199.77</i>
<i>16 Oct 11</i>	<i>Transfer Cheque Debit Cheque No. 0000108385</i>	<i>3682.00</i>		<i>338517.77</i>
<i>17 Oct 11</i>	<i>Cash withdrawal Cheque No. 0000108389</i>	<i>71760.00</i>		<i>266757.77</i>
<i>18 Oct. 11</i>	<i>Cheque No. 0000108386 Cheque No. 0000108387</i>	<i>4641.00 977.00</i>		<i>262116.77 261139.33</i>
	<i>OT02491110181208 TT Charges</i>	<i>40.00</i>		<i>261099.33</i>
	<i>OT02491110181208 Sunil Kumar Agar</i>	<i>200000.00</i>		<i>61099.33</i>
<i>19 Oct. 11</i>	<i>Cash Deposit Transfer Cheque Credit Trade Licence Reversal</i>		<i>200000.00 170000.00 2000.00</i>	<i>261099.33 431099.33 433.099.33</i>
<i>20 Oct. 11</i>	<i>Transfer Cheque Credit</i>		<i>200000.00</i>	<i>633099.33</i>

13. Deposit at Serial No. 4 has come from Standard Chartered Bank, Abu Dhabi Branch as under:-

<i>M.S.A Trading FZC</i>		<i>Standard Chartered Bank Branch : Abu Dhabi Enquiry Te. No. : 600522288 Stmt No. /Date : 1 of 1/ 27 Oct 11 Currency : AED Account Type : Current Account Account No. : 01605953801</i>		
<i>Date</i>	<i>Description</i>	<i>Withdrawal</i>	<i>Deposit</i>	<i>Balance</i>
<i>21 Oct 11</i>	<i>Balance Brought Forward</i>			<i>633099.33</i>
<i>23 Oct 11</i>	<i>Transfer Cheque Debit Cheque No. 0000108390</i>	<i>270000.00</i>		<i>363099.33</i>
<i>24 Oct 11</i>	<i>OT02491110241829 TT Charges</i>	<i>40.00</i>		<i>363059.00</i>
	<i>OT02491110241829 Sunil Kumar Agar</i>	<i>200000.00</i>		<i>163059.33</i>

14. Deposit at Serial No. 5 has come from Standard Chartered Bank, Dubai as under:-

<i>Sunil Kumar Agarwal &/OR Rekha Agaf P.O.Box</i>		<i>Branch : Dubai Currency : USD Account No. : 01203387401 To Date : 01/04/2012</i>		
<i>Date From : 01/01/2012 Start Balance : 30,488.00 CR</i>				
<i>Date</i>	<i>Description</i>	<i>Withdrawal</i>	<i>Deposit</i>	<i>Balance</i>
<i>10 Jan 12</i>	<i>By order Peak Star Trading Co. (LLC)</i>	<i>0.00</i>	<i>93,100.00</i>	<i>123,588.00 CR</i>
<i>17 Jan 12</i>	<i>OT02091201171423 TT Charges</i>	<i>7.00</i>	<i>0.00</i>	<i>123,581.00 CR</i>
	<i>OT02091201171423 2033874</i>	<i>27,000.00</i>	<i>0.00</i>	<i>96,581.00 CR</i>
<i>21 Jan 12</i>	<i>OT02091201210264 TT Charges</i>	<i>27.00</i>	<i>0.00</i>	<i>96,554.00 CR</i>
	<i>OT02091201210264 Sunil Agarwal</i>	<i>90,000.00</i>	<i>0.00</i>	<i>6,554.00 CR</i>
<i>24 Jan 12</i>	<i>Rev of OT02091201210264</i>	<i>0.00</i>	<i>27.00</i>	<i>6,581.00 CR</i>
<i>30 Jan 12</i>	<i>OT02091201210264 UAINV0561</i>	<i>20.00</i>	<i>0.00</i>	<i>6,561,00 CR</i>
<i>07 Feb 2012</i>	<i>OT0209120 1300256 Other Bank Charges</i>	<i>30.76</i>	<i>0.00</i>	<i>6,530.24 CR</i>

15. And deposit at Serial Nos. 6, 7, 8 & 9 has come from Standard Chartered Bank Barakhamba Road and the same is as under:-

000584 DDAB05 MR SUNIL KUMAR AGARWAL 601 SOUTH RIDGE TOWER NO 06 BURJ DOWN TOWN P O BOX 48987 DUBAI UNITED ARAB EMIRATES		BRANCH : Barakhamba Road STATEMENT DATE : 29 Feb 2012 CURRENCY : INR ACCOUNT TYPE NRE SAVINGS ACCOUNT ACCOUNT NO. : 52211931027 NOMINEE REGISTERED : Yes				
BRANCH ADDRESS: Narain Manzil;23, BaraKhamba Road New Delhi 110001 IFSC: SCBL0036020 , PHONE NO.: 41524403						
Date	Value Date	Description	Cheque	Deposit	Withdrawal	Balance
Feb 01	Feb 01	Balance Forward				1,85,519.89
Feb 14	Feb 14	I L36701202143558 BKIDH12045802682 HABIB BANK AG ZURICH COMMISSION PAID SENDER IFSCBKID0000150		1,955,669.00		2,141,188.89
Feb 16	Feb 16	OL36801202160918 SCBLH12047002586 LNS INDUSTRIES LTD INVESTMENT RECEIVER IFSC UTIB0000214			2,000,000.00	1,41,188.89
Feb 23	Feb 23	IL36701202230433 BKIDH12054880881 HABIB BANK AG ZURICH COMMISSION PAID SENDER IFSCBKID0000150		7,999,900.00		8,141,088.89
		IL36701202232898 BKIDH12054889158 PEAK STAR TRADING CO LLC COMMISSION PAID SENDER IFSC8KID0000150		6,781,407.00		14,922,495.89
		OL36801202231729 SCBLH12054004522 LNS INDUSTRIES LTD FUND TRF RECEIVER IFSC UTIBOOOZ14			8,000,000.00	6,922,495.89
Feb 24	Feb 24	IL36701202241011 BKIDH12055900710 SPACE STAR GENERAL TRADING SENDER IFSCBKID0000150		3,244,947.00		10,167,442.89
Feb 27	Feb 27	OL36801202271173 SCBLH 12058003858 LNS INDUSTRIES LTD INVESTMENT RECEIVER IFSC UTIB0000214			10,000,000.00	167,442.89
		RTGS RETURN SCBLH12058003858 LNS INDUSTRIES LTD //SCBLH 12058003858//ACCOUNT DOES N		10,000,000.00		10,167,442.89
		OL36801202271173 IL36701202275903				10,167,442.89
		Total		29,981,923.00	20,000,000.00	

16. A perusal of the afore-stated details clearly establishes the sources of Shri Sunil Agrawal. It is not the case of the Assessing Officer that the appellant company

has purchased cheque from Shri Sunil Agrawal by paying cash. It can be seen from the above that every time the money has been transmitted by Shri Sunil Agrawal he had clear balance in his bank account. As mentioned elsewhere, for the subject assessment year, the revenue cannot question the source of the source.

17. Considering the facts mentioned hereinabove, we have no hesitation to hold that the assessee has successfully discharged the onus cast upon it by provisions of Section 68 of the Act and therefore no adverse inference is called for.

18. We set aside the findings of the ld. CIT(A) and direct the A.O. to delete the addition of Rs. 4,90,20,000/-. Appeal filed by the Assessee is allowed.

19. Since we have decided the appeal in favour of the assessee, the stay petition filed by the assessee becomes otiose.

Order pronounced in Open Court on 16 - 04- 2018

Sd/-

Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER True Copy
RAIPUR: Dated 16/04/2018

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Sr. P.S.
ITAT, Raipur