

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 2515/DEL/2015
[Assessment Year - 2011-12]**

R. G. Consultants Pvt. Ltd.,
109, MCD Market,
Saraswati Marg, Karol Bagh
New Delhi

Vs

The Dy. C.I.T.
Circle - 15(1),
New Delhi

PAN : AAACR 3394 M

**ITA No. 4335/DEL/2015
(Assessment Year - 2011-12)**

The Dy. C.I.T.
Circle - 20(2),
New Delhi

Vs

R. G. Consultants Pvt. Ltd.,
109, MCD Market,
Saraswati Marg, Karol Bagh
New Delhi

(APPELLANT)

PAN : AAACR 3394 M

(RESPONDENT)

**Date of Hearing : 19.02.2020
Date of Pronouncement : 20.02.2020**

Assessee by : Shri Ved Jain, Adv
Shri Ashish Goel, CA
Ms Umang Luthra, Adv

Revenue by : Shri H. K. Charudhari, CIT-DR
Shri Saras Kumar, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above two cross appeals by the assessee and revenue are preferred against the order of the Commissioner of Income Tax (Appeals)-11, New Delhi dated 31.03.2015 pertaining to Assessment Year 2011-12. Since both these appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

ITA No. 2515/DEL/2015 [Assessee's appeal]

2. The solitary grievance raised by the assessee is that the Id. CIT(A) erred in confirming the addition of Rs. 1 crores on account of undisclosed cash u/s 69 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. Briefly stated, the facts of the case are that some information was received from the Police Station, Karol Bagh, New Delhi that on 22.11.2010, two persons, namely Shri Deepak Singh and Shri Harish Kumar were caught by the police with two bags at Gaffar Market, Karol

Bagh, New Delhi. These two bags contained unexplained cash of Rs. 1 crore.

4. The police further informed that these two persons were employees of M/s R.G. Consultants Pvt Ltd and these bags belonged to the assessee. The Director of the company was called on the spot. Pursuant to this, survey operation u/s 133A of the Act was carried on 23.11.2010 to verify the source of Rs. 1 crore found and retained by the police authorities.

5. The Assessing Officer observed that no proper books of account were available at the office premises. The Director Shri Neetu Nayyar claimed that cash seized by police was duly recorded in the books of account and, accordingly, the Assessing Officer asked the assessee to produce the books of account.

6. During the course of scrutiny assessment proceedings, once again the assessee was asked to furnish details of source of Rs. 1 crore found and seized by the police.

7. The assessee furnished details of cash in hand as under:

<i>S. No.</i>	<i>A.Y.</i>	<i>Date of Filing</i>	<i>Cash in Hand as per Balance Sheet</i>
1.	2005-06	09.09.2005	4613499.11
2.	2006-07	15.09.2006	5321019.11
3.	2007-08	06.10.2007	3419131.42
4.	2008-09	30.09.2008	2873520.19
5.	2009-10	27.09.2009	5385691.45
6.	2010-11	14.10.201	4784325.75
7.	2011-12	30.09.2011	7821212.75

8. It was explained that the assessee is an authorised money changer and due to business requirements, the assessee has to maintain substantial cash balance. It was further explained that huge amount was withdrawn from HDFC Bank, New Delhi but the Assessing Officer observed that the cash does not carry tags of HDFC bank. The Assessing Officer further observed that cash book so produced was not made available to the survey party wherein it was explained that the books of account were lying with the Chartered Accountant. The Assessing Officer further made enquiry from the CA and the CA informed that the pen drive contained books of account was provided, but the same could not be opened.

9. After considering the detailed submissions and explanation tendered by the assessee, the Assessing Officer was not convinced and was of the firm belief that Rs. 1 crore found and seized was never disclosed in the books of account. The Assessing Officer further observed that the cash withdrawn from HDFC Bank from 01.11.2010 to 22.11.2010 amounted to Rs. 81.50 lakhs. The Assessing Officer further observed that the cash has been withdrawn in tranches. Another reason for disbelieving the assessee's contention was that the bundles of notes contained the slips of PNB, Hissar wherein the claim is withdrawal from HDFC Bank. Disbelieving all the contentions and submissions made by the assessee, the Assessing Officer made addition of Rs. 1 crore.

10. The assessee agitated the matter before the ld. CIT(A) but without any success.

11. Before us, the ld. counsel for the assessee vehemently stated that the Assessing Officer did not point out any defect in the books of account of the assessee. It is the say of the ld. counsel for the assessee that the Assessing Officer has not appreciated the nature of business of the assessee in its true perspective. The ld. counsel for the

assessee further stated that the nature of business of the assessee is such that it has to carry large amount of cash in hand.

12. The ld. counsel for the assessee further stated that merely because the cash bundles carry the slip of PNB, Hissar, would not justify the stand taken by the Assessing Officer in as much as many a times banks give cash which was received by it from the depositor as it is and, therefore, some cash must have been deposited which carried the tag of PNB, Hissar and the same cash was given by HDFC Bank to the assessee.

13. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and reiterated what has been stated in the assessment order.

14. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee is an authorised money changer. In our considered opinion, this line of business required availability of cash in huge amount as the persons give dollars to be exchanged in Indian currency. Considering the

exchange rate, the assessee has to carry heavy cash. To this extent, we do not find any quarrel between the assessee and the revenue.

15. The main reason which we find is that the cash bundles carry the tag of PNB, Hissar. Again, in our considered view, this should not be given weightage in as much as it is a very common practice amongst all banks to issue currency bundles as received by them. Moreover, once a bundle of currency carried tag of another bank, the issuing bank need not have to count again and again.

16. Another reason given by the Assessing Officer is that the cash books were not available at the time of survey. It is common practice that though the cash books are written on day to day basis, but in practice, there is always a time gap between the book entries. Books were lying with the CA, which have also been verified by the Assessing Officer and when during the course of assessment proceedings books were produced, not even a single defect has been pointed out by the Assessing Officer in the books of account of the assessee. We are of the considered view that the entire addition has been made on the basis of suspicions and surmises and such additions cannot be sustained. We, accordingly, set aside the findings of the ld. CIT(A) and

direct the Assessing Officer to delete the addition of Rs. 1 crore. The ground raised by the assessee is allowed.

ITA No. 4335/DEL/2015 [Revenue's appeal]

17. The solitary grievance of the Revenue is that the Id. CIT(A) erred in deleting the addition of Rs. 2.56 crores.

18. During the course of scrutiny assessment proceedings, and on perusal of the balance sheet, the Assessing Officer found that a sum of Rs. 2.56 crores has been taken as unsecured loan from the directors and their relatives as under:

S. No.	Name of the Person	Amount (Rs.)
1.	Neetu Nayyar	63,25,000
2.	Shiv Kumar Nayyar	53,25,000
3.	Meena Nayyar	23,25,000
4.	Honey Nayyar	23,25,000
5.	Kartik Nayyar	23,25,000
6.	Paragya Nayyar	23,25,000
7.	Chandrika Nayyar	23,25,000
8.	Vinayak Nayyar	23,25,000
Total		2,56,00,000

19. The assessee was asked to justify the unsecured loans in the light of provisions of section 68 of the Act. The assessee submitted all the bank statements alongwith copies of confirmations. The assessee was asked to produce all the creditors personally but could produce only one person, namely, Shri Neetu Nayyar. The Assessing Officer was of the firm belief that the assessee has failed to discharge the initial onus cast upon it by provisions of section 68 of the Act and accordingly, made addition of Rs. 2.56 crores u/s 68 of the Act.

20. The assessee carried the matter before the Id. CIT(A) and once again furnished all the relevant documents to justify the loan.

21. After considering all the facts and submissions, the Id. CIT(A) held as under:

“I have gone through the assessment order of the AO, written submissions & paper book of the assessee. In the assessment order the AO has treated the unsecured loans of Rs. 2.56 crores received by the appellant from various parties as unexplained and added the same to the income of the appellant under section 68 of the Income Tax Act 1961. On going through the paper book, I notice that the appellant in order to discharge its primary onus to prove the identity, genuineness and credit worthiness of the

lenders the appellant has submitted the following documents before the assessing officer.

- i. PAN*
- ii. Bank statement*
- iii. Confirmation*
- iv. ITR*

I have perused the above stated documents at length and in detail. I had also called for the case records and perused the same. I find that the appellant having produced all these documents as stated above has duly established the identity and creditworthiness and has also established the genuineness of the transactions. The lenders are regularly filing their Income Tax Return. Also on perusal of the bank statement of the lenders, I notice that there are no immediate cash deposits before payment.

This is a case of the company. The amount has been contributed by the directors and their relatives. The identity of each of these persons has been established. Further each of these persons have confirmed having paid this amount to the company. Each of these persons have been filing returns. Further bank statements of these persons have been filed and the payment has come from the bank account. The allegation of the AO is regarding the source of the credit in the bank account. In this regard I am of the view that the AO is not justified to ask source of source. The assessee being a company and the loan having come from the directors and their relatives their identity

having been established and the money having been come through bank and each of the persons being a tax payer, adverse inference, if any, regarding the source of credit in the bank account may be an issue in the case of such individuals but cannot be a ground for making addition in the hands of the assessee company.

Further it is not the case that the party lenders/creditors have been held engaged in any unscrupulous activity or has been found to be engaged in the providing accommodation entries. The appellant company on its part has submitted necessary details to establish the identity of the lenders. The AO during the course of the assessment proceedings has not been able to bring any adverse material or evidence to discredit the genuineness of the transaction.”

22. Before us, the ld. DR strongly supported the findings of the Assessing Officer and the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

23. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that all the lenders are either directors or relatives of the directors. It is also true that the assessee has furnished PAN details, bank statements, confirmations and copies of Income tax returns of the lenders. It is equally true that none of

the lenders is alleged to be an entry provider. A perusal of their bank statements reveals that they have given loan to the assessee out of their available balances and it is not the case of the Revenue that prior to issuing cheques, there is a deposit of cash in the lender's bank account. Therefore, it can be safely concluded that the assessee has not purchased cheque by paying cash. Considering the evidences which are before us in the form of paper book and considering the fact that the Id. CIT(A) has deleted the addition after carefully perusing the documents, we find no reason to interfere with the findings of the Id. CIT(A). Accordingly, the ground raised by the revenue is dismissed.

24. In the result, the appeal of the assessee ITA No. 2515/DEL/2015 is allowed whereas the appeal of the revenue ITA No. 4335/DEL/2015 is dismissed.

The order is pronounced in the open court on 20.02.2020.

Sd /-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 20th February, 2020

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	