

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

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

**ITA No. 203/RPR/2014
(Asst. Year: 2010-11)**

Shri Ratan Lal Batra,
Raigarh, C.G.

Vs.

ITO,
Ward – 1
Raigarh, C.G.

PAN-ADDPB5567D

(Appellant)

(Respondent)

Assessee by : Shri S.R. Rao, Advocate
Department by : Shri D.K. Jain, DR

Date of hearing : 08/08/2018.
Date of pronouncement : 23/10/2018.

ORDER

PER SUCHITRA KAMBLE, JM :

This appeal filed by the assessee against the order dated 27.03.2014 passed by the CIT(A), Bilaspur (CG) relating to assessment year 2010-11.

2. The grounds of appeal are as follows:

“1. The assessment u/s 143(3) of the IT Act passed by the A.O is highly unjustified. The A.O has without appreciation of the facts and evidences put forth before him, made the flowing additions.

- a. Addition u/s 68 in the name of Kripa& Sons HUF : Rs. 2,07,890/-*
- b. Addition u/s 68 in the name of Kripa Sindhu Sahu :Rs. 2,07,.890/-*
- c. Addition u/s 68 in the name of Riyaz Mohammed : Rs. 3,14,573/-*
- d. Addition u/s 68 in the name of Ibrahim Mohammed: Rs. 2,09,370/-*

The above additions made by the A.O are unjustified. On the facts and in the circumstances of the case, the addition so made by the A.O. deserved to be deleted and the appellant prays justice.

2. *The A.O is highly unjustified in making the following additions:*

(i) Disallowance out of vehicle expenses: Rs. 10,390/-

The above additions made by the A.O are unjustified. The Additions are deserve to be deleted. The entire assessment is unlawful, high unjustified and the appellant prays to cancel all the additions to the total income as added by the A.O”.

2. The assessee is an individual and derives income from trading in Kirana items through his proprietorship concern “Ratan Trading Company has filed his return of income for the A.Y 2010-11 on 01.10.2010 declaring total income of Rs. 1,34,660/-. During the assessment proceedings u/s 143(3) of the IT Act the A.O determined the total income of Rs.11,40,230 by making the additions u/s 68 of the Act towards unsecured loans from Kripa& Sons, Riyaz Mohammed, Ibrahim Mohammed, KripaSindhuSahu and vehicle maintenances charges. Thus the A.O determined the total income of the assessee at Rs. 9,52,963/-.

3. Aggrieved by the order of the A.O, the assessee filed an appeal before the CIT(A), the CIT(A) has confirmed the order of the A.O, the assessee is in appeal before us.

3. The Ld. AR submitted that the statements of all the four persons in respect of the addition made u/s 68 of the IT Act explained the source of income during assessment proceedings u/s 143(3) of the IT Act. The Ld. AR relied upon the decision of Hon’ble Chhattisgarh High Court in the case of CIT Vs. Abdul Aziz (2012) 251 CTR 58 (C.G). Therefore the Ld. AR submitted that this addition made be deleted. Ground no. 2, is not pressed by the Ld. AR.

4. The Ld. DR on the other hand relied upon the orders of the authorities below.

5. We have heard both the parties and perused all the relevant material available on record. We find that the ratio laid down by the Hon'ble Chhattisgarh High Court in the case of Abdul Aziz (cited supra) has been relevant in the present case. The Hon'ble High Court held as under:

“19. In the case on hand, the CIT(A) has examined all the statements and depositions made by the creditors including their source of income and it was found that the A.O. without having any material on record, contrary to the statements and affidavits filed by the creditors taken a stand that the creditors have failed to prove their creditworthiness and, as such, the transaction was not genuine. The A.O. has not made any other independent enquiry to disprove the creditworthiness of the creditors, as established by affidavits, statements of the creditors disclosing source of income. Thus, the finding of the CIT(A) that the observation of the A.O. with regard to dissatisfaction was on the basis of surmises and conjectures, is just and proper. The I.T.A.T. has affirmed the finding recorded by the CIT(A) and, as such, there is no occasion for this Court to interfere with the finding of facts, which is based on proper appraisal of evidence and on the basis of sufficient records.

20. In view of foregoing, we are of the considered opinion that the findings recorded by the CIT(A) and affirmed by the I.T.A.T. are based on proper appreciation of facts and are not perverse, being correlated with each and every transaction. Thus, the issue is purely question of facts. No question of law, more so substantial question of law, as aforesaid, arise in the facts of the case.”

In the present case, the assessee has explained the sources of unsecured loans and through the statements of those four persons, it can be seen that the loan was given by the loan creditors. Thus, the burden of proof was shifted from the assessee to the Assessing Officer to prove that the source of loans were not genuine. The Assessing officer in present case has not made any other independent inquiry to disprove the creditworthiness and genuineness of the loan creditors. The Assessing Officer also failed to

establish his finding that the amount received as loan was assessee's own amount routed back in this manner as there is nothing on record to show the same. In fact, the records revealed that interest was paid on these loans made to the creditors which was duly reflected in the Income Tax Returns of the assessee and as well as that of the creditors. The CIT(A) relied upon the decision in the case of Khushal Prasad Manhar vs. ITO passed by the Tribunal, Bilaspur Bench and the same was confirmed by the Hon'ble Chhattisgarh High Court (2010) 236 CTR 192. However, the said decision does not apply in the present case as the facts in the said case was totally different. As in the said case of Khushal Prasad Manhar two separate deposits were made by individual assessee and in capacity of HUF by the assessee therein. In fact, the creditors therein filed their returns for the first time in 2005-06 and deposits into bank was not in lumpsum but on several occasions, more particularly in a gap of one day itself. Besides there was doubtful nature of transaction in the manner in which sum was found credited in the books of accounts. But in the present assessee's case, all the creditors were regular income tax payers with Assessing Officers' located in the same station. The assessee filed copies of IT returns, Balance sheet, capital account and bank statements of the lenders and the bank statements show the regular transactions which substantiate that the lenders are having known sources of income. Therefore, the addition made by the Assessing Officer and confirming the same by the CIT(A) is not correct. Thus, we set aside the order of the CIT(A). The Ground No. 1 is allowed. As regards Ground no. 2, the same is not pressed by the Ld. AR, hence dismissed.

6. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on 23rd October, 2018.

Sd/-

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 23 -10-2018.

KRK/-

Copy to:

1. *The Assessee.*
2. *The Revenue.*
3. *The C()IT*
4. *The CIT(A)*
5. *The D.R.*
6. *Guard file.*

By order

Private Secretary
ITAT, RAIPUR