

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

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

I.T.A .No. 89/RPR/2014 (A.Y 2009-10)

Shabd Prakash Lath, Nirala Nagar, Bustand, Bilaspur (C.G). PAN – ABWPL8707G (APPELLANT)	Vs	ITO – Ward 1(1), Mahima Complex, Vyapar Vihar, Bilaspur, C.G (RESPONDENT)
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Appellant by	Shri R.B Doshi, CA
Respondent by	Shri D.K. Jain, DR

Date of Hearing	07.08.2018
Date of Pronouncement	16.10.2018

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the Order dated 27/01/2014 passed by CIT(A), Bilaspur (CG) for the A.Y 2009-10.

2. The grounds of appeal are as under:

1. *That under the facts & the law, the Ld. CIT(A) erred in maintaining disallowance of Rs. 80,000/- out of Rs. 1,69,630/- claimed towards expenses which is unjustified.*

Prayed that expenses are vouched & verifiable, moreover, the income offered is more than as required u/s 44AE.

2. *That the Ld. CIT(A) further erred in maintaining addition u/s 68 amounting to Rs. 2,50,000/- received Rs. 50,000/- from Payal Lath and Rs. 2,00,000/- received from Vandana Agarwal, which is unjustified.*

Prayed that the appellant discharged the burden of proving credit worthiness, identity & genuineness of transactions & therefore, the addition of Rs. 2,50,000/-.

3. The assessee is an individual and derives income from salary from M/s Sarwa Mangla Sales and Services Pvt. Ltd., Bilaspur, as well as income from house property, interest income from bank and two sources of business income i.e. income from plying bus and letting out Tata 407 on hire charge basis owned by him. The return of income for A.Y 2009-10 was filed on 02.12.2009 declaring income at Rs. 1,88,750/- after claiming deduction u/s 80C of the Income Tax Act, 1961. The Assessing Officer assessed the income at Rs. 8,57,880/- after making an additions of Rs. 1,69,130/- relating to expenses and Rs. 5,00,000/- as regards estimated receipts from bus plying u/s 68 of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee. Being aggrieved by the order of the CIT(A), the assessee is in appeal before us.

5. As regards Ground No. 1, the Ld. AR submitted that the assessee had submitted profit and loss account along with account relating to the business of bus plying at page Nos. 7 and 8 of the paper book which were duly produced before the Assessing Officer as well as before the CIT(A). The Ld. AR also submitted that the expenses disallowed by the Assessing Officer towards Rs. 1,69,130/- was duly explained before the Assessing Officer. The Ld. AR submitted that none of the evidences shows that it relates to goods carriage vehicle except Rs. 2,475/- towards tax of vehicle. The Ld. AR further submitted bills and voucher expenses produced before the Assessing Officer which was not at all disputed by the Assessing Officer. The Ld. AR further submitted that there was no discrepancy pointed out by the Assessing Officer in the Assessment Order. Thus, the disallowance which is partly sustained by the CIT(A) is only on presumption basis. The narration in books shows that all the expenses claimed were relating to bus operation. The Ld. AR submitted that the CIT(A) without verifying the vouchers has given different reason for sustaining of partial disallowance. The Ld. AR further submitted that running

and maintaining expenses of goods carriage born by hirer. The Ld. AR further submitted that there was no discrepancy in two balance sheets which is for the business and for the other balance sheet is for the consolidated accounts.

6. As regards Ground No. 2, the Ld. AR submitted that loan was given by one Payal Lath has been explained and the source of loan of Rs. 50,000/- was disbelieved by the CIT(A) is not just and proper. The loan given by one Vandana Agarwal was also explained before the Assessing Officer as well as before the CIT(A). The documents such as loan confirmation computation and bank account as well as balance sheets of Payal Lath as well as Vandana Agarwal was submitted before the Assessing Officer as well as before the CIT(A). Thus, the Ld. AR submitted that burden cast upon assessee u/s 68 of the Income Tax Act was discharged by the assessee and the same shifted to the Assessing Officer, but no fresh evidence was brought by the Assessing Officer in support of the additions made u/s 68 of the Act. The Ld. AR submitted that the Assessing Officer incorrectly mentioned that none of the evidences were proved by the assessee. In fact, this is not correct as the assessee has filed all the relevant evidences in support of his claim. The Assessing Officer should have explained how the details filed by the assessee are contrary to his claim. The Ld. AR submitted that no adversity was drawn without making any enquiry from creditors about the source of their funds. The Ld. AR relied upon the decision of the Delhi High Court in the case of CIT Vs Gangeshwari Metal Pvt. Ltd., (2014) 361 ITR 10 (Del). The Ld. AR submitted that the loan was out of their own capital and was accepted in the returns, therefore, different view cannot be taken in the present case. The Ld. AR further submitted that no contrary material / adverse material was brought by the Assessing Officer for making such additions. The Ld. AR relied upon the decision of the Hon'ble Chhatishgarh High Court in the case of CIT Vs. Abdul Aziz (2012) 251 CTR 58 (C.G) as well as the decision of the Hon'ble Madhya Pradesh High Court in case of CIT vs. Metachem Industries (2000) 245 ITR 160. The Ld. AR further

submitted that the reliance of the decision of the Tribunal in case of Kushal Prasad Manhar vs. ITO order dated 30.07.2009 which was confirmed by the Hon'ble High Court as mentioned by the CIT(A) in his order, is not at all applicable and has distinguishing factors. The Ld. AR pointed out following distinguishing factors:-

<i>Facts/findings in Kushal Prasad Manhar</i>	<i>Present assessee</i>
<i>Addition made not only on account of cash deposit but also because genuineness and credit worthiness not established.</i>	<i>Genuineness and credit worthiness proved by confirmation, entries in bank account, capital account and balance sheet, which have all remained undisputed and accepted in the case of the creditors.</i>
<i>Capacity of the creditors and their creditworthiness not proved. Capital account and balance sheet do not appear to have been submitted in favour of creditworthiness.</i>	<i>Capital account and balance sheet substantiating credit worthiness submitted, remained uncontroverted.</i>
<i>Cash deposits were made on 18 dates, in small and odd amounts.</i>	<i>Single cash deposit made</i>
<i>Huge amount of cash (Rs. 14,99,000/-) was not considered to be probable of being kept by the assessee.</i>	<i>Huge amount of cash is not involved.</i>
<i>Loans were given on different dates, in small and odd amount which raised doubt its genuineness.</i>	<i>Loan given in one go.</i>

6. On the other hand, the Ld. DR relied upon the order of the Assessing Officer as well as the CIT(A). As regards to Ground No. 2, the Ld. DR submitted that regarding the findings of the Assessing Officer that cash was deposited in the respective bank account of the creditors before issuance of cheque of equal amount in favour of the assessee. Regarding the source of cash deposit of Rs.50,000/- on 19.10.2008 the Ld. DR submitted that immediately after deposit of cash, Payal Lath issued cheque of Rs.50,000/- in favour of the assessee. As regards, source of cash deposit of Rs.2,00,000/- on 06.06.2008 in the bank account of Vandana Agarwal with Central Bank of Commerce,

Bilaspur, immediately after deposit of cash, Vandana Agarwal issued cheque of Rs.2,00,000/- in favour of the assessee on same date, for which there was no explanation given by the assessee. Thus, the Ld. DR submitted that the CIT(A) rightly made addition.

7. We have heard the both the parties and perused all the relevant material available on record. As regards Ground No. 1, we find that the bills and vouchers were produced before the Assessing Officer as well as the CIT(A) by the Assessee. The expenses disallowed by the Assessing Officer towards Rs. 1,69,130/- was duly explained before the Assessing Officer. Despite accepting the evidence produced by the assessee and giving benefit of Rs. 79,000/- without doubting the same, the CIT(A) disallowed Rs. 80,000/- as expenses. This itself shows that the CIT(A) has not given proper reasoning while disallowing the partial expenses. The CIT(A) without verifying the vouchers has given different reason for sustaining of partial disallowance. Thus, the disallowance which is partly sustained by the CIT(A) is only on presumption basis. A perusal of the books of account shows that all the expenses claimed were relating to bus operation. Thus, the Assessee discharged his burden of proving the expenses through the evidences. Therefore, Assessing Officer as well as the CIT(A) are not correct in disallowing the expenses. Therefore Ground No. 1 of the assessee's appeal is allowed.

8. As regards ground No. 2, it is pertinent to note that the documents such as loan confirmation computation and bank account as well as balance sheets of Payal Lath as well as Vandana Agarwal were submitted before the Assessing Officer as well as before the CIT(A) by the Assessee. Thus, initial burden of proving the evidence on part of the assessee u/s 68 of the Income Tax Act was discharged by the assessee and the same shifted to the Assessing Officer, but no fresh evidence was brought by the Assessing Officer in support of the additions made u/s 68 of the Act. The Assessing Officer incorrectly mentioned that none of the evidences were produced by the assessee which is not correct

after going through the records submitted before the Assessing Officer and the CIT(A). The assessee filed all the relevant evidences in support of his claim. There is no explanation by the Assessing Officer as to how the details filed by the assessee are contrary to his claim. Thus, no contrary view can be taken or the claims of the assessee be doubted without making any enquiry from creditors about the source of their funds. The Ld. AR relied upon the decision of the Delhi High Court in the case of CIT Vs Gangeshwari Metal Pvt. Ltd., (2014) 361 ITR 10 (Del) which is relevant in the present case. The ratio laid down by the Hon'ble High Court is that if the complete particulars of creditors are furnished to the Assessing Officer and Assessing Officer has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false and cannot be acted upon, then no addition can be made in the hands of the assessee u/s 68 of the Income Tax Act, 1961. The loans were out of the creditors' own capital and was accepted in the returns, therefore, different view cannot be taken in the present case. Here also, the Assessing Officer has not brought any contrary material / adverse material for making such additions. The Ld.AR relied upon the decision of the Hon'ble Chhatisgarh High Court in the case of CIT Vs. Abdul Aziz (2012) 251 CTR 58 (C.G). The reliance of the decision of the Tribunal in case of Kushal Prasad Manhar vs. ITO order dated 30.07.2009 which was confirmed by the Hon'ble High Court as mentioned by the CIT(A) in his order is not at all applicable and is rightly distinguished by the Ld. AR. Hence, in the present case the creditworthiness in our opinion has been explained and there is an explanation as well as the details submitted before the Assessing Officer which was crucial difference in the present case to that of the decision in the case of Kushal Prasad Manhar (supra). The reliance of the Ld. AR on the decision in the case of Abdul Aziz (supra) is relevant wherein it is held that once the assessee proved creditworthiness of the creditors no addition can be made under Section 68 of the Act. Therefore, the Assessing Officer as well as the CIT(A) are not correct in making this addition. Hence, Ground No. 2 is allowed.

9. In the result the appeal of the assessee is allowed.

Order pronounced in the Open Court on 16th October, 2018.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 16/10/2018
KRK

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Private Secretary

Raipur Bench, Raipur