

the order directing the AO to make a fresh assessment. During the proceedings u/s.143(3) r.w.s.263 of the Act. Accordingly, the AO issued notices u/s.143(2)/142(1) of the Act to the assessee. On examination of books of accounts and bank details filed by the assessee the AO made addition of Rs.1,02,00,000/- u/s.68 as unexplained cash credits. The AO also disallowed 10% of the contract expenses and made an addition of Rs.25,88,576/-. The AO further made an addition of Rs.67,500/- by disallowing expenses claimed under the head salary and wages @10% and assessed the total income of the assessee at Rs.1,34,34,400/- and passed order u/s.143(3) r.w.s.263 of the Act, dated 28.03.2014.

3. Aggrieved by the order of AO, assessee preferred an appeal before the CIT(A). In the appellate proceedings, the AR of the assessee appeared and argued the grounds and reiterated the submissions made before the AO. The CIT(A) after considering the submissions of the assessee and the findings of AO, partly allowed the appeal of the assessee.

4. Aggrieved by the order of CIT(A), the Revenue has filed an appeal before the Tribunal.

5. Before us Id. DR supported the order of AO and argued the first ground of appeal only and prayed for allowing the appeal of Revenue.

6. On the other hand, Id. AR supported the order of CIT(A).

7. We have heard the rival submissions and perused the material on record. Ld. DR before us submitted that the AO after perusal of bank accounts found that the unsecured loan is actually diversion of fund and therefore, the AO has rightly added the same to the income of the assessee, whereas the CIT(A) deleted the addition overlooking the fact that the unsecured loan receipts and payments were actually bogus with an intention to deliberately reduce the taxable income. We find that the CIT(A) while dealing on the disputed issue has observed that the AO has not been able to prove that the loan was unexplained cash credit. On the other hand the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor stand proved. The observations of the CIT(A) in this regard are as under :-

“[6.6] I have considered the submissions made by the appellant and have also gone through the assessment order. It is not clear as to why has the Ld.AO treated the amount, as unexplained cash credit. The reply of the appellant extracted by the Ld.AO in the assessment order itself proves the source of the loan. This also demonstrates that the money was returned back in the subsequent year. Appellant's balance sheet also shows that it had shown the amount as outstanding loan from the creditor M/s C.K.Construction Co. All these details were available with the Ld.AO and have been duly noted

[6.7] The Ld.AO goes on record in the assessment order slating that "The assessee himself admitted vide letter dated 19,02,2014 that he is one of Authorized signatory for operation of bank account no. 490120110000132 at Bank of India, Ratu Road, Ranchi. It implies that the unsecured loan amount Rs.1,02,00,000/- which the assessee has shown in the Books of Accounts that it was obtained from M/s. C. K. Construction & Co. Samastipur, Bihar was not at all taken. The assessee himself diverted the fund from the bank account of M/s. C. K. Construction & Co., Samastipur, Bihar to the bank account of his own firm. The assessee has not been provided any unsecured loan by M/s. C. K. Construction & Co. Thus, it was

its own Cash Credit and hence has to be added back to its total income as deemed income u/s.68 of the Income Tax Act, 1961."

[6.8] The Ld.AO has made the addition on account of unexplained cash credit but seems to have been influenced by the letter of the creditor and has gone on the assumption of a fraud / committed by the appellant on the creditor. Be that: as it may, he did not bother to investigate as to how was the fund transferred from one bank to the other. On investigation he would have found that the cheque had been signed by an authorised signatory and therefore honoured by the bank. Element of fraud, that the Ld.AO implies is evident when he writes "he assessee himself diverted the fund from the bank account of M/s. C. K.Construction & Co., Samastipur, Bihar to the bank account of his own firm. The assessee has not been provided any unseated loan by M/s. C. K. Construction & Co.", doe; not get proved on the face of record. Any presumed dispute that the two concerns may have had is not the concern of the Income tax Department unless it impacts the income chargeable to tax. It is a civil dispute which would have to be sorted out in the appropriate forum.

[6.9] On the facts and circumstances of the case I hold that the Ld.AO has not been able to prove that the loan was unexplained cash credit. On the other hand the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor stand proved. Ground of appeal is allowed."

8. During the course of hearing the Id. DR has only supported the order of Assessing Officer and could not bring any new cogent evidence to controvert the above findings of the CIT(A). Accordingly, we are of the opinion that the CIT(A) has passed a reasoned order, which we uphold the same and dismiss the grounds of appeal of Revenue.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 27/11 /2018

Sd/-

(N.S.SAINI)

ACCOUNTANT MEMBER

Ranchi, Dated 27/11/2018

Prakash Kumar Mishra , Sr. Ps

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant –
DCIT, Circle-1, Ranchi
2. The Respondent –
M/s C.K. Construction,
H-112, Harmu Housing Colony, Harmu,
Ranchi
3. The CIT(A) concerned
4. CIT , concerned
5. DR, ITAT, Ranchi
6. Guard file.

//True Copy//

BY ORDER,

SR.PS, ITAT, RANCHI