

**आयकर अपीलीय अधिकरण, "एस.एम.सी", न्यायपीठ, कटक**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, CUTTACK**

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.318/CTK/2018

(निर्धारण वर्ष / Assessment Year :2015-2016)

IRON BASE, Plot No.304, Sailashree Vihar, Chandrasekharapur, Bhubaneswar-751021	Vs.	ITO, Ward-5(1), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AADFI 8514 L</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri N.R.Biswal, AR  
राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, DR  
सुनवाई की तारीख / Date of Hearing : **04/02/2019**  
घोषणा की तारीख/Date of Pronouncement **07/02/2019**

**आदेश / O R D E R**

This is an appeal filed by the assessee against the order of CIT(A)-2, Bhubaneswar, dated 07.05.2018 in First Appeal No.0134/2017-18 for the assessment year 2015-2016.

2. In this appeal, the assessee has filed revised grounds of appeal, which read as follows :-

"1. For that, on the facts and circumstance of the case, the Ld. CIT(A) has erred in law, by confirming the addition of unsecured loan of Rs. 4,00,000/- made by the Ld. A.O. as not genuine whereas the same were not verified by the Ld. A.O. The assessee had submitted the list of 26 persons from whom loan had been taken along with the amount of loan taken . However the Ld. A.O. had not given sufficient opportunity to the assessee to submit the address and date of the loan taken even though it was available with assessee, as the assessment is supposed to be time barred on 31.12.2017. Further the Ld. CIT(A) had also not given sufficient opportunity to the assessee to submit the said details. Therefore addition of Rs.4,00,000/- is arbitrary, unjustified, illegal on the facts and circumstances of the case and the same is liable to be deleted in full.

2. *For that, on the facts and circumstance of the case, the Ld. CIT(A) has erred in law, by confirming the addition of unsecured loan of Rs.4,00,000/- without verifying that the same is brought forward from F.Y. 2013-14. Therefore addition of Rs.4,00,000/- is arbitrary, unjustified, illegal on the facts and circumstances of the case and the same is liable to be deleted in full.*
3. *For that, on the facts and circumstance of the case, if ground No.1 & Ground No.2 is not accepted, we request your honour to restore the entire issue to the/ file of the Assessing Officer to delete the same after verification.”*

**Application of assessee for admission of additional evidence.**

3. I have heard the arguments of both the sides on the application of assessee dated 04.02.2019 seeking admission of additional evidence in the form of loan creditors, date of loan given, mode of receipts, balance sheet and profit & loss account for relevant financial year 2013-2014.

4. Ld.AR submitted that the AO did not provide sufficient opportunity of hearing to submit the relevant documentary evidence explaining and justifying the existence, capacity of the creditors, genuineness & creditworthiness of the transaction and he did not specifically ask to furnish the relevant documentary evidence and the assessee due to ignorance could not file the same before the AO during the course of assessment proceedings. Ld. AR further submitted that even during the first appellate proceedings, Id.CIT(A) did not provide opportunity to submit the relevant documents and simply confirmed the observations and findings of AO and the assessee remained empty handed before the authorities below.

5. Ld. AR vehemently pointed out that the impugned loan was taken by the assessee during immediately preceding financial period pertaining to the assessment year 2014-2015, which was first year of business and,

therefore, the same amount which was brought forward from the preceding assessment year to the present assessment year, cannot be taxed as income of the assessee treating the same as bogus unsecured loan. Ld. AR also submitted that to meet the ends of justice, the assessee may kindly be allowed to submit the additional evidence including balance sheet, profit & loss account and the return of income for A.Y.2014-2015 along with relevant details of the creditors i.e. name and address of the creditors, mode of receipt of credit, date of receipt/payment by the creditors to the assessee and amount, which is very relevant to decide the controversy regarding unsecured loan and to remove the doubts in the mind of the AO. Ld. AR prayed that the relevant additional evidence could not be filed before the authorities below during the assessment and first appellate proceedings due to the reasons beyond control of the assessee. Therefore, the same is being produced first time before the Tribunal as additional evidence under bonafide and honest conduct of the assessee and, hence, the same may kindly be admitted for consideration.

6. Replying to the above, Id. DR strongly opposed to the admission of additional evidence. However, subsequently, in all fairness, Id. DR submitted that if it is found necessary, just and proper to admit the additional evidence then the AO should be allowed to examine the same and the issue may kindly be restored to the file of AO only for this purpose.

7. On careful consideration of the above submissions, I am satisfied that the assessee could not file the relevant documentary evidence

pertaining to the immediately preceding assessment year 2014-2015 and other relevant details establishing the existence, capacity of the creditors as well as creditworthiness and genuineness of the transaction. I may point out that as per rule 29 of the Income Tax Appellate Tribunal Rules, 1963 (in short the "ITAT Rules, 1963"), the additional evidence, which could not be submitted, may be allowed to be admitted and considered in certain limited conditions. For the sake of completeness in this order, the rule 29 is being reproduced below:-

*"29. The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or , if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.]"*

8. In my humble understanding of rule 29 of the ITAT Rules, 1963, first limb of this rule empowers the Tribunal to allow the assessee to submit any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass order or for any other substantial cause. Second limb of this rule further provides that production of additional evidence before the Tribunal may be allowed if the income tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on the points specified by them or not specified by them, the Tribunal, for the reasons to be recorded may

allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

9. In the present case first limb of rule 29 does not apply. However, second limb of rule has application to the facts and circumstance of the present case as from the orders of the authorities below i.e. from para 3 and 4 of assessment order, I observe that the AO asked the assessee to furnish certain documents and in reply to which the assessee through its AR submitted books of accounts, which were examined and placed on the record. Thereafter the AO perused the balance sheet and picked up the issue of unsecured loan of Rs.4 lakhs shown by the assessee due as on 31.03.2015. Thereafter the AO alleged that during the course of assessment proceedings, the assessee was asked to furnish the names and address of the person from whom the firm has received unsecured loan and also asked to furnish the date and mode of receipt of loan but there is no mention regarding issuance of any notice or notesheet entry requiring the assessee to furnish abovenoted documentary evidence or details. Therefore, I clearly observe that the AO did not provide due opportunity to the assessee to submit relevant documentary evidence during assessment proceedings and made addition.

10. From the relevant paras of first appellate order, I further observe that the Id. CIT(A) simply reproduced the observations of the AO and confirmed the addition by observing that even during the course of appellate proceedings the assessee has not given address of loan creditors, date on which alleged loan was obtained and whether the same

was received through cheque or cash. The Ld. CIT(A) also observed that in absence of date of obtaining loan, it cannot be said that they are old loans. But there is no mention regarding issuance of any notice to the assessee or any notesheet entry seeking the required details by the first appellate authority. If the assessing officer or appellate authority is not specifically asking the assessee to submit specified documentary evidence or details and adjudicating the issue against the assessee in absence of such relevant documentary evidence and details, then I can safely presume that the assessee was not allowed due opportunity of hearing by the authorities below to submit its case along with supporting documentary evidence and relevant details. Therefore, second limb of rule 29 of the ITAT Rules, 1963 is to be pressed in service for admission and consideration of additional evidence submitted by the assessee before the Tribunal.

11. Therefore, in view of foregoing discussions, the additional evidence filed by the assessee including other relevant details of the creditors are relevant and necessary evidence, which should be taken on record to meet the ends of justice and to sub-serve the purpose and cause of justice. Therefore, application of the assessee for taking additional evidence is allowed under rule 29 of the ITAT Rules, 1963 and additional evidence is taken on record for consideration.

12. Furthermore, since the AO was not allowed to verify and examine the documentary evidence, which has been admitted as additional evidence in earlier part of this order, therefore, the issue of unsecured

loan/creditors is restored to the file of AO for fresh examination and verification with a direction that the AO shall allow due opportunity of being heard to the assessee and shall consider the additional evidence for *de novo* adjudication of the issue. Accordingly, the case is restored to the file of AO for the limited purpose as indicated above with a direction that the AO shall only decide the issue of unsecured loan without being prejudiced to the earlier assessment and first appellate order.

**13. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on this 07/02/2019.

**Sd/-**  
**(CHANDRA MOHAN GARG)**  
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 07/02/2019

प्र.कु.मि/PKM, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- .  
IRON BASE,  
Plot No.304, Sailashree Vihar,  
Chandrasekharapur,  
Bhubaneswar-751021
2. प्रत्यर्थी / The Respondent-  
ITO, Ward-5(1), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**  
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack