

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAIPUR” BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI PAWAN SINGH, JUDICIAL MEMBER**

**आयकर अपील सं. /I.T.A. No.186/RPR/2018
(निर्धारण वर्ष / Assessment Year : 2013-14)**

M/s. Dhariwal Brothers, C/o. Raymond Retail Shop, Jeewan Bima Marg, Pandri, Raipur (C.G.)	बनम / Vs.	Income Tax Officer- Ward (3)(1), Raipur
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AADFD 6404 E		
(□ पीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
□ पीलार्थी ओर से / Appellant by :	Shri R. B. Doshi, CA	
प्रत्यर्थी की ओर से/Respondent by :	Shri R.K. Baral, DR	
सुनवाई की तारीख / Date of Hearing	12.08.2021	
घोषणा की तारीख /Date of Pronouncement	05.10.2021	

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income-Tax (Appeals)-I, Raipur (“CIT(A)” in short) dated 01.08.2018 arising from the assessment order dated 03.03.2016 passed under Section 143(3) of the Income Tax Act, 1961 (“the Act” in short). The grounds of appeal raised by the assessee read as under :-

- “1. Ld. CIT(A) erred in confirming the addition of Rs.2,15,750/- made by the AO u/s 68 on account of loan received by the appellant from Sunil Kumar Prashan Kumar HUF & interest thereon. The addition made by AO and sustained by Ld. CIT(A) is not justified.
2. Ld. CIT(A) erred in confirming disallowance out of vehicles, travelling and telephone expenses to the extent of 10% of the claim out of the disallowance of 20% made by the AO. The disallowance sustained by the Ld. CIT(A) is not justified.

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3. *Ld. CIT(A) erred in confirming addition of Rs.61,29,546/- made by the AO rejecting the book results and applying GP rate of 9.30% in place of the disclosed GP rate of 7.03%. The addition made by the AO and confirmed by CIT(A) is not justified. Rejection of books and estimation of profit is not justified and is illegal.”*

2. As per Ground No1, the assessee has challenged the addition of Rs.2,15,750/- made by the Assessing Officer under Section 68 of the Act on account of loan received by the assessee from one Sunil Kumar Prashan Kumar HUF and interest thereon. As noticed, in the course of the scrutiny assessment, the Assessing Officer made additions under Section 68 of the Act on account of unsecured loans received from several parties on the ground that the onus which lay upon the assessee under Section 68 of the Act was not discharged. In the first appeal, the CIT(A) concluded that the identity, creditworthiness and genuineness of the loan amount received by the assessee has been explained satisfactorily in terms of Section 68 of the Act. However, in respect of loans received from Sunil Kumar Prashan Kumar HUF, it was found to be unexplained on the yardstick of Section 68 of the Act. The addition of Rs.2,15,750/-, received from the aforesaid party, was thus sustained by the CIT(A) and disallowance of interest paid to the party was also sustained.

2.1 Before the Tribunal, the learned Counsel for the assessee submitted that all the relevant details such as PAN Number, Bank Statement of the lender etc were furnished. The amount has been received through banking channel from the aforesaid party who is not related to the assessee. Interest was also paid thereon. Not only this, the amount has been repaid to the said party during the same year. The disallowance was made only on the ground that the party has not

responded to the notice served under Section 133(6) of the Act. The learned Counsel relied upon the decision of the Hon'ble Supreme Court in the case of CIT Vs. Orissa Corporation P. Ltd (1986) 159 ITR 78 (SC) for the proposition that where the notice remained unserved, but, however, the Assessing Officer has not made any further efforts to make enquiry, an adverse inference cannot be derived automatically. It was contended that the case of assessee is on a much higher pedestal having regard to the fact that notice under Section 133 (6) was served but not responded. The learned Counsel further referred to several judicial precedents for the proposition that where the repayment has been made, the addition under Section 68 is not justified.

2.2 On appraisal of the facts narrated above, we find that the assessee has received the money through banking channel and also repaid the same through banking channel. The interest has been paid on the loans availed and the payment has been made after deduction of TDS. Thus, the whole set of transactions appears *prima facie* bonafide and in the ordinary course of obtaining borrowals. The only basis for adverse inference by the lower authority is absence of response on the enquiry letter issued under Section 133(6) of the Act and served upon the lender. As pointed out on behalf of the assessee, in view of the overwhelming evidences available in favour of the assessee, this solitary fact could not give rise to an automatic inference adverse to the assessee in the light of decision of Hon'ble Supreme Court in the case of Orrisa Corporation (supra).

2.3. The Hon'ble Gujarat High Court in the cases of CIT Vs. Ayachi Chandrasekhar Narsangji, 42 Taxmann.com 251 (Guj) and CIT

Vs. Mahavir Crimpers, 95 Taxman.com 323 (Guj) have held that when the Department has accepted the factum of repayment, the additions under Section 68 is not sustainable in law. Similar view has been expressed in CIT Vs. Karaj Singh (2011) 15 Taxmann.com 70 (P&H) & Panna Devi Chowdhary Vs. CIT, 208 ITR 849 (Bom).

2.4 Having heard the facts and the circumstances of the case, we have no hesitation to hold that the assessee has sufficiently discharged the onus which lay upon it in terms of Section 68 of the Act. In this view of the matter, we set aside the order of the CIT(A) on this point and direct the Assessing Officer to delete the addition on this score.

3. Consequently, Ground No.1 of the appeal of the assessee is allowed.

4. Ground No.2 concerns ad-hoc disallowance out of vehicle, travelling and telephone expenses partly sustained by the CIT(A). The assessee could not, in any manner, controvert the view taken by the CIT(A). The action of the CIT(A) being reasonable on the facts of the case and in the absence of any serious rebuttal thereof, we decline to interfere.

5. Ground No.2 of the assessee's appeal is dismissed.

6. Ground No.3 concerns the addition of Rs.61,29,548/- made by the Assessing Officer by adopting GP rate of 9.30% in place of GP rate of 7.03% arising from the book results.

6.1. Before the Tribunal, the learned Counsel for the assessee submitted, at the outset, that increase or decrease in the Gross Profit (“GP” in short) ratio and the Net Profit (“NP” in short) ratio depends on variety of factors in a given business venture and the book results of two different assessment years cannot be expected to be the same. Such variations in the profits are normal incidents of any business enterprise.

6.2 The Learned Counsel for the assessee next pointed out that the quantitative details of all items traded were also submitted to the Assessing Officer (Page No.48 and 51 of the paper-book) and such details were verifiable with reference to the sales made to identified parties who are all wholesalers. No enquiry has been made from the customers and no suppression in sales was actually found. The action of the Assessing Officer is in the realm of suspicion, surmises and conjectures. It is only an elementary to say that mere fall in GP/NP would not automatically trigger estimation.

6.3 It was also submitted that, broadly speaking, the fall in GP/NP in the current year vis-à-vis earlier year is on account of following:-

- (i) Fluctuation in foreign exchange rate of the goods imported by the assessee;
- (ii) The assessee entered into contract for sale of blankets with Raymond Ltd. for which purchase order was obtained (page Nos. 52 & 53 of the paper-book). Blankets were subsequently imported from China and supplied to Raymond. The purchase price happened to be more than

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the selling price contract with the customer resulting in loss of Rs.10.28 lakhs;

- (iii) In trading of soap noodles, loss of Rs.13.57 lakhs was incurred for which detailed working is placed at page no.55 of the paper-book;
- (iv) Custom duty on purchase of wire-netting was 10% higher in FY 2011-12 which further increased to 12.36% in the year under consideration. The value of imported wire-netting being substantial, the additional burden of custom duty is about Rs.8.83 lakhs which could not be passed on to the purchasers;
- (v) The turnover during the year increased by about 60% owing to lower margins of profits charged by the assessee.

6.4 The learned Counsel further pointed out that in the subsequent assessment year, i.e. AY 2014-15, the turnover of the assessee again increased by about 71% as compared to the Assessment Year 2013-14 in question. The GP rate in the subsequent year further declined from existing 7.03% to 5.39% having regard to the lower margin charged by the assessee. The Assessing Officer, in the scrutiny assessment, accepted the GP rate of 5.39% without any disturbance. The copy of the assessment order dated 16.08.2017 passed under Section 143(3) of the Act was placed on record. The Gross Profit in the similar range at 5.89% declared in Assessment Year 2015-16 was also accepted by the Assessing Officer. The learned Counsel thus submitted that where the Department has accepted the position in the subsequent year having regard to the increase in turnover and host of factors contributing to the decline in the business profits, there was no warrant for the

Revenue to artificially adopt GP rate of earlier year derived in its own set of facts. The learned Counsel accordingly submitted that the action of the Revenue be set aside and the position of the assessee be restored.

6.5 Per contra, the CIT-DR for the Revenue relied upon the order of the CIT(A) under challenge and essentially submitted that the assessee did not fully explain the fall in GP and the burden to substantiate the trading results were not discharged by the assessee.

7. We have carefully considered the rival submissions on the issue. On careful appraisal of the submissions and the corroborating evidences, we observe that the quantitative details of the items traded by the assessee were furnished before the Assessing Officer. No enquiry has been made with the customers. No discrepancy in the valuation of closing stock was pointed out by the Assessing Officer or by the CIT(A) either. Thus, by implication, the transactions in the trading account were without much dispute. The assessee has attempted to explain the fall in GP by citing specific reasons. The assessee contends that it is mainly in the business of imports and any fluctuation in the foreign exchange rate could naturally have cascading effect on the Gross Profit where the contract for sale has already been entered. This apart, the substantial increase in the turnover has been noticed. The assessee seeks to explain that the higher turnover could be achieved owing to lower profit margins. Such explanation merits acceptance. The Gross Profit in the subsequent assessment years have fallen down further from 7.03% to 5.39% in sync with increase in turnover. The book results in the subsequent year have been accepted by the Revenue. Thus, when seen on broader parameters, the book results of the assessee should be

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believed and should not be discarded. The benefit of doubt, if any, needs to go to the assessee – more so where such mathematical ratios cannot be explained to the hilt. The assessee, to our mind, has explained the fall in GP in a broader reckoning with reasonable particularity. The action of the Revenue Authorities thus deserves to be set aside and the plea of the assessee for restoration of book results deserves to be accepted.

14. The ground No.3 of the appeal of the assessee is allowed.

15. In the result, the appeal of the assessee is partly allowed.

Pronounced on 05.10.2021 as per Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

BT

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आदेश की प्रतिलिपि अग्रोषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर / DR, ITAT, RAIPUR
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By order

Assistant Registrar
Income Tax Appellate Tribunal
Raipur Bench, Raipur