

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

(Through Virtual Court at Pune)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER

AND

SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 277/RPR/2016

आयकर अपील सं./ITA No. 78/RPR/2015

निर्धारण वर्ष / Assessment Year : 2008-09

Shri Devi Chand Jain  
Prop. M/s. Loonkaram Devi Chand Jain,  
Main Road, Pandariya (C.G.)  
PAN : ABFPJ6738Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,  
Ward-2, Rajnandgaon.

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R Rao, A.R

Revenue by : Shri G.N Singh, D.R

सुनवाई की तारीख / Date of Hearing : 02.02.2022

घोषणा की तारीख / Date of Pronouncement : 21.02.2022

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the respective orders passed by the CIT (Appeals)-33, New Delhi AND CIT (Appeals)-2, Raipur, dated 13.06.2016 and 23.02.2015, respectively, which in turn arises from the orders dated 27.11.2009 passed by the A.O under Sec. 143(3) and under Sec. 271(1)(c) of the Income-tax Act, 1961 ( in short 'the Act') for assessment year 2008-09.

2. We shall first deal the appeal filed by the assessee for the assessment year 2008-09 pertaining to quantum assessment. Before us, the assessee has assailed the impugned order on the following grounds of appeal:

“1. In the facts and circumstances of the case, order is bad in law as well as on facts.

2. In the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.1,50,000/- on account of advance from Debtors/Creditors made by the Assessing Officer.

3. The appellant craves leave for reserving the right to amend, modify, alter add or forgo any grounds of appeal at any time before or during the hearing of this appeal.”

3. Succinctly stated, the assessee had on 30.09.2008 filed his return of income for assessment year 2008-09, declaring an income of Rs.1,94,920/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act. During the course of assessment proceedings, it was observed by the Assessing Officer that the 'balance sheet' of the assessee revealed a liability of Rs.1,50,080/- in the name of M/s. DPS Infrastructure (P) Ltd. (in short "DPSIPL"). In order to verify the genuineness and veracity of the aforesaid outstanding liability, the Assessing Officer called upon the assessee to place on record a copy of the ledger account of the aforementioned party a/w its complete postal address and confirmation etc. In compliance, the assessee placed on record copies of his 'balance sheets' for the preceding years which therein revealed that the aforesaid liability had surfaced in the said earlier years. Elaborating the nature of the aforesaid liability, it was claimed by the assessee that the aforementioned party, viz. M/s. DPSIPL which had its registered office at 39, Steam Park, Shivneri Circles, New Bombay Adra Highway, Dwarika, Nashik, Maharashtra had come to Mungeli for executing contracts for construction of roads for the Government of Chattisgarh. It was claimed by the assessee that the aforementioned party had given an advance for purchase of cement from the assessee concern. In so far the complete address of the aforesaid party was concerned, it was submitted by the assessee that it was not conversant with its present

whereabouts. However, the Assessing Officer was not persuaded to subscribe to the aforesaid explanation of the assessee. It was observed by the Assessing Officer that it was beyond comprehension that the assessee would have though received a substantial amount of advance from the aforementioned party but would be ignorant about its whereabouts. Backed by his aforesaid observations, the Assessing Officer was of the view that the outstanding liability of the assessee qua the aforementioned party was bogus. It was observed by him that the aforementioned amount that was received by the assessee as an advance from the aforementioned party would have thereafter crystallized into supply of goods to it by the assessee. Observing, that the assessee had neither accounted for the purchase bills corresponding to the aforesaid unaccounted sales made to the aforesaid party nor furnished the complete details of its transactions with respect to the said party, the Assessing Officer was of the view that the unsubstantiated explanation tendered by the assessee did not merit acceptance. Accordingly, the Assessing Officer dubbing the aforementioned liability as bogus, therein, added the same to the returned income of the assessee.

4. Aggrieved, the assessee carried the matter in appeal before the CIT (Appeals). After deliberating at length on the facts of the case, the CIT (Appeals) was not inclined to subscribe to the assessee's claim as regards

the genuineness of the outstanding liability shown in the name of the aforementioned party in question. On a perusal of the records, it was observed by the CIT (Appeals) that the assessee had received an advance of Rs.1,06,000/- on 05.10.2006; and Rs.100,000/- on 15.10.2006, against which it had for the very first time supplied cement of Rs. 45,050/- on 20.12.2006, i.e, after more than two months of receipt of advance. It was observed by the CIT (Appeals) that the balance amount of Rs.1,50,080/- (cr.) was thereafter brought forward by the assessee to the succeeding years and was shown as an outstanding liability. Observing that not only the assessee had failed to place on record confirmation of the aforesaid party which would have instilled any confidence as regards his explanation, the CIT(A) was of the view that it even otherwise it was unlikely that the aforesaid party would have advanced an amount in two installments; and that too two months prior to receipt of the first bag of cement from the assessee. Backed by his aforesaid observation the CIT (Appeals) upheld the view taken by the Assessing Officer and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT (Appeals), has carried the matter before us.

6. We have heard the ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material

available on record, as well as considered the judicial pronouncement that have been pressed into service by the ld. A.R to drive home his contentions. Admittedly, it is a matter of fact borne from the record that the liability of Rs.1,50,080/- (Cr.) as was reflected in the name of M/s. DPSIPL in the 'balance sheet' of the assessee was not generated during the year under consideration, but was an outstanding liability that was b/forward from the preceding year. On a perusal of the orders of the lower authorities, we find that the reasons adopted by them to make/sustain the addition of Rs.1,50,080/-(supra) are based on observations standing on their respective independent footing. On the one hand, we find that the Assessing Officer had doubted the aforesaid outstanding liability, for the reason, that as per him goods would have been supplied by the assessee against the same. Being of the view that the assessee would have carried out unaccounted purchases of goods which thereafter would had been routed as unaccounted sales to the aforementioned party, the A.O held a conviction that the liability in question was to be dubbed as bogus and thus, was not to be accepted. In the backdrop of his aforesaid observations, the Assessing Officer was of the view that the outstanding liability in question that was reflected by the assessee in his books of account was nothing but his undisclosed business income which was reflected in the garb of the aforesaid outstanding liability. On the other hand, we find that the CIT (Appeals) had though upheld the addition as

regards the outstanding liability in question, but the reasoning adopted by him stands on a different footing. As is discernible from the order of the CIT (Appeals), we find, that he was of the view that it was beyond business prudence that an advance would have been made by the aforesaid party, viz. M/S. DPSIPL in two installments; and that too two months before receiving the first bag of cement from the assessee. The CIT (Appeals), thus, doubting the very factum of receipt of advance by the assessee from M/s. DPSIPL had dubbed the same as a bogus liability.

7. After deliberating at length on the issue in question, we are of a strong conviction that the reasoning of neither of the authorities below find favour with us. In so far the view taken by the Assessing Officer that the outstanding liability of Rs.1,50,080/- of the assessee towards M/s. DPSIPL would have crystallized in corresponding unaccounted sales that would have been made by the assessee to the said party, in our considered view, is an observation which is absolutely in the thin air and is clearly devoid and bereft of any supporting material. In our considered view, even if for the sake of argument the aforesaid observation of the Assessing Officer is accepted, we find no justification as to on what basis the addition of unaccounted purchases corresponding to the alleged unaccounted sales made by the assessee to the aforementioned party could be related to the year under consideration and not to the preceding year. Be that as it may,

we are of the considered view that as there is no material on record to support the aforesaid view of the Assessing Officer, therefore, the same does not merits acceptance.

8. Adverting to the observation of the CIT (Appeals) that it was beyond comprehension and business prudence that the aforementioned party i.e. M/s. DPSIPL would have advanced the amount in two installments, i.e, more than two months before receiving the first bag of cement from the assessee, we are of the considered view, that by so observing the CIT(A) had tried to convey that the liability in question in itself was bogus. If that be so, then, we are of the considered view that no addition qua the outstanding liability in question could have been made in the hands of the assessee during the year under consideration. Our aforesaid conviction is supported by the judgment of the Hon'ble High Court of Delhi in the case of Commissioner Of Income Tax vs. Usha Stud Agricultural Farms Ltd. (2008) 301 ITR 384 (Del), wherein it was observed as under :

“ 6. Section 68 of the Act reads as under:

68. Cash credits Where any sum is found credited in the books of an assessed maintained for any previous year, and the assessed offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessed of that previous year.

7. According to this Section, any sum found credited in the books of the assessed maintained for a previous year may be charged to income tax as the income of the assessed of that previous year, if -

(i) The assessed offers no explanation about the nature of sources of such sum, or

(ii) The explanation offered by him is, in the opinion of the Assessing Officer, not satisfactory.

8. Here, the CIT(A) has deleted the addition of Rs. 15 lacs mainly on the ground that this credit balance of Rs. 15 lacs is being reflected in the accounts of the assessed over the past four to five years or so and hence this was not a fresh credit entry of the previous year under consideration and these credit entries were already made and accounted for in the assessment years 1995-96 and 1997-98 which were introduced in the form of advance against breeding stallions owned by the assessed and thus these credit entries did not relate to the year under consideration for being considered under Section 68 of the Act.

9. Since it is a finding of fact recorded by the CIT(A) that this credit balance appearing in the accounts of the assessed, does not pertain to the year under consideration, under these circumstances, the Assessing Officer was not justified in making the impugned addition under Section 68 of the Act and as such no fault can be found with the order of the Tribunal which has endorsed the decision of the CIT(A).

10. The above being the position, no fault can be found with the view taken by the Tribunal.

11. Thus, the order of the Tribunal does not give rise to a question of law, must less a substantial question of law, to fall within the limited purview of Section 260A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.”

It was observed by the Hon'ble High Court that as the credit balance appearing in the books of account of the assessee did not pertain to the year under consideration, therefore, there was no justification on the part of the A.O in making the impugned addition u/s.68 of the Act during the year. Backed by our aforesaid observation, we find no justifiable reason to

uphold the view taken by the CIT (Appeals) as regards the impugned addition of Rs.1,50,080/- made by the Assessing Officer. Accordingly, in the backdrop of our aforesaid deliberations, we herein set-aside the order of the CIT (Appeals) and vacate the addition made by the Assessing Officer. The **Grounds of appeal Nos. 1 to 3** raised by the assessee are allowed in terms of the observation hereinabove.

9. In the result, the appeal of the assessee in ITA No.277/RPR/2016 is allowed in terms of the aforesaid observation.

**ITA No.78/RPR/2015**  
**A.Y.2008-09**

10. We shall now deal with the appeal filed by the assessee against the order of the CIT(Appeals) upholding the penalty levied by the Assessing Officer u/s 271(1)(c) of the Act.

11. As we have already vacated the addition made by the Assessing Officer, therefore, the penalty imposed by him u/s 271(1)(c) vide his order dated 28.04.2010 cannot survive on a standalone basis and has to meet the same fate. Accordingly, the penalty of Rs. 40,690/- imposed by the Assessing Officer is herein vacated. The Grounds of appeal raised by the assessee are allowed.

12. In the result, appeal of the assessee in ITA No.78/RPR/2015 is allowed in terms of the aforesaid observation.

13. Resultantly, both the appeals filed by the assessee are allowed in terms of our aforesaid observations.

Order pronounced on 21<sup>st</sup> day of February, 2022.

Sd/-  
**JAMLAPPA D BATTULL**  
**ACCOUNTANT MEMBER**

Sd/-  
**RAVISH SOOD**  
**JUDICIAL MEMBER**

रायपुर/ RAIPUR ;

दिनांक / Dated : 21<sup>st</sup> February, 2022

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-33 Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	02.02.2022	Sr.PS/PS
2	Draft placed before author	08.02.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		