

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

**(Through Virtual Court)**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA No. 324/RPR/2016**

**निर्धारणवर्ष / Assessment Year : 2011-12**

M/s. B.B. Verma  
HIG-9, C1, C2, Near Niharika Talkies,  
Korba (C.G)

PAN : AQLPS2396C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Joint Commissioner of Income Tax,  
Range-1, Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by :Shri G.S. Agarwal, AR  
Revenue by :Shri Shrivankumar Meena, DR

सुनवाई की तारीख / Date of Hearing : 10.03.2022  
घोषणा की तारीख / Date of Pronouncement : 09.05.2022

**आदेश/ ORDER**

**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT (Appeal), Bilaspur, dated 29.03.2016, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 10.03.2014 for assessment year 2011-12. Before us the assessee has assailed the impugned order on the following grounds of appeal:

"1. That the learned CIT(A) erred in not allowing credit of TDS of Rs.88,445/- being received under PMGSY on account of advance for mobilization made by the learned AO.

Prayed that the credit of TDS of Rs.88,445/- either be allowed this year or it be allowed in A.Y.2012-13 & 2013-14 when the amount of advance mobilization was recognized as revenue in accounts.

2. That the learned CIT(A) further erred in confirming the addition of Rs.5,96,400/- being amount received from M/s. Aditya Minerals, Korba added by learned AO though the appellant discharged the burden of proving identification, credit-worthiness and genuineness of transaction.

Prayed to delete the addition.

3. That the learned CIT(A) further erred in confirming the disallowance of Rs.1,14,520/- made by the learned AO comprising of Rs.84,520/- being depreciation disallowed @20% on vehicle and Rs.30,000/- being lumpsum disallowance on account of vehicle expenses rejecting the explanation.

Prayed that considering the volume of business and scattered sites, the disallowance is unjustified and be deleted.

4. That the learned CIT(A) further erred in dismissing the ground that when depreciation on interest capitalized to vehicle account and not claimed to profit & loss A/c. was disallowed then interest at Rs.8,62,195/- be allowed.

Prayed to allow the interest of Rs.8,62,195/-."

2. Succinctly stated, the assessee firm which is engaged in the business of a contractor had filed its original return of income for the assessment year 2011-12 on 30.09.2011, declaring an income of Rs.85,46,970/-. The return of income filed by the assessee was processed as such u/s.143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. Assessment was, thereafter, framed by the Assessing Officer u/s.143(3) of the Act dated 10.03.2014 determining the income of the assessee at Rs.1,69,65,645/- after, inter alia, making the following additions/disallowances:

Sl. No.	Particulars	Amount
1.	Disallowance of assessee's claim for credit of TDS received under PMGSY on advance for mobilisation	-
2.	Addition of the amount received from M/s. Aditya Minerals, Korba u/s.68 of the Act.	Rs.5,96,400/-
3.	Disallowance @20% of assessee's claim for depreciation on vehicles	Rs.84,520/-
4.	Disallowance on ad-hoc basis out of vehicle expenses	Rs.30,000/-
5.	Disallowance of the assessee's claim for depreciation on the interest capitalized to vehicle account ( Pursuant to declining of the same as deduction claimed by the assessee)	Rs.8,62,195/-

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success in so far the aforesaid additions/ disallowances and other issues in question were concerned.

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

6. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

7. We shall first deal with the claim of the assessee that the CIT(Appeals) had erred in not allowing the credit of TDS of Rs.88,445/- (supra) that was received on advance for mobilization during the year under consideration. Briefly stated, the assessee in his return of income had raised a claim of credit of TDS of Rs.96,622/- on the "Mobilization Advance" of Rs.42,64,000/- that was received from PMGSY, Korba. Observing, that the assessee had only accounted for mobilization advance of Rs.3,60,860/- (out of Rs.42,64,000/-) in his total receipts during the year under consideration, and, had disclosed the balance amount of Rs.39,03,140/- [Rs.42,64,000 (-) Rs.3,60,860/-] under the head "Secured loans including advances from contractees", the Assessing Officer drawing support from Section 199 of the Act r.w Rule 37BA of the Income Tax Rules, 1962, therein, held a conviction

that credit for tax deducted at source only to the extent corresponding to the amount of gross receipt of Rs.3,60,860/- (supra) was to be allowed to the assessee. Accordingly, the Assessing Officer on a *pro-rata* basis restricted the assessee's claim for credit of TDS to Rs.8,177/-, i.e, the amount of TDS that was corresponding to the receipt of Rs.3,60,860/- (supra) accounted for by the assessee in its return of income for the year under consideration.

8. After having given thoughtful consideration to the aforesaid issue in hand, we are of the considered view, that as observed by the Assessing Officer, and rightly so, as per Section 199 of the Act r.w Rule 37BA(3)(i) and (ii), the credit for tax deducted at source is to be allowed to the assessee in the assessment year in which the corresponding income is assessable. As such, where tax is deducted at source and paid to the Central Government over a number of years, then, credit for TDS shall be allowed across those years in the same proportion in which the income is assessable to tax. Backed by the aforesaid position of law, we are of the considered view that no infirmity emerges from the orders of the lower authorities who have

rightly restricted the assessee's claim for credit of TDS to the extent of the sum that was relatable to the corresponding income/receipt that was accounted for in its income for the year under consideration. At the same time, finding substance in the claim of the Ld. Authorized Representative (for short 'AR') for the assessee that the claim of the assessee for credit of remaining amount of TDS is to be allowed in its hands on *pro-rata* basis in the respective years, in which, the same is offered as its income, accordingly direct the AO so. . We, thus, in terms of our aforesaid observations disposed off the **Ground of appeal No.1.**

9. We shall now deal with the grievance of the assessee that the CIT(Appeals) had erred in confirming the addition u/s.68 of the Act of Rs.5,96,400/-, i.e, the amount that was stated by the assessee to have been received from M/s. Aditya Minerals, Korba. As is discernible from the records, the assessee firm had, inter alia, received an amount of Rs. 5,96,400/- from M/s. Aditya Minerals, Korba. In order to verify the genuineness of the aforesaid transaction, the Assessing Officer in the course of the assessment proceedings had issued summons

u/s.131 of the Act dated 31.07.2013 to M/s. Aditya Minerals, Korba, which however were received backed from the postal authority unserved. Backed by the aforesaid fact, the Assessing Officer directed the assessee to produce the aforementioned party, viz. Aditya Minerals, Korba in order to facilitate necessary verification. However, the assessee failed to comply with the aforesaid directions of the Assessing Officer and did not produce the aforementioned party. Observing, that the assessee had failed to discharge the onus that was cast upon it to verify the identity and creditworthiness of the aforesaid party, as well as genuineness of the impugned loan transaction, the Assessing Officer held the transaction in question as bogus. Accordingly, the Assessing Officer added the aforesaid amount of Rs. 5,96,400/- to the returned income of the assessee.

10. On appeal, the CIT(Appeals) finding no infirmity in the view taken by the Assessing Officer upheld the same.

11. Before us, the assessee had placed on record confirmations of the aforementioned lender, viz. M/s. Aditya Minerals, Korba. Also, our

attention was drawn by the Ld. AR to a copy of a bank statement of the assessee wherein receipt of the aforementioned amount was duly reflected. It was claimed by the Ld. AR that as the aforesaid concern in question, i.e., M/s. Aditya Minerals, Korba had been shut down, therefore, for the said reason the assessee could not produce the said party for necessary verification in the course of the proceedings before the lower authorities. On a specific query by the Bench as to whether the aforesaid loan in question had repaid by the assessee as on date, the Ld. AR answered in negative.

12. We have given a thoughtful consideration to the aforesaid issue and are unable to persuade ourselves to subscribe to the contentions advanced by the Ld. AR. On a perusal of the orders of the lower authorities, we find that it is a matter of fact borne from record that the assessee had failed to discharge the onus that was cast upon it as regards substantiating the identity and creditworthiness of the lender, viz. M/s. Adiyta Minerals, Korbaand and also substantiating the genuineness of the loan transaction is question. At this stage, we may herein observe, that though it is the claim of the assessee that the

lender, i.e., M/s. Aditya Minerals, Korba was a sister concern of M/s. Aditya Construction, i.e., another concern from whom loan was raised by the assessee during the year under consideration, but we are unable to comprehend that now when the requisite confirmations and verification qua the latter party, viz. M/s. Aditya Construction (supra) could be obtained/got done by the assessee during the course of the assessment proceedings, then why the same could not be done qua the party in question. Although the assessee had placed on our record a confirmations of the lender, viz. M/s. Aditya Minerals, Korba, however, the same being in the nature of an 'additional evidence' does not merit admission in absence of an application by the assessee before us under Rule 29 of the Income Tax Appellate Tribunals Rules, 1963 for admission of the same. Apart from that, the fact that on the same date, i.e, on 19.06.2010 on which the impugned loan of Rs.5,96,344/- (supra) is received/credited in the assessee's bank account on 19.06.2010, there is a cash withdrawal of Rs.5.96 lacs in itself raises serious doubts as regards the authenticity of the loan transaction in question. Be that as it may, we are of the considered

view that as the assessee had failed to substantiate the authenticity of the loan transaction in question, therefore, no infirmity arises from the orders of the lower authorities who had rightly held the same as an unexplained cash credit u/s.68 of the Act. Thus, **Ground of appeal No.2** raised by the assessee is dismissed in terms of our aforesaid observations.

13. We shall now advert to the grievance of the assessee that the CIT(Appeals) had erred in upholding a disallowance of Rs.1,14,520/-, viz. (i) disallowance of 20% out of depreciation on vehicle :Rs.84,520/- ; and (ii) lump sum disallowance out of vehicle expenses : Rs.30,000/- .On a perusal of the records, we find that the Assessing Officer in the course of the assessment proceedings, after taking cognizance of the fact that the assessee firm owned six cars, had called upon it to substantiate that the same were being used wholly and exclusively for the purpose of its business. In reply, the assessee firm had ruled out any personal usage of the aforesaid vehicles either by the partners or by its staff members. Observing, that the reply furnished by the assessee did not inspire much of confidence, the Assessing Officer

drawing support from the fact that similarly placed concerns having higher turnovers were having 2-3 cars, thus concluded that the usage of the vehicles by the assessee firm for personal purpose of the partners/staff members could not be ruled out. Backed by his aforesaid conviction the Assessing Officer disallowed an amount of Rs.84,520/- i.e. 20% of the assessee's claim for depreciation a/w. an ad-hoc disallowance of Rs.30,000/- on account of various expenses attributable to usage of cars.

14. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

15. We have heard the Ld. Authorized Representatives of both the parties qua the aforesaid issue and have given a thoughtful consideration to the contentions advanced by both the parties. Although the view taken by the Assessing Officer that the fact that the assessee firm owned six cars would raise serious doubts as regards the usage of the same wholly and exclusively for its business purposes, but the same in our view could not have on a standalone basis justified

dislodging of the assessee's claim as regards usage of the said vehicles solely for the purposes of its business. Although, it was observed by the Assessing Officer that similar placed concerns, or in fact even concerns having higher turnover as in comparison to the assessee firm owned 2-3 cars, but the said fact in our considered view cannot form a basis for concluding that the vehicles owned by the assessee firm were not being used wholly and exclusively for the purposes of its business. Apart from that, we find that the details of the concerns which were being referred to by the Assessing Officer does not find any mention in the body of the assessment order. Considering the totality of the facts involved in the case before us, we are afraid that the estimated/ad-hoc disallowances of depreciation/vehicles expenses by the Assessing Officer cannot be sustained in the absence of any concrete material on record in support thereof. Accordingly, we, herein vacate the disallowance of Rs.1,14,520/-(supra) made by the Assessing Officer which was upheld by the CIT(Appeals). Thus, **Ground of appeal No.3** raised by the assessee is allowed in terms of our aforesaid observations.

16. Now, we shall advert to the grievance of the assessee that both the lower authorities had erred in declining the assessee's claim for depreciation of Rs. 8,62,195/- qua the interest element on the loans that were raised from financial institutions for purchase of machinery and were capitalized in the respective accounts of the said capital assets.

17. Succinctly stated, the assessee had borrowed interest bearing loans from financial institutions for purchase of machinery. The assessee had issued post-dated cheques to the financial institutions. Interest expenditure involved for acquiring the machinery was capitalized by the assessee in the respective machinery accounts and, on the same depreciation was claimed. Observing, that the capitalization of interest on the basis of post-dated cheques, i.e., to the extent the same was relatable to the amount of interest that had yet not fallen due was not permissible as per the mandate of law, the Assessing Officer disallowed the same. On appeal, the CIT(Appeals) being of the view that the interest on the borrowed capital pertaining

to the period prior to the asset having been put to use was to be capitalized, thus, restricted the assessee's claim for deduction to the extent of interest that had become payable during the year under consideration. Accordingly, the assessee's claim for depreciation qua balance interest, i.e., interest capitalized to the machinery account to the extent the same had yet not become payable was declined by the CIT(Appeals).

18. Aggrieved, the assessee has carried the matter in appeal before us. We have heard the Ld. Authorized Representatives of both the parties as regards the aforesaid issue in question. In our considered view, the interest expenditure to the extent incurred by the assessee qua the borrowed funds which were utilized by it for acquiring machinery in the course of its existing line of business was allowable as a deduction u/s.37(1) of the Act. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of DCIT Vs. Core Healthcare Ltd. (2009) 308 ITR 263 (Guj.). On the basis of our aforesaid observations, we are of the considered view that the assessee would be entitled for deduction of interest paid/payable on

the interest-bearing funds borrowed from financial institutions, i.e, to the extent such interest expenditure had crystallized during the year under consideration. At the same time, we may herein observe that assessee's claim for capitalization of the interest expenditure to the account of the respective machinery, viz. Tata Hyva Truck, JCB machine and the consequential claim of depreciation on the same is devoid and bereft of any merits and cannot be sustained. We, thus, in terms of our aforesaid observations direct the Assessing Officer to allow the assessee's claim for deduction of interest on the borrowed funds to the extent the same were utilized by it in the course of its existing line of business, i.e., for the purpose of machinery, and such interest paid/payable had crystallized during the year under consideration. Accordingly, the orders of the lower authorities qua the aforesaid issue in question is modified in terms of our aforesaid observations. Thus, **Ground of appeal No.4** raised by the assessee is partly allowed in terms of our aforesaid observations.

19. In the result, appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in the open court on 09<sup>th</sup> day of May, 2022.

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

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

रायपुर/ RAIPUR ; दिनांक / Dated : 09<sup>th</sup> May, 2022  
SB

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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

		Date	
1	Draft dictated on	04.04.2022	Sr.PS/PS
2	Draft placed before author	05.04.2022	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		