

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA Nos.245 and 246/Bang/2022</b>
<b>Assessment Years : 2009-10 and 2010-11</b>

Shri. Ramzanali Asgar Khan, Prop of R A K Constructsion, Flat No.703, ‘G’ Block, Raheja Residency, 3 <sup>rd</sup> Block, Koramanagala, Bengaluru – 560 034. <b>PAN : AAGPK 6255 R</b>	Vs.	DCIT, Central Circle – 1(4), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri. Siddesh Nagaraj Gaddi, CA
Revenue by	:	Shri. Sankar Ganesh K, JCIT (DR)(ITAT), Bengaluru.

Date of hearing	:	11.08.2022
Date of Pronouncement	:	22.08.2022

**ORDER**

***Per Chandra Poojari, Accountant Member:***

These two appeals are filed by the assessee directed against different orders of CIT(A) for the Assessment Years 2009-10 and 2010-11 dated 21.01.2022. Since the issues in these appeals are common in nature, these appeals are clubbed together, heard together and disposed off by this common order for the sake of convenience.

2. The facts of the case are that in these Assessment Year, the assessee declared the sales as follows:

Particulars	Amount (Assessment Year 2009-10)	Amount (Assessment Year 2010-11)
Works contract receipts	36,42,67,150/-	50,51,43,199/-
Scrap sales	1,93,07,000/-	12,00,000/-
Gross sales	38,35,74,150/-	50,63,43,199/-

3. The AO while framing the assessment observed that the scrap sales declared by the assessee in the Assessment Year 2009-10 is 1.93 Crores and Rs.12 lakhs in Assessment Year 2010-11 is not supported by any documentary evidence and more so it was cash sales wherein the assessee has not furnished details of the buyers to whom it was sold. Accordingly, the AO was of the opinion that the assessee has introduced the unexplained money as cash sales. Accordingly, these credits were treated as unexplained credits under section 68 of the Income Tax Act, 1961 (hereinafter called 'the Act'). Against this, the assessee is in appeal before us. At the outset, the learned AR submitted that a proper opportunity of being heard was not offered to him to explain these credits found credited in the bank account of the assessee. Further, it was submitted that assessee is having sufficient cash balance to deposit into bank account as such no addition could be made by AO. According to the learned AR, the addition was made under section 68 only on suspicion reason which is not enough in sustaining the addition under section 68 of the Act and he relied on the various judgments in this regard. Further, it was submitted that assessee offered additional income in the course of survey and to that extent, set up has to be given towards any unexplained credits if so, made by the AO. Further, it was submitted that there was no iota of evidence found during the course of survey at the premises of the assessee. Further it was submitted that assessee explained the source for deposit of cash into bank account as sale of scrap and the Department cannot seek for source of source and addition cannot be made on this ground. On the other hand, DR submitted that assessee's sales in

Assessment Year 2009-10 was Rs.38.35 Crores out of this assessee claimed scrap sales at Rs.1.93 Crores. In another Assessment Year 2010-11, the assessee's total sales was Rs.50.63 Crores. Out of this, assessee's scrap sales was Rs.12,00,000/-. There is such a huge variation between the scrap sale as compared both Assessment Years which is unbelievable. The assessee actually deposited unaccounted cash into bank account and it created a make-believe story to explain the cash deposit on scrap sales which cannot be upheld. Thus, he relied on the order of the lower authorities.

4. We have heard both the parties and perused the material on record. In Assessment Year 2009-10, total sales were Rs.38.35 Crores. Out of this Rs.38.35 Crores, the assessee claimed scrap sales at Rs.1.93 Crores. In another Assessment Year 2010-11, the total sales were Rs.50.63 Crores out of this assessee claimed scrap sales at Rs.12,00,000/-. During the course of assessment, the AO asked the details of buyers of these scrap sales. The assessee has not furnished any details with regard to whom the scrap sale was made. The entire scrap sale was recorded by the assessee as cash sales. Even in the cash sales, the assessee must have evidence with regard to name and address of the parties to whom the cash sales were made. Had it been genuine cash sales, the assessee would have produced name and address of the parties to whom it was sold. However, even on repeated requests by the AO, assessee failed to produce these details. That provoked the AO to make an addition of Rs.1.93 Crores under section 68 of the Act in Assessment Year 2009-10 and Rs.12,00,000/- in Assessment Year 2010-11. Even before us, assessee was not able to produce any details of the buyers to whom the scrap was sold. The assessee has also not produced any stock records for generation of the scraps from year to year. The assessee made an oral plea that these scraps were generated from year to year. The Bench has put a question with regard to details of generation of this scrap from year to year. But the learned AR expressed his

inability to produce the same. In our opinion, the assessee is having no explanation with regard to generation of scraps and sale of the same. In our opinion, it is only a make-believe story so as to account the unaccounted cash generation by assessee. In view of this, we do not find any merit in the argument of the learned Counsel for the assessee. However, the AR made one more plea that if the scrap sales has been considered as an addition under section 68 of the Act, then corresponding sales and relevant expenditure relating to the scrap sales charged to the Profit and Loss A/c to be taken out. We find this plea of the assessee here is reasonable. Accordingly, we direct the AO to take out the scrap sales if it is included in the total sales in the Profit and Loss A/c furnished by assessee and also take out the all corresponding expenditure relating to the scrap sales debited to the Profit and Loss A/c and compute the income accordingly and make separate additions for scrap sales to the income of assessee. This appeal of the assessee is partly allowed.

5. In the result, both the appeals of the assessee are allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(BEENA PILLAI)**  
**Judicial Member**

Sd/-

**(CHANDRA POOJARI)**  
**Accountant Member**

Bangalore.

Dated: 22.08.2022.

/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.