

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.451/CTK/2019**

(निर्धारण वर्ष / Assessment Year :2003-2004)

Sri Sandip Jena,  
Kalibari, VSS Marg,  
Sambalpur-768001  
**PAN : ABXPJ 3335 M**

.....Assessee

Versus

DCIT, Circle-1(1), Sambalpur

.....Revenue

Shri P.R.Mohanty, Advocate for the assessee

Shri M.K.Gautam, CIT-DR for the Revenue

**Date of Hearing : 16/09/2022**

**Date of Pronouncement : 16/09/2022**

**आदेश / O R D E R**

**Per Bench :**

This is an appeal filed by the assessee against the order of the CIT(A), Sambalpur, dated 30.08.2019 passed in I.T.Appeal No.0349/2013-14, for the assessment year 2003-2004.

2. It was submitted by the Id. AR that there was a search in the premises of the assessee on 23.07.2006. It was the submission that the assessee is an employee with Orissa Power Transmission Corporation Limited (OPTCL). It was submitted that in the course of search, a balance sheet and profit & loss account belonging to M/s SRJ Software Pvt. Ltd. was found. It was submitted that the assessee's son Shri Soumit Ranjan

Jena and his daughter-in-law Smt. Preeti Jena were the directors of the said company i.e. SRJ Software Pvt. Ltd. (SSPL). It was the submission that the balance sheet and profit & loss account of the said SRJ Software Pvt. Ltd. for the assessment year 2003-2004 was found in the course of search. In the said balance sheet, unsecured loans showed the assessee's name with an amount of Rs.9,55,000/-. The assessee was asked to explain the source of the said amount. The assessee denied having given the loan. The AO on the ground that no evidence was produced by the assessee to prove that he had not given the loan, had made the addition of Rs.9,55,000/- as undisclosed income of the assessee. On appeal, the Id. CIT(A) took the view that a document found in the course of search is to be explained by the assessee. Consequently, he did not accept the claim of the assessee and confirmed the assessment. It was the submission that the assessee is in appeal before the Tribunal. It was submitted by the Id. AR that the assessee has never given the said unsecured loan of Rs.9,55,000/ to SRJ Software Pvt. Ltd. It was the submission that the assessee also cannot prove that he has not given the said loan as the assessee was to prove the negative.

3. To a specific query as to what happened in the assessment in the case of SRJ Software Pvt. Ltd., it was submitted that the said company is assessed in Delhi and to the knowledge of the Id. AR, no assessment has been done.

4. To a further query as to whether the assessment has been done in the case of Shri Soumit Ranjan Jena and Smt. Preeti Jena, it was

submitted that another survey/search was conducted on another company owned by the assessee's son i.e. Jena Enterprises at Goa during 2010. It was submitted that assessment in respect of search years related to the search of 2010 had been done in Goa and matters have been processed in Goa by the assessee's son. It was submitted that this amount of Rs.9,55,000/- has not been examined by any of the authorities in respect of the company, namely, SRJ Software Pvt. Ltd. or in the case of Shri Soumit Ranjan Jena or Smt. Preeti Jena, the directors of the company. It was the prayer that the addition made by the AO and confirmed by the CIT(A) deserves to be deleted.

5. In reply, the Id. CIT-DR submitted that the documents in form of balance sheet and profit & loss account had been found from the residence of the assessee. It was submitted that as per the provisions of Section 292C of the Act, it was the duty of the assessee to explain the documents with cogent evidence. No evidence has been produced before the AO or the CIT(A). It was the submission that a perusal of the balance sheet and profit & loss account of SRJ Software Pvt. Ltd., which was found in the course of search, showed that the same was audited. Admittedly, the assessee is not a director of the said company. The son and daughter-in-law are the directors of the said company. The assessee has not even produced any confirmation from the directors of the said company to show that they have not raised any loan from the assessee. It was further submitted that no balance sheet in the case of the assessee has been filed along with income tax return. It was the submission that

whether the son of the assessee was doing any fraudulent activity or not has no nexus with this appeal for the assessment year 2003-2004. Whether the money reached to SRJ Software Pvt. Ltd. from the assessee in cash or by cheque, can be explained only by the company. The Id. CIT-DR drew our attention to para 6.3 of the order of the Id. CIT(A). It was further submitted that the order of the coordinate bench of the Tribunal in assessee's own case for the assessment year 2006-2007 was produced to show that the documents seized therein and relied upon had been treated as dumb documents. It was the submission that the balance sheet and profit & loss account that too audited one, cannot be treated as dumb document. He relied on the decision of Delhi Bench of the Tribunal in the case of Rati Ram Gotewala, reported in (2004) 89 ITD 14/(2004) 84 TTJ(Del) 516 to support his proposition that when the search operation resulted in the seizure of a diary written by the assessee and some of the entries in the diary, tallied with the books of accounts maintained in the regular course of business, it was the duty of the assessee to explain the entries in the diary and the diary was a primary evidence of the affairs of the assessee's business. Finally, it was the prayer of the Id.CIT-DR that the order of the Id. CIT(A) and that of the AO be upheld.

6. We have considered the rival submissions.

7. The search in the present case was conducted in 2006. The document found in the course of search is the balance sheet and profit & loss account of a company being SRJ Software Pvt. Ltd. for the assessment year 2003-2004. The assessee is nowhere connected with

the said company except being the father of one of the directors and father-in-law of the other. The assessee has no control over the functioning of the said company or its daily operations much less its accounts. The assessee has categorically confirmed that he has not given the loan to SRJ Software Pvt. Ltd.. Once the assessee specifically confirmed that he has not given the money, then the onus shifts on the revenue to show that the said documents which have been found in the course of search, is true. It would be farfetched to ask the assessee to prove the negative and get the confirmation letters from the assessee's son or daughter-in-law that they have not received any loan from the assessee for their company. As far as the assessee is concerned, the balance sheet and profit & loss account of SRJ Software Pvt. Ltd., the same is a dumb document, insofar as it is not a document written by him and it is not a document under his control and he has no association with the said company. It must be mentioned here that just because the assessee's son is a director of the said company, it does not presume that the assessee would know about the functioning or the intricacies of the company run by his son and daughter-in-law. The decision relied upon by the Id. CIT-DR in the case of Rati Ram Gotewala (supra) would not apply to the facts of the present case, insofar as in that case a diary was found with the entries and some other entries tallied to the entries in the regular books of accounts. In these circumstances it was held that such diary is to be treated as a primary evidence and it is the duty of the assessee to explain the entries. In the impugned appeal, an audited balance sheet and

profit & loss account of SRJ Software Pvt. Ltd. run by a third party has been found. The assessee is nowhere connected to the said company and the assessee nowhere could explain any entries any balance sheet and profit & loss account. This being so, we are of the view that the addition made by the AO and confirmed by the CIT(A) for the amount of Rs.9,55,000/- in the hands of the assessee, is unsustainable and the same stands deleted.

8. In the result, appeal of assessee stands allowed.

Order dictated and pronounced in the open court on 16/09/2022.

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 16/09/2022

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-  
Sri Sandip Jena,  
Kalibari, VSS Marg,  
Sambalpur-768001
2. प्रत्यर्थी / The Respondent-  
DCIT, Circle-1(1), Sambalpur
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,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack