

आयकर अपीलीय अधिकरण
रांची 'डीबी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI 'DB' BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री संजय गर्ग, न्यायिक सदस्य

एवं

डॉ मनीष बोर्ड, लेखा सदस्य

के समक्ष

Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

I.T.A. No.: 94/Ran/2019

Assessment Year: 2015-16

ACIT, Circle-2(1), Hazaribag, Jharkhand.....Appellant

Vs.

Sanjay Kumar Upadhyay.....Respondent
[PAN: AAOPU 9780 D]

Appearances by:

Sh. Praveen Sinha, CA, appeared on behalf of the Assessee.

Sh. Pranob Ku. Koley, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : August 22nd, 2022

Date of pronouncing the order : September 28th, 2022

आदेश

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the Revenue pertaining to the Assessment Year (in short "AY") 2015-16 is directed against the

order passed u/s 250 of the Income Tax Act, 1961 (in short the “Act”) by Id. Commissioner of Income-tax (Appeals), Hazaribagh, Jharkhand [in short Id. “CIT(A)”] dated 19.12.2018 which is arising out of the assessment order framed u/s 143(3) of the Act dated 14.12.2017.

2. Brief facts of the case as culled out from the records are that the assessee is an individual engaged in the business of civil construction. E-return of income for AY 2015-16 was filed on 30.09.2015 declaring total income at Rs. 22,62,050/-. Case of the assessee selected for limited scrutiny followed by serving of notices u/s 143(2) & 142(1) of the Act. Various details called for by Id. Assessing Officer (in short Id. “AO”) were supplied by the assessee from time to time. After making various additions Id. AO assessed the income at Rs. 1,76,31,290/-. Assessee challenged the additions before Id. CIT(A) and partly succeeded.

3. Now, the Revenue is in appeal before this Tribunal raising the following grounds of appeal:

“1. That regarding the addition made to the tune of Rs. 11,52,934/- under the head undisclosed turnover, the Ld.CIT (A) Hazaribag erred in deleting the addition. The Ld.CIT (A) Hazaribag, relied upon the evidence put forwarded by the assessee before him in this regard and did not take into account the material evidence brought on the record by the Assessing officer.

2. That regarding the addition made to the tune of Rs. 94,71,000/- under the head increase in capital, the Ld.CIT (A) Hazaribag, erred in deleting the addition. The Ld.CIT (A) Hazaribag, relied upon the evidence put forwarded by the assessee before him in this regard and did not take into account the fact brought on the record by the Assessing officer during the course of assessment proceedings. The Ld.CIT (A) Hazaribag, relied upon some judicial pronouncements and deleted the said addition.

3. *That regarding the addition made to the tune of Rs. 46,86,305/- U/s 68 of I.T. Act, the Ld.CIT (A) Hazaribag, erred in deleting the addition. The Ld.CIT (A) Hazaribag, relied upon the evidence put forwarded by the assessee before him in this regard and did not take into account the fact brought on the record by the Assessing officer.”*

4. Ld. D/R vehemently argued supporting the finding of ld. AO.

5. Per contra, ld. Counsel for the assessee heavily relied on the finding of ld. CIT(A) and also referred to the facts of the case as well as the details filed in the paper book containing 117 pages which mainly includes the financial statements, computation of income, copies of income tax returns and Form 26AS of M/s. Baba Baidyanath Constructions and also its bank statement.

6. We have heard rival contentions and perused the records placed before us.

7. As regards Ground no. 1, brief facts are that there was a mismatch of turnover between the one reported in Form 26AS with the one disclosed by the assessee in the audited profit & loss account amounting to Rs. 11,52,934/-. Before ld. CIT(A), it was stated by the assessee that there is an arithmetical mistake made by ld. AO as he replaced sales turnover from Executive Engineer, REO Works Division, Hazaribag, amounting to Rs. 2,12,79,417/- with the figure 1,98,79,417/- and thereafter, made the addition. It was categorically stated by the assessee that such details were never given to ld. AO and it is also not understood as to how ld. AO had arrived at the alleged difference in the turnover and it was also submitted that the turnover from Executive Engineer, REO Works Division, Hazaribag appearing in Form 26AS is only at Rs. 2,08,00,657/- whereas in the books gross receipts offered from

Executive Engineer, REO Works Division, Hazaribag is Rs. 2,12,79,417/- which is higher. It also submitted that ld. AO seems to have made the mistake inadvertently by taking the figure of the payment received from Executive Engineer, REO Works Division, Hazaribag during the year at Rs. 1,98,79,417/- which is not correct. After considering these submissions, ld. CIT(A) deleted the said addition observing as follows:

“5.2. The findings of the A.O. as per the assessment order and the written and oral submissions of the AR have been considered. The following are relevant for deciding the issue under consideration. Simultaneously, the issue under consideration is also adjudicated as under:

(i) At the outset, there is an arithmetical mistake and the AO has not provided the correct working for the addition. It is only the last bill amount of Rs. 14,00,000/- which was not taken into account while filing the TDS Return by the contractee Government Department (EE, REO, Works Division, Hazaribag)

(ii) The appellant has already declared higher turnover as per the audited profit & loss account as compared to the gross receipts as appearing in the Form No. 26AS.

(iii) The AO has not established that the appellant has actually received the said amount of Rs. 11,52,934/-.

(iv) The AR has furnished detailed written submission along with requisite documentary evidence which satisfactorily explains the contention of the appellant.

In view of the above, it is held that the AO is not justified in making the addition of Rs. 11,52,934/- as undisclosed turnover of the appellant. Therefore, the said addition of Rs. 11,52,934/- is hereby deleted. Accordingly, this ground of appeal is allowed.”

8. From perusal of the above finding of ld. CIT(A) as well as the submissions made by the assessee before the lower authorities which remained uncontroverted at the end of ld. D/R, we are of the considered view that the alleged addition was wrongly made by

ld. AO on the basis of some arithmetical mistakes made while examining the turnover details of the assessee and ld. AO failed to establish that the appellant has actually received the said sum of Rs. 11,52,934/- over and above the turnover disclosed in the books of account. Thus, no interference is called for in the finding of ld. CIT(A) and ground no. 1 raised by the Revenue is dismissed.

9. Revenue's Ground no. 2 relates to the addition of Rs. 94,71,000/- made by the ld. AO invoking the provisions of Section 41(1) of the Act and observing that there was a substantial increase in the capital in a year due to cessation of liability. The facts are that the assessee is a partner in a firm named M/s. Baba Baidyanath Constructions. The assessee took loan from the partnership firm in the preceding year and the outstanding loan of Rs. 94,71,000/- was brought forward from FY 2013-14 i.e. AY 2014-15. The amount of the said loan was received by the assessee during FY 2012-13 on various dates totalling to Rs. 94,71,000/-. During the year under appeal the said outstanding loan was transferred to the capital account of the assessee through journal entry. In other words, the liability standing in the balance sheet as loan was transferred under the head "Capital" in the name of the assessee. Ld. AO treated the said adjustment from loan account to capital account as cessation of liability and added in the hands of the assessee. When the matter travelled before ld. CIT(A), he after considering the submissions of the assessee, deleted the addition observing as follows:

"6.3. The findings of the A.O. as per the assessment order and the written and oral submissions of the AR have been considered. The following are relevant for deciding the issue under consideration.

Simultaneously, the issue under consideration is also adjudicated as under:

(i) At the outset, it is stated that the provisions of section 41(1) has been erroneously invoked for the addition of Rs. 94,71,000/- due to the following:

(a) The amount is not at all a trading liability.

(b) This is a transaction on account of loan / capital account.

(c) The appellant has not claimed any deduction or allowance in respect of the said amount of Rs. 94,71,000/-

(ii) The AR has also brought out the legal provisions of section 41(1) of the Income-tax Act, 1961, decision of the Hon'ble SC on interpretation of statutes as well as various other court decisions establishing that the amount involved is not covered under the provisions of Section 41(1) of the Income-tax Act, 1961.

(iii) During the appellate proceedings the AR has also furnished the requisite documentary evidence to explain the source of receipt of loan of Rs. 94,71,000/- during the FY relevant to AY 2012-13.

(iv) The AR has furnished detailed written submission along with requisite documentary evidence which satisfactorily explains the contention of the appellant.

In view of the above, it is held that the AO is not justified in invoking the provisions of Section 41(1) of the Income-tax Act, 1961 and making the addition of Rs. 94,71,000/- on account of cessation of liability u/s 41(1) of the Income-tax Act, 1961. Therefore, the said addition of Rs. 94,71,000/- is hereby deleted. Accordingly, this ground of appeal is allowed.”

10. From perusing the finding of Id. CIT(A) and also considering the facts of the case, we find that the assessee is a partner in M/s. Baba Baidyanath Constructions and the alleged sum is undisputedly received by the assessee in the preceding year. The assessee being the partner in the firm can withdraw the sum from the partnership firm if needed. Such amount withdrawn from the partnership firm of which genuineness is not in doubt can be

utilized by the assessee for any of its purpose including the one for business. The assessee has never claimed the alleged amount as any deduction or allowance against the revenue during the year or in the past. The assessee still remains the partner in the partnership firm M/s. Baba Baidyanath Constructions which is regularly filing the income tax return and the copies of the same for AY 2013-14, 2015-16 are placed in the paper book. The said adjustment of transferring the loan into the capital is between the assessee and the partnership firm. Had the assessee treated it as a part of the capital in the preceding year when the amount was actually withdrawn from the partnership firm, the present situation would not have arrived. Under these given facts and circumstances of the case we are of the considered view that ld. AO was not justified in invoking the provisions of Section 41(1) of the Act on the alleged transaction and thus, we fail to find any infirmity in the finding of ld. CIT(A) deleting the said addition. Thus, ground no. 2 raised by the Revenue stands dismissed.

11. Ground no. 3 raised by the Revenue relates to addition of Rs. 46,86,305/- made by ld. AO invoking the provisions of Section 68 of the Act. Brief facts relating to the issue are that there was an increase in the capital during the year at Rs. 46,86,305/-. The claim of the assessee was that the source of the same was the amount withdrawn by the assessee from the partnership firm M/s. Baba Baidyanath Constructions where the assessee is a partner and having control over the business and the management. Ld. AO was not satisfied and he rejected the assessee's claim and made the addition thereon. Before ld. CIT(A) the assessee again filed complete details including the bank statements of M/s. Baba

Baidyanath Constructions explaining the source of the said sum. Identity and creditworthiness of M/s. Baba Baidyanath Constructions and genuineness of the transaction was proved by the assessee before Id. CIT(A) who after considering the same deleted the addition observing as follows:

“7.3. The findings of the A.O. as per the assessment order and the written and oral submissions of the AR have been considered. The following are relevant for deciding the issue under consideration. Simultaneously, the issue under consideration is also adjudicated as under:

(i) At the outset, there is an arithmetical mistake as the amount received by the appellant from M/s Baba Baidyanath Construction during the year under consideration is Rs. 46,67,558/- whereas the AO has wrongly stated as Rs. 46,86,305/-.

(ii) It is stated that the provisions of section 68 has been erroneously invoked for the addition of Rs. 46,86,305/- due to the following:

(a) The identity of M/s Baba Baidyanath Construction is established with the Partnership Deed, PAN & ITR. Moreover, the appellant is also partner in the firm.

(b) The genuineness of the transactions are established as the transactions were made through account payee cheque and there were no cash deposits and the receipts were only from the Government Department.

(c) The creditworthiness of the transaction is also established by way of Form 16A issued by Government Department, Bank Statement, etc. The ultimate source of fund is from Government of Jharkhand.

(d) The AO has stated that the appellant has not established the purpose of the transaction which is not required to be established as per the legal provisions.

In view of the above, the appellant has clearly discharged the onus cast upon him under the law to establish the identity, genuineness and creditworthiness of the transaction with the necessary documentary evidences.

(ii) The AR has also brought out the legal provisions of section 68 of the Income-tax Act, 1961, decision of the Hon'ble SC on interpretation of statutes as well as various other court decisions establishing that the amount involved is not covered under the provisions of Section 68 of the Income-tax Act, 1961.

(iii) During the appellate proceedings, the AR has furnished detailed written submission along with requisite documentary evidence which satisfactorily explains the contention of the appellant.

(iv) On perusal of the accounts and documentary evidences submitted, it is seen that out of the total amount of Rs. 46,67,558/-, an amount of Rs. 10,000/- has been received by cash and the remaining amounts by cheque. The appellant has not produced the cash book of M/s Baba Baidyanath Construction to explain the source of cash of Rs. 10,000/-.

In view of the above, it is held that the AO is not justified in invoking the provisions of Section 68 of the Income-tax Act, 1961 and making the addition of Rs. 46,76,305/- u/s 68 of the Income-tax Act, 1961. Therefore, the said addition of Rs. 46,76,305/- is hereby deleted. However, as the source of Rs. 10,000/- is not established, the addition of Rs. 10,000/- u/s 68 is hereby confirmed. Accordingly, this ground of appeal is partly allowed."

12. From perusal of the above finding of Id. CIT(A) as well as on going through the records, we find that the assessee being a partner of M/s. Baba Baidyanath Constructions which is regularly filing income tax return, the assessee in order to procure contracts in the business in his individual name withdrew the sum from the partnership firm and utilized the same showing it as its own capital. We fail to find any merit in the finding of Id. AO invoking provisions of Section 68 of the Act even after accepting that the assessee being a partner in the said firm, has withdrawn the amount from the capital account of the firm and utilized it as a capital in its own business and explained the source of the alleged sum in all aspects of identity, genuineness and creditworthiness. Under these facts, there remains no possibility to invoke the

provisions of Section 68 of the Act which is applicable in case of unexplained cash credits. Therefore, ld. CIT(A) has rightly appreciated the facts and deleted the addition and thus, the finding of ld. CIT(A) do not call for any interference. Thus, ground no. 3 raised by the Revenue challenging the addition of Rs. 46,86,305/- is also dismissed.

13. In the result, the appeal filed by the Revenue is dismissed.

Kolkata, the 28th September, 2022.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 28.09.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. ACIT, Circle-2(1), Hazaribag, Jharkhand.**
- 2. Sanjay Kumar Upadhyay, Krishna Vihar Colony, Shivpuri, Hazaribag, Jharkhand-825 301.**
- CIT(A), Hazaribagh, Jharkhand.
- CIT-
- CIT(DR), Ranchi Bench, Ranchi.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata