

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM**  
**आयकर अपील सं./ITA No.236/RPR/2017**

(निर्धारण वर्ष / Assessment Year :2012-2013)

ITO-3 (4), Raipur	Vs	Shri Anil Kumar Panthi, Shop No.23, G.E.Road, Medical Complex, Raipur
PAN No. : <b>AEQPP 5835 A</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

Cross Objection No.09/RPR/2017  
(Arising out of ITA No.236/RPR/2017)

(निर्धारण वर्ष / Assessment Year :2012-2013)

Shri Anil Kumar Panthi, Shop No.23, G.E.Road, Medical Complex, Raipur	Vs	ACIT-4(1), Raipur
PAN No. : <b>AEQPP 5835 A</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri G.S.Agrawal, CA
राजस्व की ओर से /Revenue by	:	Shri G.N.Singh, Sr. DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	25/07/2022
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	31/10/2022

**आदेश / O R D E R**

**Per Arun Khodpia, AM :**

The revenue has filed appeal against the order passed by the CIT(A)-I, Raipur, dated 17.07.2017 for the assessment year 2012-2013. The assessee has also filed cross objection to the appeal filed by the revenue.

2. The revenue in its appeal has taken the following grounds:-

1. *“Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.2,35,21,935/- made by the AO on account of unexplained unsecured loan without appreciating the facts on record?”*
2. *“Whether CIT(A) committed an error in law in not appreciating the purport of provisions of sections 68 of the Income-tax Act,*

*1961 and thereby the order passed by CIT(A) is bad in law and deserves to be quashed?”*

3. *“Whether on the facts & circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition merely on the point that the AO had not made proper enquiry regarding genuineness and creditworthiness of the lender where in Ld. CIT(A) having concurrent powers of the AO u/s 250(4) of the Act, was justified in deleting the addition of Rs. 2,35,21,935/- made by the AO in the absence of satisfaction of parameters prescribed u/s 68 of the Act?”*
4. *“Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified by giving a finding which is contrary to the evidence on record, as the Ld. CIT(A) has accepted the identity, creditworthiness of the lender as genuine, a finding which is factually incorrect, thereby rendering the decision, which is perverse?.”*
5. *The order of Ld. CIT(A) is erroneous both in law and on facts”.*
6. *“Any other ground that may be adduced at the time of hearing.”*

3. Brief facts of the case are that the assessee filed its return of income on 10.03.2019 declaring total income of Rs.9,21,550/-. The case of the assessee was selected for scrutiny through CASS and on issuance of statutory notices by the AO, the AR of the assessee appeared and filed bills and vouchers etc., however, on examination of the same, the AO found that some of the vouchers were prepared by the assessee or by his employees. It was noted by the AO that there was no bill enclosed with the vouchers. Therefore the AO disallowed Rs.2,35,21,935/- in absence of satisfaction of parameters prescribed u/s.68 of the Act. Against the said order of AO, the assessee preferred appeal before the CIT(A) and the CIT(A) allowed the appeal of the assessee. Now, the revenue is in further appeal before the Tribunal against the additions deleted by the CIT(A).

4. Ld Sr DR submitted that the order of Ld CIT(A) on the sole issue of this appeal regarding deleting the addition of Rs 2,35,21,935/- made by the Ld AO was unjustified. Deletion merely on the basis that the AO had not made proper enquiry regarding genuineness and creditworthiness of the lender was unjustified when the Ld CIT(A) was also have concurrent powers of the AO u/s 250(4) of the Act. Findings of the Ld CIT(A) were contrary to the evidence on record, acceptance of identity, creditworthiness and genuineness of the transaction/lender was factually incorrect and the decision rendered by the Ld CIT(A) was perverse.

5. Ld Sr DR drew our attention to para 4 of the assessment order. Wherein it was observed by the Ld AO that the confirmation from lenders of the unsecured loan taken by the assessee were filed, however on verification it was found that certain confirmations were not signed by the lenders. On being queried, the assessee was failed to give any satisfactory reply. Therefore an addition of Rs. 2,35,21,935/- was made and added to the income of assessee. In view of these observations of the Ld AO, Ld Sr DR has placed his full reliance on the order of the Ld AO. It is submitted that the order of Ld CIT(A) is erroneous both in law and facts, thus it was the prayer that the same needs to be set aside and the order of the AO shall be restored.

6. In defence the Ld AR of the assessee submitted that the assessee is proprietor of M/s Sagar Enterprises, carrying on wholesale business of medicines and its accounts are audited. An addition of Rs. 2,35,21,935/- was made by the Ld AO on account of unacceptable unsecured loan

without mentioning any section of the Act under which such addition was made. It was the allegation by the Ld AR that the order of Ld AO was cryptic and sketchy finished in 5 lines on the issue so far as have not mentioned the name of loan creditors for Rs. 2,35,21,935/-, whose balances were treated as unaccepted unsecured loans. It was also submitted that a specific prayed was made vide a letter dated 07.02.2016 to the Ld AO to provide breakup of Rs. 2,35,21,935/- so as to prepare to present its case before the Ld CIT(A), but nothing was provided. It is further acceded by the Ld AR that when Ld CIT(A), after admission of loan confirmations and certain additional documents furnished by the assessee under rule 46A during appellate proceedings, have directed the Ld AR to furnish a remand report on the same along with break of the loans of certain amount added back to income of the assessee, since such details were not evident from the assessment order, however no breakup was reported by the Ld AO in the remand report. It was the submission that assessee has submitted 388 pages of supporting and documents such as Confirmations, Account copy, Bank statements, ITR, computation of Income etc. during the assessment proceedings before the Ld AO. It was the submission that reasonable opportunity of being heard was not provided by the Ld AO. It is further agitated that the assessment order and remand report of the Ld AO, at both the placed it has been acclaimed by the Ld AO that the assessee has produced accounts, bills, vouchers and discussion was done on the evidences. Additional evidence u/r 46A were submitted for reasonable cause as

explained in the application for admission of additional evidences u/r 46A before the Ld CIT(A) therefore Ld AO's contention as emanated from the remand report that the additional evidences which were produced during the assessment proceedings should not be accepted is against the principle of natural justice. It was thus the submission that Ld CIT(A) has rightly admitted the fresh evidences and judiciously decided the issue after considering the facts of the case and law. Therefore, the addition made by the Ld AO was rightly deleted by the Ld CIT(A) and the same deserves to be upheld.

7. To substantiate claim of the assessee Ld AR has placed copies of following judgments in its case law compilation paper book.

On satisfaction u/s.68

- i) *CIT Vs. P. Mohanakala (2007) 291 ITR 278 (SC)*
- ii) *Rajshree Synthetics Pvt. Ltd. Vs. CIT 256 ITR 331 Raj.*
- iii) *Mehta Parikh & Co. Vs. CIT 30 ITR 181 SC*
- iv) *CIT v. Smt. P.K. Noorjahan 237 ITR 570 SC*

On discharge of burden u/s 68

- v) *ITO vs. Smt. Pratima Ashar (2019) 107 taxmann.com 135 MumTrib dt. 06.06.2019*
- vi) *Pawan Kumar Agrawal Vs. ITO-2(2), Bilaspur Tax Case No. 24 of 2011 Chhattisgarh HC*
- vii) *CIT Vs. Abdul Aziz (2012) 82 CCH 248 ChatHC*
- viii) *ITO-1, Raigarh Vs. Koushal Agrawal 22 ITJ 233 ITAT, Raipur Bench, Raipur dt. 18.07.2013*
- ix) *CIT Vs. Gangeshwari Metal Pvt. Ltd. (2014) 361 ITR 10 (Delhi)*
- x) *CIT Vs. Lovely Exports Pvt. Ltd. (2008) 172 Taxman 44 Taxman magazine*

8. We have heard the rival submissions, perused the orders of the revenue authorities and considered the case laws relied upon.

9. On the factual matrix of the case, it is the admitted fact that certain evidences placed before the AO were incomplete, thus the assessee has requested for submission of fresh evidences u/r 46A and the same were admitted by Ld CIT(A). Working of the addition of Rs.2,35,21,935/- is still missing as the same was not provided by Ld AO either to assessee or to Ld CIT(A). It was the observation of the Ld CIT(A) that the assessee has furnished complete list of loans and proper confirmation certificate duly signed by creditors, bearing PAN, name and address, thus has discharges its onus, however on perusal of the paper book furnished by the Ld AR, it is noticed that certain confirmations are still unsigned. It is evident that the evidences produces before the Ld CIT(A) were not verified properly and the same needs a thorough verification, thus, we find it appropriate to restore the same to files of the Ld AO for proper verification of the confirmations and other supporting evidences produced by the assessee and adjudication of the issue again. Assessee shall be granted reasonable opportunity of being heard. Thus, this ground of appeal of the revenue is allowed for statistical purposes, as per our observations herein above.

10. Apropos, Cross Objection No.09/RPR/2017 filed by the assessee against the ITA 236/RPR/2017, which is in support of the order of the Ld CIT(A), wherein the additional made by AO for Rs.2,35,21,935/- was deleted, since the issue is already decided by us in the appeal i.e. ITA No.236/RPR/2017 of the revenue restoring the same to the files of the Ld

AO for verification of the evidences and re-adjudication of the issue, consequently, cross objection of the assessee stands dismissed.

11. In the result, the appeal of revenue is allowed for statistical purposes and cross objection of the assessee stands dismissed.

Order pronounced in pursuance to Rule 34(4) of ITAT Rules, 1963 on 31/10/ 2022.

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

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 31/10/2022

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**  
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur