

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 50/RPR/2020

निर्धारण वर्ष / Assessment Year : 2015-16

Alok Kumar Jain
221, Lal Building, Mohan Nagar,
Durg (C.G.)-491 001
PAN : ACIPJ2268D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2(1), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Choudhury N.C Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.09.2022

घोषणा की तारीख / Date of Pronouncement : 10.11.2022

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-II, Raipur dated 18.12.2019, 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 28.12.2017 for the assessment year 2015-16. The assessee has assailed the impugned order on the following grounds of appeal:

“1. That the Learned A.O erred in making addition u/s.68 of Rs.500000/- being unexplained cash credit, addition is bad in law, unfair and unjustified.

2. That the learned A.O erred in disallowing Rs.150000/- out of milling expense claimed thus the disallowance is bad in law.

3. That the appellant reserves all his rights to add, raise on any grounds or produce document at the time of hearing.”

2. Succinctly stated, the assessee who is engaged in the business of rice milling had filed his return of income for A.Y.2015-16 on 30.09.2015, declaring an income of Rs.5,53,820/-. Subsequently, the case of the assessee was selected for scrutiny assessment under CASS.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had shown an amount of Rs.3,77,908/- under the head 'Sundry creditors' against one M/s.

Bipin Rice Mill. Thereafter, the assessee was asked to produce all the details and a letter u/s. 133(6) of the Act was issued by the A.O to M/s. Bipin Rice Mill at the given address i.e. "Gram Sisoda, Ramgarh, Jila Kaimur, Bihar-821 110". As the said letter was returned unserved with the remark "Unknown", therefore, the A.O called upon the assessee to put forth an explanation as to why the same may not be treated as a bogus liability. However, as the assessee failed to substantiate the authenticity of the aforesaid liability, therefore, the A.O dubbed the same as an unexplained cash credit u/s.68 of the Act.

3.1 Further, the A.O while culminating the assessment proceedings held the loans which were claimed by the assessee to have been received from 3 parties amounting to Rs.5 lacs as an unexplained cash credit u/s.68 of the Act by observing as under:-

"3. It was further noticed during the course of the assessment proceeding, that during the year assessee had obtained loans from the following persons as under:

- | | |
|----------------------------|-----------------|
| 1. Smt. Chandraprabha Jain | :Rs.2,00,000/- |
| 2. Smt. Maya jain | : Rs.2,00,000/- |
| 3. Shri Chakresh Jain | : Rs.1,00,000/- |

Vide questionnaire issued, it was asked to file confirmation of all the fresh loan creditors of the relevant year. However, assessee has filed only confirmations of all the above creditors. No bank statement depicting the transactions have been filed by the assessee during the course of assessment proceedings. In respect of Smt. Chandra prabha Jain and Smt. Maya Jain assessee has filed form 15 H. Smt. Chandra prabha Jain and

Smt. Maya Jain are receiving interest from assessee at Rs.1,72,000/- and Rs.1,89,000/- Filing of form 15H itself shows that their income from all sources is below taxable limit and in every possibility it is the only interest income. How a person whose income is below taxable limit can afford loan of Rs.2,00,000/-. Therefore there is no credit worthiness of these persons. Further assessee failed to submit the bank accounts of the creditor from which the amount was routed. The genuineness of transaction remains unproved. With every submission, assessee only stated that he has filed copy of return and capital account. Filing of capital account is not a proof of credit worthiness, until the actual state of affair is proved. In the case of Chakresh Jain, no copy of IT return or bank statement was filed during the course of assessment proceedings. Therefore, the unsecured loan from these persons shown at Rs.5,00,000/- is added back to the total income of the assessee as unexplained cash credit u/s. 68 of the I.T.Act.1961. Even though assessee was being asked to produce the necessary documents, vide submissions dated 07/12/2017 and subsequent submissions, he only submitted the copy of ITR and capital account.

3.2 Also the A.O made a disallowance of Rs.1,50,000/- out of milling expenses by observing as under:

“4. It was noticed from the P & L account filed that assessee has debited an amount of Rs.15,48,945/- under the head 'Custom Milling expenses'. Assessee was asked to produce all relevant documents on the basis of which the claim has been made. Ledger account of the expense was furnished by the assessee during the course of assessment proceedings. It was seen that assessee has debited this expense under two subheads namely Custom Paddy expenses at Rs.7,36,245/- and Custom Rice expenses at Rs.8,12,700/- Cash payments have been made on various dates for transportation of rice and paddy no details of vehicle number or the name of person to whom cash payments have been made is mentioned. In view of the above, the claim of the assessee is not fully verifiable. Therefore, in order to plug in the possible leakage of revenue, an amount of Rs.1,50,000/- is

disallowed under this head and added back to the total income of the assessee for the year.”

3.3. On the basis of his aforesaid observation the A.O after, inter alia, making the aforesaid additions/disallowances vide his order passed u/s.143(3) dated 28.12.2017 determined the income of the assessee at Rs.15,81,728/-.

4. The assessee being aggrieved with the order of the A.O carried the matter in appeal before the CIT(Appeals) who inter alia, sustained two additions, viz. (i) addition of Rs.5,00,000/- made by the A.O u/s.68 of the Act; and (ii) addition of Rs.1,50,000/- out of custom milling expenses.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal. As the assessee appellant despite having been intimated about the hearing of appeal had failed to put up an appearance, therefore, I am constrained to proceed with and dispose off the appeal as per Rule 24 of the Appellate Tribunal Rules, 1963, i.e, after hearing the respondent revenue and perusing the orders of the lower authorities.

6. After having given a thoughtful consideration to the orders of the lower authorities, it transpires that the CIT(Appeals) on the issue of addition of Rs.5,00,000/- made by the A.O u/s.68 of the Act had

categorically observed that the assessee had failed to prove the creditworthiness of the persons from whom loans were claimed to have been raised by him. It was also observed by the CIT(Appeals) that the assessee was unable to show the level of savings available with the creditors for making the respective advances. For the sake of clarity the relevant observations of the CIT(Appeals) are culled out as under:-

“3.3 The AO has made addition noting that since the creditors filed form no.15-H it showed that their income was meager and they could not make any loan to the assessee. Smt. Chandra Prabha has filed return of income showing income of Rs.2,72,270/- for AY 2015-16, Rs.1,97,792 for the AY 2014-15, Rs.1,97,378/-for the AY 2013-14 and Rs.1,95,758/- for the AY 2012-13. Out of such small income how much will be left with her after meeting expenses which she can save and make advance to the assessee. Facts are the same in respect of the Shri Chakresh Jain and Smt. Maya Jain. Filing of return of income is not an evidence of creditworthiness of a person. The assessee should have documents to show the level of savings available with creditors for making advance. On these facts addition is sustained.”

On the basis of the aforesaid facts, I am of the considered view that the order of the CIT(Appeals) on the issue in question is well-reasoned and does not call for any interference on my part. Thus, the **Ground of appeal No.1** raised by the assessee is dismissed in terms of the aforesaid observations.

7. Adverting to the issue of addition of Rs.1,50,000/- made by the A.O out of custom milling expenses, it was observed by the

CIT(Appeals) that the assessee was unable to substantiate his claim with supporting documentary evidence and accordingly, he sustained the addition of Rs.1,50,000/- by observing as under:

“4.3 I have gone through the facts and the submissions of the appellant. Appellant has contented that it had all the records and therefore the disallowance by the A.O is bad in law. During the appeal proceedings no such records were produced to substantiate the claim. In absence of the same the disallowance of 10% of the claim is justified and is hereby sustained.”

On the basis of the aforesaid facts, I am of the considered view that the order of the CIT(Appeals) on the issue in question is well-reasoned and the same does not call for any interference. Thus, the **Ground of appeal No.2** raised by the assessee is dismissed in terms of the aforesaid observations.

8. **Ground of appeal No.3** being general in nature is dismissed as not pressed.

9. In the result, appeal of the assessee is dismissed in terms of the aforesaid observations.

Order pronounced in open court on 10th day of November, 2022.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 10th November, 2022

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G)
4. The Pr. CIT-II, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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