

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCHES : NAGPUR
(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND

DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA.No.167 & 168/Nag./2017
Assessment Year 2006-07 & 2008-09

M/s. Central India Minerals, 5, Temple Road, Civil Lines, Nagpur – 440 001. PAN AAEFC2949Q	vs.,	The ACIT, Central Circle-1(4), Aayakar Bhavan, Telangkhedi Road, Civil Lines, Nagpur. PIN – 440 001.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Kailash Kanojiya, D.R.

Date of Hearing :	14.11.2022
Date of Pronouncement :	17.11.2022

ORDER

PER SATBEER SINGH GODARA, J.M.

These assessee's appeals for A.Ys. 2006-07 and 2008-09, arise against the Ld. CIT(A)-3, Nagpur separate orders dated 03.03.2017 passed in Case No.CIT(A)-3/403/11-12 and dated 15.02.2017 in Case No.CIT(A)-3/405/11-12; respectively, in proceedings under section 144 r.w.s. 153C of the Income Tax Act, 1961 [In short "the Act"].

2. Cases called twice. None appeared at assessee's behest. The very factual position appears to have existed on all the earlier hearing occasions as well. We, thus, proceed ex-parte against the assessee.

3. Ld. DR at this stage invited our attention to the assessee's grounds of appeal in former A.Y. 2006-07 as follows:

1. *"The order passed by the Hon'ble CIT(A) confirming the order of A.O on account of capital introduction by the partner is illegal, invalid and bad in law.*
2. *The Hon'ble CIT(A) erred in upholding and confirming the addition made by the A O of the Rs.4,80,000/- u/s 68 of the Income Tax Act, 1961 as unexplained cash crepit for addition to the capital account of the partner of the assessee firm.*
3. *The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal and the factual and legal arguments against the addition by the Ld. CIT(A) / Ld. AO at the time or before the course of appellate proceedings in interest of natural justice."*

4. We next note with the able assistance coming from the Revenue side that the assessee has pleaded the very same substantive grounds and the only exception therein is the amount of Section 68 addition of Rs.86,500/- in this later A.Y. 2008-09.

5. Ld. DR vehemently argued during the course of hearing that both the lower authorities have rightly treated

these sums as unexplained cash credits in the nature of addition to the capital account of the assessee firm's partner Smt. Kusum N. Daga. We find no merit in Revenue's instant arguments as a catena of case law i.e., *Abhyudaya Pharmaceuticals vs.*, CIT [2013] 350 ITR 358 (All.); *CIT vs.*, *M.Venkateswara Rao & Others* [2015] 370 ITR 212 [T & A.P]; *CIT vs.*, *Taj Borewells* [2007] 291 ITR 232 (Mad.) and *PCIT vs.*, *Vaishnodevi Refoils and Stuff Ltd.*, [2018] 89 taxmann.com 80 (Guj.) has unanimously settled the issue that such an addition involving partner's capital account of a firm has to be made in the partner's hands than that of the concerned Firm. We, thus, delete both these identical additions for these precise reason alone.

6. Ld. DR raised yet another argument at the end that the assessee could not prove the impugned sums as involving partner's capital account only. We find no substance in the instant technical argument as well as we are dealing with Section 153C assessment(s) wherein the impugned addition has been made on the basis of seized material carrying presumption of correctness regarding the contents thereof under section 292C of the Act. This is indeed coupled with the fact that the instant latter argument goes against the very genesis of the impugned addition and, therefore, rejected.

7. The assessee's twin appeals are allowed in above terms. A copy of this order shall be placed in respective case files.

Order pronounced in the open Court on 17.11.2022.

Sd/-
[DR. DIPAK P. RIPTOE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 17th November, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Ld. CIT(A) concerned.
4.	The CIT concerned
5.	D.R. ITAT, Nagpur Bench, Nagpur
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.