

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.181/RPR/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Pramod Singh
Patrapali Transport Nagar,
Raigarh (C.G.)
PAN : AUGPS7369Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1,
Raigarh (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri G.S. Agrawal, CA
Revenue by : Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 20.09.2022

घोषणा की तारीख / Date of Pronouncement : 28.11.2022

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeal), Bilaspur dated 02.03.2017, 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 26.03.2013 for the assessment year 2010-11. The assessee has assailed the impugned order on the following grounds of appeal before me:

- “1. That Id. CIT(Appeal) erred in confirming addition of Rs.20,00,088/- being opening cash in hand as appearing in the personal balance sheet of the appellant.
2. That the learned CIT(A) failed to appreciate that the closing balance of cash in hand as per balance sheet was not disputed by the learned A.O.
3. That the Id. CIT(Appeal) is not justified in confirming the following additions/disallowance made by the A.O.

S.No.	Particulars	Amount in Rs.
1.	Out of difference in receipts	2767
2.	Out of balances in bank account	59292

4. That the order of the Id. CIT(Appeal) is bad in law and on facts.
5. The appellant craves leave to add and /or alter, amend or withdraw any ground/s before or at the time of hearing of this appeal.”

2. Succinctly stated, the assessee who is a labour contractor had e-filed his return of income for A.Y.2010-11 on 15.10.2010, declaring an income of Rs.9,63,960/-. The return of income filed by the assessee was initially processed as such u/s. 143(1) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee was maintaining three bank accounts which were not disclosed by him in his return of income for the year under consideration, as under:

Sl. No.	Name of Bank	Account No.	Name of Holder	Balance as on 31.03.2010	Remarks
1.	Allahabad Bank	20973856748	Mr. Pramod Singh	Rs.819/-	-
2.	-do-	50010567612	--do--	Nil	Account closed
3.	-do-	20973777934	Shri Binod Kumar Singh Shri Pramod Singh Shri Jai Prakash Singh	Rs.58,473/-	The account is joint names of other two brothers of the assessee

On being confronted with the aforesaid fact, it was the claim of the assessee that as the bank accounts in question were his personal accounts, therefore, they did not form part of his balance sheet of his business for the year under consideration. In support of his

contention the assessee filed with the A.O a personal balance sheet for the year under consideration.

4. Coming across the cash deposits in the aforesaid bank account, the A.O called upon the assessee to put forth an explanation as regards the respective sources of the same. In reply, it was submitted by the assessee that the source of the cash deposits was out of the cash in hand as was at the relevant point of time available with him in his personal account and that which was withdrawn on the various dates from his personal cash book and also, certain amounts were transferred from other bank accounts. The explanation of the assessee for the sake of clarity as extracted by the A.O in the body of the assessment order is culled out as under:

“1. Allahabad Bank, Account No.20973856748:-In this account there is a lot of credit and debit entries for which the assessee has filed entry wise explanation. The source of deposit will be dealt with as per the discussion in respect of cash introduced in the cash book.

2.Allahabad Bank, Account No.50010567612 :- In this account the assessee has encashed the old FDR of Rs.7,50,000/- and transferred the said amount along with interest of Rs.2,733/- to current account No.20973856748 mentioned at Sl. NO.1 above. This FDR was made on 09.03.09 out of the transfer entry from current account No.20973856748 mentioned at S. No.1. There is no other credit entries in this account.

3. Allahabad Bank, Account No.20973777934:-This is a joint account of assessee along with his two brothers namely Shri Binod Kumar Singh and Shri Jai Prakash Singh. It is explained by the assessee that the credit entries in this account are out of rent received by them from the joint

property of three brothers, land compensation received from State Government and out of cash deposited by the Pramod Singh out of withdrawal from the cash book. The withdrawal from cash book will be dealt with as per the following discussion.”

On a perusal of the aforesaid explanation of the assessee, it was observed by the A.O that the assessee had, inter alia, claimed that the source of the cash deposits in the aforesaid bank accounts was out of cash in hand of Rs. 20,00,088/- that was available with him on 01.04.2009 in his personal capital account. Apart from that, it was claimed by the assessee that the source of the cash deposits was also sourced out of the cash withdrawals made by him on various dates during the year under consideration. Elaborating on the sources of cash in hand as on 01.04.2009 of Rs. 20,00,088/- (supra), it was the claim of the assessee that the same was out of cash which was received by him from both his father and father-in-law as well as out of his personal capital account. However, as the assessee except for placing on record the receipt of land revenue that was paid in respect of certain agricultural lands owned by his parents and in-laws could not lead any evidence which would irrefutably evidence the availability with him of cash in hand out of which cash deposits were made in the aforementioned bank accounts, therefore, the A.O rejected the explanation of the assessee. Considering the fact that the assessee had not shown any agriculture income either during the

year under consideration or in the earlier years, the A.O rejected his claim as regards the opening balance of cash in hand of Rs.20,00,088/- (supra) on 01.04.2009, which, as per him, inter alia, explained the cash deposits made in the aforesaid bank accounts. Accordingly, the A.O on the basis of his aforesaid deliberations dubbed the amount deposited by the assessee in the aforesaid bank accounts as having been sourced out of his unexplained income.

5. Apropos the amount of Rs.20,00,088/-(supra) which was claimed by the assessee as opening cash in hand on 01.04.2009, which, thereafter, as claimed by him was deposited over the year in his aforementioned bank accounts, the A.O holding a conviction that the same was an unsubstantiated claim that was not backed by any supporting material, thus, dubbed it as an unexplained cash credit u/s.68 of the Act. After, inter alia, making the aforesaid addition of Rs.20,00,088/- (supra) u/s.68 of the Act, the A.O vide his order passed u/s.143(3) dated 26.03.2013 assessed the income of the assessee at Rs.40,08,340/-.

6. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success insofar the addition of Rs.20,00,088/- made by the A.O was concerned.

7. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

8. The assessee had filed before me an application seeking admission of certain documents as an "additional evidence", viz. (i) statements of the assessee's bank account(s) with Allahabad Bank, Raipur, i.e, (a) A/c No.20973856748 and (b) A/C. No.20973777934; (ii) land revenue record of Shri Nagendra Singh, father of the assessee; and (iii) copy of bank statement of Shri Nagendra Singh with SBI, Saran. It was averred by the Ld. AR that as the aforesaid documents which though would have a strong bearing on the adjudication of the core issue involved in the present appeal could not be filed on the records of the lower authorities due to paucity of time, therefore, the same in all fairness may be admitted.

9. Per contra, the Ld. Departmental Representative (for short 'DR') did not raise any objection as regards the admission of the aforesaid documents filed by the assessee.

10. As the assessee had filed before me the copies of the bank statement(s) in question, and also the copies of the bank account of Shri Nagendra Singh (father of the assessee) a/w the latter's land revenue record to support the source of the credits in his aforesaid bank accounts in question, which, in my considered view would have

a strong bearing on verifying the veracity of his explanation as regards the source of the cash deposits in the said bank accounts, and thus, the adjudication of the issue involved in the present appeal, therefore, in all fairness I admit the same.

11. Controversy involved in the present appeal before me hinges around the sustainability of the view taken by the lower authorities, who had rejected the assessee's explanation that the cash deposits during the year under consideration in the aforesaid bank accounts in question were, inter alia, sourced out of the opening cash in hand of Rs.20,00,088/- (supra) that was available with him on 01.04.2009. In sum and substance, it is the claim of the assessee that as the aforesaid amount of Rs.20,00,088/-(supra) had its roots embedded in the preceding years and was available with him as a simplicitor opening balance during the year, therefore, the same while framing of the assessment for the year under consideration could not have been held as an unexplained cash credit u/s.68 of the Act.

12. Although it was the claim of the assessee that the amount of Rs.20,00,088/- (supra) was available with him as opening cash in hand on 01.04.2009, but the same was rejected by the A.O for the reason that the assessee could not lead any evidence in support thereof. In fact, it was observed by the A.O that as the assessee had

not disclosed any agriculture income either during the year under consideration or in the earlier years, therefore, there was no justification as regards his claim of having cash in hand of Rs.20,00,088/- (supra) on 01.04.2009. As such, the A.O on the basis of his aforesaid observation had, inter alia, held the aforesaid amount of Rs. 20,00,088/- (supra) as the undisclosed income of the assessee for the year under consideration. It was the claim of the Ld. AR before me that as the aforesaid amount of Rs.20,00,088/- (supra) was in fact available with the assessee on 31.03.2009 and was carried forward as an opening balance during the year under consideration, therefore, both the lower authorities had grossly erred in law and facts of the case in treating the same as an unexplained cash credit u/s. 68 of the Act. My attention was also drawn by the Ld. AR to the copy of the assessee's bank accounts with Allahabad Bank, Raipur i.e. (a) A/c No.20973856748 and (b) A/C. No.20973777934. Taking me through the SB account No.20973856748, it was submitted by the Ld. AR that the assessee had from the said bank account made cash withdrawals of Rs.14 lacs in two tranches, viz. (i) Rs.6 lacs on 25.03.2009; and (ii) Rs.8 lacs on 27.03.2009, Page 1 of additional evidence. Also, the Ld. AR took me through the SB account No.20973777934 (supra) which reveals that the assessee had made cash withdrawals out of the said bank account of Rs.6 lacs i.e in two

tranches of Rs.3 lacs each on 25.03.2009 & 27.03.2009, Page 2-3 of additional evidence. On the basis of the aforesaid facts, it was submitted by the Ld. AR that as the amount aggregating to Rs.20 lacs [Rs.14 lacs + Rs.6 Lacs] was available with the assessee a few days prior to close of the immediately preceding year on 31.03.2009, therefore, the availability of cash in hand to the said extent with him was duly established beyond any scope of doubt.

13. Apart from that, the Ld. AR in order to justify the credits in the aforesaid bank account(s) during the immediately preceding year had taken me through the bank account of Mr. Nagendra Singh (father of the assessee) with SBI, Saran. It was submitted by the Ld. AR that the respective credits in the aforesaid bank account(s) of the assessee were clearly the amounts which were transferred by Mr. Nagendra Singh (supra) to the said bank account(s) of the assessee during the immediately preceding years. In sum and substance, the ld. A.R had not only tried to establish the availability of cash in hand of Rs.20 lacs with the assessee as on 01.04.2009, but had even gone to the extent of explaining the corresponding sources of the credits in the said respective bank account(s) in the immediately preceding years. On the basis of his aforesaid contentions, it was the claim of the Ld. AR that now when the availability of cash in hand of Rs.20 lacs with the assessee on 31.03.2009 was established beyond doubt, therefore,

there was no justification for the A.O to have held the cash in hand of Rs.20,00,088/-(supra) that was claimed by the assessee as opening cash in hand on 01.04.2009, as an unexplained cash credit u/s.68 of the Act.

14. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

15. Having given a thoughtful consideration to the aforesaid contentions of both the ld. Authorized Representatives in the backdrop of the material available on record as well as the additional documentary evidences which have been placed on record by the assessee, I find substance in the claim of the Ld. AR that the amount of Rs.20,00,088/-(supra) was in fact the duly explained cash in hand available with the assessee on 01.04.2009. At the same time, I am of the view that as the aforesaid copies of bank account(s) a/w the other documents which have been filed by the assessee as "additional evidence" before me were not available before the A.O, therefore, he had no occasion to verify the factual position as regards the availability of cash withdrawals that were made by the assessee from both the accounts on 25.03.2009 and 27.03.2009, as on the date of closure of the immediately preceding year on 31.03.2009. I, say so, for the reason that the fact that the aforesaid cash withdrawals made

by the assessee on the aforementioned two dates could have been utilized/invested by the assessee during the said preceding year itself cannot also be ruled out. However, without expressing any view on the said aspect, and considering the very fact that the copies of the said respective bank accounts, documents a/w. the aforesaid explanation of the assessee to support his claim of availability of opening cash in hand of Rs. 20,00,088/- (supra) on 01.04.2009 was not available before the A.O in the course of the original assessment proceedings, therefore, in the interest of justice and in all fairness, the matter requires to be revisited by him *albeit* for the limited purpose to verify the availability of the aforesaid amount of Rs.20,00,088/- (supra) on 31.03.2009 with the assessee.

16. I, thus, in terms of my aforesaid observations set-aside the order of the CIT(Appeals) and restore the matter to the file of A.O, though for the limited purpose of carrying out verifications in terms of the aforesaid directions. Needless to say, the A.O shall in the course of de-novo proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim on the basis of fresh documentary evidences.

17. In the result, appeal of the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in the open court on 28th day of November, 2022.

Sd/-

(रवीश सूद/RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 28th November, 2022

***SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal), Bilaspur (C.G.)
4. The Pr. CIT, Bilaspur (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