

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI G D PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.76/RPR/2013

निर्धारण वर्ष / Assessment Year : 2004-05

N.K. Chirania  
V 11, Sunflower Villa,  
Nayapara, In front of  
State Bank, Chakarbhata,  
Bilaspur (C.G.)  
PAN : AANPC6961B

.....अपीलार्थी / Appellant

**बनाम / V/s.**

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Vinod Kumar Khatri, CA  
Revenue by : Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 09.11.2022

घोषणा की तारीख / Date of Pronouncement : 19.01.2023

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals), Bilaspur, dated 05.02.2013, which in turn arises from the order passed by the A.O. u/ss.147/143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 20.11.2007 for A.Y. 2004-05. Before us the assessee has assailed the impugned order on the following revised grounds of appeal:

“1. i) The order of the Learned Commissioner of Income Tax (Appeal) is contrary to law and the facts of the case.

ii) That the learned AO in law as well as on fact erred in reopening the case as it is issued for verification of return.

iii) That the learned AO erred in reopening the case without obtaining approval from the competent authority.

2. The Honorable Commissioner of Income Tax (Appeal) erred in sustaining addition of Rs.5,00,000/- made u/s 69A of the Income Tax Act being unexplained expenditure is arbitrary and without basis. The additions are liable to be deleted.

3. That the appellant craves leave to add to and/or amend, alter, rescind the grounds taken here in above, before or at the time of hearing of this appeal.”

2. Succinctly stated, the assessee who is a salaried employee had filed his return of income on 31.03.2005, declaring an income of Rs.83,400/-. The return of income filed by the assessee was initially processed as such u/s.143(1) of the Act.

3. Observing that the claim of the assessee of having made an investment of Rs.6.77 lac towards purchase of the flats at Bilaspur City out of his own savings was not commensurate with his returned income, the A.O reopened his case u/s.147 of the Act. Notice u/s.148 dated 01.08.2006 was issued to the assessee. In compliance, the assessee vide a letter dated 07.08.2006 requested that his original return filed on 31.03.2005 may be treated as a return of income filed in response to notice u/s.148 of the Act. Acting upon the aforesaid request of the assessee the A.O issued notice u/s.143(2) of the Act dated 13.11.2006 and proceeded with the assessment.

4. During the course of the assessment proceedings, the A.O called upon the assessee to put forth an explanation as regards the source of investment of Rs.26,07,500/- that was made for acquiring five flats during the year under consideration. In reply, it was submitted by the assessee that while for the investment to the extent of Rs.19.15 lac was sourced from loans that were raised from various banks and LIC, the balance investment of Rs.6,92,500/- was made by him out of his own savings. On being called upon to substantiate the availability of the aforesaid savings, it was, inter alia, stated by the assessee that the same comprised of the refund of loans of Rs.5 lac which were earlier advanced by him to his four relatives, viz. (i) Shri Vijay Chirania-Brother : Rs.1,50,000/-; (ii) Shri Vinod Rungta- Brother in law : Rs.1,00,000/-; (iii) Shri Pankaj Chirania-Brother :

Rs.1,50,000/- and (iv) Shri Manish Chirania : Rs.1,00,000/-. The A.O in order to verify the authenticity of the aforesaid claim of the assessee though directed him to produce the aforementioned persons, but the assessee expressed his inability to do so. At the same time, the assessee placed on record affidavits of the aforesaid persons. The A.O in order to verify the authenticity of the aforesaid claim of the assessee issued notices to the aforementioned persons which, however, were received back undelivered. Although, it was the claim of the assessee that he had in the past advanced interest free cash loans to his aforesaid relatives, which were repaid by them in cash in due course of time, and the investment in question was, inter alia, to the extent of Rs.5 lac sourced out of the said funds, but the A.O rejected the said unsubstantiated claim and made an addition of Rs.5 lac u/s.69A of the Act.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

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

7. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

8. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset assailed the validity of the assessment framed by the A.O u/ss.147/143(3) of the Act dated 20.11.2017, on the ground that the same was framed *de-hors* issuance of a valid notice u/s.143(2) of the Act. Elaborating on his aforesaid contention, it was averred by the Ld. AR that though notice u/s.143(2) of the Act could have been issued by the A.O latest by 31.03.2006, however, the same was issued by him only on 13.11.2006 i.e. beyond the stipulated time period. Our attention was drawn by the Ld. AR to the copy of the notice u/s.143(2) dated 13.11.2016, Page 26 of APB. It was, thus, the claim of the Ld. AR that as the assessment in question had been framed on the basis of notice issued u/s. 143(2) dated 13.11.2006, i.e., a notice issued beyond the prescribed time period, therefore, the same was liable to be quashed. On merits, it was the claim of the Ld. AR that as the investment of Rs.5 lac (supra) towards purchase of the property in question was clearly sourced from the funds which were available with the assessee out of the cash repayment of loans by his relatives, therefore, both the lower authorities had grossly erred in making/sustaining the addition of the same u/s.69A of the Act. In order to buttress his claim as regards availability of the aforesaid funds at the time of making the investment, the Ld. AR took us through the copy of the bank account of the assessee which revealed the refund of the loans by

his aforementioned relatives, viz.(i) Shri Vijay Chirania-Brother: Rs.1,50,000/-; (ii) Shri Vinod Rungta- Brother in law : Rs.1,00,000/-; (iii) Shri Pankaj Chirania-Brother : Rs.1,50,000/- and (iv) Shri Manish Chirania : Rs.1,00,000/-. It was averred by the Ld. AR that refund proceeds of the aforesaid loans were thereafter withdrawn by the assessee and were available with him for making the investment to the extent of Rs.5 lac during the year under consideration. Our attention was also drawn by the Ld. AR to the copies of the affidavits of the aforesaid relatives, wherein they had categorically deposed of having refunded the respective loans to the assessee in the period relevant to A.Y.2003-04. On the basis of his aforesaid contentions, it was submitted by the Ld. AR that not only the A.O had wrongly assumed jurisdiction and framed the assessment u/ss.147/143(3) of the Act, but even otherwise no addition on merits was called for in his hands.

9. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that the A.O had validly reopened the assessee's case and framed the assessment vide his order passed u/ss.147/143(3) dated 20.11.2007.

10. We have given a thoughtful consideration to the contentions advanced by the ld. Authorized Representatives of both the parties. Apropos, the claim of the Ld. AR that the A.O had grossly erred in law in

framing the assessment vide his order passed u/ss.147/143(3) dated 20.11.2007, for the reason that the same had been framed on the basis of notice u/s.143(2) dated 13.11.2006, i.e., a notice issued beyond the stipulated time period, we do not find favour with the same. In our considered view the Ld. AR had absolutely proceeded with on the basis of misconceived facts. As observed by us hereinabove, the assessee in compliance to the notice issued u/s.148 dated 01.08.2006 had vide his letter dated 07.08.2006 requested that his original return of income be treated as a return of income filed in response to the aforesaid notice. As the assessee had impliedly filed his return of income in compliance to the notice u/s.148 of the Act, dated 07.08.2006 (supra), therefore, the notice issued u/s.143(2) dated 13.11.2006 was well within the stipulated time period. In our considered view the Ld. AR had confused the time period that was available for issuing notice u/s.143(2) in case of a simplicitor assessment, wherein such notice for the year under consideration i.e. A.Y.2004-05 could not have been issued beyond 31.03.2006. Be that as it may, as notice u/s.143(2) dated 13.11.2006 had validly been issued within the stipulated time period from the date of filing of return of income by the assessee u/s. 148 of the Act, i.e. on 07.08.2006 (supra), we, therefore, finding no substance in the aforesaid claim of the Ld. AR, dismiss the same.

11. Adverting to the claim of the assessee that investment towards purchase of the properties to the extent of Rs.5 lac was sourced from the cash refund of loans from his aforesaid relatives viz., (i) Shri Vijay Chirania-Brother: Rs.1,50,000/-; (ii) Shri Vinod Rungta- Brother in law : Rs.1,00,000/-; (iii) Shri Pankaj Chirania-Brother : Rs.1,50,000/- and (iv) Shri Manish Chirania : Rs.1,00,000/-, we are not inclined to accept the same. Ostensibly, the loans advanced by the assessee to his aforesaid relatives were refunded by them over the period 24.06.2002 to 25.03.2003, Page 37 of APB. On a perusal of the records, it transpires that the assessee had made cash withdrawals of Rs.5 lac out of the aforesaid refunds as were credited in his bank account over the period 08.07.2002 to 26.03.2003, as under:

Date	Particulars
08.07.2002	Rs.50,000/-
19.12.2002	Rs.2,00,000/-
26.03.2003	Rs.2,50,000/-
Total	Rs.5,00,000/-

Although, it is the claim of the assessee that the aforesaid cash withdrawals were available with him to source the investment to the extent of Rs.5 lac, but the same in our considered view is nothing but an unsubstantiated claim raised by him in thin air. Although our attention

was drawn by the Ld. AR to the 'balance sheet' of the assessee as on 31.03.2003, which revealed cash in hand of Rs.6,63,600.50, however, the same does not inspire any confidence. We, say so, for the reason that in case the assessee had cash-in-hand of Rs.6,63,600/- (supra) available with him on 31.03.2003, then there was no reason for him to have not produced before the A.O his books of account for the year under consideration i.e. A.Y.2004-05, to substantiate his claim that the investment of Rs.5 lac was made by him out of his duly disclosed sources. In fact, the balance sheet as had been filed before us, Page 35 of APB, in our view is merely an attempt on the assessee's part to justify the availability with him of cash in hand of Rs.5 lac to explain the investment in question. As the assessee had failed to substantiate on the basis of irrefutable documentary evidence that the cash withdrawals made from his aforesaid bank account were utilized for making investment of Rs.5 lac in in question, therefore, we are unable to concur with the claim of the Ld. AR that both the lower authorities had erred in making/sustaining the addition of the said amount u/s.69A in the hands of the assessee. We, thus, in terms of our aforesaid observation, finding no merit in the claim of the assessee, uphold the order of the CIT(Appeals). Thus, the **Grounds of appeal No.(s) 1 to 3** raised by the assessee are dismissed in terms of our aforesaid observations.

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

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-  
**G D PADMAHSHALI**  
**(ACCOUNTANT MEMBER)**

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

रायपुर/ RAIPUR ; दिनांक / Dated : 19<sup>th</sup> January, 2023  
#####SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur (C.G)
4. The CIT, Bilaspur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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