

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. 14/RPR/2022**

**निर्धारण वर्ष / Assessment Year : 2016-17**

Charanjeet Singh Garcha  
Behind G.T Tower, VIP Road,  
Puraina, Chhatisgarh-492 001  
PAN : AHGPG3736N

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Circle-1(1), Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhishek Mahawar, CA  
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 07.02.2023

घोषणा की तारीख / Date of Pronouncement : 07.02.2023

**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 (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 29.11.2021, 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 08.12.2018 for the assessment year 2016-17. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. That CIT Appeals-NFAC has erred in both fact and in law in confirming the addition of Rs.17,00,000/- made by the Assessing Officer u/s.68 of the Income Tax Act, 1961.
2. That CIT Appeals-NFAC while confirming the addition has failed to consider the fact that total payment done through HSBC credit card is Rs.18,975/- only not Rs.17,00,000/-. Further CIT Appeals-NFAC has erred in making addition of Rs.17,00,000/- u/s.68 of the Act on withdrawal instead of verifying the credits and source of fund in the bank account.
3. The CIT-Appeals-NFAC has erred in not providing an opportunity for virtual hearing while passing the order despite the specific request from the appellant thereby violating the law of natural justice.
4. That the assessee craves to add, amend or delete any of the above grounds of appeal during the course of hearing.
5. That the above grounds are without prejudice to each other.”

2. Succinctly stated, the assessee who is deriving income from the business of running bar a/w. income from other sources had e-filed

his return of income for the A.Y.2016-17 on 31.03.2017, declaring an income of Rs.3,66,340/-. The case of the assessee was, thereafter, selected for limited scrutiny assessment u/s.143(2) of the Act, for the reason, viz. : *“whether the credit card payment has been made from disclosed sources.”*

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee whose total turnover from the business of running a bar was Rs.39.2 lac had disclosed his income under the deeming provisions of Section 44AD of the Act.

4. On a perusal of the Individual Transaction Statement (ITS) of the assessee, it was observed by the A.O that he had during the year under consideration made cash deposits in two bank accounts, viz. (i) Canara Bank, Raipur : Rs.13.97 lac; and (ii) HSBC Bank account : Rs.17 lac (approx.). On being queried about the source of the aforesaid cash deposits, it was submitted by the assessee that the same were made by him out of his business income and the cash withdrawals made during the year under consideration. Although, the A.O held a conviction that as the cash deposits of Rs.13.97 lac made by the assessee in his bank account with Canara Bank, Raipur could justifiably be held to have been sourced out of his business turnover of Rs.39.14 lac, therefore, he accepted the explanation of the

assessee to the said extent, but at the same time rejected the said explanation in so far the impugned cash deposits of Rs.17 lac (supra) made by him in his HSBC bank accounts were concerned. Considering the cash deposits of Rs.17 lac (supra) made by the assessee during the year in his HSBC bank account as an unexplained cash credit u/s.68 of the Act, the A.O, vide his order passed u/s.143(3) dated 08.12.2018 assessed the income of the assessee at Rs.20,66,340/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) who not finding favour with the contentions advanced by the assessee upheld the order passed by the A.O, observing as under:

“As seen from the above the A.O. in the assessment order has stated that the reasons for selection of scrutiny was whether credit card payment was from disclosed source. To verify the above the Assessing Officer called for the statements of two bank accounts held by the appellant.

In the Canara bank account the total cash deposited was 13.97 lacs, and the Assessing officer has noticed that the appellant's turnover is 39.2 lacs and all the business transaction have been done through this account and also it is seen that the cash book of the appellant contains that all the business transactions have been done through Canara Bank account only and not through the HSBC account. The A.O. has stated that the credit card bills pertain to the HSBC bank only and the withdrawals amounting to Rs.17 lacs had been done through this account. Hence, the A.O. made the addition u/s.68, as the appellant could not explain the source of these transactions. The Assessing Officer has made the addition within the reason for which the case was selected for limited scrutiny. Hence, the case is dismissed.”

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

7. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset of hearing of the appeal submitted that the impugned addition of Rs.17 lac (supra) had been made by the A.O on the basis of his perverse observations. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the A.O had wrongly observed that the assessee during the year under consideration had made payments of Rs.17 lac (supra) towards its credit card bills from his HSBC bank account. Rebutting the aforesaid observation of the A.O, it was submitted by the Ld. AR that the assessee had during the year under consideration made a payment of Rs.18,957.50 towards his credit card bills, Page 21 of APB. On the basis of the aforesaid facts, it was submitted by the Ld. AR that not only the A.O had grossly erred in observing that the assessee had made a payment of Rs.17 lac (supra) towards his credit card bills, but had without any basis made an addition of the said impugned amount by dubbing the same as an unexplained cash credit u/s.68 of the Act. It was averred by the Ld. AR that it was beyond comprehension as to on what basis the impugned addition of Rs.17 lac (supra) was made by the A.O in the hands of the assessee. Adverting to the assessee's HSBC bank account, it was submitted by

the Ld. AR that the cash deposit of Rs.14.80 lac were made by the assessee in the said bank account during the year under consideration. In order to fortify his aforesaid contention the Ld. AR had drawn our attention to "Annexure-1" of his submission, wherein, bifurcated details of the cash deposits made in the HSBC account a/w. the other bank accounts of the assessee were stated. It was averred by the Ld. AR that as the assessee during the year under consideration had made an aggregate cash deposits of Rs.31.15 lac (approx.) in all the bank accounts so held by him, which, could justifiably be explained as having been sourced out of his cash from business receipts/turnover of Rs.31.49 lac and opening cash in hand (CIH) on 01.04.2015 of Rs.2.52 lac (net), therefore, there was no justification on the part of the A.O to have held any part of the cash deposits made in his HSBC bank account as an unexplained cash credit u/s.68 of the Act. On being queried about the source out of which, the expenses of his business were incurred, it was submitted by the Ld. AR that the same were out of the total cash withdrawals of Rs.49.69 lac (approx.) that were made by him from his bank accounts during the year under consideration. On the basis of his aforesaid contentions, it was the claim of the Ld. AR that considering the cash receipts of his business and opening cash in hand (CIH) (net balance i.e. after considering the closing C.I.H)), no adverse inferences as

regards the cash deposit of Rs.14.80 lac made by the assessee in his HSBC bank account was liable to be drawn. Alternatively, it was submitted by the Ld. AR that as the assessee was disclosing his business income under deeming provision of Section 44AD of the Act, and, thus, was not maintaining any books of accounts, therefore, the impugned addition of Rs.17 lac (supra) made by the A.O u/s.68 of the Act was even otherwise principally not maintainable. In support of his aforesaid contention, the Ld. AR relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Bhaichand H. Gandhi (1983) 141 ITR 67 (Bom.) (HC) and also that of the order of the ITAT, Mumbai in the case of Mehul V Vyas Vs. ITO (2017) 164 ITR 296 ( Mumbai-Trib).

8. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. However, the Ld. DR on being specifically queried about the basis of making the impugned addition of Rs.17 lac (supra) u/s.68 of the Act in the hands of the assessee, was unable to come forth with any reply as regards the same.

9. I 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 the ld. A.R to drive home his contentions.

10. Admittedly, as stated by the Ld. AR, and, rightly so, the very basis for making the impugned addition u/s.68 of the Act of Rs.17 lac is not discernible from the orders of the lower authorities. Although, it is the claim of the A.O that the assessee had during the year under consideration made payment of Rs.17 lac (supra) towards his credit card bills from HSBC bank account, but a perusal of the said bank account as was brought to my notice by the Ld. AR reveals that the assessee had a payment on the said count of Rs.18,957.50/- . Be that as it may, I am unable to fathom as to how and from where the A.O had adopted the figure of Rs.17 lac (supra) and made an addition of the same u/s.68 of the Act. Ostensibly, the assessee during the year under consideration had made cash deposits of Rs.14.80 lac (supra) in his HSBC bank account. Considering the assessee's cash receipt from his business of Rs.31.49 lac a/w. opening CIH of Rs.2,52,320/- (net), I find substance in the claim of the Ld. AR that the said sum justifiably explained the aggregate cash deposit of Rs.31.15 lac (supra) made by the assessee in his bank accounts during the year under consideration. As observed by me hereinabove, it is the claim of the assessee that the expenses of his business were met out from the cash withdrawals of Rs.49.69 lac

(supra) made from his various bank account during the year under consideration, and the same had not been rebutted by the Ld. DR. Considering the aforesaid facts, I am of the view that as neither the very basis for making the impugned addition of Rs.17 lac (supra) u/s.68 of the Act is discernible from the orders of the lower authorities nor anything to the said affect despite a specific query by the Bench, had been brought to my notice by the Ld. DR, therefore, there is no justification for sustaining the impugned addition which has no legs to stand upon.

11. Apart from that, I am of the considered view that as the cash deposits of Rs.14.80 lac (supra) made by the assessee in his HSBC bank account can safely be held to have been sourced out of his current year cash of business receipts a/w. cash in hand available with him ( out of opening CIH), therefore, even on the said count no adverse inferences are liable to be sustained on the said count in the hands of the assessee. I, thus, in the backdrop of my aforesaid observations, finding no merit in the impugned addition of Rs.17 lac (supra) made/sustained by the lower authorities vacate the same. Accordingly, the order of the CIT(Appeals) is set-aside and the impugned addition of Rs.17 lac made/sustained by the lower authorities is vacated.

12. As the impugned addition of Rs.17 lac (supra) made/sustained by the lower authorities had been vacated by me in terms of my aforesaid observations, therefore, I refrain from adverting to the contentions that had been advanced by the Ld. AR as regards the assumption of jurisdiction by the A.O for making the impugned addition u/s.68 of the Act, which, thus, is left open.

13. In the result, appeal of the assessee is allowed in terms of the aforesaid observations.

Order pronounced in open court on 07<sup>th</sup> day of February, 2023

Sd/-

**(रवीश सूद / RAVISH SOOD)**

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 07<sup>th</sup> February, 2023

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, 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