

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.320/RPR/2014

निर्धारण वर्ष / Assessment Year : 2005-06

M/s. Radhika Water & Amusement Park Industries,
Dayalband, Bilaspur (C.G.)
PAN : AAIFK7321K

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri G.S. Agrawal, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 08.05.2023

घोषणा की तारीख / Date of Pronouncement : 12.05.2023

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), Bilaspur dated 18.06.2014, 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 28.12.2007 for the assessment year 2005-06. The assessee has assailed the impugned order on the following grounds of appeal:

“1. In the facts and circumstances of the case, Ld. CIT(A) was not justified in confirming the addition of Rs.1,20,000/- out of the addition of Rs.7,41,840/- made by the A.O invoking section 68, on account of capital introduced by the partners. The addition confirmed by the CIT(A) is illegal, invalid and not justified.

2. CIT(A) was not justified in confirming the addition of Rs.1,00,000/- made by the A.O invoking section 68, on account of capital introduced by the partner H.K, Sachdeo (HUF). The addition made by the A.O and confirmed by the CIT(A) is illegal and not justified.

3. In the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the disallowance of Rs.1,25,350/- made by the A.O on account of salary expenses of Rs.2,50,700/-. The addition is not justified.

4. Without prejudice to ground no.1, 2 & 3 above, Ld. CIT(A) erred in dismissing the ground no. 1 & 2 of appeal raised by the appellant and in holding that the A.O was justified in selecting the case of appellant for scrutiny and in making assessment u/s.143(3). The action of the A.O in selecting the case for scrutiny and the order of the CIT(A) confirming such action is contrary to instructions of CBDT and provisions of law.

5. The appellant reserves the right to add, amend or alter any of the grounds of appeal.”

Also, the assessee has raised an “additional ground” vide his letter dated 10.03.2023 which reads as under:

“Ground No.6.

“That under the facts and law, the Ld. Assessing Officer further erred in not allowing depreciation on various assets used for the purpose of business for which the details were filed along with the Return on Form 3CD. Prayed that depreciations amounting to Rs.6,50,976/- be allowed.”

2. At this stage, I may herein observe that the assessee vide its letter dated 10.03.2023 (filed before me on 25.04.2023) had categorically stated that all the additional grounds of appeal which were raised upto 31.12.2023 are being withdrawn. On the basis of the aforesaid concession of the assessee my indulgence in the present appeal is confined to adjudicating the aforesaid grounds of appeal a/w. additional ground of appeal filed by the assessee on 25.04.2023.

3. Succinctly stated, the assessee firm had filed its return of income for the first time in compliance to notice issued u/s.142(1)(i) dated 26.12.2005 on 01.03.2006, declaring a net loss of Rs. (-) 2309/-. Return of income filed by the assessee was

processed u/s.143(1) of the Act on 13.03.2006 at the returned loss. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

4. Original assessment was framed by the A.O vide order passed u/s.143(3) of the Act dated 28.12.2007, determining the income of the assessee firm at Rs.12,27,384/- after, inter alia, making the following additions/disallowances:

| Sr. No. | Particulars | Amount |
|---------|--|---------------|
| 1. | Addition on account of cash introduced by partners | Rs.7,41,840/- |
| 2. | Addition on account of cash introduced in the name of H.K. Sachdeo (HUF) | Rs.1,00,000/- |
| 3. | Disallowance out of salary expenses | Rs.1,25,350/- |

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) who partly allowed the same. On a perusal of the order of the CIT(Appeals), it transpires that he had though confirmed the additions, viz. (i) addition on account of cash introduced in the name of H.K. Sachdeo (HUF) : Rs. 1 lac; and (ii) disallowance out of salary expenses : Rs.1,25,350/-, but had

scaled down the addition that was made by the A.O on account of cash introduced by the partners of Rs.7,41,840/- to Rs.1,20,000/-.

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

7. 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 them to drive home their contentions.

8. I shall first take up the “additional ground of appeal” raised by the assessee firm vide its letter dated 10.04.2023. As the assessee vide his aforesaid additional ground of appeal had raised a claim for deduction of depreciation of Rs.6,50,976/-, which is based on the facts that are clearly discernible from the “audit report” filed by the assessee’s chartered accountant in Form 3CB, Page 39 of APB, and has sought adjudication of a legal issue, i.e. entitlement of the assessee towards claim of depreciation, therefore, I have no hesitation in admitting it.

9. Now I shall deal with the additional ground of appeal raised by the assessee before me. Admittedly, it is a matter of fact borne from record that the assessee firm in its auditor's report had as required under the the Income-tax Act furnished complete details of its fixed assets and depreciation of Rs. 6,50,976/-. It is the claim of the Ld. Authorized Representative (for short 'AR') for the assessee, that as the assessee per the mandate of "Explanation 5" to Section 32(1) of the Act was entitled for claim of depreciation, whether or not such claim was raised while computing its income, therefore, the same is to be allowed.

10. Per contra, the Ld. Departmental Representative (for short 'DR') did not rebut the aforesaid claim of the Ld. AR.

11. I have given a thoughtful consideration to the issue, and before proceeding any further, deem it fit to cull out the "Explanation 5" of Section 32(1) of the Act that was made available on the statute vide the Finance Act, 2001 w.e.f. 01.04.2002, which reads as under:

"Explanation 5.- For the removal of doubts, it is hereby declared that the provisions of this sub-section shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income."

On a perusal of the aforesaid “Explanation 5” (supra), it transpires that the legislature in all its wisdom had w.e.f. A.Y. 2002-03 provided that an assessee would statutorily be allowed depreciation, irrespective of the fact that as to whether or not he had claimed the same as deduction while computing his total income. As the assessee in the case before me had categorically furnished the complete details of depreciation of Rs. 6,50,976.13, Page 39 of APB (as Annexure 2 to the “audit report” in Form 3CB), therefore, I find substance in the aforesaid claim of the assessee. Accordingly, I, on the basis of my aforesaid observations direct the A.O to allow the assessee’s claim for depreciation. Thus, the **additional ground of appeal** raised by the assessee is allowed in terms of my aforesaid observations.

12. I shall now deal with the grievance of the assessee that the CIT(Appeals) had erred in sustaining the addition of Rs.1,20,000/- (out of Rs.7,41,840/-) that was made by the A.O u/s.68 of the Act, i.e. on account of capital introduced by the partner.

13. At the very outset of the hearing of the appeal, it was submitted by the Ld. AR that the A.O while framing the assessment had made an addition of Rs.7,41,840/- on account of cash credits appearing in the capital accounts of some of the partners, as under:

| Sr. No. | Name of the partner | Amount deposited in cash other than loans/gifts | Amount/dt. Of first deposit | Excess over Coln. No.4 |
|---------------------------|------------------------|---|-----------------------------|------------------------|
| (1) | (2) | (3) | (4) | (5) |
| 1. | Shri Karan Sachdeo | Rs.1,20,000/- | Rs.25,000/- dt.14-04-04 | Rs.95,000/- |
| 2. | Smt. Gita Sachdeo | Rs.4,00,000/- | Rs.50,000/-dt.02-04-04 | Rs.3,50,000/- |
| 3. | Smt. Radhika Sachdeo | Rs.2,00,240/- | Rs.35,000/-dt.02-04-04 | Rs.1,65,240/- |
| 4. | Smt. Ranjan Sachdeo | Rs.4,12,000/- | Rs.55,000/-dt. 05-04-04 | Rs.3,57,000/- |
| 5. | Shri Vijay Kr. Sachdeo | Rs.2,11,600/- | Rs.80,000/-dt. 28-04-04 | Rs.1,31,600/- |
| Unexplained cash deposits | | | | Rs.7,41,840/- |

It was submitted by the Ld. AR that on appeal, the CIT(Appeals) had out of the aforesaid amount of Rs.7,41,840/- sustained an addition of Rs.1,20,000/- that was introduced in cash by Shri Karan Sachdeo in his capital account (wrongly mentioned by the CIT(Appeals) in his order as Shri Ranjan Sachdeo). The Ld. AR in

order to fortify his aforesaid claim that the observation of the CIT(Appeals), i.e. sustainability of the addition of Rs.1,20,000/- was in context of Shri Karan Sachdeo, had taken me through the bifurcated details of Rs.7,41,840/- (supra), which revealed that Shri Karan Sachdeo had made a cash addition of Rs.1,20,000/- (supra) in his capital account during the year under consideration. Also, the ld. A.R in order to fortify his aforesaid contention beyond any scope of doubt had taken me through the "Capital a/c" of Shri. Ranjan Sachdeo (supra), Page 22 of APB, which did not reveal any addition of Rs. 1.20 lac. Carrying his contention further, it was submitted by the Ld. AR that while for the A.O had restricted the addition in the case of Shri Karan Sachdeo to Rs.95,000/- [Rs.1,20,000/- (-) Rs.25,000/-], but the CIT(Appeals) without putting the assessee firm to any notice for enhancement had made an addition of the entire amount of Rs.1,20,000/-. It was further submitted by the Ld. AR that as the aforesaid cash credit/addition had figured in the capital account of the partner, viz. Shri Karan Sachdeo (supra), therefore, there could have been no justification for the A.O to have made addition of any part of such amount in the hands of the assessee firm. The

Ld. AR in support of his aforesaid contention had pressed into service the order of this Tribunal in the case of ITO Vs. M/s. Stock Mandi, ITA No.342/RPR/2016, CO No.01/RPR/2017 dated 17.10.2022. It was submitted by the Ld. AR that in the aforesaid case the Tribunal had observed that if the A.O had any doubts as regards the additions/credits in the capital account of the partners, then the action was called for in the hands of the partners and not in the case of the assessee firm. Further, reliance was placed by the Ld. AR on the judgment of the Hon'ble High Court of Madhya Pradesh in the case of CIT v. Metachem Industries [2000] 245 ITR 160(MP).

14. Apart from that, it was submitted by the Ld. AR that the assessee firm in the course of assessment proceedings had placed on record documentary evidence, wherein, Shri Karan Sachdeo (supra) had duly confirmed his capital account of Rs.1,71,278.30 (Cr.) appearing in the balance sheet of the assessee firm on 31.03.2005. My attention was drawn by the Ld. AR to the copy of the personal balance sheet of Shri Karan Sachdeo, Page 14 of APB a/w. the balance sheet of the assessee firm at Page 42 of APB.

15. Per contra, the Ld. Departmental Representative (“DR” for short) relied on the orders of the lower authorities. However, the Ld. DR on specifically being confronted with the anomaly as regards the mentioning of the name of Shri Ranjan Sachdeo (supra) as against that of Shri Karan Sachdeo as was brought to my notice by the Ld. AR, could not rebut the same.

16. On a conjoint perusal of the balance sheet of the assessee firm and the personal balance sheet of Shri Karan Sachdeo (supra), I find that the said partner had duly accepted/ confirmed the capital of Rs.1,71,278.30 (Cr.) appearing against his name in the balance sheet of the assessee firm. On the basis of the aforesaid facts, it can safely be concluded that Shri Karan Sachdeo (supra) had duly accepted the transactions appearing in his capital account with the assessee firm.

17. Considering the aforesaid factual position, I am of the view that now when Shri Karan Sachdeo (supra) had accepted his capital account in the assessee firm, then, in case the A.O had any doubts as regards the source of the amount therein credited, he could have only proceeded against the said partner and not drawn any adverse inferences in the case of the assessee firm. My

aforesaid view is fortified by the order of the ITAT, Raipur in the case of ITO Vs. M/s. Stock Mandi (supra), wherein it has been held as under:

“.....We further concur with the view taken by the CIT(Appeals) that even if the A.O had any doubts as regards the additions/credits in the capital account of the partners, then, the action was called for in the hands of the partners and not in the case of the assessee firm. Our aforesaid view is duly supported by the judgment of the Hon'ble High Court of Gujarat in the case of Pr. CIT-4 Vs. Vaishnodevi Refoils and Solvex, Tax Appeal No.846 of 2017 dated 28.11.2017 [SLP of the revenue in the aforesaid case had been dismissed by the Hon'ble Apex Court vide its order passed in SLP (Civil) Diary No(s). 22842/2018 dated 09.07.2018]. Also, a similar view had been taken by the Hon'ble High Court of Madhya Pradesh in the case of CIT Vs. Metachem Industries (2000) 245 ITR 160 (MP).

18. On the basis of the aforesaid facts, we not only principally concur with the view taken by the CIT(Appeals) that no adverse inferences as regards the additions/credits in the capital account of the partners was liable to be drawn in the hands of the assessee firm, but also even otherwise, are of a strong conviction that as the source of the respective addition/credits had duly been confirmed by the respective partners out of their duly explained sources, therefore, on the said count also, no addition was called for in its hand. On the basis of our aforesaid observation, we uphold the order of the CIT(Appeals) who had rightly vacated the respective additions of Rs.65.16 lacs (approx.) and Rs.5.25 lacs (approx.) that was made by the A.O as regards the additions/credits in the partners capital accounts.”

I, thus, on the basis of my aforesaid observations vacate the addition of Rs.1.20 lac (supra) made by the A.O in the case of the assessee firm on account of addition appearing in the capital account of Shri Karan Sachdeo [wrongly mentioned by the

CIT(Appeals) as Shri Ranjan Sachdeo]. Thus, the **Ground of appeal No.1** raised by the assessee is allowed in terms of my aforesaid observations.

18. I shall now deal with the grievance of the assessee that the CIT(Appeals) had erred in confirming the addition of Rs.1 lac made by the A.O u/s.68 of the Act on account of capital introduced by the partner Shri H.K Sachdeo, HUF.

19. The Ld. AR once again reiterated his contention that if the A.O had any doubts as regards any addition/credit in the capital account of the partners, then, the action was called for in the hands of the partners and not in the case of the assessee firm. On merits, it was submitted by the Ld. AR that the balance reflected in the "capital account" of H.K Sachdeo, HUF as appearing in the books of account of the assessee firm at Rs.5,43,899.02 on 31.03.2005 was duly disclosed by him in his personal balance sheet for the year under consideration, i.e. A.Y.2005-06. My attention was drawn by the Ld. AR to the personal balance sheet of H.K Sachdeo, HUF Page 3 of APB and the balance sheet of the assessee firm, Page 42 of APB a/w. copy of the capital account of H.K Sachdeo, HUF, Page 44 of APB. It

was submitted by the Ld. AR that H.K Sachdeo, HUF had during the year made a cash addition of Rs.1 lac in his capital account with the assessee firm. Elaborating on the source of the aforesaid addition, it was submitted by the Ld. AR that the same could safely be gathered from the personal capital account of Shri H.K Sachdeo, HUF, Page 3 of APB. Be that as it may, it was submitted by the Ld. AR that now when Shri H.K Sachdeo, HUF had duly admitted its capital account with the assessee firm, and thus, the addition of Rs.1 lac in cash made by him in the same, therefore, in case if the A.O had any doubts as regards the source of such addition, then, the action was called for in the hands of the said partner and no adverse inferences could have been drawn in the hands of the assessee firm.

20. I have given a thoughtful consideration and find substance in the claim of the Ld. AR that the aforesaid partner, viz. H.K Sachdeo, HUF had duly accepted/confirmed his capital of Rs.5.43 lacs (approx.) appearing in the balance sheet of the assessee firm. Also, as observed by me hereinabove, the said partner, viz. H.K Sachdeo, HUF had duly disclosed its investment as partner in the assessee firm in its personal balance sheet for

the year under consideration. Considering the aforesaid factual position, I am of the considered view, that as observed in the case of Shri Karan Sachdeo (supra), that in case the A.O had any doubts as regards the additions/credits appearing in the capital account of a partner, then, he ought to have proceeded with in the case of the said partner and no adverse inferences were called for in the hands of the assessee firm. I, thus, on similar terms and observations that were recorded by me while vacating the addition in the case of Shri Karan Sachdeo, delete the addition of Rs.1 lac made by the A.O u/s.68 of the Act on account of capital introduced by H.K Sachdeo (HUF). Thus, the **Ground of appeal No.2** raised by the assessee is allowed in terms of my aforesaid observations.

21. Now, I shall deal with the grievance of the assessee that the CIT(Appeals) had erred in confirming the disallowance of Rs.1,25,350/- that was made by the A.O on an *ad-hoc* basis out of assessee's claim for deduction of salary expenses of Rs.2,50,700/-.

22. On a perusal of the assessment order, I find that the assessee has raised a claim for deduction of salary expenses of

Rs.2,50,700/-. It was observed by the A.O that the assessee had not maintained any attendance register, salary register, and had raised his claim for deduction of salary on the basis of internal vouchers which neither made any mention of the nature of job done by the employees nor did the same bear their signatures along with revenue stamp. Accordingly, the A.O on the basis of his aforesaid observations disallowed 50% of the assessee's claim for deduction of salary expenses i.e. Rs.1,25,350/-.

23. It is the claim of the Ld. AR that as the A.O had without pointing out any specific instance where the assessee's claim for deduction of salary expenses was either not found to be in order; or was not found to have been incurred wholly and exclusively for the purpose of its business, therefore, there was no justification for him to disallow on an *ad-hoc* basis 50% of its said claim for deduction of salary expenses.

24. Per contra, the Ld. DR relied on the orders of the lower authorities.

25. I have given a thoughtful consideration and find substance in the claim of the Ld. AR. Admittedly, it is a matter of fact borne

from record that the A.O had not pointed out even a single instance where either the assessee's claim for deduction of salary expenditure was not found to be in order; or was not found to have been incurred for wholly and exclusively for the purpose of its business. As is discernible from the assessment order, I find that as stated by the Ld. AR and, rightly so, the ad-hoc disallowance made by the Assessing Officer is merely backed by general observations and not on the basis of any material which would support the same. Admittedly, an assessee's entitlement for claiming deduction of expenses u/s.37(1) of the Act presupposes incurring of expenses wholly and exclusively for the purpose of its business and as such, any expenditure which does not fall within the four corners of the statutory requirement contemplated u/s. 37(1) of the Act cannot be allowed as a deduction and can justifiably be disallowed. But then, I am of the considered view that disallowance of expenditure can by no means be allowed to be made on an arbitrary basis and have to be supported by irrefutable observation of the Assessing Officer that the assessee's claim for deduction of expenditure incurred does not satisfy the requirements contemplated u/s.37(1) of the

Act, i.e. was either not in the nature of an expenditure that was incurred wholly and exclusively for the purpose of business; or was an expenditure which was in the nature of a capital expenditure or personal expenditure of the assessee; or was an expenditure incurred by the assessee for any purpose which is an offence and prohibited by law. Now, in the case before me, the Assessing Officer on an ad-hoc basis had disallowed the assessee's claim for deduction of certain expenses, but the same as observed by me hereinabove is not supported by any material and is merely guided by general observations on his part. I am unable to comprehend as to on what basis a part of the assessee's claim for deduction of salary expenses had been disallowed while for the remaining has been allowed. Apart from that, I find there is no whisper in the body of the assessment order about any such expenditure which as per the Assessing Officer could not be verified; or was not supported by bills or vouchers. In my considered view, such exercise of disallowing on an ad-hoc basis certain expenses claimed by the assessee as a deduction without placing on record any supporting materials can by no means be permitted. In the backdrop of the aforesaid facts, I find

substantial force in the claim of the ld. A.R that devoid of any specific infirmity qua the assessee's claim for deduction of the aforesaid expenditure by the lower authorities, the disallowance of any part of the same in a most arbitrary manner, on an ad-hoc basis, could by no means be held to be justified. My aforesaid view is fortified by the order of the ITAT, Kolkata in the case of Animesh Sadhu Vs. ACIT, Circle-1, Hoogly, ITA No. 11/Kol/2013, dated 12.11.2014 and that of the ITAT, Delhi in the case of ACIT, New Delhi Vs. M/s Modi Rubber Ltd. ITA No. 1952/Del/2014, dated 15.05.2018. Accordingly, in the totality of the facts involved in the case before me, I am unable to concur with the ad hoc disallowance of the expenses in question by the A.O. I, thus, not finding favor with the view taken by the lower authorities set-aside the order of the CIT(A) and vacate the disallowance of Rs.1,25,350/- made by him. The **Ground of appeal No. 3** raised by the assessee is allowed in terms of my aforesaid observations.

26. As the Ld. AR had not placed any contentions as regards the **Ground of appeal No.4**, therefore, the same is dismissed as not pressed.

27. **Ground of appeal No.5** being general in nature is dismissed as not pressed.

28. In the result, appeal of the assessee is partly allowed in terms of my aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board on 12th day of May, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 12th May, 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, "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.