

**आयकर अपीलिय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM**  
**आयकर अपील सं./ITA No.187/RPR/2019**  
(Assessment Years: 2014-2015)

ACIT-1(1), Bhilai	Vs	M/s Shree Arihant Traders, 88-A, Light Industrial Area, Bhilai
<b>PAN No. :AAVFS 0118 A</b>		

**AND**

Cross Objection No.25/RPR/2019  
(Arising out of ITA No.187/RPR/2019)  
(Assessment Years: 2014-2015)

M/s Shree Arihant Traders, 88-A, Light Industrial Area, Bhilai	Vs	ACIT-1(1), Bhilai
<b>PAN No. :AAVFS 0118 A</b>		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Ravi Agrawal, CA
राजस्व की ओर से /Revenue by	:	Shri V.K.Singh, CIT-DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	04/07/2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	05/07/2023

**आदेश / O R D E R**

**Per Arun Khodpia, AM:**

The revenue has filed this appeal against the order passed by the Id. CIT(A)-II, Raipur, dated 22.05.2019 for the assessment year 2014-2015. The assessee has also filed cross objection.

2. The revenue in its appeal has raised the following grounds:-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.19,06,854/- made by the AO u/s. 41(1) of the Income-tax Act, on account of sundry creditors outstanding balances.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.2,70,00,000/- made by the AO on account of credit received from related company by applying provisions of sec. 2(22)(e) of the Income-tax Act, 1961.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by AO on account of disallowance of Rs. 1,21,72,320/- being transport payments*

*made in cash by invoking provisions of sec. 40A(3) of the Income-tax Act, 1961.*

4. *The Order of the Ld. CIT (A) is erroneous both in law and on fact.*
5. *Any other ground that may be adduced at the time of hearing.*

3. Further, the revenue vide letter dated 02.012.2022 has filed the additional ground of appeal which reads as under :-

1. *On the facts & in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.19,06,854/- made by the AO u/s 41(1) of the Act by accepting the 'fresh evidence' filed by the assessee violating the Rule 46A of the IT Rules which is unjustified & unwarranted..*
2. *On the facts & in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.2,70,00,000/- made by the AO u/s 2(22)(e) of the Act by accepting the 'fresh evidence' filed by the assessee violating the Rule 46A of the IT Rules which is unjustified & unwarranted.*

4. Ld. CIT-DR before us drew our attention to the additional grounds challenging therein the violation of Rule 46A of IT Rules, 1962 by the Id. CIT(A) in accepting the fresh evidence filed by the assessee. He further submitted that the assessee has not furnished any information before the AO regarding the ledger account of M/s Shri Arihant Trade Links (P) Ltd and submitting the same before the Id. CIT(A) is absolutely fresh evidence, violating the provisions of Rule 46A of IT Rules, 1962. It was also submitted by the Id. CIT-DR that before accepting the evidences produced by the assessee, the Id. CIT(A) was required to ask the AO to examine the same and to offer his comments on the merits of such additional facts. Therefore, it was the prayer of the Id. CIT-DR that the matter deserves to be sent back to the file of Id. CIT(A) for fresh adjudication.

5. In response, the Id. AR of the assessee has fairly admitted that certain evidences pertaining to addition made u/s.41(1) of the Act were additionally submitted before the Id. CIT(A), were accepted and the adjudication was done based on the same, however, soft copy of books of accounts as well as written submissions were made before the Id. AO. Therefore, the addition u/s.2(22)(e) was made entire based on the records submitted by the assessee and therefore the contention of the revenue that additional evidences were submitted shall not be entertained.

6. We have considered the rival submissions and perused the material available on record. On perusal of the impugned order, it is found that the Id.CIT(A) has partly allowed the appeal of the assessee, therefore, the revenue is before us raising the grounds in the present appeal against the relief granted to the assessee and also the assessee has filed cross objection to challenge the addition confirmed by the Id. CIT(A). With respect to the additional ground of the department that the additional evidences were submitted before the Id. CIT(A) on the issue pertaining to addition u/s.41(1) of the Act as well as u/s.2(22)(e) of the Act, and Id. CIT(A) has adjudicated both the issues in favour of the assessee without consulting the AO to examine the said fresh evidences and to offer his comments on the same. This contention of the revenue was partly accepted by the Id. AR during the course of hearing. On perusal of the order of the Id. CIT(A), it is apparent that the additional evidences were taken into consideration to decide the issues in hand but without giving any opportunity to the Assessing Officer to examine and to revert with his

report on the same. Under such circumstances, the adjudication done by the Id. CIT(A) in violation of Rule 46A of IT Rules, 1962, cannot be considered as justified and, therefore, such findings deserve to be set aside. Considering such facts of the case, we are of the considered view that, in the interest of justice, the grounds raised in the appeal by the revenue as well as under the cross objection by the assessee should be restored back to the file of the Id. CIT(A) to adjudicate the same afresh, after allowing adequate opportunity to the assessee as well as the department to present their contentions by submitting necessary documents, evidences, information or written submissions. Consequently, the appeal of the revenue and the cross objection of the assessee, both are set aside and restored to the file of the Id CIT(A) for fresh adjudication on merits as per law.

7. In the result, appeal of the revenue and cross objection of the assessee, both are allowed for statistical purposes.

Order pronounced in the court on 05/07/2023.

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

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 05/07/2023

*Prakash Kumar Mishra, Sr.P.S(on tour)*

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**  
आयकर अपीलीय अधिकरण,  
रायपुर/ITAT

सत्यापित प्रति //True Copy//