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

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.148/RPR/2018
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Sushil Kumar Agrawal,
Prop. of M/s. Shrikishan & Co.,
Darri Road, Korba (C.G.)
PAN : ACGPA4350B

.....**अपीलार्थी /** Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax
Circle-Korba (C.G.)

.....**प्रत्यर्थी** / Respondent

Assessee by :Shri Y.K Mishra, Advocate
Revenue by :Shri Choudhary N.C. Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing :27.06.2023
घोषणा की तारीख / Date of Pronouncement :10.07.2023

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 02.04.2018, which in turn arises from the order passed by the A.O. u/s.143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 27.03.2015 for A.Y. 2012-13. The assessee has assailed the impugned order on the following grounds of appeal (revised) before us:

> "1. The Ld. CIT(A) erred in law as well as facts while confirming addition of Rs.8,48,547/-u/s.40(a)(ia) on account of finance charges paid to Non Banking Finance Companies.
>
> 2. That Ld. CIT(A) erred in law as well as facts while confirming addition of Rs.14,65,920/-u/s.68 on account of unsecured loan taken by the assessee.
>
> 3. That the assessee craves leave to add, alter and amend modify, substitute, delete, and/or rescind all or any of the grounds of appeal on or before the final hearing."

Also the assessee has raised before us an additional ground of appeal, as under:

> "4. That in view of above facts and circumstances that the notice issued u/s 143(2) of the Act, on 07.08.2014 is time barred hence the assessment order passed u/s 143(3) is bad in law and liable to be quashed."

2. Succinctly stated, the assessee who is engaged in the business of road construction and transportation had e-filed his return of income for

the assessment year 2012-13 on 13.09.2012, declaring an income of Rs. 2,36,28,820/-. The return of income filed by the assessee was initially processed as such under Sec.143(1) of the Act. Subsequently the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. The A.O vide his order passed under Sec.143(3) dated 27.03.2015 determined the income of the assessee at Rs.2,64,93,290/- after, inter alia, making the following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Disallowance u/s.40(a)(ia) of the Act.	Rs.8,48,547/-
2.	Disallowance on account of unexplained cash credit u/s.68 of the Act.	Rs.14,65,920/-
3.	Lumpsum disallowance on account of labour payments	Rs.2,00,000/-
4.	Lumpsum disallowance on account of purchase and expenses	Rs.2,00,000/-
5.	Lumpsum disallowance on account of salary expenses	Rs,1,00,000/-
6.	Disallowance u/s.40(a)(ia) of the Act on account of audit fees	Rs.50,000/-

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) who sustained two additions/disallowances, viz. (i) disallowance u/s.40(a)(ia) of the Act : Rs.8,48,547/- ; and (ii) addition of unexplained cash credit u/s.68 of the Act : Rs.14,65,920/-.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us assailing the aforesaid two issues, viz. (i) disallowance under Sec. 40(a)(ia) of the Act of his claim for deduction of interest paid to NBFC: Rs.8,48,547/-; and (ii) addition of unexplained cash credit u/s.68 of the Act: Rs.14,65,920/-.

6. 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.

7. Apropos the disallowance under Sec. 40(a)(ia) of the Act of the assessee's claim for deduction of interest paid to NBFC's of Rs.8,48,547/-, the assessee has filed before us an application U/rule 29 of the ITAT Rules, 1963 seeking liberty for placing on record certificates of two Chartered Accountants, wherein they had certified that M/s. Magma Fincorp Ltd. and M/s Religare Finvest Ltd., i.e the respective payees, had included the respective interest income of Rs.66,272/- and Rs. 5,51,511/-, received from the assessee company in their returns of income for A.Y 2012-13. The ld. AR had taken us through the respective certificates of the Chartered accountants at Page 49-52 of APB. It was submitted by the Ld. AR that as the aforesaid certificates which have a strong bearing on the adjudication of the ground of appeal no.1 could not be obtained in the

course of the proceedings before the lower authorities, therefore, the same in all fairness be admitted. The ld. Departmental Representative (for short "DR") did not raise any objection to the seeking of admission of the aforesaid CA certificates by the assessee's counsel. We have given a thoughtful consideration, and are of the considered view, that as the CA certificate(s) under consideration will have a strong bearing on the adjudication of ground of appeal no. 1, therefore, in all fairness the same merits admission.

8. Although the CA certificates refers to the fact that the payees, viz. (i) M/s. Magma Fincorp Limited and (ii). M/s Religare Finvest Ltd. had included the interest charges of Rs.66,272/- and Rs. 5,51,511/- received from M/s Shri Krishna & Company (i.e a proprietary concern of the assessee) in their taxable income and had paid the tax on its declared income; but, as the same are not in the prescribed form i.e "Form 26A" r.w Rule 31ACB as provided in the "1st proviso" to Sec. 201(1) r.w. Section 40(a)(ia) of the Act, therefore, the same cannot be acted upon for concluding that the assessee for the said amounts is not to be treated as being in default as regards deduction of tax at source u/s 194A of the Act. Considering the technical lapse on the part of the assessee in not furnishing the accountant certificates in the prescribed form, i.e "Form 26A" r.w Rule 31ACB, we, thus, in all fairness restore the issue to the file

of the A.O with a liberty to the assessee to furnish the same in the prescribed form in the course of the set-aside proceedings. In case the assessee furnishes the certificates in the prescribed form i.e "Form 26A" r.w Rule 31ACB with the A.O in the course of the set-aside proceedings, then, the disallowance u/s. 40(a)(ia) to the said extent shall be vacated by him.

9. Adverting to the balance disallowance of Rs. 2,30,764/- [Rs. 8,48,547/- (-) Rs. 66,272/- (-) Rs. 5,51,511/-] , it was submitted by the Ld. AR that as per the amendment that was made available on the statute by the Finance Act, (No.2) 2014 w.e.f 01.04.2015 the disallowance under Sec. 40(a)(ia) was liable to be restricted to 30% of the amount of expenditure that was claimed as a deduction by the assessee. Ld. AR in support of his aforesaid contention that the disallowance as regards the balance amount which was claimed as a deduction be restricted to 30% of the expenditure had relied on the following judicial pronouncements:

(i) Muradul Haque Vs. ITO, ITA No.114/Del/2019 dated 18.06.2020

(ii) Punabhai G Pardava Vs. ITO, ITA No.219/RJT/2018

(iii) Amruta Quarry Works Vs. ITO, ITA No.1481/Ahd/2013 dated 19.07.2016

(iv) Neena Kaul Vs. Asst. CIT, ITA No.1386/Mum/2017 dated 21.05.2019

10. We have given a thoughtful consideration to the issue in hand, and perused the material available on record as well as considered the judicial

pronouncements that have been pressed into service by the Ld. AR to drive home his aforesaid contention. We find that the Hon'ble Supreme Court in the case of **Shree Choudhary Transport Co. Vs. Income Tax Officer (2020) 426 ITR 289 (SC),** wherein the following substantial question of law was raised before it:

> "3. As to whether sub-clause (ia) of Section 40(a) of the Act, as inserted by the Finance (No. 2) Act, 2004 with effect from 01.04.2005, is applicable only from the financial year 2005-2006 and, hence, is not applicable to the present case relating to the financial year 2004-2005; and, at any rate, whole of the rigour of this provision cannot be applied to the present case?"

, had after exhaustively deliberating on the issue in hand observed, that unlike the amendment to Section 40(a)(ia) of the Act as was made available on the statute by way of insertion of the "1st Proviso" vide the Finance Act, 2010, which being curative in nature was required to be given retrospective operation, i.e. from the date of insertion of the said statutory provision w.e.f. 01.04.2005, it was preposterous to draw an analogy from the same for arriving at a similar view as regards the amendment made to Section 40(a)(ia) of the Act vide the Finance (No.2) Act, 2014, wherein the disallowance under the said statutory provision was scaled down to 30% of the sum applicable. To sum up, it was observed by the Hon'ble Apex Court that the benefit of the amendment made available in Section 40(a)(ia) of the Act vide Finance (No.2) Act 2014 was available on the statute w.e.f. 01.04.2015 and not prior thereto. For the sake of clarity the relevant observations of the Hon'ble Apex Court are culled out as under:

"19. In yet another alternative attempt, learned counsel for the appellant has argued that by way of Finance (No.2) Act, 2014, disallowance under Section 40(a)(ia) has been limited to 30% of the sum payable and the said amendment deserves to be held retrospective in operation. This line of argument has been grafted with reference to the decision in Calcutta Export Company (supra) wherein, another amendment of Section 40(a)(ia) by the Finance Act of 2010 was held by this Court to be retrospective in operation. The submission so made is not only baseless but is bereft of any logic. Neither the amendment made by the Finance (No.2) Act, 2014 could be stretched anterior the date of its substitution so as to reach the assessment year 2005-2006 nor the said decision in Calcutta Export Company has any correlation with the case at hand or with the amendment made by the Finance (No.2) Act of 2014.

19.1. By the amendment brought about in the year 2014, the legislature reduced the extent of disallowance under Section 40(a)(ia) of the Act and limited it to 30% of the sum payable. On the other hand, by the Finance Act of 2010, which was considered in the case of Calcutta Export Company (supra), the proviso to Section 40(a)(ia) of the Act was amended so as to provide relief to a bonafide assessee who could not make deposit of deducted tax within prescribed time. In fact, even before the year 2010, the said proviso was amended by the Finance Act 2008 and that amendment of the year 2008 was provided retrospective operation by the legislature itself. For ready reference, we may reproduce in juxtaposition the main part of Section 40(a) (ia) of the Act as it would read after the amendments of 2008, 2010 and 2014 respectively, as under13:-

(i) After the amendment by Finance Act, 2008 "40. Amounts not deductible. - Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",-

(a) in the case of any assessee-

*** *** *** (ia) any interest, commission or brokerage, rent, royalty 14, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid,-

(A) in a case where the tax was deductible and was so deducted during the last month of the previous year, on or before the due date specified in sub-section (1) of section 139; or (B) in any other case, on or before the last day of the previous year:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted – (A) during the last month of the previous year but paid after the said due date; or (B) during any other month of the previous

year but paid after the end of the said previous year, 13 The Explanation part of the provision is omitted, for being not relevant for the present purpose.

14. The expressions "rent, royalty" were inserted in the year 2006. such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

*** *** ***"

(ii) After the amendment by Finance Act, 2010 "40. Amounts not deductible. - Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",-

(a) in the case of any assessee-

*** *** *** (ia) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:

*** *** ***"

(iii) After the amendment by Finance (No.2) Act, 2014 "40. Amounts not deductible. - Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",-

(a) in the case of any assessee-

*** *** *** (ia) thirty per cent. of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent. of such sum

shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid15:

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.16 *** *** ***" 19.2. The aforesaid amendment by the Finance (No.2) Act of 2014 was specifically made applicable w.e.f. 01.04.2015 and clearly represents the will of the legislature as to what is to be deducted or what percentage of deduction is not to be allowed for a particular eventuality, from the assessment year 2015-2016.

19.3. On the other hand, in the case of Calcutta Export Company (supra), this Court noticed the aforesaid two amendments to Section 40(a)(ia) of the Act by the Finance Act, 2008 and by the Finance Act, 2010, which were intended to deal with procedural hardship likely to be faced by the bonafide tax payer, who had deducted tax at source but could not make deposit within the prescribed time so as to claim deduction. In paragraph 17 of judgment in Calcutta Export Company, this Court took note of the case of genuine hardship, particularly of the assessees who had deducted tax at source in the 15 This proviso was substituted in the year 2008 and again in the year 2010; and then, was amended by the Finance (No. 2) Act, 2014.

16. This proviso was inserted by Act No. 23 of 2012 last month of previous year; and observed in paragraph 18 that the said amendment of the year 2008 was brought about with a view to mitigate such hardship. After reproducing the said amendment of the year 2008 and after noticing its retrospective operation, this Court delved into the position obtaining after 2008, where still remained one class of assessees who could not claim deduction for the TDS amount in the previous year in which the tax was deducted and who could claim benefit of such deduction in the next year only; and, after finding that the amendment of the year 2010 was intended to remedy this position, held that the said amendment, being curative in nature, is required to be given retrospective operation that is, from the date of insertion of Section 40(a)(ia).

19.4. Learned counsel for the appellant has only referred to the concluding part of the decision in Calcutta Export Company but, a look at the entire synthesis by this Court, of the reasons for the amendments of 2008 and 2010, makes it clear as to why this Court held that the amendment of the year 2010 would be retrospective in operation. We may usefully reproduce the relevant discussion and exposition of this Court in Calcutta Export Company as under:- (at pp. 663-666 of ITR):-

"19. The above amendments made by the Finance Act, 2008 thus provided that no disallowance under section 40(a)(ia) of the Income-tax Act shall be made in respect of the expenditure incurred in the month of March if the tax deducted at

source on such expenditure has been paid before the due date of filing of the return. It is important to mention here that the amendment was given retrospective operation from the date of April 1,2005, i.e., from the very date of substitution of the provision.

20. Therefore, the assesses were, after the said amendment in 2008, classified in two categories namely: one, those who have deducted that tax during the last month of the previous year and two, those who have deducted the tax in the remaining eleven months of the previous year. It was provided that in the case of assessees falling under the first category, no disallowance under section 40(a)(ia) of the Income-tax Act shall be made if the tax deducted by them during the last month of the previous year has been paid on or before the last day of filing of return in accordance with the provisions of section 139(1) of the Income-tax Act for the said previous year. In case, the assessees are falling under the second category, no disallowance under section 40(a)(ia) of Income-tax Act where the tax was deducted before the last month of the previous year and the same was credited to the Government before the expiry of the previous year. The net effect is that the assessee could not claim deduction for the TDS amount in the previous year in which the tax was deducted and the benefit of such deductions can be claimed in the next year only.

21. The amendment though has addressed the concerns of the assesses falling in the first category but with regard to the case falling in the second category, it was still resulting into unintended consequences and causing grave and genuine hardships to the assesses who had substantially complied with the relevant TDS provisions by deducting the tax at source and by paying the same to the credit of the Government before the due date of filing of their returns under section 139(1) of the Income-tax Act. The disability to claim deductions on account of such lately credited sum of TDS in assessment of the previous year in which it was deducted, was detrimental to the small traders who may not be in a position to bear the burden of such disallowance in the present assessment year.

22. In order to remedy this position and to remove hardships which were being caused to the assessees belonging to such second category, amendments have been made in the provisions of section 40(a) (ia) by the Finance Act, 2010.

*** *** ***

24. Thus, the Finance Act, 2010 further relaxed the rigors of section 40(a)(ia) of the Income-tax Act to provide that all TDS made during the previous year can be deposited with the Government by the due date of filing the return of income. The idea was to allow additional time to the deductors to deposit the TDS so made. However, the Memorandum Explaining the Provisions of the Finance Bill, 2010 expressly mentioned as follows: "This amendment is proposed to take effect retrospectively from April 1, 2010 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years."

25. The controversy surrounding the above amendment was whether the amendment being curative in nature should be applied retrospectively, i.e., from the date of insertion of the provisions of section 40(a)(ia) or to be applicable from the date of enforcement.

*** *** ***

27. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section, is required to be read into the section to give the section a reasonable interpretation and requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.

28. The purpose of the amendment made by the Finance Act, 2010 is to solve the anomalies that the insertion of section 40(a)(ia) was causing to the bona fide tax payer. The amendment, even if not given operation retrospectively, may not materially be of consequence to the Revenue when the tax rates are stable and uniform or in cases of big assessees having substantial turnover and equally huge expenses and necessary cushion to absorb the effect. However, marginal and medium taxpayers, who work at low gross product rate and when expenditure which becomes the subject matter of an order under section 40(a)(ia) is substantial, can suffer severe adverse consequences if the amendment made in 2010 is not given retrospective operation, i.e., from the date of substitution of the provision. Transferring or shifting expenses to a subsequent year, in such cases, will not wipe out the adverse effect and the financial stress. Such could not be the intention of the Legislature. Hence, the amendment made by the Finance Act, 2010 being curative in nature is required to be given retrospective operation, i.e., from the date of insertion of the said provision." 19.5. A bare look at the extraction aforesaid makes it clear that what this Court has held as regards "retrospective operation" is that the amendment of the year 2010, being curative in nature, would be applicable from the date of insertion of the provision in question i.e., sub-clause (ia) of Section 40(a) of the Act. This being the position, it is difficult to find any substance in the argument that the principles adopted by this Court in the case of Calcutta Export Company (supra) dealing with curative amendment, relating more to the procedural aspects concerning deposit of the deducted TDS, be applied to the amendment of the substantive provision by the Finance (No.2) Act, 2014. 19.6. We may in the passing observe that the assessee-appellant was either labouring under the mistaken impression that he was not required to deduct TDS or under the mistaken belief that the methodology of splitting a single payment into parts below Rs. 20,000/- would provide him escape from the rigour of the provisions of the Act providing for disallowance. In either event, the appellant had not been a bonafide assessee who had made the deduction and deposited it subsequently. Obviously, the appellant could not have derived the benefits that were otherwise available by the curative amendments of 2008 and 2010. Having defaulted at every stage, the attempt on the part of assessee-appellant to seek some succour in the amendment of Section 40(a)(ia) of the Act by the Finance (No.2) Act, 2014 could only be rejected as entirely baseless, rather preposterous. 19.7. Hence, Question No.3 is also answered in the negative, i.e., against the assessee-appellant and in favour of the revenue."

On the basis of the aforesaid settled position of law as had been laid down by the Hon'ble Apex Court in the case of Shree Choudhary Transport Co. Vs. ITO (supra), we are of the considered view that the issue in hand is no more *res-integra* and the amendment made vide the Finance (No.2) Act, 2014 restricting the disallowance to 30% of the sum payable could not be given a retrospective effect. We, thus, in terms of our aforesaid observations reject the claim of the Ld. AR that the disallowance u/s. 40(a)(ia) of the Act as regards the balance amount of finance charges/interest of Rs. 2,30,764/- (supra) that was claimed by him as a deduction was liable to be restricted only to the extent of 30% of the sum payable by the assessee. Thus, the **Ground of appeal No.1** raised by the assessee is partly allowed in terms of our aforesaid observations.

11. Apropos the addition of Rs.14,65,920/- made by the AO u/s 68 of the Act, it was observed by the A.O that the assessee had taken unsecured loans from two persons, viz. (i) Shri Pawan Kumar Agrawal: Rs. 12 lac; and (ii). Smt. Mohini Devi: Rs.6,00,000/- during the year under consideration. The assessee on being called upon to furnish requisite documents in support of the identity and creditworthiness of the persons from whom the unsecured loans had been raised, filed with the A.O supporting documentary evidences, i.e confirmations of the lenders and copies of the returns a/w bank statements of both the lenders. On verification, it was

observed by the A.O that cash was deposited in the bank accounts of the lenders just prior to advancing of loans to the assessee. The AO called upon the assessee to furnish copy of the balance sheets a/w capital A/c's of the aforesaid lenders. Although the assessee had filed all the requisite details with the AO, but the latter was of the view that the assessee had failed to give a satisfactory reply regarding the creditworthiness of the above two persons. It was also observed by the A.O that the lenders were using their bank accounts not for keeping their earnings in that account but only for the purpose of giving loans to the assessee, which was evident from the fact that as and when they had advanced the amounts they had deposited cash in their bank accounts. Although the AO apparently did not find favour with the creditworthiness of either of the lenders, but he only made an addition of the amount of Rs.12,00,000/- i.e the loan that was claimed by the assessee to have been raised from Shri. Pawan Kumar Aggarwal a/w. disallowance of assessee's claim for deduction of interest expenses of Rs.2,65,920/- (i.e interest paid by the assessee to both the lenders) u/s.68 of the Act. Thus, the A.O on the basis of his aforesaid deliberations made an addition u/s 68 of the Act of an amount aggregating to Rs.14,65,920/- [Rs.12,00,000/- (+) Rs.2,65,920/-].

12. On appeal, it was observed by the CIT(Appeals) that the creditworthiness of the lenders was not established by the assessee on the

basis of clinching documentary evidence. It was further observed by the CIT(Appeals) that balance in the bank accounts was not available with the lenders and cash was deposited in the same immediately before making payments to the assessee. Observing that the assessee had failed to establish creditworthiness of the lenders and genuineness of the transaction, the CIT(Appeals) upheld the view taken by the A.O and sustained the addition of Rs.14,65,920/-.

13. Shri Y.K Mishra, the Ld. Authorized Representative (for short 'AR') though assailed the validity of the jurisdiction that was assumed by the AO for framing the assessment in absence of a valid notice u/s 143(2) of the Act, but after arguing for some time on the said issue he preferred not to carry his contentions on the same any further. Considering the aforesaid facts, the **additional ground of appeal** raised by the assessee is dismissed.

14. On merits, Shri. Y.K Mishra, Ld. AR for the assessee submitted that the assessee had duly discharged the onus that was cast upon him as envisaged u/s.68 of the Act, viz. (i) the assessee had filed written submissions and evidence to prove the identity and creditworthiness of the lenders a/w genuineness of the transactions under consideration; (ii) the assessee had filed evidence as regards the capacity of the lender to advance money a/w the source of income and copy of computation of

income; (iii) as regards proving the genuineness of the transaction, it was submitted that the loans were issued by account payee cheques by persons who had capacity to lend the money; and (iv) to prove the identity of the lenders the respective addresses, PAN and copy of the return of income of the lenders were placed on the record of the AO in the course of the assessment proceedings. It was further submitted by the Ld. AR that the A.O had neither made any enquiry nor issued any notice u/s.131 of the Act to verify the claim of the assessee as regards the unsecured loan, and had made the addition u/s.68 of the Act without any cogent basis. It was further submitted by the Ld. AR that the assessee had filed PAN cards of the lenders in order to substantiate their identity; confirmations from the lenders a/w. their bank statements to justify the genuineness of transactions; and copies of the returns of income of the lenders to justify their creditworthiness. The Ld. A.R in support of his contention that now when the assessee had discharged the primary onus that was cast upon him as regards proving the authenticity of the loan transactions, then the A.O without dislodging the same could not have summarily drawn adverse inferences as regards the said transactions, had relied on the following judicial pronouncements:

(i) CIT Vs. Sahibganj Electric Cables P. Ltd. 115 ITR 408(Cal)

(ii)G.M Overseas Vs. ACIT, ITA No.1891/Del/2020 dated 21.03.2022

(iii)Shree Samruddhi Overseas Trading Company Vs. DCIT, ITA No. 909 and 910/Ahd/2018 dated 19.04.2021.

Apropos the disallowance of the assessee's claim for deduction of interest expenditure of Rs. 2,65,920/-, it was submitted by the ld. AR that no adverse inferences as regards the interest paid by the assessee on the aforesaid genuine loans raised by him was liable to be drawn. Alternatively, it was submitted by the ld. AR that now when the AO had only doubted the authenticity of the loan of Rs. 12 lac raised by the assessee from Shri. Pawan Kumar Agrawal, therefore, there was no justification for him to have disallowed the interest paid on the loan raised from Smt. Mohini Devi.

15. We have deliberated at length on the contentions advanced by the ld. Authorized representatives of both the parties in the backdrop of the orders of the lower authorities in context of the aforesaid issue in hand, i.e sustainability of the additions made by the A.O u/s 68 of the Act. As observed by us at length hereinabove, it is the claim of the ld. A.R that both the lower authorities had erred in making/sustaining the addition aggregating to Rs.14,65,920/- (supra) u/s. 68 of the Act. As is discernible from the records, the assessee had in order to substantiate the authenticity of the loan transaction in question, had placed on record supporting documentary evidences, viz. (i) names, addresses and PAN Nos. of the lender; (ii) confirmation of account of the lender; and (iii) copy of the return of income of the lender. It is the claim of the ld. A.R that as the

assessee had on the basis of clinching documentary evidences duly substantiated the authenticity of the loan transaction in question, therefore, the same could not have been held as an unexplained cash credit u/s 68 of the Act.

16. We find that involving identical facts loan raised by the assessee from the aforementioned person, viz. Shri Pawan Kumar Agrawal in the immediately preceding years i.e. AY 2010-11 & AY 2011-12 was held by the A.O as unexplained cash credit u/s.68 of the Act. However, on appeal, atter deliberating at length, the Tribunal vide its order passed in ITA Nos. 93 & 94/RPR/2017 dated 27.03.2023 had restored the matter to the file of the A.O for re-adjudicating the same, observing as under:

"**(B).Loans raised by the assessee from certain individuals :**

Sr. No.	Particulars	Amount
1.	Smt. Mohini Garg	Rs. 8,00,000/-
2.	**Shri Pawan Garg**	**Rs. 12,00,000/-**
3.	Smt. Sharda Devi	Rs. 10,00,000/-

(i). The A.O in order to verify the authenticity of the loans that were claimed by the assessee to have been received from the aforementioned persons who were residents of Orissa, had issued a commission to the Jt. DIT (Inv.), Bhubaneswar for carrying out necessary enquiry as regards the identity and creditworthiness of the lenders as well as the genuineness of the loan transactions under consideration. The ADIT(Inv.), Unit-1(1), Bhubaneswar vide his report dated 26.03.2013 informed the A.O that though notice(s) u/s 131 of the Act were served on all the aforementioned parties but neither of them had complied with the same. On the basis of the

aforesaid fact the A.O held the loans aggregating to Rs. 30 lac (supra) that were claimed by the assessee to have been raised from the aforementioned three parties as bogus and treating the same as his undisclosed income made an addition of the same to his returned income. On appeal the CIT(Appeals) finding no infirmity in the view taken by the A.O upheld the same.

(ii). It is the claim of the ld. A.R that as at the relevant point of time when notice(s) u/s 131 were issued by the Jt. DIT (Inv.), Bhubaneswar all the three parties were out of station to attend a family function, therefore, for the said reason they could not make a necessary compliance to the same. Apart from that, it is the claim of the ld. A.R that now when all the aforementioned three parties were residing at Rourkela where the office of the Commissioner of Income-tax was based, therefore, they had been subjected to undue hardship by the A.O who had issued a commission to Jt.DIT(Inv.), Bhubaneswar i.e a town which was 317 kms far from Rourkela. It is the claim of the ld. A.R that the assessee in order to substantiate the authenticity of the respective loan transactions had placed on record supporting documentary evidences, viz. (i). Names, addresses and PAN Nos. of the lenders (ii). Confirmations of all the aforesaid three lenders; (iii). Copies of the income-tax returns of the lenders; and (iv). Copies of the bank account of the assessee. It is the claim of the ld. AR that now when the complete details of the lenders a/w supporting documents had been filed by the assessee in the course of the assessment proceedings, then, there was no justification for him to have held the loans received from the said lenders as unexplained cash credits for the solitary reason that they had failed to comply with the notice issued u/s.131 of the Act by the ADIT(Inv.), Bhubaneswar. It was further averred by the ld. A.R that as the assessee had repaid the respective loans to all the lenders in F.Y 2015-16 and the same had been accepted by the department, therefore, no adverse inferences as regards the veracity of the said respective loan transactions was liable to be drawn.

(iii). Admittedly, it is a matter of fact borne from record that neither of the aforesaid three lenders had complied with the notice(s) issued by the ADIT (Inv.), Bhubaneswar, as a result whereof the authenticity of the respective loan transactions could not be proved. At the same time, we find substance in the claim of the ld. A.R that as at the relevant point of time the aforesaid lenders had gone out of station to attend a family function, therefore, for the said reason the respective notice(s) could not be complied with by them. Also we concur with the contention of the ld. A.R that now when all the lenders were residents of Rourkela, a city where all the office of the Income-tax department including that of the Commissioner of Income-tax were based, therefore, there was no justification for the

A.O to have issued a commission to the ADIT(Inv.), Bhubaneswar whose office was situated 317 kms far from Rourkela. Be that as it may, it is the claim of the ld. AR that as the assessee had in the course of the assessment proceedings, inter alia, submitted confirmations of the lenders and copies of the returns of income a/w PAN Nos. of the lenders, therefore, the primary onus that was cast upon him as regards proving the authenticity of the loan transactions stood duly discharged. On a perusal of the paper book to which our attention was drawn by the ld. AR, it transpires that the assessee had in the course of the assessment proceedings placed on record documentary evidences to substantiate the authenticity of the aforesaid loan transactions, viz. confirmations of the lenders, copies of returns of income and PAN no(s) of the respective lenders, and had discharged the primary onus that was cast upon him as regards proving the authenticity of the loan transactions in question, Page 111-119 of APB. Apart from that it transpires that the assessee in his attempt to dispel all doubts as regards the veracity of the loan transactions had filed before us the "affidavits", dated 18.07.2022 of the respective lenders wherein they had admitted of having advanced the interest bearing loans to the assessee a/w the reasons for doing so, Page 50-57 of APB.

(iv). Although the assessee by filing the aforesaid supporting documentary evidences had duly discharged the primary onus that was cast upon him as regards proving the authenticity of the interest bearing loans that were claimed to have been raised from the aforementioned parties, viz. (i). Shri. Pawan Garg; (ii). Smt. Sharda Devi; and (iii). Smt. Mohini Garg, however, the said material aspect had not been considered by the lower authorities. On a perusal of the records, we find that the fact that the aforementioned parties had failed to comply with the notice(s) issued u/s. 131 of the Act by the ADIT(Inv.), Bhubaneswar had weighed in the mind of the lower authorities for dubbing the loan transactions as bogus. We are unable to persuade ourselves to the summarily stamping of the loan transactions as bogus by the lower authorities. Our aforesaid conviction that a mere non-compliance by the lenders of the summons issued u/s 131 of the Act by the ADIT(Inv.), Bhubaneswar will not be sufficient to draw adverse inferences as regards the authenticity of the loan transactions in question is supported by the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC)**, wherein the Hon'ble Apex Court had held as under:

> "In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assessees. Their index number was in the file of the Revenue. The

> Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

> Be that as it may, we are of the considered view that as the lower authorities had neither considered the aforesaid supporting documentary evidences that were filed by the assessee in order to fortify his claim of having raised genuine loans from the aforementioned parties, nor had the occasion to taken cognizance of the respective "affidavits" of the lenders that have been filed for the very first time before us, therefore, the matter in all fairness requires to be restored to the file of the A.O. We, thus, in terms of our aforesaid observations restore the matter to the file of the A.O for re-adjudication after considering the aforesaid supporting documents that have been filed by the assssse in order to drive home his claim of having raised genuine loans from the aforementioned three parties. Needless to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim of having raised genuine loans from the aforementioned three persons, viz. (i). Shri. Pawan Garg; (ii). Smt. Sharda Devi; and (iii). Smt. Mohini Garg. The **Ground of appeal No.3** is allowed/allowed for statistical purposes in terms of our aforesaid observations."

17. Considering the fact that the Tribunal vide its consolidated order passed in ITA Nos. 93 & 94/RPR/2017 dated 27.03.2023, while disposing off the assessee's appeal for the immediately preceding years, i.e AY 2010-11 and AY 2011-12 had restored the matter to the file of the AO, inter alia, for verifying the creditworthiness of the lender, viz. Shri. Pawan Kumar Agarwal after considering the supporting documentary evidences which

were filed by the assessee in the course of the assessment proceedings, and carrying out necessary verifications, therefore, we are of the considered view, that on the same terms, the issue in hand i.e veracity of the assessee's claim of having raised a genuine loan from Shri. Pawan Kumar Agarwal would be required to be revisited by the AO. We, thus, restore the issue in hand i.e assessee's claim of having raised a genuine loan of Rs. 12 lac from Shri. Pawan Kumar Agarwal to the file of the AO for fresh adjudication. Needless to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim of having raised a genuine loan from the aforementioned lender, viz. Shri. Pawan Kumar Agrawal.

18. Apropos the disallowance of the assessee's claim for deduction of interest of Rs. 2,65,920/-, we may herein observe, that it is the claim of the ld. AR that the aforesaid amount comprises of interest that was paid by the assessee to both the lenders, viz. (i). Shri. Pawan Kumar Agrawal; and (ii). Smt. Mohini devi. If that be so, then, now when the AO had not held the unsecured loan raised by the assessee from Shri. Mohini Devi as an unexplained cash credit u/s 68 of the Act, there could be have been no justification for him to have disallowed the interest that was claimed by the assessee to have been paid to the said lender. Accordingly, the

disallowance of the interest expenditure to the extent made by the AO w.r.t loan raised by the assessee from Smt. Mohini Devi (supra) cannot be sustained and is herein vacated. As regards the disallowance of the assessee's claim for deduction of interest paid on the loan raised from Shri. Pawan Kumar Agrawal (supra), as we have restored the issue pertaining to verification of the claim of the assessee of having raised a genuine loan from the said person to the file of the AO for fresh adjudication, therefore, the said issue would also be required to be revisited by the AO. We, thus, in terms of our aforesaid observations restore the issue as regards verifying the authenticity of the claim of the assessee of having raised a genuine loan of Rs. 12 lac from Shri. Pawan Kumar Agrawal a/w allowability of his consequential claim for deduction of the interest paid on the same to the file of the AO for fresh adjudication. The **Ground of appeal No.2** is allowed for statistical purposes in terms of our aforesaid observations.

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

Order pronounced in open court on 10th day of July, 2023.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; **दिनांक** / Dated : 10th July, 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 Pr. CIT, Bilaspur (C.G.)
5. **विभागीय प्रतिनिधि**, **आयकर अपीलीय अधिकरण**, **रायपुर बेंच**, **रायपुर** / DR, ITAT, Raipur Bench, Raipur.
6. **गार्ड फ़ाइल** / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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