

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. 322/RPR/2014

निर्धारण वर्ष / Assessment Year : 2005-06

M/s. Jalaram Trading Co.
Dayalband, Bilaspur
Chhattisgarh-495 001

PAN : AADFS7259N

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri G.S. Agrawal, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 03.08.2023

घोषणा की तारीख / Date of Pronouncement : 16.10.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee firm 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 17.12.2007 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, the Ld. CIT(A) erred in confirming the addition of Rs.28,715/- made by the A.O on account of shortage of stock. The addition sustained by the CIT(A) is not justified.

2. In the facts and circumstances of the case, Ld. CIT(A) was not justified in confirming the addition of Rs. 12,58,559/- made by the AO as unexplained cash credit invoking sec. 68, on account of capital introduced by the partner of the firm. The addition made by the AO is illegal, invalid and not justified.

3. Without prejudice to ground no.1 & 2 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.

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

2. Before proceeding any further, I may herein observe that the assessee appellant vide his letter dated 07.02.2023 had withdrawn the additional grounds of

appeal that were raised by it. Accordingly, the **additional grounds of appeal** raised by the assessee are dismissed as withdrawn.

3. Succinctly stated, the assessee firm had filed its return of income for A.Y 2005-06 on 17.01.2006, declaring a net loss of Rs. (-) 62,370/-. The return of income filed by the assessee firm was processed as such u/s. 143(1) of the Act.

4. Survey u/s.133A of the Act was conducted on the assessee firm on 31.01.2005. Survey Officials, during the course of proceedings, came across certain discrepancies, viz. (i) short/deficit cash amounting to Rs.1,40,491/-; and (ii) short/deficit amounting to Rs.28,715/-. Thereafter, the case of the assessee firm was taken up for scrutiny u/s.143(2) of the Act. As the assessee's explanation regarding the aforesaid discrepancies, i.e., deficit cash and stock, did not favor the A.O., he added the same to the returned income of the assessee. Apart from that, the A.O. came across cash deposits over the year in the cash book of the assessee firm against the names of its partners, viz. S/shri Shashikant Sachdeo and Paresh Kumar against which "demand drafts" for an equivalent amount were drawn on the date of cash deposit itself, as under:

<u>Sr. No.</u>	<u>Date</u>	<u>Name</u>	<u>Amount</u>
1.	05-04-2004	Shri Shashikant Sachdeo	Rs.1,00,150/-
2.	16-04-2004	<u>-do-</u>	Rs 1,00,150/-
3.	29-04-2004	-do-	Rs 90,135/-
4.	04-05-2004	-do-	Rs 34,404/-
5.	10-05-2004	-do-	Rs 77,099/-
6.	03-06-2004	-do-	Rs 85,665/-
7.	04-06-2004	-do-	Rs 39,371/-
8.	10-06-2004	-do-	Rs 84,126/-
9.	12-06-2004	-do-	Rs 76,066/-
10.	22-06-2004	-do-	Rs 84,126/-
11.	26-06-2004	Shri Paresh Kumar	Rs.1,10,000/-
12.	28-06-2004	Shri Shashikant Sachdeo	Rs. 73,497/-
13.	01-07-2004	-do-	Rs 16,732/-
14.	24-07-2004	-do-	Rs 42,237/-
15.	27-07-2004	-do-	Rs 85,665/-
16.	31-07-2004	-do-	Rs 70,105/-
17.	02-08-2004	-do-	Rs 22,156/-
18.	11-08-2004	-do-	Rs 88,376/-
19.	16-08-2004	-do-	Rs 40,060/-
20.	31-08-2004	-do-	Rs 48,439/-
Total cash deposit			Rs 13,68,559/-

Observing that the aforesaid transactions were not reflected in the respective partner's capital account filed along with its return of income, the A.O. called upon the assessee firm to put forth an explanation as regards the same. In reply, it was submitted by the assessee firm that both the aforementioned partners, viz. S/shri Shashikant Sachdeo and Paresh Kumar were also partners in its "sister concern", viz. M/s Ramesh Chemical Industries. The assessee firm placed on record the copy of the ledger account ("Haste a/c") of Shri Shashikant Sachdeo (supra) as was appearing in its books of accounts and in the books of its sister concern, viz. M/s. Ramesh Chemical Industries, Page 1-3 of APB. Elaborating further, it was submitted that as M/s. Ramesh Chemical Industries (supra) did not have a bank account with the State Bank of India and its supplier, viz. M/s Mamta Industries was insisting on payments vide "demand drafts" drawn on the State Bank of India, therefore, cash was brought from M/s. Ramesh Chemicals Industries (supra) and was deposited in

the books of the assessee firm, and “demand drafts” were drawn for an equivalent amount on the date of the cash deposit itself. In sum and substance, it was the claim of the assessee firm that cash deposits of Rs. 12,58,559/- in its books of accounts that were routed through its partner, viz. Shri Shashikant Sachdeo (“Haste A/c”) was the money belonging to its sister concern, viz. M/s. Ramesh Chemicals Industries, and the same was utilized for drawing “demand drafts” on State Bank of India in favor of the said partner, i.e., Shri. Sashikant Sachdeo. Thus, the assessee firm claimed that its bank account with the State Bank Of India was used by its sister concern, i.e, M/s Ramesh Chemical Industries for drawing “demand drafts”. However, the explanation furnished by the assessee did not find favor with the A. O who had observed as under:

“(b) I have considered the above submissions of the assessee and my observations in the matter are under:-

(i) At the very outset it is stated that the ledger was not found at the time of Survey operations on 31-01-2005. This fact is verifiable from the Inventory of Books and Documents drawn on the date of survey. The same was produced before the then ITO on a much later date. The signature of the ITO on the ledger copy does not testify that he has verified and satisfied about the transactions recorded therein. The ITO has not left any note of satisfaction therein. Further, it is the Assessing Officer who has to satisfy himself, during the course of assessment proceedings, regarding the genuineness of transactions appearing in the books.,

(ii) The capital account of Shri Shashikant Sachdeo, partner in the books of the assessee firm filed along with the return does not reflect the cash deposits made by him amounting to Rs.12,58,559/-. Therefore these transactions are not in the capacity of a partner in the firm.

(iii) All the deposits were more than Rs.20,000/- each and were accepted by the assessee in cash in contravention of provisions of Sec 2695S of the I.T.Act.

(iv) The purpose for which cash was allegedly deposited by Shri Shashikant Sachdeo is not at all convincing. Under the present banking system anyone

can open an account by depositing a small amount with any bank, leave alone State Bank of India, and M/S Ramesh Chemical Industries is doing business at Bilaspur for more than 30 years. It is, therefore, absolutely unbelievable from any angle that the assessee could not open an account with State Bank of India. Even otherwise one can obtain Demand Drafts from State Bank of India by depositing cash directly and there is no bar that only account holders can get Demand Drafts. No prudent businessman would opt for such cumbersome and long drawn procedure to obtain Demand Drafts, by flouting the provisions of I.T.Act, as has been done in this case.

(v) Since both the firms are separate entities, there is no legal sanctity to such transactions under I.T.Act.

(v) Assuming that such deposits were made to facilitate M/5 Ramesh Chemical Industries, the same could have been made through account payee cheque of Bank of India where the said firm maintains its account, in conformity with the provisions of Sec 269 55 of the Act., instead of by depositing in cash.

(vi) The cash book reveals that the Demand Drafts were drawn in the name of Shri Shashikant Sachdeo.”

Accordingly, the A.O. held the cash deposits of Rs.12,58,559/- as unexplained cash credit u/s.68 of the Act.

5. In so far, the cash deposit of Rs.1.10 lacs made by Shri Paresh Sachdeo (supra) in the bank account of the assessee firm on 26.06.2004 was concerned, the A.O observed that the same was sourced out of the withdrawal that was made from the assessee firm on the same day. Accordingly, no adverse inference as regards the cash deposit of Rs.1.10 lac (supra) was drawn by the A.O.

6. Thus, the A.O. on the basis of his aforesaid observations, vide his order passed u/s.143(3) of the Act dated 17.12.2007, determined the income of the assessee firm at Rs.13,68,700/-.

7. Aggrieved the assessee firm carried the matter in appeal before the CIT(Appeals). Apropos the deficit stock of Rs.28,715/- that was detected during the course of survey proceedings, it was the claim of the assessee that the said discrepancy had emanated for the reason that direct expenses were not allocated on a proportionate basis while carrying out valuation of the stock. However, the explanation of the assessee did not find favor with the CIT(Appeals), who, finding no infirmity in the valuation of the stock, upheld the addition made by the A.O.

8. As regards the addition of cash deposits of Rs.12,58,559/-, the CIT(Appeals) observed that Shri Sashikant Sachdeo, a partner of the assessee firm, on 19 occasions had during the year deposited cash aggregating to Rs.12,58,559/- in the books of account of the assessee firm, which, thereafter, was utilized for purchasing "demand drafts" of an equivalent amount on the same date against his name. It was also observed by the CIT(Appeals) that the aforesaid cash deposits were not routed through the capital account of the above-mentioned partner, viz. Shri Sashikant Sachdeo. Also, it was observed by the CIT(Appeals) that the ledger account of the assessee firm was not found at the time of survey operation on 31.01.2005.

9. Apropos the explanation of the assessee firm that it had merely allowed the use of its bank account by its sister concern, viz. M/s. Ramesh Chemicals Industries (supra) for facilitating payments as required by the latter's suppliers, the same did not find favor with the CIT(Appeals). It was observed by the CIT(Appeals) that neither the purpose for which the assessee firm had issued "demand drafts" nor the details of recipients were made available. Holding a conviction that the assessee firm had

failed to discharge the onus that was cast upon it as regards explaining the nature and source of the cash credits in its bank account, the CIT(Appeals) concurred with the treating of the same as unexplained cash credits u/s.68 of the Act by the A.O.

10. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal.

11. I have heard the Id. 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. AR to drive home his contentions.

(A). Deficit Stock : Rs.28,715/-

12. During the course of the hearing of the appeal, it was submitted by the Ld. AR that the impugned discrepancy in the stock, i.e., deficit stock of Rs. 28,715/- (on physical stock-taking), had resulted on the basis of a tentative trading account that was prepared by the assessee firm on 31.01.2005. Referring to the aforesaid discrepancy, it was submitted by the Ld. AR that the same works out at a miniscule figure of 2.9% of the total stock value of Rs.9.84 lacs. The Ld. AR further submitted that the deficit stock in the hands of the assessee firm was attributable to multiple reasons, viz. (i) quantitative details of the stock were not maintained by the assessee firm; (ii) value of the stock (as per books of account) on 31.01.2005 was arrived at on the basis of tentative trading account; and (iii) the assessee firm was trading numerous items of *karyana*. The Ld. AR submitted that as there was a meager

variance of Rs.28,715/- i.e., 2.9% of the value of the entire stock, therefore, no adverse inference much the less addition of the said amount was called for in the hands of the assessee firm.

13. After thoughtful consideration, I cannot persuade myself to concur with the claim of the Ld. AR that as the discrepancy in the stock on the date of the survey is minuscule, therefore, no adverse inference was liable to be drawn in its hand. To the said extent, I concur with the view taken by the CIT(Appeals), who had rejected the said claim of the assessee firm. But at the same time, I find substance in the claim of the Ld. AR that in the case of deficit stock, there was no justification for the A.O. to have made an addition of the entire amount in the hands of the assessee firm. I say so for the reason that now when purchases were duly accounted for in the books of the assessee firm, therefore, on a deficit stock that had surfaced at the time of survey proceedings, the addition was liable to be restricted to the extent of the profit element which the assessee would have made by carrying out sales outside its books of accounts. Accordingly, I restrict the addition in the hands of the assessee firm by applying its GP rate of 6.4% on the amount of deficit stock of Rs.28,715/-, and thus sustain the addition to the extent of Rs.1838/-. Thus, the **Ground of Appeal No.1** raised by the assessee is partly allowed in terms of the aforesaid observations.

**(B) Unexplained cash deposit (books of account of the assessee):
Rs.12,58,559/-**

14. The A.O. observed that a perusal of the records found during the course of survey proceedings revealed cash deposits aggregating to Rs.12,58,559/- made on

19 occasions during the year against the name of Shri. Sashikant Sachdeo (partner of the assessee firm), which, thereafter, were utilized for purchasing “demand drafts” for an equivalent amount on the date of the deposit itself. Explaining the nature and source of the aforesaid cash deposits, the Ld. A.R. submitted that the same was the money belonging to its sister concern, viz. M/s. Ramesh Chemicals Industries (supra), which was utilized by the latter for drawing “demand drafts” in favor of its supplier, viz. M/s Mamta Industries, Bilaspur, by using the bank account of the assessee firm with State Bank of India. Elaborating further, it was averred by the Ld. A.R that M/s Mamta Industries, Bilaspur, i.e., supplier of *agarbattis* to M/s. Ramesh Chemicals Industries (supra) had insisted on the payments by way of “demand drafts” drawn on the State Bank of India. The Ld. AR submitted that as M/s. Ramesh Chemicals Industries (supra) did not have a bank account with the State Bank of India, therefore, the assessee firm had come to its rescue by allowing it to use its bank account with the State Bank of India for making payments in the desired manner to the aforementioned supplier.

15. Explaining the *modus operandi* that the assessee firm had adopted to accommodate its sister concern, viz. M/s Ramesh Chemical Industries, the Ld. AR submitted that Shri. Sashikant Sachdeo (as a partner of M/s Ramesh Chemical Industries) would withdraw cash from M/s Ramesh Chemical Industries (supra) and his “Haste A/c” (i.e. current a/c) with M/s. Ramesh Chemicals Industries (supra) would stand debited by the said amount. Thereafter, Shri Sashikant Sachdeo (as a partner of the assessee firm) would deposit the aforesaid amount of cash with the

assessee firm and his "Haste A/c" (i.e. current a/c) with the assessee firm would be credited by the said amount. On the same date of cash deposit, a "demand draft" would be drawn on the bank account of the assessee firm with State Bank of India favoring M/s. Mamta Industries (supra), i.e., the supplier of M/s Ramesh Chemical Industries (supra) and the "Haste A/c" of Shri Sashikant Sachdeo (with the assessee firm) would be debited by the said amount (including commission charges for the drawing of "demand drafts"). On the other hand, on making the payment to M/s Mamta Industries (supplier), the "Haste A/c" of Shri. Sashikant Sachdeo (as a partner with M/s Ramesh Chemical Industries) would be credited with the amount of the "demand draft" drawn in favor of M/s Mamta Industries (supra) along with the amount of bank commission charges. Explaining the reason as to why the aforesaid transactions were not appearing in the "capital account" of Shri Sashikant Sachdeo (as a partner of the assessee firm), the Ld. A.R submitted that the same was for the reason that there were two accounts of Shri Sashikant Sachdeo (supra) i.e., "regular A/c" (i.e. "Capital a/c") and "Haste A/c". Carrying his contention further, it was averred by the Ld. AR that the aforesaid transactions carried out by the assessee firm to accommodate its sister concern, viz. M/s. Ramesh Chemical Industries (supra) for making payments to its supplier were routed through the "Haste A/c." of Shri Sashikant Sachdeo (as a partner with the assessee firm). It was further submitted by him that as the entire amount of cash deposits in Shri. Sashikant Sachdeo (Haste A/c) with the assessee firm, which were sourced out of withdrawals made by him from his "Haste account" with M/s. Ramesh Chemical Industries, were

on the same date nullified by a “debit” of an equivalent amount in lieu of the “demand draft” that would be drawn on the bank account of the assessee firm with State Bank of India, therefore, no balance remained at the end of the year.

16. In order to fortify his aforesaid claim, the Ld. AR had taken me through the copy of “Haste A/c.” of Shri Sachikant Sachdeo (supra) in the books of account of M/s. Ramesh Chemicals Industries, Page 1 & 2 of APB. On a perusal of the aforesaid “Haste A/c” of Shri Sashikant Sachdeo with M/s. Ramesh Chemical Industries, it transpires that the said account on 19 occasions was debited for cash withdrawals, including commission charges (for the drawing of demand drafts) during the year under consideration. Corresponding to the cash withdrawals made out of the aforesaid “Haste A/c” of Shri Sashikant Sachdeo (as a partner with M/s. Ramesh Chemical Industries), I find that there are cash deposits of equivalent amounts on 19 occasions during the year in the said person’s “Haste A/c” with the assessee firm, i.e., M/s. Jalaram Trading Company, Page 3 of APB. Also, I find that the cash deposits in Shri Sashikant Sachdeo (Haste A/c) with the assessee firm had been utilized to the last of *paisa* for the drawing of “demand drafts” of amounts equivalent to the amount of cash deposit, on the date of deposit itself. At this stage, I may herein observe that the entire amount of cash deposits on 19 occasions had been fully utilized/debited for the drawing of “demand drafts” and payment of commission charges (for the drawing of demand drafts); and thereafter, the balance in “Haste A/c” of Shri Sashikant Sachdeo with the assessee firm as on 31.03.2004 was reflected at Nil.

17. On the basis of the aforesaid facts, I find some substance in the claim of the Ld. AR that the cash deposits in Shri Sashikant Sachdeo (Haste A/c) with the assessee firm during the year under consideration were sourced out of cash withdrawals that were made from Shri Sashikant Sachdeo (Haste A/c) with M/s. Ramesh Chemicals Industries. At the same time, I find that the aforesaid explanation as regards the nature and source of the cash deposits of Rs. 12,58,559/- (supra) in the books of account of the assessee firm was summarily rejected by the lower authorities and, thus, was never verified by them. Considering the fact that the "cash book" of M/s Ramesh Chemical Industries (supra), Pages 4 -21 of APB (signed by the Income-tax Inspector at the time of survey proceedings on 31.01.2005, i.e., at Page 4 & Page 21) was available before the department, the claim of the assessee firm that the cash deposits in question in its books of accounts were in turn sourced out of the cash withdrawals from Shri. Sashikant Sachdeo (Haste A/c) could not have been summarily brushed aside by the lower authorities by terming the same as a mere eye wash. I am of the considered view that the matter requires to be restored to the file of the A.O. The A.O in the course of the set-aside proceedings, is directed to verify the claim of the assessee firm that the cash deposits of Rs. 12,58,559/- (supra) shown against the name of Shri. Sashikant Sachdeo (supra) in its books of account were sourced out of the cash withdrawals from Shri. Sashikant Sachdeo (Haste A/c) with M/s Ramesh Chemical Industries (supra). In case the claim of the assessee firm is found to be in order, then, the addition of Rs. 12,58,559/- (supra) made by the A.O u/s 68 of the Act, which, thereafter, had been sustained by the

CIT(Appeals) shall stand vacated. 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 firm, which shall remain at liberty to substantiate its claim on the basis of fresh documentary evidence. Thus, **Ground of Appeal No.2** raised by the assessee firm is allowed for statistical purposes in terms of the aforesaid observations.

18. As the Ld. AR had not advanced any argument as regards the **Ground of Appeal No.3**, therefore the same is dismissed as not pressed.

19. **Ground of appeal No.4**, being general in nature, is dismissed as not pressed.

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

Order pronounced in open court on 16th day of October, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 16th October, 2023.

**#SB

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, 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.