

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. 240/RPR/2022  
निर्धारण वर्ष / Assessment Year : 2017-18

Manohar Mal & Co.  
Halwai Lane, Main Road, Sadar Bazar,  
Raipur (C.G.)  
PAN : AADFM8711B

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Circle-4(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Bikram Jain, CA  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 07.09.2023

घोषणा की तारीख / Date of Pronouncement : 17.10.2023

**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), National Faceless Appeal Center (NFAC), Delhi, dated 03.10.2022, 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 30.12.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in sustaining the order of the A.O. wherein the A.O. has erred in making addition of Rs. 16,00,000/- on account of sale u/s. 68 of the I.T.Act, 1961 by treating it as bogus. The addition made by the A.O. and sustained by the CIT-A is unjustified, unwarranted and uncalled for.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in sustaining the order of the A.O. wherein the A.O. has erred in invoking provisions of section 115BBE of Income Tax Act, 1961 on account of sales of Rs. 16,00,000/- which is duly recorded in the book of the assessee. The invocation of provisions of section 115BBE by A.O. on trading transactions and sustained by the CIT-A is unjustified, unwarranted and uncalled for.

3. The appellant reserves the right to add, amend or alter any grounds of appeal at any time of hearing.”

2. Succinctly stated, the assessee firm which is engaged in the trading of gold bullions and silver ornaments, had e-filed its return of income for A.Y. 2017-18 on 04.11.2017 declaring an income of Rs.59,62,530/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that survey proceedings were conducted on the assessee on 25.03.2017, wherein he had disclosed a sum of Rs. 22,40,208/- towards excess stock that was unearthed from its business premises. Further, on 23.12.2018, the A.O. was in receipt of information from ITO-2(2), Raipur. The A.O. was informed that during the course of the assessment proceedings of Shri Narayan Sahu, proprietor of M/s. Ajay Food Products, Raipur, for A.Y.2017-18 cash deposits of Rs.16 lacs made in two tranches of Rs.8 lacs each had surfaced. It was informed to the A.O. that the aforesaid amount of Rs. 16 lac (supra) was transferred to the assessee firm, viz. Manohar Mal & Co. As per the information shared by the ITO-2((2), Raipur, Shri. Narayan Sahu (supra), on being queried about the source of cash deposits and the purpose of transfer of the sum to the assessee firm, had in his statement recorded u/s. 131 of the Act on 20.12.2010 stated that the same was an accommodation entry wherein money belonging to the assessee firm was

laundered by him in lieu of a commission of Rs.30,000/-. It was admitted by Shri Narayan Sahu (supra) that the aforesaid payment to the assessee firm was not made towards the purchase of jewelry or gold coins from the said concern.

4. Considering the aforesaid information he received, the A.O. called upon the assessee to explain why the amount of Rs. 16 lac (supra) may not be treated as unexplained cash credit u/s.68 of the Act. In reply, it was submitted by the assessee that the payment was received from Shri Narayan Sahu (supra), Proprietor of M/s. Ajay Food Products, Raipur, in the course of its regular business activities, i.e., towards the sale of bullion to the said person. In order to fortify his aforesaid claim, the assessee firm had drawn support from the fact that the sale transactions were duly reported in its VAT return and had been accepted by the Sales Tax Department. Also, the copy of the ledger account of M/s. Ajay Food Products, as appearing in the books of account of the assessee firm, were filed with the A.O. It was, thus, the claim of the assessee firm that the statement of Shri Narayan Sahu (supra) was totally incorrect and without any basis. Apart from that, the assessee firm requested the A.O. to provide it an opportunity to cross-examine Shri Narayan Sahu (supra).

5. The A.O., to facilitate the cross-examining of Shri Narayan Sahu, called upon the assessee firm vide letter dated 27.12.2019 to put up an appearance at his office at 11 a.m. As the assessee did not avail the opportunity that was afforded by the A.O., the latter held a conviction that the assessee had forfeited his right to cross-examine. Also, it was observed by the A.O. that the unsubstantiated claim of the assessee that the sale transaction in question was genuine could not be summarily accepted as it was not supported by any bill/voucher in respect of the said transaction. Considering the fact that as per the information shared by the ITO-2(2), Raipur, Shri Narayan Sahu (supra) was a non-filer and was admittedly rendering his services as an entry provider who had laundered ill-gotten money of certain parties in lieu of commission income, the A.O was of the view that the amount of Rs.16 lacs received by the assessee from the said person was its unexplained cash credit u/s. 68 of the Act. Accordingly, the A.O. vide his order passed u/s.143(3) dated 30.12.2019 after, inter-alia, making an addition of Rs.16 lacs assessed its income at Rs.75,62,530/-.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). After deliberating on the contentions advanced by the assessee, the CIT(Appeals) upheld the addition of Rs.16 lacs made by the A.O u/s.68 of the Act. The CIT(Appeals), while upholding the view taken by

the A.O., had observed that the assessee, despite having been afforded sufficient opportunity to cross-examine Shri Narayan Sahu (supra), had failed to avail the same. Accordingly, the CIT(Appeals) finding no infirmity in the view taken by the A.O who had held the amount of Rs.16 lacs received by the assessee from Shri Narayan Sahu as unexplained cash credit u/s.68 of the Act, upheld the same. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as follows:

“6.2 The appellant in its ground of appeal no 2 & 3 has assailed the AO making addition of Rs.1600000/- u/s 68 of the Act and invoking section 115BBE of the Act on account of sales which is duly recorded in the book of the assessee. The appellant further submitted that it was a trading transactions and AO is unjustified in making addition u/s 68 of the Act by treating it as bogus. The AO in the assessment order noted that on the basis of information received from ITO Raipur that one Sh. Narayan Sahu had taken commission and routed around 1600000/- to the account of Manohar Mal & Co. The appellant in its submission stated that the said money was on account of bullion sale and it had reported the said transaction in its books of accounts. The AO in the assessment order provided the opportunity to cross examine Sh. Narayan Sahu, which was not availed by the appellant. Therefore, the AO added Rs.1600000/- u/s 68 being unexplained cash credit and taxed u/s.115BBE of the Act. In the course of the appeal proceedings the appellant relied on various case laws on the authenticity of the statement recorded u/s 132 etc. However, the appellant has not come up with an explanation why it had not taken the opportunity to cross examine Sh. Narayan Sahu the Proprietor of M/s Ajey Foods Products which was provided to the appellant by the AO. In view of the above facts the explanation and case laws relied by the appellant do not provide support to its case. The AO addition made by the AO of Rs.1600000/- u/s 68 of the Act r.w.s is confirmed. The ground of appeal is dismissed.”

7. The assessee firm, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before us.

8. We 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. A.R to drive home his contentions.

9. At the threshold of the hearing of the appeal, Shri Bikram Jain, Ld. Authorized Representative (for short, "AR" firm) for the assessee submitted that as the assessee was not afforded sufficient opportunity to cross-examine Shri Narayan Sahu (supra), therefore, it was for the said reason that it could not dislodge the statement of the said person. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the amount of Rs.16 lacs was received by the assessee against the sale of 500 gms gold bullion to M/s. Ajay Food Products. He submitted that the aforesaid amount of sale consideration was received through banking channels vide two RTGS of Rs.8 lacs each. Rebutting the observation of the A.O. that the assessee had failed to substantiate his aforesaid sale transaction by placing on record the supporting bills/vouchers, the Ld. AR took us through the copy of the sale bill dated 24.11.2016 that was issued to M/s. Ajay Food Products, Page 18 of APB. Also, the Ld. AR had drawn our attention to the copy of the account of M/s. Ajay Food Products (supra) as appearing in the books of account of the assessee firm. Referring to the aforesaid documents, the Ld. A.R submitted

that now, when the sale transaction under consideration was duly accounted in the books of account of the assessee firm, supported by the sale bill, and accepted by the Sales Tax Department, therefore, it was incorrect on the part of the A.O to have whimsically concluded that the same had not been substantiated by the assessee on the basis of any supporting documentary evidence.

10. Apropos the failure on the part of the assessee firm to cross-examine the aforesaid person, viz. Shri Narayan Sahu, proprietor of M/s. Ajay Food Products, Raipur, the Ld. AR submitted that the same had occasioned due to insufficient time that was allowed by the A.O. Elaborating on his aforesaid contention, the Ld. AR submitted that the A.O., for the first time vide Show Cause Notice (SCN) dated 25.12.2019, had queried about the transaction undertaken by M/s. Shri Ajay Food Products, Page 16 of APB. The Ld. AR submitted that though the assessee firm vide its letter dated 26.12.2019 had filed with the A.O a copy of the sales invoice and also brought to his notice the fact that the sale transaction, which was reported in its VAT return had been accepted by the Sales Tax Department, but the A.O had on the basis of his incorrect observations concluded that the assessee could not substantiate his aforesaid claim on the basis of supporting documentary evidence. The Ld. A.R had drawn our attention to the aforesaid letter dated 26.12.2019 (supra),

which revealed that the assessee firm had along with its reply, filed a copy of the sale invoice with the A.O, Page 17 of APB. The Ld. A.R submitted that the A.O had, at the fag end of the assessment proceedings, issued a notice on 27.12.2019 (at 8.10 pm), wherein he stated that as the assessee despite having been telephonically informed to cross-examine Shri Narayan Sahu (supra) had failed to attend, therefore, another opportunity was being given to put up an appearance till 11 am on 28.12.2019 and cross-examine the said person. The Ld. A.R has drawn our attention to the aforesaid letter dated 27.12.2019 of the A.O, Page 20 of APB. The Ld. AR further submitted that as the assessee was not provided with a copy of the statement of Shri Narayan Sahu (supra), therefore, it had, as of 28.12.2019, uploaded a request with the A.O to make available a copy of the said statement so that the said person could be cross-examined, Page 21 of APB. The Ld. A.R submitted that as the statement of Shri Narayan Sahu (supra) was not made available to the assessee till the completion of the assessment proceedings, therefore, the assessee, for this reason, remained divested of his statutory right to cross-examine the said person in absence of the latter's statement. Carrying his contention further, it was submitted by the Ld. A.R that as the A.O had neither disproved the correctness of the documentary evidence that the assesee firm filed, viz. sale bill, VAT returns, copy of ledger account of the M/s. Ajay Food Products, etc., nor provided to him a copy of the statement of Shri Narayan

Sahu (supra) for facilitating a proper cross-examination of the said person; therefore, the addition of Rs. 16 lac made by him could not be sustained and was liable to be vacated.

11. Per contra, the Ld. Departmental Representative (for short, "DR") relied on the orders of the lower authorities.

12. Having thoughtfully considered the aforesaid issue, we find substance in the claim of the Ld. A.R that the A.O had not only wrongly observed that the copy of the sale bill supporting the authenticity of the aforesaid transaction was not filed before him; but also, the copy of the statement of Shri Narayan Sahu (supra) had not been made available to the assessee firm as a result whereof, the latter had remained divested from an opportunity to properly cross-examine the said person. As observed by us hereinabove, a perusal of the letter dated 26.12.2019, Page 17 of APB, clearly reveals that the assessee firm had filed with the A.O copy of the sale invoice to support the authenticity of the sale transaction. Also, the copy of sale invoice No. MMB/147 dated 24.11.2016 issued by the assessee firm to M/s. Ajay Food Products is placed on record, Page 18 of APB. Apart from that, as stated by the Ld. A.R., a copy of the ledger account of M/s. Ajay Food Products (supra) in the books of account of the assessee firm, wherein the aforesaid sale transactions were found duly recorded, was filed by the assessee in the course of the

assessment proceedings, Page 19 of APB. Considering the aforesaid facts, we are of the considered view that the observation of the A.O. that the assessee firm had failed to substantiate the authenticity of its aforesaid sale transactions in question is found to be perverse.

13. Apart from that, we find that it is a matter of fact borne from the record that despite a specific request by the assessee firm for a copy of the statement of Shri Narayan Sahu (supra), on the basis of which adverse inferences were sought to be drawn by the A.O, the same was not made available to the assessee. Our aforesaid observation is supported by the request uploaded by the assessee with the A.O. on 28.12.019, wherein he had categorically requested for a copy of the statement of Shri Narayan Sahu (supra), Page 21 of APB.

14. Backed by the aforesaid facts, wherein the A.O had not only proceeded on the basis of his perverse observations that the assessee firm had failed to substantiate the genuineness of the sale transaction on the basis of supporting documentary evidence but also considering the fact that the A.O provided no fair opportunity to cross-examine Shri Narayan Sahu (supra), we are of the view that the matter would be required to be revisited by the A.O. Needless to say, the A.O shall in the course of the set-aside proceedings facilitate a cross-examination of Shri Narayan Sahu (supra) after affording a

reasonable opportunity of being heard to the assessee firm which shall remain at liberty to substantiate the authenticity of its aforesaid sale transaction on the basis of fresh documentary evidence. Thus, the **Grounds of appeal Nos. 1 & 2** raised by the assessee are disposed off in terms of our aforesaid observations.

15. As we have restored the matter to the file of the A.O. for fresh adjudication, therefore, we refrain from adverting to and dealing with the contentions raised by the Ld. A.R. as regards the merits of the case.

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

Order pronounced in open court on 17<sup>th</sup> day of October, 2023.

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

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

रायपुर/ RAIPUR ; दिनांक / Dated : 17<sup>th</sup> October, 2023

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

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