

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोडपिया, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No: ITA 55/RPR/2020
(Assessment Years:2014-15)

Asstt. Commissioner of Income Tax, Bhilai	V s	Shri Sanjay Jain, C/o M/s Sidharth Industries, Plot No. 38, Industrial Estate, Bhilai, C.G.
PAN: AET PJ1859D		
(अपीलार्थी/Appellant)	· ·	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Ravi Agarwal, CA
राजस्व की ओर से /Revenue by	:	Smt. Ila M. Parmar, CIT-DR
सुनवाई की तारीख/ Date of Hearing	:	23-08-2023
घोषणा की तारीख/ Date of Pronouncement	:	09-11-2023

आदेश / O R D E R

Per Arun Khodpia, AM:

The captioned appeal filed by the revenue, is instituted against the order of Ld. CIT(A)-II, Raipur (C.G.) u/s 250 of the I.T. Act, 1961 (herein after referred to as "Act") dated 18/12/2019 for the AY 2014-15, which arose out of the order of the Ld. AO passed u/s 143(3) dated 09/12/2016.

2. The grounds of appeal raised by the revenue are as under:

1. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 16,94,296/- made by the AO on account of non-deduction of tax at source and hence, applicability of provision u/s 40(a)(ia) of the ACT?"

2. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 1,14,50,000/- made by the AO on account of unexplained cash credit u/s 68 of the IT Act for failure to substantiate the nature and source of credits?"
3. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the disallowance of Rs.33,16,241/- made by the AO on account of bogus interest expenses claimed on old creditors?"
4. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 11,91,000/- made by the AO on account of unexplained cash credits u/s 68 of the IT act for the failure to substantiate the nature and source of credits?"
5. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the disallowance of Rs. 39,08,200/- made by the AO on account of fictitious loss by establishing exercise is only a paper-made transaction without any actual delivery and receipt of goods and funds?"
6. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the disallowance of Rs.7,77,668/- made by the AO on account of undervaluation of stock?"
7. "The order of the Ld. CIT(A) is erroneous both in law and on facts".

8. "Any other grounds that may be adduced at the time of hearing".

3. The brief facts of the case, culled out from the records are that the return of income for the relevant AY was filed by the assessee on 10/10/2014, declaring total income of Rs.90,06,840/-. The case of the assessee was selected for scrutiny under 'CASS'. Statutory notices a/w query letters were issued, in response AR of the assessee had attended the hearings and filed return submissions. After discussion and deliberation between the assessee and the Ld. AO, certain additions which were proposed, but the response of the assessee was not considered as satisfactory by the Ld. AO and, therefore, such additions/disallowances were imposed and added to the returned income of the assessee for Rs. 2,42,25,570/-, in aggregate the total assessed income of the assessee after the additions worked out at Rs. 3,32,32,410/-. Aggrieved with such additions/disallowances by the Ld. AO, assessee preferred the appeal before in Ld. CIT(A), wherein, the contentions of assessee were found partly convincing and, therefore, the grounds of appeal were partly allowed by the Ld. CIT(A). To challenge the decision of the Ld. CIT(A), on account of deleting the additions made by the AO, now the department has filed the present appeal for our consideration.

4. Ground wise adjudication of the present appeal is as under:

Ground 1: Deleting the addition of Rs. 16,94,296/- on account of non-deduction of tax at source u/s 40(a)(ia) of Act.

5. At the outset, Ld. CIT DR vehemently supported the orders of revenue authorities. It is submitted that since the payment were made to the parties on account of interest, therefore, Ld. AO has rightly invoked the provisions of section 40(a)(ia), the same, thus, is merits to be sustained.

5.1 Apropos, non-deduction of tax at source u/s 40(a)(ia), in support of the order of the Ld. CIT(A), it was the submission of Ld. AR that the addition has been made by disallowing the expenditure under the head 'Bank Commission and Charges' for the reason that the appellant did not deducted TDS on these payments. It was the submission of Ld. AR that the appellant has purchased goods from three parties against bills of exchange, those bills of exchange were discounted by the suppliers of goods, as per the understanding between the assessee and the suppliers, the discounting charges paid to the bank by supplier was to be reimbursed by the buyer i.e., assessee. It is the reason for which these expenses are debited to Bank Commission and Charges Account. Ld. AR before us further submitted that the interest on the delayed payment of purchase partakes the nature of trade liability and, therefore, there was no obligation on the assessee to make any TDS on such payments. Ld. AR, further on the query of the bench in the earlier hearings have submitted

certain documents to substantiate the nature of payments made under the head Bank Commission and Charges. Ld. AR drew our attention to the said documents which includes ledger account of Bank Commission Charges, ledger account of the suppliers of goods, copies of inland bills, transactions advise pertaining to the said suppliers, copy of the credit note etc. In support of the contentions raised by the Ld. AR, following judgments have been furnished before us:

1. **Income Tax officer vs Parag Mansukhlal Shah reported in (2012) 143 TTJ 0606**, in the said decision coordinate bench of the ITAT at Ahmadabad has held that the disallowance u/s 40(a)(ia) on the payment of interest for delayed payment of purchase price to principal, a payment having no nexus with a deposit, loan or borrowing is out of the ambit of the definition of interest as per section 2(28A). It is further held that a payment is compensatory in nature and not related to any deposit/ debt/ loan, then such a payment is out of the ambit of provisions of section 194A. It is held that as the true nature of payment by the assessee is nothing but added value of cost of purchase, therefore, no TDS was required to be made, so the disallowance u/s 40(a)(ia) was not sustainable.
2. **CIT VS. VIDYUT CORPORATION (2010) 324 ITR 0221**, Hon'ble Mumbai High Court in this case has held that bill discounting charges reimbursed by the purchaser to the assessee being a

component of interest towards delayed payment of price of the goods sold, form a component of sale price and it is paid towards the delay which has occurred in the payment of price, hence, assessee is eligible for deduction u/s 80IB in respect of bill discounting charges.

5.2 Ld. AR also submitted before us the certificate obtained from the suppliers of goods to whom such bill discounting charges which includes interest were paid and copy of UCO Bank's guideline for letter of credit bill discounting. With such submissions supported with documentary evidences that the bill discounting charges includes interest on account of delay in the part of assessee which in turn has allowed the assessee extra time and utility of the credit facilities which were provided by the bankers of the supplier for payment of the purchases made, it was the contention of the Ld. AR that since the payment towards bill discounting charges was on account of purchases of the goods by the assessee, therefore, the provisions of TDS cannot be triggered on such transactions.

5.3 We have considered the rival contentions, perused the material available on record and case laws submitted for our consideration. On Perusal of the submissions by the Ld. AR, pertaining to the disallowance u/s 40(a)(ia), after giving a thoughtful consideration to overall facts and circumstances, we observed that the payment of bills discounting charges made to the suppliers of goods were on account of delayed payment by the assessee towards purchase of goods, on which the bankers of the

suppliers have charged interest which in turn have been recovered from the assessee in the form of reimbursement of such charges. It is indeed a fact borne from the record that interest charges are according to the policy of the respective banker and the same were imposed in terms of their guidelines. It is also an undisputed fact that the bill discounting charges which includes interest also, but such interest is not in the nature of any deposit/ loan / debt or in any form which became the income of the recipient, accordingly, provisions of TDS u/s 194A are not applicable. It is also an element which is substantiated with supporting evidence that the payment of interest included in the bill discounting charges pertains to purchases of goods by the assessee, therefore, provisions of TDS cannot be applied. In view of overall facts and circumstances of the present case respectfully following the judgments in the case of Parag Mansukhlal shah (supra) and Vidyut Corporation (supra), we are of the considered opinion that the impugned transactions shown under the head 'Bank Commission and Charges', which are in the nature of reimbursement of the charges paid by the suppliers on behalf of the assessee, which in no way can form part of the income of the recipient of such payments, therefore, provisions of Section 194A to deduct TDS cannot be applied on such payments, consequently, disallowance by invoking the provisions of section 40(a)(ia) was bad in law, thus, the same is directed to be deleted. Ground No. 1 of the revenue is, thus, dismissed in terms of aforesaid observations.

Ground NO. 2: disallowance u/s 68 for Rs. 1,14,50,000/-

6. Ld. CIT DR have briefly explained the facts of the issue from the assessment order, wherein the assessee was questioned by the Ld. AO regarding the loans taken by the assessee from five parties during the year. The relevant extract from the observations of Ld. AO is as under:

The assessee was required to explain the nature and source of credits made in the books of account as under:

SL	NAME	AMOUNT
1.	Shri Sunn Jain, Bhilai	9,50,000/-
2.	M s. Akash Kumar Golchha & Sons HUF, Rajnandgaon	15,00,000/-
3.	Shri Govardhan Chandak, Rajnandgaon	20,00,000/-
4.	Shri Kailash Chandra Sharma	15,00,000/-
5.	M s. Metal Ore, Mumbai	55,00,000/-
	TOTAL	1,14,50,000/-

In reply though the assessee contended to have filed confirmations, copies of ITR, Computation of Income, Bank Passbook, etc. to substantiate identity and creditworthiness of the creditors and genuineness of the transactions, no such compliance was made in most of the cases. In the course of assessment proceedings, it was contended that the creditors are Income-tax assessee, and the money was received through banking channels. It is settled law that wherever there is credit in the books of account, the primary burden is cast on the assessee to establish identity and creditworthiness of the creditors and genuineness of the transactions. It needs to be conclusively proved by the assessee. In this case the contention that the creditors are assessee, and the money was received through banking channel is not sufficient to establish genuineness of the transactions and creditworthiness of the lenders. It is rampant practice now a days that in order to plough back one's own money, several tactics like depositing of own money in the accounts of men of low means, arrangement of investment by shell companies, etc are applied. In this case the assessee did not give particulars of sources of income, possible savings, whether such income justify such savings, immediate source of deposit, etc. Thus, the assessee has failed to substantiate the nature

and source of credits. It is a ritual to file confirmation in case of lenders, but assessee failed to file even confirmations from above persons except Shri. Sunny Jain. Therefore, the above amount of Rs. 1,14,50,000/- had to be treated as unexplained cash credits u/s 68 of the Act and accordingly added to the total income. Penalty proceedings u/s. 271(1)(c) of the Act are separately initiated.

6.1 Ld. CIT DR further submitted that Ld. CIT(A) has not appreciated facts of the issues properly. Ld. CIT(A) has observed that the AO has issued notices u/s 133(6) to the loan creditors on 08/12/2016, but without waiting for their response has completed the assessment on 09/12/2016. All the necessary information has required by AO vide notice u/s 133(6) and address of creditors were filed on 13/12/2016. However, the assessment order was already passed on 09/12/2016. A remand report was called from AO, wherein, it was the comment of AO that the assessee has furnished the copy of confirmation account of the lenders, copies of ITR's and Band Accounts, however, copies of balance sheets in response of the said lenders were not filed. Ld. CIT DR further submitted that the ground of the appeal of the assessee qua the addition u/s 68 on account of receipts of loan was deleted by the Ld. CIT(A) only on the basis that the assessee was precluded by not affording with proper time to produce the details, Ld. AO has failed in disproving the genuineness of the creditors and, therefore, in absence of any adverse fact against the assessee that the assessee was in practice to plough back his own money by several tactics like depositing the money in accounts of man of low means, arrangements of investments by shell companies etc., the general

comments recorded by the AO, cannot be the foundation for disallowance and accordingly the disallowance was vacated. It is the submission of Ld. CIT DR that the first appellate authority i.e., the CIT(A) is having jurisdiction and powers Co-terminus with the Ld. AO, who also is duty bound and has powers to conduct enquiries which the AO, was failed in performing such duties. In the present case in absence of balance sheet and financials of the loan creditors how the same were considered as genuine is missing in the observations of Ld. CIT(A). It is therefore the prayer of the Ld. CIT DR that the addition made by Ld. AO which are arbitrarily deleted with illogical conclusions, shall be sustained and the unjustified order of Ld CIT(A) is liable to be set aside.

6.2 In response, Ld. AR of the assessee submitted that the appellant has furnished confirmations, ITR and bank statements of all the parties, the allegation of the Ld. AO that the assessee did not file even confirmations except in case of Shri Sunny Jain is totally baseless. Ld. AO has issued notice u/s 133(6) to loan creditors on 08/12/2016 and passed the assessment order on 09/12/2016 without waiting for reply of the enquiries. It is the submission of Ld. AR that all the information pertaining to source of loans have been furnished before the revenue authorities. Ld. AR placed his reliance on the judgment of the Hon'ble jurisdictional High Court in the case of Pawan K. Agarwal, vide Tax case No. 24 of 2011, wherein it has been held that "*First Appellate Authority was justified, also on the basis of the judicial precedents referred by it, in entering the finding*

that the Assessee had discharged his primary onus u/s 68 of the Act. That having been done, the First Appellate Authority was fully justified in taking the view that it was open to the department to take recourse of Section 131 or Section 133(6) of the Act if they were to further proceed. That not having done so, the First Appellate Authority was within its jurisdiction to conclude on facts and law, In favour of the Assessee.” Ld. AR further argued that since the primary onus cast upon the assessee was duly discharge which the Ld. AO have not taken into cognizance, but has allegedly mentioned in the assessment order that though the assessee contended to have filed confirmations, copies of ITR, computation of income, bank passbook etc. to substantiate identity and creditworthiness of the creditors and genuineness of the transactions, no such compliance was made in most of the cases. Ld. CIT(A) has rightly appreciated the facts of the issue and accordingly has deleted the addition by rejecting the decision of the Ld. AO.

6.3 We have considered the rival submissions, perused the material available on record and considered the case law placed before us. In the present case admittedly, the assessee has received unsecured loans to the extent of Rs. 1,14,50,000/- from five parties. According to the facts borne from the record, confirmations, ITR computation, bank passbooks etc. of the loan creditors have been furnished before the AO on 02/12/2016. It is also discernible from the records that notices u/s 133(6) were issued to the loan creditors on 08/12/2016 and the assessment

order was passed on 09/12/2016. Apparently, reasonable time to respond was not provided to the loan creditors. Ld. CIT(A) has observed all the actions of the Ld. AO, which were not according to law. On perusal of order of Ld. CIT(A), it is observed that, from the comments offered by the Ld. AO in his remand record, instead of examining the information available in the form of submissions of the assessee and the information received against the notices u/s 133(6), Ld. CIT(A) also ignored the observation of the assessing officer that balance sheet by the respective lenders were not submitted, which is a crucial document to decide the creditworthiness of the loan creditors, herein it would be pertinent to mention that the financials and balance sheet of the said loan creditors were not furnished even before us. The decision of Ld. CIT(A) was based on findings in the assessment order, thereby, since no adverse fact were found or brought on record by the Ld. AO, therefore, the addition made on the basis of general comments was held as liable to be reversed and accordingly the addition was deleted. In the present case since the basic requirements as mandated u/s 68 to establish identity, creditworthiness of the creditors and genuineness of transactions has been partly satisfied by the assessee. In absence of financial statements including balance sheet of the loan creditors, even without recording any observation pertaining to examination of the documents on which no satisfaction pertaining to the identity, creditworthiness of the creditors and genuineness of transaction was offered by the AO in the remand report, relevant portion of which is reproduced in the order of Ld. CIT(A). Examination of all such documents,

based on which the preconditions for satisfaction of provisions of sec. 68 were again escaped during the appellate proceedings as apparent from the order of Ld. CIT (A), wherein no observation pertaining to satisfactions of such conditions has been recorded. Assessee's reliance on the order of Hon'ble jurisdictional High Court in the case of Pawan K. Agarwal (supra) is distinguishable on the fact that in the said case the assessee has discharged the primary onus that lay on it in terms of section 68 of the Act, which in the present case is only partly complied with. In backdrop of aforesaid observations, since the information available before the Ld. CIT(A) were not looked into so as to examine the identity, creditworthiness of the creditors and genuineness of transactions in terms of provisions of sections 68, we find it appropriate to remit the issue back to the files of Ld. CIT(A) to re-adjudicate the issue afresh. Assessee shall be provided with adequate opportunity of being heard. In the result ground no. 2 of the revenue is partly allowed for statistical purposes.

7. **Ground NO. 3: Addition on account of interest paid on the unsecured loans of the assessee for Rs. 33,16,241/-**

Since, ground no., 2 of the present appeal pertaining to unsecured loan is restored back to the file of Ld. CIT(A) for fresh adjudication, the interest on such loan, whether the same is to be treated as bogus or not is consequential to the decision on the issue of standing of unsecured loan within the provision of section 68. We thus, are of the opinion that ground no. 3 of the revenue should also be re-adjudicated afresh a/w the issue

regarding additions u/s 68, accordingly the same is directed to restore back to the files of Ld. CIT(A). In the result ground no. 3 of the appeal is partly allowed for statistical purposes.

8. **Ground NO. 4: Pertaining to addition u/s 68 of the act for Rs. 11,91,000/-** regarding credit entries in the capital account of the assessee during the year, it is the submission of Ld. CIT DR that, when the AO has questioned to explain such credits, the assessee has submitted that assessee did not file personal capital account, balance sheet or any personal bank account. Also, regarding a credit of Rs. 8,91,000/- it was the explanation of the assessee that the same was received on account of sale of plot but the same could not be substantiated with the corroborative evidence. Before Ld. CIT(A) assessee has submitted proprietors' capital account also submitted copy of the registered Sale Deed dated 13/02/2014 showing receipt of Rs. 8,91,000/-. Since, such details were not made available to the Ld. AO, therefore, he was left with no option but to make the addition. Observations of the Ld. AO pertaining to these additions is as under:

It is found from verification of the assessee's Capital account found that an amount of Rs.3,00,000/- was credited on 20/06/2013 and Rs.8,91,000/- was credited on 17/02/2014. The assessee was asked to explain the nature and source of such credits, but no explanation was furnished. The assessee did not file personal capital account, balance sheet or any personal bank account other than that shown in the Tax Audit Report to show the drawings for reasons best known to him. Similarly, the credit of Rs.8,91,000/- allegedly received from sale of plot also remained to be explained

and established. After considering assessee's failure to satisfactorily explain these credits, these sums are treated as unexplained cash credits and aggregate amount of Rs.11,91,000/- is added to the total income u/s.68 of the Act. Penalty proceedings u/s.271(1)(c) of the Act are separately initiated.

8.1 Ld. AR on the other hand has submitted that all the relevant information and documents were furnished before the Ld. AO. However, Ld. AO has made the addition alleging that no explanation was furnished. Relevant documents like proprietors' capital account, copy of Sale Deed etc were submitted to the CIT(A), so as before us also in the Assessee's paper book. On perusal of in such evidence, the claim of the assessee regarding introduction of capital during the relevant assessment year is substantiated, therefore, the observation of the Ld. CIT(A) that the impugned addition on account of introduction of capital to the tune of Rs. 11,91,000/- stands explained and the addition deleted is found to be on right footing, thus, we approve the same. In the result ground no. 4 of the revenue is dismissed.

9. **Ground No. 5: Deleting the disallowance of Rs. 39,08,200/- on account of fictitious loss**

Ld. CIT DR vehemently supported the order of AO. The observations of the Ld. AO from the Assessment order were reiterated. Ld. AO has observed that the assessee has designed a ploy to reduce the profit and thereby evading the taxes. The observations of Ld. AO are extracted as under:

17. *During verification of the books of account it was found that the assessee designed a ploy to reduce the profit in turn to avoid tax. In this attempt he claimed to have purchased 650 MT HR Coils from DM Sons Metals Pvt. Ltd. @ Rs.50,500/- PMT for Rs.3,44,66,253/- on a single day, i.e., 12/03/2014. The entire amount of purchase consideration, including the amount of VAT of Rs.16,41,253/- is shown as outstanding. No transportation expenses were incurred. On the other hand, the same lot was shown as sold to a party named V.P. Ispat. The sale transactions were booked between 15/03/2014 to 19/03/2014 Rs. 44,000/- to 44,500/Per MT. The sale value comes to Rs.3,03,62,642/-. Some transportation expenses were booked with respect to the sale, but no evidence is available to establish physical movement of the goods in respect of both the transactions. Thus, it is established that the assessee has deliberately booked the alleged purchase and sale transactions with sole motive of reducing the profit which was otherwise ranging between 11.64% to 1.12% of the sales. Surprisingly the entire sale consideration is also shown as receivable. This further establishes the fact that this is only a make believe or fake transaction to scale down genuine profits through this colorable device, which is not permissible. therefore, the assessee was asked to explain the reason for such transactions. In the course of assessment proceedings, it was explained that the transactions were made in the normal course of business and no adverse inference is called for. Assessee's explanation is general and without any basis. Admittedly, the transactions were made in a short span of less than a week at the very end of the year without settling the accounts by making payment. This shows that the entire exercise is only a paper-made transaction without any actual delivery and receipt of goods and funds. Under these circumstances the difference of Rs.39,08,200/- claimed as loss, which in fact is fictitious, is added to the total income of the assessee. Penalty proceedings u/s.271(1)(c) of the Act are separately initiated.*

9.1 Ld. CIT DR further submitted that the order of Ld. CIT(A) was not justified in deleting the disallowance of Rs. 39,08,200/- made by the AO on account of fictitious loss by establishing that the entire exercises is a paper made transactions without any actual delivery, receipt of goods and funds. Therefore, it was the submission that the order of Ld. CIT(A) was

not justified on this issue, hence the same should be set aside and the purported disallowance qualifies to be reinstated.

9.2 In response to the aforesaid submissions of Ld. CIT DR, it was the submission of Ld. Counsel of the assessee that the transaction which has been allegedly treated as bogus transaction and accordingly, the loss incurred in the said transaction cannot be treated as fictitious loss only because of transaction has completed in a short span of time. Ld. AR, in support of assessee's contentions have further drawn our attention to appellant's submissions before the Ld. CIT(A). The submissions before the Ld. CIT(A) which were culled out in the said order are reproduced for better comprehension about explanations of the assessee:

16.2 *The submissions of the appellant are as under:*

1. *First of all, the appellant strongly records his objection with regard to any explanation called for in respect of these transactions. No explanation was called for nor any opportunity was provided to the appellant to explain his case. As earlier submitted, the AO asked for a soft copy of books of accounts and the appellant gave it to him. On the basis of examination of the soft copy of accounts, in the absence of the appellant, the AO drew various conclusions and made the addition. This is against the principle of natural justice.*

2. *That the appellant has a branch in Mumbai. The impugned purchase of 650 MT of H R Coil was purchased by Mumbai Branch and sold from Mumbai only. The total turnover of the appellant is Rs.110.00 crores approx. and the impugned transaction is a small fraction of it.*

3. The copies of transport bilty in support of movement of goods in respect of sales of all these goods to M/S V.P. Ispat, Mumbai, along with copy of freight account are enclosed at page no. 81 to 88. The allegation of the AO with regard to this is baseless and devoid of any merit.

4. The market price of H R Coil is highly volatile and fluctuates very much in a short span of time. The AO has himself stated in his order that the profit margin ranges from 1.12% to 11.64%.
[Para 17-page no. 10]

5. It is humbly submitted that the appellant sold various products of HR Coils to other parties also at almost similar prices i.e. sale price ranging from Rs. 42,650.00 to Rs.45,000.00 per MT. Copy of accounts for goods sold at almost similar prices to other parties at that time, are enclosed at page no. 89 to 92.

6. Your honour shall appreciate that the market of iron and steel including H R Coil is open and nothing can be hidden. The prices are well available in the internet also. One of the most widely accepted and reliable website for this is "www.steelmint.com/hrc-prices-indian". The printout of the prices of H R Coils in 12th and 13th week of 2014, i.e. from 17/03/2014 to 30/03/2014 are enclosed at page no.93 to 98 which also substantiate that fact that the prices of H R coil was Rs.43,000.00 per ton to Rs.43,500.00 per ton.

7. The appellant gets the credit period of one month for purchases and similarly, he gives credit for 1 month period in case of sales. It is for this reason only, the purchase amount and sale consideration were outstanding as these transactions took place in middle of March, 2014. However, payments were made and/or received in next year.

8. It is submitted that apart from these transactions, there are other transactions also entered into by the appellant in which there is loss. In the appellant's business, price is highly volatile, and it fluctuates rampantly. Copy of accounts in which the appellant

suffered trading loss due to fluctuation of market price are enclosed at page no. 99 to 100.

9. *Your honour shall appreciate that the appellant suffered trading loss in very next year also i.e. in FY 2014-15 in respect of H R Coils / Sheet. Copy of accounts in support of this is enclosed at page no. 101 to 102 to substantiate this stand.*

10. *Your honour shall appreciate that copy of accounts from M/S DM Sons' Metal Pvt. Ltd., Mumbai duly confirmed is enclosed at Page no. 103. The contention of the AO that these transactions are not genuine does not stand at all. There must be more than bare suspicion to support the assessment framed by the AO. It is submitted that assessment made on pure guess work is wholly arbitrary and bad in law.*

In view of the above facts, your honour is requested to delete the addition of Rs.39,08,200.00 and oblige.

9.3 Based on aforesaid submissions before the Ld. CIT(A), Ld. AR has submitted that while enforcing an adverse inference for making the addition against the assessee, no explanation was called for pertaining to the said transactions, which is against the principal of natural justice. The assessee was penalized by imposing an addition for which no opportunity was provided by the Ld. AO to explain his case. When the issue was raised in appeal before the Ld. CIT(A), sufficient opportunity was provided and accordingly the assessee has furnished all the necessary evidence and submitted explanations which were well understood by the first appellate authority and accordingly has passed the following decision:

16.3 I have gone through the assessment order and the submissions of the appellant. Addition has been made without allowing opportunity to the assessee. As explained in para 16.2 above the various purchases and sales transactions have been entered on different dates and the AO was not correct in drawing conclusion that these transactions were executed to reduce income of the assessee. The appellant strongly denied that any explanation has been called for in respect of these transactions. No opportunity was provided to the appellant to explain his case. The purchases in question of 650 MT of H R Coil was made by Mumbai one Branch and sold from Mumbai. The total turnover of the appellant is Rs.110.00/- crores approx. and the impugned transaction is a small fraction of it. Copies of transport bilty in support of movement of goods in respect of sales of all these goods to M/S V.P. Ispat, Mumbai, along with copy of freight account have been filed. Market price of H R Coil is highly volatile and fluctuates widely in a short span of time. Appellant sold various products of HR Coils to other parties and sale prices to these parties and other parties are comparable which ranged from Rs. 42,650.00 to Rs.45,000.00 per MT as per the copy of accounts filed. Market of iron and steel open market and nothing can be hidden. The prices are available in the internet also. One of the most widely accepted and reliable website for this is steelmint.com substantiates the fact that the prices of H R coil was around Rs.43,000.00 per ton. From these facts it is seen that the addition has been made on the basis of vague notions of the AO, without any footing and without allowing the assessee an opportunity to have a say. Therefore, the disallowance is hereby deleted and ground of the assessee is allowed.

9.4 Ld. AR in view of aforesaid submissions have requested that the issue was explicitly explained before the Ld. CIT(A), who had appreciated the facts of the issue with a judicious and logical view and accordingly has decided the same in favour of the assessee by vacating the disallowance made by the Ld. AO. It was, therefore, the prayer that the order of Ld. CIT(A) on the issue merits to be upheld.

9.5 We have considered the rival contentions perused the material available on record and the copies of evidence furnished before us in the form of paper book by the assessee. On perusal of the orders of revenue authorities on the issue regarding booking of fictitious loss by entry into paper transactions, it is apparent from the assessment order that the addition was proposed by the Ld. AO, after asking the assessee to explain the reason for such transactions, and in response during the course of assessment proceedings it was explained that the transactions were made in the normal course of business and no adverse inference is called for. Such general explanation without any basis by the assessee was not found convincing by the Ld. AO, accordingly, the addition was made. Assessee's claim before the Ld. CIT(A), which was perceived as a gospel truth without confronting the Ld. AO was an error on the part of Ld. CIT(A) in compliance of the principal of natural justice. Ld. CIT(A) has again rushed through the matter by culminating the same in deleting the addition based on certain additional evidence which were never submitted by the assessee before the Ld. AO, this again shows violation of the principal of natural justice. Such a decision of Ld. CIT(A), *dehors*, putting the aggrieved party i.e., the revenue to notice is not correct application of law and, therefore, the decision taken under such circumstances cannot be adopted. In the present case since the assessee was failed to substantiate its claim regarding the genuineness of transaction before the Ld. AO, but has explained the same before the appellate authority and the same was considered as acceptable,

however, such explanations and additional evidence were not confronted to the AO was not a mistake on the part of assessee, therefore, the decision of Ld. CIT(A) if outrightly rejected, would be a hardship with the assessee, at the same time opportunity to respond has to be provided to the Ld. AO is also required, so as to reach at a logical conclusion, to achieve the substantial justice. In backdrop of such facts and circumstances, we are inclined to restore the issue back to the files of Ld. CIT(A) to decide the issue afresh, after hearing both the parties. Consequently, Ground No. 5 of the revenue is partly allowed for statistical purposes.

Ground No. 6: Deleting the disallowance of Rs.7,77,668/- on account of under valuation of stock.

10. Ld. CIT DR on the issue of disallowance for the reason of under valuation of stock has reiterated the observations of Ld. AO and submitted that the same should be upheld. Observations of the Ld. AO are extracted as under:

18. The method of valuation of closing stock was stated as made at cost price or market price whichever is less. However, close study of the data reveals that the transactions were made mostly on FIFO method and as a fall out the assessee was required to value its closing stock on FIFO system. In fact, in the case of Mumbai Branch it was made on FIFO basis where after considering the direct expenses, it comes exactly to the same figure as adopted in the Trading Account and Balance Sheet. But in respect of Head Office stock the value was shown at Rs.5,35,62,400/- in the Balance Sheet, while it works out to Rs.5,40,54,990/- on the basis of FIFO method generated from soft copy of books of account after considering proportionate direct expenses on the average rate of Rs.208.5 per MT of

Rs.285078/-. Thus, the undervaluation of closing stock of Head Office comes to Rs. 28,5,078/- (As per FIFO: Rs.54054990 + 285078 (-) as per books: 5,35,62,400/-). The assessee was asked to explain the difference and also state why addition should not be made on account of under valuation of closing stock. In the course of hearing the assessee has stated that they are regularly following same method of valuation as applied and recorded in the Trading A/c. and FIFO method may be the reason for the difference. However, the assessee failed to give any reply to the fact that the valuation of Mumbai Branch was made applying the same method and different methods of valuation cannot be adopted for Head Office and Branch Office. Under these circumstances the sum of Rs.7,77,668/- is added to the total income on account of under valuation of closing stock. Penalty proceedings u/s.271(1)(c) of the Act for furnishing inaccurate particulars of income are separately initiated.

10.1 Ld. AR on behalf of the assessee has drawn our attention to the submissions before the Ld. CIT(A), extracted as under:

17.2 *The submissions of the appellant are as under:*

The learned AO made the allegation of Rs. 7,77,668.00/- for the reason that the closing stock of Head Office Bhilai has been undervalued by following a different method of valuation, i.e., lower of cost or market price whereas the closing stock of Mumbai Branch has been valued by following FIFO method.

Our submission is as under:

- 1. First of all, your honour shall appreciate that FIFO is not a method of valuation at a particular point of time whereas lower of cost or market price is of stock at a particular point of time, that is at the year end. FIFO (first in first out) is a method of valuation of movement of goods over a period of time and NOT at a particular point of time. It is submitted that the AO could not appreciate this fact more particularly this aspect, and therefore he made the addition.*

2. *The AO did not ask any explanation with respect to this issue also and therefore the appellant could not explain his case. The AO asked for valuation of stock and in turn, the appellant submitted the details of valuation of closing stock with evidence. No further question nor any query was raised by the AO and this addition has been made.*
3. *Copy of valuation of closing stock is enclosed at page no. 104 to 113. It is well supported by evidences also. As submitted earlier, the AO asked for soft copy of tally data i.e., accounts of the appellant, and then he started playing with the figures and arrived at some figures, alleging undervaluation of closing stock of Bhilai Head Office by Rs. 7,77,668.00/-*
4. *Your honour shall appreciate that the appellant has valued each and every inventory with minute details and supported by copy of bills. All these are produced before your honour for your verification.*
5. *It is submitted that the appellant has been following " cost or market price whichever is less " method of valuation of stock since its inception. Regular and complete books of accounts are maintained and duly audited each year.*
6. *It is further submitted that the appellant deals in steel plate, steel structure and heavy items of different thickness, size etc. and all are different marketable products. The quantitative details of all these are maintained separately and valued on actual basis. The AO could not appreciate this fact.*
7. *Further submitted that the AO did not provide the basis of valuation of stock and it is difficult to understand it. The AO has stated that he has worked out the valuation of closing stock from the soft copy of books of accounts provided by the appellant. [Page no. 11, para 18]. In this case, the AO is duty bound to ask for explanation for the difference which he did not.*

In view of this facts, you are requested to delete the addition of Rs. 7,77,668.00 and oblige.

10.2 Ld. AR on the basis of aforesaid submissions as submitted that the Ld. AO has not taken cognizance of the facts correctly. All the relevant facts along with documentary evidence were submitted before the Ld. AO, but under prejudiced mindset, Ld. AO has summarily rejected the explanations of the assessee, therefore, the addition made was not reasonable, the issue is rightly deliberated and adjudicated by the Ld. CIT(A), hence, order of Ld. CIT(A) shall be sustained. The observations of Ld. CIT(A) on the issue are culled out as under:

17.3 *I have gone through the assessment order and the submissions of the appellant. The AO has presumed that the stock at head office has been undervalued by following different methods. AO has presumed that Assessee's valuation is on FIFO method whereas assessee has denied having followed this method. The basis of valuation of stock has not been provided. No basis of working of stock at Rs 5,40,54,990/- has been given in the assessment order whereas the valuation as per the assessee is Rs. 5,35,62,400/-. Whereas the AO has stated that the assessee could not explain the difference the appellant has contended that no such query was raised from the appellant. The assessee has valued the stock by following the FIFO method. Assessee has valued each and every inventory that mainly deals and supported by copy of bills and has provided the working of the valuation. The valuation made by item wise working of the assessee cannot be replaced by ap ate estimation by the AO by adopting method which cannot be understood. There difference worked out by the AO after making approximate valuation is without any basis. Therefore, addition is hereby deleted.*

10.3 We have considered the rival submissions, perused the material available on record and copies of evidence furnished before us. On perusal of the order of the authorities below, it is emanating that the assessee who is adopting the “cost or market price whichever is less” method of valuation of stock, whereas Ld. AO was of opinion that since the Mumbai Branch of the assessee is following FIFO method of valuation the assessee should also require to follow the same. Under such perception certain calculations were made and the difference under two methods has been determined as under valuation of stock. Assessee has valued each and every item of inventory for which working was submitted before the revenue authorities, copy of the same has been furnished before us at Page No. 156 to 165 of the assessee’s paper book. Such meticulous workings have been duly examined by the Ld. CIT(A) and has passed the remark that the item was working of the valuation of stock cannot be replaced by approximate estimations as adopted by the Ld. AO without any basis, is found to be correct and a logical opinion. Since, the assessee is following the same method of valuation on a regular basis, a new method of valuation cannot be imposed upon to be adopted just for the sake of finding a different figure so as to arrive at on an adverse inference, Ld. AO’s observations are therefore, against the settled principal of accounting and law, thus, are not worth approval. Under such facts and circumstances having no convincing submissions to substantiate the analyses by the Ld. AO, we find merits in the decision of

Ld. CIT(A), accordingly do not wish to interfere with the same. In the result ground no. 06 of the revenue stands dismissed.

Ground No. 07 & 08 the department are general in nature, wherein no further contentions were raised, therefore, the same rendered academic which requires no separate adjudication.

In the result, Appeal of the revenue in ITA No. 55/RPR/2020 is partly allowed for statistical purposes in terms of our observations here in above.

Order pronounced in the court on 09/11/2023.

**Sd/-
(RAVISH SOOD)**

न्यायिकसदस्य / JUDICIAL MEMBER

**Sd/-
(ARUN KHODPIA)**

लेखासदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 09/11/2023

Vaibhav

आदेशकीप्रतिलिपिअद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant-
2. प्रत्यर्थी/ The Respondent-
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण,रायपुर/ DR, ITAT,
Raipur
6. गार्डफाईल / Guard file.

// सत्यापित प्रति True Copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकरअपीलीयअधिकरण, रायपुर/ITAT, Raipur