

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
(ITA No. 270/RPR/2016)
(Assessment Year: 2008-09)

Shri Shiv Shankar Agrawal, Prop. M/s Shiva Agencies, T.P. Nagar, Korba, (C.G.)	V s	Income Tax Officer-1 Mahanadi Complex, Niharika Road, Korba, (C.G.)
PAN: ABAPA1042K		
(अपीलार्थी/Appellant)	·	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Veekaas S Sharma, CA
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	20.09.2023
घोषणा की तारीख/ Date of Pronouncement	:	24.11.2023

आदेश / O R D E R

Per Arun Khodpia, AM:

The Captioned appeal is filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals), Bilaspur, dated 09.03.2016 for the assessment year 2008-09, which in turn is arose from the order u/s 143(3) Income Tax Act, 1961 by the Income Tax Officer-1, Korba, C.G. dated 12.11.2010.

2. Grounds of Appeal raised by the assessee are as under:

1. Ld. CIT(Appeals) erred in confirming addition of Rs. 2,14,126/- made by the AO on account of low net profit, applying the NP rate of 4.72% of the preceding year. Rejection of book results and the addition made by the AO is not justified.

2. Ld. CIT(Appeals) erred in confirming addition of Rs. 8,51,578/- made by the AO on account of excess cash (Rs. 2,24,243/-) and

excess stock (Rs. 6,27,335/-) found during survey u/s 133A without appreciating the facts of the case properly and without appreciating that the amount surrendered during survey was already disclosed in the books and return of income filed by the appellant.

3. Ld. CIT(Appeals) erred in confirming addition of Rs. 5,87,409/- made by the AO on account of unsecured loan taken by the appellant from Smt. Trivenidevi Agrawal, without appreciating the facts of the case and evidence on record. The addition made by the AO and confirmed by CIT(Appeals) is not justified.

4. The appellant reserves the right to add, amend or alter any ground or ground/s of appeal.

3. The Brief facts of the case are that, the assessee is an individual trading in furnishing items, cushions, curtains, carpets and foams in the name of M/s Shiv Agencies at Korba. Return of income for the Assessment year 2008-09 was filed on 31.03.2009 showing total income as NIL. The case of the assessee specifically has been selected for scrutiny assessment; statutory notices were issued. There was a survey u/s 133A of I.T. Act, which was conducted by the department on 03.03.2008 and in final statements of the assessee were recorded during the survey. The assessee has offered the excess cash of Rs. 2,24,243/- and excess stock of Rs. 6,27,335/-, as both had been found out of books of accounts. It was accepted by the assessee that it would be additional income of the assessee and he was unable to tell the source of such income. The AO after hearing the assessee made certain additions and completed the assessment at Rs.16,53,113/-. Aggrieved by the order of

Ld. AO, the assessee has preferred an appeal before the Ld. CIT(A), but without success, the appeal of the assessee was dismissed by the Ld. CIT(A) after considering the merits of the issues. To challenge the adverse findings of Ld. CIT(A) approving the verdict of the Ld AO, now the assessee is before us in the present case.

4. Ground wise discussion, deliberation and adjudication of the issues are in the following para's:

5. **Ground No. 01:** Confirming the addition of Rs.2,14,126/- on account of low net profit, applying the NP rate of 4.72% of the preceding year.

5.1 On the issue of application of estimated rate of Net Profit, the Ld. AR, on behalf of the assessee has submitted a written synopsis, the same is extracted as under:

2. **Ground No.1** is directed against addition of Rs.2,14,126/- made by the LAO by applying NP rate of 4.72% of the preceding year to the turnover of year under consideration amounting to Rs.45,36,577/- on which the assessee had declared NP of Rs.2002.

2.1 **Books of accounts along with bills and vouchers duly verified:** The assessee had duly produced before the Learned A.O from time to time complete books of accounts along with bills and vouchers, the Audited Balance Sheet and the Tax Audit Report were duly furnished at the time of assessment and no adverse inference has been drawn.

The copy of Audited Balance Sheet and Profit & Loss A/c is placed on Page No.89 to 96 of Paper Book Volume-3.

2.2 **Allegation regarding diversion of bank loan for personal purposes in view of Negative Capital:**

It is respectfully submitted that the Learned A.O presumed that the assessee **had** diverted Bank loan for personal purposes and this inference has been **drawn** looking at the balance in the Capital Account of the assessee which became negative during the year under consideration to Rs.3,39,795/- from positive capital of Rs.4,49,277/- at the beginning of the year, it is respectfully submitted that the Learned A.O grossly misinterpreted the facts inasmuch as the capital of the assessee became overdrawn because of **journal entry (book entry)** passed in the books of accounts of the assessee in respect of opening difference in the Sundry Creditors Account for an amount of Rs.6,36,096/- whereby the assessee had passed an accounting entry in its books of accounts and recognized the Sundry Creditors which were pertaining to the preceding previous years and the corresponding effect was given by debiting the Capital Account of the assessee, the following accounting entry was passed in the books of accounts of the assessee on 01.04.2007.

Capital Account	Debit	Rs.6,36,096/-
To Opening difference in Sundry Creditors A/c	Credit	Rs.6,36,096/-

The aforesaid fact is discernible from the **Schedule of Proprietor's Capital A/c which is placed on Page No.91 of Volume-3 of the Paper Book.**

From above, it clearly transpires that the assessee had not diverted any money or bank loan for personal purposes, thus, there is no merit in the contention of the Learned A.O and the allegation rather presumption that the assessee had diverted interest bearing funds for personal purposes is factually incorrect averment.

2.3 Regarding Personal nature of expenses: The LAO did not appreciate the fact that the assessee had suo moto made disallowance on account of personal nature of expenses which is evident from **Proprietor's Capital Account which is placed on Page No.15-16 of Paper Book Volume-1.**

2.4 Book results cannot be disturbed without rejecting books of accounts.

Books of Accounts was not rejected:
3.1 Rejection precedes estimation:

It is respectfully submitted that it is incumbent on the part of the A.O to first reject the books of accounts before resorting to estimation of income as it's a condition precedent.

It is a trite law that the Learned AO cannot resort to estimation of income without rejecting the books of accounts.

Reliance is placed on following judicial pronouncements in support of contention that rejection precedes estimation:

S. No	Title	Citation	Authority	CLC Reference
1.	M/s Swadeshi Commercial Co. Ltd. vs. CIT	ITA No. 219 of 2001	High Court of Calcutta	1 to 3
2.	CIT vs. Anil Kumar & Co.	(2016) 386 ITR 0702	High Court of Karnataka	4 TO 7
3.	Arup Kumar Hazra vs. I.T.O.	ITA No. 2385/KOL/2017	Kolkata Tribunal	8 to 11
4.	G.T. Umesh vs. ITO	ITA No.1321/BANG/2017	Bangalore Tribunal	12 to 15

3.2 The Learned AO has not rejected the books of accounts of the assessee as there is no mention of invoking of powers u/s 145(3) of the I.T. Act, 1961 and **there is no finding in the assessment order to the effect that:**

- a) The Learned AO is not satisfied with the correctness or completeness of the accounts maintained by the assessee that have been audited u/s 44AB of the I.T. Act, 1961.
- b) There is no satisfaction in the assessment order that the assessee has not followed any notified accounting standard;
- c) That the method of accounting has not been consistently followed.

3.3 **Admitted by the LAO that provisions of Section 145 were not invoked** which is evident from the Remand Report dated 03.08.2015 copy whereof is placed on **Page No.24 to 28 of the Paper Book Volume**, kind attention is invited to **Page No.26 of the Paper Book**.

3.4 Reliance is placed on the following judicial pronouncement:

S. No.	Title	Citation	Authority	CLC Reference
1.	M/s Sanjay Agrawal vs. ACIT	ITA No.339/RPR/2016 dated 24/09/2021, AY 2012-13	ITAT, Raipur Bench	16 to 28--

3.5 **Satisfaction about defects precedes Rejection:**

Even before rejecting the books of accounts, it is necessary for the A.O to point out specific defects in the books of accounts, bills and vouchers as a result of which reasonable profits cannot be deduced there from and record his satisfaction.

3.6 Conditions precedent for rejection of books of accounts u/s 145(3):

The provisions of Section 145(3) can be invoked for rejecting the books if the Learned AO gives a finding that:

- (i) the assessee is not following regularly any accounting standard notified by the Central Government in pursuance of Section 145(2), or
- (ii) the Learned AO is not satisfied about the correctness or completeness of the account, or
- (iii) where the assessee is not following any method of accounting regularly;

3.7 It is a settled principle of law that if no such finding is given then income chargeable under the head "Profits and gains of business" has to be computed in accordance with the method of accounting regularly employed by the assessee. Furthermore, for rejecting the books of accounts under condition no.2, the Learned AO has to demonstrate that the accounts are not correct and complete as there exist serious defects in maintenance of accounts, irrespective of whether accounting methods or accounting standards are regularly followed; it is incumbent upon the Learned AO to show that the way accounts are written or kept (and not accounting method adopted like cash or mercantile), profits cannot be correctly deduced there from.

3.8 Reliance is placed on following judicial pronouncements in support of contention that rejection of books of accounts without pointing out specific defects is bad-in-law:

S. No.	Title	Citation	Authority	CLC Reference
1.	CIT vs. Padamchand Ramopal	(1970) 76 ITR 719 (SC)	Supreme Court of India	29 to 30
2.	ACIT vs M/s Sanjay Agrawal	ITA No. 82/RPR/2018 CO No. 05/RPR/2018	ITAT, Raipur Bench	31 to 50
3.	ACIT v s. M/s Radheshyam Agrawal	ITA No. 42/RPR/2018	ITAT, Raipur Bench	51 to 77
4.	CIT vs. Om Overseas	(2009) 315 ITR 185	High Court of Punjab & Haryana	78 to 80
5.	Dr. Prabhudayal vs. CIT	(2018) 162 DTR 0012	High Court of Allahabad	81 to 86

3.9 Insignificant mistakes in accounts cannot lead to rejection of books of accounts:

Books of accounts regularly maintained by the assessee cannot be rejected outrightly based on the insignificant mistakes noticed in any year. Reliance is placed on the following judicial pronouncements:

S. No.	Title	Citation	Authority	CLC reference
1.	CIT vs. Padamchand Ramgopal	(1970) 76 ITR 719	Hon'ble Supreme Court	29 to 30
2.	Dr. Prabhudayal vs. CIT	(2018) 162 DTR 0012	High Court of Allahabad	81 to 86

3.10 Low Net profit rate cannot be the reason for rejection of books of accounts: Reliance is placed on the decision of the Hon'ble ITAT, Raipur bench in the case of Yogesh Gupta vs. ACIT-4(1), Raipur in ITA No. 289/RPR/2016 is placed on Page No. 87 to 95 of CLC.

4. The Net Profit rate does not always remain static with mathematical precision. Reliance is placed on following judicial pronouncements: -

s. No.	Title	Citation	Authority	CLC Reference
1.	<i>CIT vs. Winner Constructions Pvt. Ltd.</i>	(2012) 81 CCH 0091	High Court of Delhi	96 to 101
2.	<i>ITO, Ward-I (2), Raipur vs. Shri Srawan Kumar Arora</i>	ITA No. 144/BLPR/2011	Raipur Tribunal	102 to 109
3.	<i>ACIT-I(I), Raipur vs. Ramesh Steel Industries</i>	ITA No. 145/BLPR/2011	Raipur Tribunal	110 to 113
4.	<i>Shri Shakti Minerals Industries vs. ACIT-1 2, Raipur</i>	ITA No. 67/BLPR/2011	Raipur Tribunal	114 117

5. The appellant places its reliance on the following decisions of the Hon'ble Supreme Court in support of the contention that each year's assessment is a separate assessment.

6.

s. No.	Title	Citation	Authority	CLC Reference
1	<i>M.M. Ipoh & Ors. vs. CIT</i>	(1968) 67 ITR 0106	Hon'ble Supreme Court of India	118 to 129
2	<i>ITO vs. Murlidhar Bhagwan Das</i>	(1964) 52 ITR 0335	Hon'ble Supreme Court of India	130 to 146

3	<i>Bharat Sanchar Nigam Ltd. ANR. vs. Union of India & Ors.</i>	<i>(2006) 282 ITR 0273</i>	<i>Hon'ble Supreme Court of India</i>	<i>147 to 177</i>
4	<i>Installment Supply (Pvt.) Ltd. Vs Union of India</i>	<i>AIR 1976 SC 53</i>	<i>Hon'ble Supreme Court of India</i>	<i>178 to 188</i>
5	<i>Municipal Corporation of City of Thane vs. Vidyut Metallics Ltd. and Anr.</i>	<i>(2007) 8 SCC 68</i>	<i>Hon'ble Supreme Court of India</i>	<i>189 to 195</i>

Prayer: *It is prayed that the ground of appeal may kindly be allowed and addition of Rs.2,14,126/- may kindly be deleted as the same is contrary to facts and law, more particularly, when the reasons mentioned by the Learned AO are bereft of merit.*

5.2 On the basis of aforesaid contentions raised by the Ld. Counsel of the assessee, it was the submission that, the Ld. AO has disturbed the Profit of the assessee by adopting estimation for the same, against the facts and law, therefore, the same is liable to be rejected and the addition made needs to be vacated.

5.3 Ld. Sr. DR on the other hand strongly supported the order of revenue authorities and requested to sustain the same.

5.4 We have considered the rival contentions, perused the material available on record and case laws referred to by the Ld. AR on behalf of the assessee. In the present case Assessing Officer has observed that the percentage of Net Profit for the current year has been reduced to 0.04% as compared to the profit ratio for the preceding assessment year 2007-08, which was 4.72%. Accordingly, has adopted the percentage of profit in Assessee's own case from the previous year. Since, the Ratio of

Net Profit to the Sales for the year under consideration has significantly declined, the Ld. AO has rightly observed and compared the same with previous year's ratio of profit to find out the reasons for such downfall. The Ld. AO has observed that the opening capital of the proprietor, which was Rs. 4,49,277/- has been reduced and the closing capital has arrived at a negative figure of Rs. (-)3,39,735/-, which according to Ld AO, reflects that the assessee has used the secured loan from bank for personal purpose. The reason behind said belief of the Assessing Officer was that the Bank Interest for the year has been increased from Rs.57,543/- to Rs. 1,86,866/-, which in terms of percentage to turnover has increased from 0.72% to 4.12%. In order to dislodge the said understanding of the Ld. AO, Ld. AR of the assessee, drew our attention to Page No. 91 of Paper book, Volume-3 of the assessee, wherein it is apparent that capital account of the proprietor has become negative because of reduction of Rs. 6,36,096/-, which was opening difference in sundry creditors account. There was also a withdrawal of Rs. 1,54,979/- from the capital account. These two transactions have mainly reduced and turned the proprietor's capital into negative. The belief of the Ld. AO that assessee has used the funds received from Bank as unsecured loan was not found proven from the records. Ld. AO also estimated the profit of the assessee based on the presumption that the personal use of phone and vehicle cannot be denied, since the assessee has not produced call register and vehicle logbook during the scrutiny assessment. The Ld. AO has not specifically

rejected the books of account of the assessee invoking the provisions of sections 145(3) of the Act, and therefore, the estimation of Profit without rejecting the books of accounts is not acceptable. Even if, it is perceived that the Ld. AO has impliedly rejected the books of accounts, the preconditions for rejection of books of accounts, as relied upon by the assessee in its written submission (supra), were not followed by the AO by recording his satisfaction for the same, the Ld. AO, thus, has failed on that count also. Under such facts and circumstances the observations of Ld. AO, which was further approved by the Ld. CIT(A) cannot be approved for the reasons, that No specific observations by AO w.r.t. rejections of books of accounts, and this fact has categorically accepted by the Ld. AO in remand before the CIT(A), NO specific defect were pointed out by the Ld AO, which caused rejection of books of accounts., Reduction in the Net Profit cannot be the basis for rejection of books and thereby estimating the profit on presumptive basis without pointing out specific errors w.r.t. books account maintained by the assessee.

5.5 In view of such observations, we find merits in the contentions raised by the assessee and, accordingly, the observations of Ld. AO and decision of Ld. CIT(A) approving said opinions were found to be devoid of merit, thus, are directed to be quashed, consequently, Ground No. 1 of the assessee is allowed.

6. **Ground No. 2.** Confirming addition of Rs. 8,51,578/- on account of excess cash of Rs. 2,24,243/- and excess stock of Rs. 6,27,335/-.

6.1 Ld. AR of the assessee on this issue has submitted a written synopsis the same is extracted as under:

7. **Ground No. 2-** is directed against addition of Rs.8,51,578/- of Excess Cash amounting to Rs.2,24,243/- and excess stock amounting to Rs.6,27,335/-disregarding the fact that the same already stood offered for taxation in the books of accounts and ROI.

7.1 **Regarding Learned A.O's allegation that the assessee did not offer for taxation and disclose the cash amounting to Rs.2,24,243/- and stock amounting to Rs.6,27,335/-:**

It is respectfully submitted that after the survey operation got completed, the assessee had duly accounted for the cash amounting to Rs.2,24,243/- as well as the excess stock found during survey amounting to Rs.6,27,335/- and incorporated the same in its books of accounts that has been subjected to audit u/s 44AB of the Income Tax Act, 1961.

It is respectfully submitted that the aggregate sales amounting to Rs.45,36,577/-disclosed in the audited Profit and Loss Account very much includes the undisclosed cash sales of Rs.2,24,243/- which is evident from "Schedule-J Sales" to the audited Trading and Profit & Loss Account of the assessee for the year under consideration copy whereof is placed on Page No.95 of the Paper Book Volume-3, the cash found during survey was derived from the undisclosed cash sales of the assessee, therefore, the assessee had recognized the sales in its books of accounts and introduced the cash receipts, in this way, the assessee duly offered the excess cash of Rs.2,24,243/- in as much as the same was credited to the Profit and Loss Account of the assessee and accordingly offered for taxation.

Similarly, the sum of Rs.6,27,335/- representing excess stock found during survey was added to the closing stock and the same is included in the closing stock appearing in the audited Profit and Loss Account of the assessee at Rs.29,36,230/-, kind attention is invited to "Schedule-F Closing Stock" to the audited Trading and Profit & Loss Account of the assessee copy whereof is placed on Page No.-----to----- of CLC, the assessee has duly offered the same for taxation as the same stands credited to the Trading and Profit & Loss Account of the assessee, thus, there is no merit in the view harbored by the Learned A.O that the assessee has not offered the income surrendered during survey.

6.2 **LAO admitted that Rs.8 51 578/- stood offered for taxation in the Remand Report dated 03.08.2015:**

It's an admitted position of fact by the LAO that the sum of Rs.8,51,578/- already stood offered for taxation which is evident from the Remand Report dated 03.08.2015 copy whereof is placed on **Page No.24 to 28 of the Paper Book Volume 1**, kind attention is invited to **Page No.25 of the Paper Book**. Thus, the Learned A.O has accepted the fact that the assessee had credited the income surrendered during the course of survey amounting to Rs.8,51,878/- in the Trading and Profit & Loss Account.

6.3 **Income disclosed during survey constituted business income of the assessee.**

Kind attention is invited to Statement of the assessee dated 03.03.2008 copy whereof is placed on Page No. 18 to 20 of the Paper Book Volume- I. Specific attention invited to answer of the assessee to Question No. 1 on Page No. 19.

Reliance is placed on the decision of this Hon'ble Raipur Bench in the case of Shree Sita Udyog in ITA No.249/RPR/2017 dated 22.07.2022 full text whereof is placed on Page No. 196 to 215 of the CLC.

6.4 **Statement recorded u/s 133A has no evidentiary value:** as has been held by the Hon'ble Supreme Court in the case of CIT vs. S Khader Khan Son (2012) 82 CCH 357, full text of the decision is placed on Page No. 216 to 217 of the CLC.

6.5 **Explanation furnished during the course of assessment proceedings cannot be ignored merely because explanation was not furnished during the course of survey:**

Where an explanation is not furnished to the survey team but later on the explanation is furnished during the course of assessment, then the same cannot be brushed aside if there is no material based on which books can be rejected. Reliance is placed on the following judicial pronouncement:

s. No.	Title	Citation	Authorities	CLC Reference
1.	Yadurish RaiJhunjunwla vs. CST	(1987) 67 STC 381	High court of Allahabad	218 to 219
2.	Ramdas Juganivs. CIT	(2006) 282 ITR 356	High court of Madhya Pradesh	220 224

6.6 **Statement of assessee or surrender cannot be sacrosanct or decisive:**

It is open for the person who gave the statement to prove that the statement was incorrect or otherwise unreliable.

Reliance is laced on the following judicial pronouncements:

S.N	Title	Citation	Authority	CLC Reference
1.	Pullangode Rubber Produce Co. Ltd. vs. State of Kerala	(1973) 91 ITR 18	Hon'ble Supreme Court	225 to 227
2.	ITO vs. Vijay Kumar Kesar	(2010) 327 ITR 497	High Court of Chhattisgarh	228 to 236

a. CBDT has laid emphasis on collection of evidences vide CBDT circular dated 10.03.2003 and 18.12.2014:

The copy of CBDT Circular dated 10.03.2003 and 18.12.2014 is placed on Page 237 to 238 and 239 to 240 of the CLC.

Prayer: It is prayed that the ground of appeal may kindly be allowed addition of Rs.8,51,578/- may kindly be deleted.

6.2 Based on aforesaid written submissions, Ld. AR contended that the cash amount Rs.2,24,243/- which was found in excess during the survey proceedings. The assessee has duly accounted for the same and shown as additional income, to substantiate this fact Ld. AR of the assessee has drawn our attention to assessee's paper book, volume no. 3 containing copy of Tax Audit Report, Audited Balance Sheet and P&L account a/w schedules. At page no. 95 of the Assessee's paper book under schedule 'J' of the audited financials, it is discernible that sales of the assessee has been further added by "Undisclosed cash sales" for Rs. 2,24,243/-. Regarding excess stock found during the survey amounting to Rs. 6,27,335/- Ld. AR drew our attention to page no. 91 of the paper book Vol.3, wherein under schedule 'F' to the Balance Sheet the value of closing stock has been increased by the impugned amount under head "Stock of Goods (excess stock found in survey)". Ld. AR further drew our

attention to page no. 19 of the paper book, volume-1 of the assessee, wherein the statement of the assessee recorded during the survey proceedings were furnished, on perusal of question no. 2 of the said statements, regarding excess stock the assessee has submitted that he is unable to clarify the source of the said excess stock, therefore, he agreed to disclose the same as additional income accrued to him besides his regular income for the previous year 2007-08 relevant to AY 2008-09. Similar answers were offered by the assessee w.r.t. excess cash found during the survey in terms of such submissions. Ld. AR submitted that amount of excess cash and excess stock has been duly offered for taxation by the assessee, the same has been accepted as admitted fact by the Ld. AO also in the remand report before the Ld. CIT(A), which is placed at page no 24 to 28 of the paper book. Ld. AO has categorically mentioned that the surrendered income has been credited in the P&L account by the assessee but has been not shown separately in the computation of income, it was the contention of the Ld. AO that the assessee has treated the surrendered income as income from business. It was the contention of the Ld. AR that Ld. AO as well as Ld. CIT(A)'s has not correctly appreciated the facts and nature of the transaction therefore has decided the issue against the assessee. It was thus the prayer that once assessee has disclosed the income under the head business even if the same is made taxable under some other head the business income would reduced the total income will remain same, therefore, the income

which is already offered for taxation cannot be added to the income of the assessee to tax it twice, hence, the addition made by the Ld. AO and confirmed by the Ld. CIT(A) is liable to be reversed.

6.3 Ld. Sr. DR on the contrary has submitted that the excess of stock of Rs. 6,27,335/- and excess cash of Rs. 2,24,243/- in total Rs. 8,51,578/- is added in the income of the assessee by the AO. Since, the same is from other source as per Assessee's own statement who has categorically admitted that the income is from the sources which he is unable to clarify. Ld. Sr. DR placed his reliance from the judgment by the Hon'ble High Court of Chhattisgarh (2012) 20 Taxmann.com 853 (C.G.) In the case of Dhanush General Store vs. CIT, wherein Hon'ble Jurisdiction High Court has held that unexplained investments and value of excess stock has to be treated as deemed income u/s 69. With such submissions it was the prayer by revenue that the addition made by AO and approved by the Ld. CIT(A) should be sustained.

6.4 We have considered the rival submission, perused the material available on record and case laws placed before us by the parties. On perusal of the statement of the assessee during the survey proceedings, it is evident that the excess cash and excess stock found during the survey was accepted by the assessee as his income from the unexplained sources and, accordingly, the same cannot be treated as income from his

regular business. Contentions of the Ld. AR that statements recorded u/s 133A has no evidentiary value may be right, but, the assessee was unable to explained at any stage, may it be before the AO or CIT(A) or before us as to what was the source of such excess cash and stock found, therefore, in absence of explanation about the source of surrendered income to dislodge or to retract from the acceptance given by the assessee under impugned statements, by way of submitting any corroborative evidence to support such contention, we are unable to convince ourselves to endorse the contentions of the assessee. Under such facts and circumstances, the income surrendered by the assessee, which was *Suo Moto* offered by adding the same in his business income is found to be on wrong assumption and, therefore, we rejected such assumption of the assessee. Consequently, the income of the assessee, *dehors* any explanation shall be treated as unexplained income to be taxed according to the provisions of section 69 of the Act. However, as the income has already offered by the assessee under the head business, the same cannot be added again to the income of the assessee, this will be tantamount to double taxing the same income. In pour considered opinion, the nature of income surrendered should be treated to be under other head, but at the same time the income from business of the assessee for the said year shall be scale down to that extent, resultantly, the total income shall remain same. Under such facts and circumstances the addition made by the AO only on the basis that the assessee has not

separately shown the same in computation of income under the head income from other sources even if accepted shall have no bearing on the assessed income of the assessee, since the same has already been shown by way of showing in P&L Account under the head business income thus said exercise rendered revenue neutral, In nut shell, we don't see any reason to sustain such addition. Consequently, the addition made by the AO and approved by the Ld. CIT(A) stands deleted. It is pertinent to mentioned that the income surrendered by the assessee shall be treated as income from other sources u/s 69 of the Act and Tax effect of the same shall be computed in accordance with provisions of extant law. In the result, Ground no. 2 of the assessee is Partly allowed for statistical purposes.

7. **Ground No. 03**, confirming addition of Rs. 5,87,409/- on account of unsecured loan taken by the assessee from Smt. Triveni Devi Agrawal.

7.1 Ld. AR on behalf of the assessee has submitted a written submission on this ground, which is culled out as under:

Ground No.3- is directed against addition of Rs. 5,87,409/- on account of unsecured loan taken by the appellant from his mother namely Smt. Triveni Devi Agrawal.

8. Documentary evidence filed before the LAO and Learned CIT(A) while discharging the onus u/s 68:

S. NO.	Particulars	Placed on following Page No. of Paper Book Volume-2
1	Computation of Income and acknowledgement of A.Y 2008-09	68 & 69
2	Affidavit	70
3	Bank statement	71 to 74

4	Statement of affairs and Capital account for A.Y 2008-09	75
5	Cash flow statement	76

9. Regarding so called statement of the Lender namely Smt. Triveni Devi Agrawal: No summon was issued by the Learned A.O to Smt. Triveni Devi Agrawal before recording her statement, therefore, the so-called statement dated 12.11.2010 of Smt. Triveni Devi Agrawal being relied upon by the Learned A.O has no evidentiary value and the same does not exist in the eyes of law.

9.1 The fact that the Learned A.O had not issued any summon is self-evident from the assessment order where in the Learned A.O is absolutely silent about issuance of any summon to Smt. Triveni Devi Agrawal for examining her on oath.

Reliance is laced on the following judicial pronouncements:

S.N.	Title	Citation	Authority	CLC Reference
1.	Jagati Publications Ltd. vs. ACIT	(2022) 36 NYPTTJ (Hyd)	Hon'ble ITAT, Hyderabad 'B' Bench	241 to 266
2.	Smt. Jatinder Kaur vs. DCIT	(2021) 35 NYPTTJ 991 (Chd)	Hon'ble ITAT, Chandigarh 'A' Bench	267 to 272
3.	Maruti Impex Vs. JCIT	(2013) 7 NYPTTJ 1483 (Mum)	Hon'ble ITAT, Mumbai 'B' Bench	273 to 281
4.	CIT vs. Omprakash K. Jain & Ors.	(2010) 322 ITR 362	Hon'ble High of Court Bombay	282 to 284
5.	Paramjit Singh Vs. ITO	(2010) 323 ITR 588 (P&H)	Hon'ble High of Court Punjab & Haryana	285 to 287
6.	Dr. G. G. Dhir vs. ACIT	(2010) 125 ITDT 35	Hon'ble ITAT, Agra Third Member Bench	288 to 294
7.	Murarka Properties (P) Ltd. & Anr. vs. Respondent: Beharilal Murarka and Others	1978 AIR 300, 1978 SCR (2) 261	Hon'ble Supreme Court	295 303

10. Significances of Affidavit:*Reliance is laced on the following judicial pronouncements:*

S.N. o.	Title	Citation	Authority	CLC Reference
1.	<i>Basir Ahmed Sisodiya vs ITO</i>	(2020) 107 CCH 0425 ISCC	Hon'ble Supreme Court	304 to 314
2	<i>Mehta Parikh & co. vs. CIT</i>	(1956) 24 CCH 0089 ISCC	Hon'ble Supreme Court	315 to 319

Prayer: *It is prayed that the ground of appeal may kindly be allowed addition of Rs.5,87,409/- may kindly be deleted.*

7.2 In this respect, Ld. AR has further submitted before us copies of computation of income, acknowledgement, affidavit, Bank statement, statement of affairs and capital account for the A.Y. 2008-09 and cash flow statement of Smt. Triveni Devi Agrawal from 01.04.2006 to 31.03.2007 and 01.04.2007 to 31.03.2008. From Bank statement of Smt. Triveni Devi Agrwal, it is apparent that she is regularly receiving monthly income of average approx Rs, 13,000/- per month, there were cash withdrawal of Rs. 2,50,000/- and 1,60,000/- in the month of February 2007 and June 2007, which deposited back in bank account along with other savings of the lender. According to her capital account and statement of affairs she has sufficient funds so as to provide loan as advanced to his son for Rs. 5,87,409/-. All such evidence were submitted before the AO, but Ld. AO entirely placed his reliance on the statement of Smt. Triveni Devi which has no evidentiary value in the eye of law. Ld. AR further submitted that since no summon was issued to Smt. Triveni Devi Agrawal before her statements were recorded therefore the so-called statements

dated 12.11.2010 of Smt. Triveni Devi Agrawal has not evidentiary value, the same does not exist in the eye of law. In light of such facts and evidence it was the submission of Ld. AR that the addition made by the Ld. Assessing Officer is liable to be quashed.

7.3 Contradicting the aforesaid contention of the assessee, Ld. Sr. DR submitted that the Ld. AO has cross-examined Smt. Triveni Devi Agrawal, by way of recording of her statements asking about granting of unsecured loan of Rs. 5,87,400/-, but she was unable to offer any explanation, but under the advice of the assessee she has said that "I have given the money but when and how much, she don't remember." Under such facts and circumstances, it is clearly evident that unsecured loan of Rs. 5,87,400/- was a money of the assessee himself which is routed through his mother's bank account to bring the same back in his business, therefore, the transaction is sham one, which cannot be considered as genuine, accordingly, the addition made by the Ld. AO and rightly sustained by the Ld CIT(A) merits to be upheld.

7.4 We have considered the rival contention and submissions, perused the material available on record and case laws referred to. Admittedly, in the present case assessee has received an unsecured loan from her mother through cheque which is duly entered in the bank statement of the lender. It is also evident that the lender is receiving income of

approximately / average 13,000/- per month. It is also evident that lender has withdrawn certain amounts in the previous year and the relevant year, within a period of six months. The lender is 85 years old lady, whose cash flows statement shows that she has cash balance of Rs. 8,54,842/- including an amount of Rs. 6/- lac deposited in Bank A/c on 28.07.2007. The creditworthiness of the lender cannot be doubted only on the basis of her statement, wherein she was not able to answer the queries of Ld. AO, as spontaneously as a person of average knowledge, conversant with the departmental proceedings could have. Looking to the age of the lender also one cannot expect an excellent memory to respond on such questions very quickly and precisely. The documentary evidence are supporting contentions of the assessee. Sole dependence of the revenue on the statement of Smt. Triveni Devi Agrawal without dislodging the same on the basis of cogent material found to be extraneous, thus, are devoid of merits, qualifies to be rejected. Accordingly, we are of the considered view that the unsecured loan granted by the mother of assessee cannot be doubted as ingenuine, thus, the addition made in the said basis found to be erroneous, so the same is directed to be deleted, consequently, Ground no. 3 of the assessee is allowed.

8. Ground no. 4 of the assessee is general in nature, wherein no further contentions were raised by the assessee, therefore the same needs no separate adjudication. Hence, treated as dismissed.

9. In the result appeal of the assessee is partly allowed for statistical purposes, in terms of our observations herein above.

Order pronounced in the open court on 24/11/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 24/11/2023

Vaibhav

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

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

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur