

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. 139/RPR/2023
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Vatsal Tradecom Private Limited
Plot No.259, Near Mittal House,
Samta Colony, Raipur (C.G.)
PAN : AAECV3688G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1(2),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 20.11.2023
घोषणा की तारीख / Date of Pronouncement : 24.11.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 29.03.2023, 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 27.12.2016 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal:

“1. Ld. CIT(A) erred in confirming addition of Rs.83,50,000/-, made by A.O on account of unsecured loans received by the appellant, invoking Section 68. The addition made by the A.O and sustained by the CIT(A) is arbitrary, illegal and contrary to the facts and evidence on records.

2. The appellant reserves the right to amend, modify or add any of the ground/s of appeal.”

2. Succinctly stated, the assessee company, which had not commenced its business during the year under consideration, had e-filed its return of income for A.Y.2014-15 on 30.09.2015 declaring an income of Rs. Nil. 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, the A.O observed that the assessee had claimed to have received unsecured loans of Rs.83,50,000/- from the following 9 (nine) parties:

i.	Anirudh Kumar	Rs.5,00,000/-
ii.	Kanika Kejriwal	Rs.10,00,000/-
iii.	Mahendra Kumar	Rs.8,00,000/-
iv.	Mamta Agrawal	Rs.18,50,000/-
v.	Payal Goyenka	Rs.6,50,000/-
vi.	Rahul Kumar	Rs.5,00,000/-
vii.	Sangeeta Agrawal	Rs.6,00,000/-
viii.	Saroj Agrawal	Rs.2,50,000/-
ix.	Ramesh Agrawal (HUF)	Rs.22,00,000/-

As the assessee had failed to substantiate the authenticity of the aforesaid loan transactions on the basis of specific documents which he was called upon to furnish in the course of the assessment proceedings, i.e., copies of return of income, bank statements, computation of income, balance sheet, capital account etc. of the aforementioned lenders, therefore, the A.O vide his order passed u/s. 143(3) dated 27.12.2016 made addition of the same as unexplained cash credits u/s.68 of the Act and determined the income of the assessee company at Rs.83,50,000/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as under:

“4.3. The issue was considered. Respective assessment order and related provisions on the subject matter were carefully perused. From the assessment order, it is clear that the appellant had received unsecured loan of Rs.83,50,000/- from different persons, whose names alongwith corresponding amount are apparent in the assessment order at Para 4. It is evident that the AO during the course of assessment proceedings had provided sufficient opportunities to the appellant to prove the identities, creditworthiness of the creditors and genuineness of transaction in respect of the unsecured loans received; but the appellant could not prove the same it is categorically recorded in the assessment order that the appellant was required to submit ITR, Bank Statements, Computation, Balance Sheet, Capital Account, etc. in r/so these cash creditors. It has also been held by the AO that the appellant has failed to discharge the onus cast it to prove the identity and capacity of the creditors as well as genuineness of the transactions on the details asked for identity PAN. ITR copies etc. were not furnished during the course of assessment proceedings. It is a settled position of law that the burden to prove the three limbs of the provisions of section 68 of the Act i.e. identity and capacity of the creditors as well as genuineness of the transactions, is on the assessee. In view of the judgements of the Apex Court in the case of Roshan Di Hatti v. CIT[1977] 107 ITR 938 (SC) and Kale Khan Mohammad Hanif v. CIT[1963] 50 ITR 1 (SC), the law is well-settled that the onus of providing the source of a sum of money found to have been received by an assessee is on the assessee. Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any other particular source.

From the facts available on record, it is evident that the appellant could not satisfactorily prove the identity, genuineness of transaction and creditworthiness of the lenders and sources thereof either during the course of assessment proceedings or before the undersigned. Hence, in view of the facts and circumstances discussed above, I am not inclined to interfere with the decision of the Assessing Officer. Accordingly, the addition of Rs.83,50,000/- made by the AO u/s 68 of the Act is hereby confirmed and above ground of appeal is dismissed.

5. In the result the appeal is dismissed. Order passed under sec 250 read with sec. 251 of the Act.”

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

6. Shri R.B. Doshi, Ld. Authorized Representative (for short 'AR') for the assessee company took us through the facts of the case. It was submitted by the Ld. AR that as the relevant documentary evidence which the A.O had called for during the course of the assessment proceedings to substantiate the identity and genuineness of the lenders a/w. genuineness of the loan transactions were not available with the assessee, therefore, the same could not be filed before him. Apropos the failure on the part of the assessee to participate in the course of the proceedings before the CIT(Appeals), it was submitted by him that the same had occasioned for the reason that as at the relevant point of time there was change in the management, therefore, necessary compliances could not be made. Elaborating further, it was submitted by the Ld. AR that the assessee company on the last occasion i.e. as on 15.02.2023 when the hearing of the appeal was adjourned for 02.03.2023 had uploaded a request letter dated 01.02.2023 requesting the CIT(A) for further time as requisite documentary evidence/material were yet to be gathered. Our attention was drawn by the Ld. AR to the adjournment letter dated 01.03.2023 that was filed by the assessee wherein he had requested that the hearing of the appeal that was fixed on 02.03.2023 be adjourned upto 17.03.2023 (copy placed on record). Carrying his contention further, the Ld. AR submitted that the CIT(Appeals) without dealing with the aforesaid request of the assessee had therein, merely proceeded with and disposed off the appeal vide his order dated 29.03.2023. Our attention was drawn to the adjournment letter dated 01.03.2023 (copy placed on record), which reads as follows.:

“Reason for seeking adjournment

Gathering of material from multiple sources requires time

We are gathering required information/documents from multiple sources, hence requires some more time.”

The Ld. A.R submitted that though the assessee’s counsel had uploaded adjournment letter (supra), the Ld. CIT(Appeal) had, however, proceeded with and disposed off the appeal based on a non-speaking order. Backed by the facts above, the Ld. AR submitted that the matter in all fairness be restored to the CIT(Appeals) with a direction to readjudicate the same after affording a reasonable opportunity of being heard to the assessee.

7. Per contra, the Ld. Departmental Representative (for short ‘DR’) did not raise any objection to the submissions put forth by the Ld. AR.

8. We have heard the Id. Authorized Representatives of both parties, perused the material available on record as well as orders of the lower authorities. As is discernible from the records, it transpires that the assessee had in the course of the proceedings before the CIT(Appeals) filed an adjournment letter dated 01.03.2023 (supra) requesting that the hearing of the appeal that was fixed on 02.03.2023 may be adjourned upto 17.03.2023. However, as stated by the Ld. AR, and rightly so, we find that the CIT(Appeals) without considering the aforesaid request of the assessee for adjournment much the less intimating to him that the same had been declined, had therein, proceeded with and disposed of the appeal. Our aforesaid observation is fortified by the fact that in the order of the

CIT(Appeals) there is no whisper of the adjournment letter dated 01.03.2023 (supra) that was filed by the assessee requesting for adjournment of the appeal upto 17.03.2023.

9. As observed by us hereinabove, failure on the part of the CIT(Appeals) to consider the assessee's request for adjournment of his case vide letter dated 01.03.2023 (supra) is discernible from the records. Also, we find that the CIT(Appeals) had disposed of the appeal on the same date, i.e., on 01.03.2023 when his office had received the application but the impugned order was passed by him much after i.e. on 29.03.2023. It is not the case that the CIT(Appeals) after considering the aforesaid request letter dated 01.03.2023 had rejected the same and proceeded with the matter. Considering the totality of the facts involved in the present case, we are of the view that the matter, in all fairness, requires to be restored to the file of the CIT(Appeals) with a direction to him to re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee. At the same time, the assessee is directed to duly comply with the notices that would be issued by the CIT(Appeals) in the set-aside proceedings, failing which, the latter may dispose of the appeal after considering the material available on record.

10. In the result, the assessee's appeal is allowed for statistical purposes in terms of our observations above.

Order pronounced in open court on 24th day of November, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 24th November, 2023
SB

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

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