

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. 54/RPR/2020  
निर्धारण वर्ष / Assessment Year : 2014-15

Shri Sandeep Surendran Nair  
38, Income Tax Colony,  
Gadge Nagar, Hingna Road,  
Nagpur (M.H.)-440016  
PAN : ACZPN2865M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-1(1), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : S/shri Makarand M. Joshi &  
Aniruddha Kavimandan, CAs

Revenue by : Shri Ram Tiwari, Sr. DR

सुनवाई की तारीख / Date of Hearing : 22.11.2023

घोषणा की तारीख / Date of Pronouncement : 28.11.2023

**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)-II, Raipur dated 30.01.2020, 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 28.12.2016 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. Whether on the facts and circumstances as well as in question of law the Ld. CIT(A) had erred in confirming the additions made by the Ld. AO on account of mismatch between 26AS and contract receipts.
2. Whether on the facts and circumstances as well as in question of law the Ld. CIT(A) had erred in confirming the additions made by the Ld. AO on account disallowance made u/s.40(a)(ia).
3. Whether on the facts and circumstances as well as in question of law the Ld. CIT(A) had erred in confirming the additions made by the Ld. AO on account of old outstanding creditors.
4. Whether on the facts and circumstances as well as in question of law the Ld. CIT(A) had erred in confirming the additions made by the Ld. AO on account of unpaid "Profession Tax" liability u/s 43B.
5. Any other point to be taken at the time of appeal.”

2. Succinctly stated, the assessee who is a mechanical contractor within the cement industry, had filed his return of income for the assessment year 2014-15 on 29.11.2014 declaring an income of Rs.69,30,640/-. Subsequently, the case of the assessee was selected for scrutiny assessment under CASS.

3. Assessment was framed by the A.O vide his order passed u/s.143(3) dated 28.12.2016, determining the income of the assessee at Rs.1,05,18,763/- after, inter alia, making following additions:

Sr. No.	Particulars	Amount
1.	Mismatch of receipts as per books and 26AS	Rs.28,62,702/-
2.	Disallowance u/s. 40(a)(ia) of the Act	Rs.1,54,827/-

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success.

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

6. At the very outset of hearing of the appeal, the Ld. Authorized Representative (for short 'AR') for the assessee submitted that as per instruction, he is not pressing grounds of appeal Nos. 3 & 4. Considering the aforesaid concession of the Ld. AR, the **Grounds of appeal Nos. 3 & 4** are dismissed as not pressed.

7. As regards the **Ground of appeal No.1**, it was submitted by the Ld. AR that mismatch of Rs.28,62,702/- on account of short accounting of contract receipt by the assessee as against that disclosed in 26AS that was added by the A.O pertained to three parties, viz. (i) Vasavadatta Cement : Rs.6,13,272/-; (ii) Ultratech

Cement (Awarpur Cement) : Rs.9,85,367/-; and (iii) Ultratech Cement (Birla Cement) : Rs.12,64,063/-. Elaborating on the reasons leading to the mismatch w.r.t. Vasavadatta Cement, the Ld. AR submitted that the same was primarily for the reason that an amount of Rs.6 lacs that was received by the assessee as an advance from the said party during the year and disclosed as such in his books of account, had however, been treated as a contract payment by the aforesaid party. Apropos the mismatch w.r.t. Ultra Tech Cement (Awarpur Cement), the Ld. AR submitted that the same had arisen on account of an unexplained amount of Rs.10,00,750/- that as per Form 26AS was credited by the said party in the account of the assessee on 31.03.2014. As regards the discrepancy of contract receipts in the case of Ultra Tech Cement (Birla white), the Ld. AR submitted that the same was primarily on account of a provisional bill of Rs.11,47,016/- credited by the said party to the account of the assessee on which TDS had also been deducted. It was, thus, submitted by him that the reason for mismatch in receipts was that Ultra Tech Cement Ltd. (Birla White) had made provisions in its books against the services rendered by the assessee on the basis of their own system of accounting and made TDS therefrom. It was submitted by the Ld. AR that on receipt of bill from the assessee, Ultra Tech Cement Ltd. (supra) had made the final accounting entry in its books of account and the difference between provisional amount as per the calculation of Ultra Tech Cement Ltd and the final bill amount was written off by the Ultra Tech Cement Ltd in its books as not payable by

them. The Ld. AR has filed additional evidence as per Rule 29 of the ITAT, Rules, 1963, as under:

(i) Confirmatory letter dated 15.11.2017 issued by Ultra Tech Cement Ltd. (Awarpur Cement)

(ii) Copy of account of the assessee in the books of Ultra Tech Cement Ltd. (Birla Cement) from 31.03.2014 to 31.03.2015 a/w. a trail of various e-mail indicating the follow up taken by the assessee and the final receipt of the ledger account from the concerned party on 23<sup>rd</sup> August, 2022.

It was submitted by the Ld. AR that as the aforesaid documents were received by the assessee after passing of the appellate order, therefore, the same could not be placed before the lower authorities. It was submitted by the Ld. AR that as the aforesaid additional documents would have a strong bearing on the adjudication of the issues involved in the appeal, therefore, the same in all fairness, be admitted.

8. The Ld. Departmental Representative (for short "DR") did not raise any objection to the seeking of admission of the aforesaid additional evidence filed by the assessee's counsel.

9. We have given a thoughtful consideration and are of the considered view that as the aforesaid documents filed by the assessee as additional evidence before us will have a strong bearing on the adjudication of ground of appeal no.1, therefore, in all fairness the same merits admission.

10. As is discernible from of the orders of the lower authorities, the A.O had made the addition of Rs.28,62,702/- on account of mismatch of receipt as per books and 26AS as per his following observations:

“3. There is difference in Gross Receipts as per books of accounts and as per 26AS.Details are as follows –

a - Vasavadatta Cement:- There is a difference in the receipts as shown in books of accounts and as per 26AS and in books- it is short by Rs.6,13,272/-. The assessee has been asked to explain the same and he has stated that they has received Rs.6,00,000/- as advance from the customers and the same is shown as advance in the balance sheet and it is not receipt. He has also filed copy of advance from customer account. It is not feasible as from the perusal of copy of ledger account of advance it is seen that the advance of Rs.6,00,000/- is received on 11/01/2014 and Rs.2,50,000/- is received on 16/01/2014 and which is converted into bill receipts on 18/02/2014. The only amount of Rs.6,00,000/- is left as advance at the year end. From the perusal of account it is also seen that all advance received by the said customer is converted to receipts in a month or two then why it is left to be billed. It is the duty to establish the same as he has also not furnished the confirmation of party for establishing the same that in actual the customer is also showing it as advance payment to us. The assessee has furnished only copy of ledger account in his books of account and nothing else and no third party confirmation or any external evidences etc. to substantiate his claim. Hence, the same is nothing but receipts of the year which has been left for accounting in books of accounts by the assessee and the same is added to his total income u/s. 68 of the Act as unexplained cash credit.

b- Ultratech Cement (Awarpur Cement) :- There is a difference of Rs. 9,85,367/- in the receipts as per 26AS and as per books. The receipts shown in books of accounts are short. The assessee has been asked to explain the same. The assessee has explained and stated that the Ultratech Cement (Awarpur Cement) has credited an amount of Rs.10,00,750/- on 31/03/2014 as per form No. 26AS but the same amount is neither received by the assessee nor bill of the same amount is raised by the assessee. In support of his claim they had submitted only copy of ledger account for the relevant year and subsequent year. Thus, difference is on account of unknown amount credited by the client against our PAN. The reason stilted by the

assessee is not tenable because the assessee knows this fact right from the beginning and before finalization of his accounts no step is taken by them for rectification; neither such effort has been taken by them nor furnished any correspondence done by the company for said rectification. From the perusal of copy of ledger account it is seen that the assessee is raising bills for repair & maintenance and man power supply the amount of maximum bill ranges from 15,000/- to 2,00,000/- therefore, is it possible that there could not be a single bill and it is accumulation of so many bill of small amount. As it is also seen from the copy of ledger account that there is regular and bulky transaction with the assessee so it is not possible for such unknown activity as claimed by the assessee. Hence, the difference of Rs.10,00,750/- is added to the total income of the assessee as short fall in the receipts shown in books of accounts.

C- Ultratech Cement (Birla White):- There is a difference of Rs.12,64,063/- in receipts as per 26AS and as per books and the receipts shown in books is short in comparison to shown in 26AS. The assessee has been asked to explain the difference in response to which he has filed reply stating that there is one bill of Rs.11,47,016/- credited by the said company on 27/04/2013 as provisional bill which is also mentioned in the statement of advance supplied by the party but there is no name of said company on copy furnished by the assessee. But the statement of advance supplied by the company is old and even though TDS was deducted on provisional bill on 27/04/2013 and it shall have converted into actual bill after that date as complete year is pending from that date. Further this fact is also best known to the assessee at the time of finalization of accounts but no such action is taken by the company for rectification if such amount not belongs to the assessee but no such was taken by the assessee and no evidences are furnished by the assessee to establish that it is not receipts except copy of ledger account of his own books of accounts. Hence, Rs.12,64,063/- is added to the total income of the assessee. In light of Jurisdictional Hon'ble High Court's decision held in case of Pesto Kill vs. CIT(2009) 30 DTR 0285 (CG) the total amount on account of mismatch of receipts as per books and 26AS comes to Rs.28,62,702/- is added to the returned income. Penalty proceedings u/s.271(1)(c) is initiated separately for furnishing inaccurate particulars of income.”

Admittedly, the assessee in furtherance of his claim that the mismatch of the contract receipts as accounted for by the assessee as against that disclosed in

Form No. 26AS were duly reconciled, had filed the aforementioned additional evidences as per Rule 29 of the ITAT Rules, 1963, which were not there before the lower authorities at the time of framing of the assessment in the case of the assessee. In the totality of the facts involved in the present case before us, we are of the considered view that the claim of the assessee that lower authorities had erred in making/sustaining the addition of the amount of mismatch u/s.68 of the Act requires to be verified. Accordingly, in all fairness, the matter is restored to the file of the A.O with a direction to verify the aforesaid claim of the assessee after considering the additional evidences as produced before us by the assessee. In case, the claim of the assessee ; or any part thereof, is found to be in order, then the addition to the said extent made by the A.O shall stand vacated. Needless to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee. Thus, the **Ground of appeal No.1** raised by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

11. The **Ground of appeal No.2** qua the disallowance under Sec. 40(a)(ia) of the assessee's claim for deduction of interest paid to NBFC of Rs.1,54,827/-, the assessee has filed before us an application U/rule 29 of the ITAT Rules, 1963 seeking liberty for placing on record a certificate from a Chartered Accountant, wherein it is certified by him that Religare Finvest Ltd., i.e, the payee had included an amount of interest charges of Rs.91,964/- received from the assessee company in its return of income for A.Y 2014-15 (copy placed on record). It was submitted by

the Ld. AR that as the aforesaid certificate which would have a strong bearing on the adjudication of the ground of appeal no. 2 could not be obtained in the course of the proceedings before the lower authorities, therefore, the same in all fairness be admitted.

12. The Id. Departmental Representative (for short "D.R") did not raise any objection to the seeking of admission of the aforesaid CA certificate by the assessee's counsel.

13. We have given a thoughtful consideration and are of the considered view that as the CA certificate under consideration will have a strong bearing on the adjudication of ground of appeal no. 2, therefore, in all fairness the same merits admission.

14. Although the CA certificate refers to the fact that the payee, viz. Religare Finvest Ltd. had included the interest charges of Rs.91,964/- received from Vasava Engineering Construction in its taxable income and had paid the tax on its declared income, but, as the same is not in the prescribed form i.e "Form 26A" r.w. Rule 31ACB as provided in the "1st proviso" to Sec. 201(1) r.w. Section 40(a)(ia) of the Act, therefore, the same cannot be acted upon for concluding that the assessee is not to be treated as being in default as regards deduction of tax at source u/s 194A of the Act on the interest charges of Rs.91,964/- paid to Religare Finvest Ltd. Considering the technical lapse on the part of the assessee in not furnishing the accountant certificate in the prescribed form i.e "Form 26A", we, thus, in all fairness

restore the issue to the file of the A.O with a liberty to the assessee to furnish the same in the prescribed form in the course of the set-aside proceedings. Needless to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee. In case the assessee furnishes the certificate in the prescribed form i.e "Form 26A" r.w.Rule 31ACB with the A.O in the course of the set-aside proceedings, then, the disallowance u/s 40(a)(ia) to the said extent shall be vacated by him. Thus, the **Ground of appeal No.2** raised by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

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

Order pronounced in open court on 28<sup>th</sup> day of November, 2023.

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

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

रायपुर/ RAIPUR ; दिनांक / Dated : 28<sup>th</sup> 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.