

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. 151/RPR/2022)
(Assessment Year: 2017-18)

Assistant Commissioner of Income Tax, Circle-1(1), Raipur	V s	Manav Motors, Opposite to Khamatarai Police Station, Bilaspur Road, Bhanpuri, Raipur
PAN: ACIPA6047P		
(अपीलार्थी/Appellant)	· ·	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Ravi Agrawal, CA
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	16.10.2023
घोषणा की तारीख/ Date of Pronouncement	:	30.11.2023

आदेश / O R D E R

Per Arun Khodpia, AM:

The captioned appeal filed by the revenue is instituted against the order of Ld. Commissioner of Income Tax (Appeals)-1, Raipur, u/s 250 of the I.T. Act, 1961 (herein after referred to as "Act") dated 25.11.2021 for the AY- 2017-18, arose out of the order u/s 143(3) of the I.T. Act, 1961 dated 27.12.2019 of the Ld. Assistant Commissioner of Income Tax, Circile-1(1), Raipur.

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

1. "Whether in Law and on the facts and the circumstances of the case, the Hon'ble CIT(Appeals) has erred in deleting the addition of

Rs. 72,42,648/- on account of unexplained cash credit found in the books of the assessee.”

2. “Whether in Law and on the facts and the circumstances of the case, the Hon’ble CIT(Appeals) has erred in not appreciating or appraising the evidence and arguments submitted by the Assessing Officer that the assessee has failed to discharge its burden under section 68 of the Act.”

3. “Whether in Law and on the facts and circumstances of the case, the Hon’ble CIT(Appeals) has erred in deleting the Penalty proceedings initiated by the Assessing Officer u/s 270A(2)(a) of the Act for under reporting of income by the assessee.”

4. “The Order of the Hon’ble CIT(Appeals) is erroneous both in Law and on facts.”

5. “Any other ground that may be adduced at the time of hearing.”

2. At the beginning of the hearing, the registry pointed out that the appeal filed by the department in the present case is barred by limitation by 17 days. Ld. Sr. DR representing the department has submitted in this respect that the order under section 250 in the case of the assessee was passed by NFAC on 25.11.2021, but the same was received in the office of Ld. PCIT, Raipur on 02.06.2022. Accordingly, limitation to file appeal before ITAT subsisted up to 31.07.2022. It is also the submission that due to voluminous order received from CIT(A) NFAC through online portal, the appeal before the ITAT could not be filed in time, Ld. Sr. DR has furnished before us a report from the concerned AO explaining the reasons for delay the same is placed on records. Considering the request from the

department and the facts and circumstances the delay in filing of the appeal has been condoned in terms of provisions of section 253(5).

3. The brief fact of the case borne from the records are that the assessee firm has filed its return of income for the AY 2017-18 on 19.09.2017 declaring of total income of Rs. 42,92,380/- Subsequently, the case of the assessee was selected for compulsory scrutiny under CASS and notice u/s 143(3) was issued on 09.08.2018. Assessment proceedings were initiated, statutory notices were issued and in compliance, the AR of the assessee has filed requisite submissions online a/w supporting documents, which were examined and placed on records. On thorough verifications of ITR, Audit Report, Books of Accounts and other records made available by the assessee during the course of assessment proceedings, Ld. AO has observed an issue pertaining to unexplained cash deposits of Rs. 12,55,16,151/- in the Bank Account of the Assessee's firm. Month wise details of Cash deposits were called for from the assessee a/w explanation for source and proof of such deposits. From the details submitted by the assessee Ld. AO has observed that during the period from 01.11.2016 till 09.11.2016 there was total deposit of Rs. 1,00,71,391/- but the cash sale of the assessee for the duration of those 08 days was of only Rs. 30,07,846/-. Assessee has explained that this difference in cash is on account of cash received from debtors. The explanation of the assessee could not find favour from the Ld. AO, who further proceeded with the observations that the amounts received in cash

as explained by the assessee are in violation of provisions of section 269ST Act. Further the assessee has only furnished ledger A/c of the various parties who paid the cash to assessee firm, which could not be taken at face value without corroborative evidence such as purchase invoices, booking invoices, address and contact details of the parties etc. Accordingly, the submissions made by the assessee are treated as not satisfactory. According to the AO, the onus of proving the source of cash receipt, which was on the assessee could not be satisfied, therefore, the cash deposits made by the assessee in the month of November 2016 reduced by opening balance and cash sales made till 08.11.2019 worked out at Rs. 72,42,648/- and have been considered as unexplained cash credits of the assessee for the AY 2017-18 and the same are decided to be taxed under the provisions of section 115BBE of the Act.

4. Aggrieved with the aforesaid observations and the order passed by the Ld. AO, assessee preferred an appeal before the Ld. CIT(A), NFAC, Wherein Ld. CIT(A), NFAC has approved the contentions of the assessee with the observation that the onus cast on the appellant has been discharged, consequently, the addition u/s 68 has been deleted.

5. Dissatisfied with the decision of the Ld. CIT(A) the department is now in appeal before us.

6. Ld. Sr DR before us has submitted that the issue in the present case relates to demonetisation period therefore the Ld. AO has specifically examined such period and found extraordinary cash deposits in the account of the assessee for which the assessee has explained that the amount were received from the debtors, but has squarely failed in substantiate by producing any evidences in support of their contention like purchase invoices, booking invoices, Address and contact details of the parties etc. before the AO. Ld. CIT(A), on the other hand has decided the issue considering the submissions of the assessee that the appellant has provided all the details including their PAN details to the AO the document also concluded TCS at the rate of 1% u/s 206C wherever applicable and the same is deposit in the government department. It is the contention of the appellant before the Ld. CIT(A)'s that provisions of section 269ST are not attracted as the appellant has not received any loans, the receipts in the appellants case are being the sales receipt. Ld. CIT(A) has considered the plea of appellant as gospel truth without appreciating the facts of the case neither going through the documents such as the sales invoices, confirmations from the parties' concerned or by conducting any enquiries with such parties. Findings of the Ld. CIT(A) were only based on the facts submitted by the assessee before him from the explanation by the assessee, without confronting the same to the AO, which are not in agreement with the facts of the case. It was, therefore, the prayer of the Ld. Sr. DR that the addition made by the Ld. AO u/s 68 deserves to be sustained by setting aside the order passed by the Ld. CIT(A)'s.

7. Ld. AR of the assessee on the other hand has submitted that the entire amount received by the assessee was duly account for in the books of account of the assessee therefore, provisions of section 68 cannot be invoked. Ld. In support of this contention, Ld. AR relied upon the order of ITAT Bench, Jaipur in the case of ACIT vs. Shri Chandra Surana in ITA No. 166/JP/2022, wherein it is held that section 68 cannot be invoked in respect of cash sale which have been furnished in the books of account and accepted by the department. Ld. AR further placed his reliance on the judgment in the case of Smt Harshil Chordia vs. ITO 298 ITR 349, wherein Hon'ble Rajasthan High Court has held that when money is received against shell then section 68 cannot be invoked.

8. On factual aspects, it is submitted by the Ld. AR that the substantial amount has been received in the first 15 days of the month of November of every year. The assessee, therefore, received a huge cash from farmers i.e., immediately after the crop has sold. Ld. AR further relied upon by the following judgments.

1. ACIT VS. SHRI NITIN SANKHLA
[ITA NO. 98/RPR/2020, Order dt. 08/06/2023]
2. RAHUL COLD STORAGE VS. ITO, DHAMTARI
[ITA No. 123/RPR/2022, Order dt. 29/11/2022]
3. ACIT VS. HIRAPANNA JEWELLERS
[ITA NO. 253/VIZ/2020, Order dt. 12/05/2021]

9. Based on aforesaid submissions it was the prayer of the Ld. AR that the addition made by the Ld. AO was based on presumptions, thus, have been vacated by the Ld. CIT(A). The order of Ld. CIT(A)'s is ,therefore, deserves to be sustained.

10. We have considered the rival submissions, perused the material available on record and case laws placed before us for our consideration. On perusal of the assessment order, the appellate order and the paper book submitted by the assessee, it is evident that the assessee has submitted before the Ld. AO and Ld. CIT(A)'s various documents like cash book, ledger accounts of 6 parties, copy of TCS, ledger of account of 33 parties a/w chart, charts showing details of cash book transactions cash summary of November 2017 to November 2018. Before us, Ld. AR has further submitted certain additional evidence consisting of copies of sale bills of 39 Tractors and other equipment, an affidavit of the partner of the assessee firm with a further request to allow him to produce daily cash summary from 01.11.2014 to 15.11.2014 to substantiate the trend of cash receipts during the month of November in earlier years.

11. Admittedly, on perusal of the assessment order, it is ostensible that the explanations of the assessee regarding amounts received in cash from debtors are not enough to substantiate the genuineness of cash

receipts, the assessee has failed in discharging its duties in submitting the requisite documents like purchase of invoices, booking invoices, address, and contact details of the parties from any concerned parties, so as to corroborate the explanations which have been offered before the Ld. AO. The details produced before the AO were again produced before the Ld. CIT(A), however, on perusal of the order of Ld CIT(A), it is arising that the Ld. CIT(A) has believed the contentions of the assessee summarily without verifying or examining or calling for the necessary documents which were vital but never submitted by the assessee. Ld. CIT(A), who has powers co-terminus with that of the Ld. AO, has not considered it appropriate to initiate any enquiries with the parties so as to reach at a justified conclusion that the cash deposits by the assessee in its books are genuine deposits and the same cannot be subjected to provisions of section 68. Before us also in the course of hearing, it was considered necessary to go through certain additional evidence to establish the genuineness of the transactions, accordingly Ld AR has submitted evidence and also requested to submit further additional evidence. Since all such additional evidence were not there before the authorities below, we cannot expect proper appreciation of facts by them under their respective proceedings.

12. Under such facts and circumstances wherein burden cast upon the assessee to place its explanations duly supported with corroborative evidence are found to be inadequate at both the assessment as well as

appellate stage, however, in view of additional evidence, we found substance in the contentions raised by the Ld. AR, but, subject to verification of such evidence so as confirm the genuineness of the transactions.

13. Apropos, case laws relied upon by the assessee are of no help in the present case, in absence of explanations offered by the assessee qua the genuineness of the transactions, even if recorded in the books of accounts but could not be substantiated by producing the supporting documents/ corroborative evidence, thus are distinguishable on facts and circumstances of the instant case.

14. In backdrop of aforesaid observations, we are of the considered view that the issue raised by the department deserves to be restore to the file of Ld. AO to examine the same and decide the issue afresh in terms of facts and the provisions of law. It is also directed that the assessee shall be provided with reasonable opportunity of being heard and to produce all the significant evidence and contentions which were raised before us. Resultantly, in the interest of principle of natural justice, we set aside the order of Ld CIT(A) and restore the matter to the files of Ld AO. Accordingly, the issues raised in the present appeal, filed by the department is partly allowed for statistical purposes.

15. In the result, appeal of the revenue is disposed-off, in terms of our aforesaid observations.

Order pronounced in the open court on 30/11/2023.

**Sd/-
(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 30/11/2023

Vaibhav Shrivastav

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