

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No. 321/RPR/2014

निर्धारण वर्ष / Assessment Year : 2005-06

M/s. Ramesh Chemical Industries
Dayalband, Bilaspur (C.G.)
PAN: AABFR3141A

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri G.S. Agrawal, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 12.09.2023

घोषणा की तारीख / Date of Pronouncement : 05.12.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee firm is directed against the order passed by the Commissioner of Income-Tax (Appeals), Bilaspur, dated 18.06.2014, 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 20.12.2007 for the assessment year 2005-06. The assessee firm has assailed the impugned order on the following grounds of appeal:

“1. In the facts and circumstances of the case, Ld. CIT(A) erred in confirming the addition of Rs.2,59,200/- made by the A.O on account of unrecorded purchases. The addition sustained by the CIT(A) is not justified.

2. Ld. CIT(A) erred in confirming the addition of Rs.1,88,370/- made by the A.O on account of cash purchase alleging it to be sham and ingenuine. The addition sustained by the CIT(A) is not justified.

3. In the facts and circumstances of the case, Ld. CIT(A) erred in confirming the following disallowance made by the A.O:

Disallowance out of salary expenses	Rs.66,900/-
Disallowance out of depreciation	Rs.30,003/-
Disallowance out of van expenses	Rs.5,173/-
Disallowance out of excess payment	Rs.1000/-

4. Without prejudice to ground no.1, 2 & 3 above, Ld. CIT(A) erred in dismissing the ground no.1 & 2 of appeal raised by the appellant and in holding that the A.O was justified in selecting the case of appellant for scrutiny and in making assessment u/s.143(3). The action of the A.O in selecting the case for scrutiny and the order of the CIT(A) confirming such action is contrary to instructions of CBDT and provisions of law.

5. The appellant reserves the right to add, amend or alter any of the grounds of appeal.”

2. Succinctly stated, the assessee firm which is engaged in the business of trading in *Agarbatti*, (i.e. incense sticks) had filed its return of income for A.Y.2005-06 on 28.10.2005, declaring a net loss of Rs. (-) 28,370/-. The return of income filed by the assessee firm was processed as such u/s. 143(1) of the Act on 12.01.2006.

3. Survey u/s. 133A of the Act was conducted on the assessee firm on 31.01.2005. During the course of survey proceedings, the stock found at the business premises of the assessee firm (including stock of Rs.40,700/- lying in the business premises of its sister concern i.e. M/s. Jalaram Trading Company) was inventorised at a value of Rs.20,31,767/-. However, as per the trading account furnished by the assessee firm the stock as on 30.01.2005 worked out at a value of Rs.17,72,567/-. On being queried about the excess stock of Rs.2,59,200/-, the partner of the assessee firm in his statement recorded on 09.02.2005 stated that the said discrepancy in the stock, inter alia, pertained to the inferior quality of goods which were received from its supplier, viz., M/s. Mamta Industries, Raipur, and as the same were to be returned back; therefore, the same were not accounted for in the books of accounts. The details of inferior quality of stock was furnished by the assessee firm, as under:

Sl. No.	Name of the party	Bill No./Date	Amount	Material
01.	Mamta Industries, Raipur	1/24-12-2004	Rs.86,400/-	Raw Agarbatti
02.	-do-	101/01-02-2004	Rs.86,400/-	Raw

				Agarbatti
03.	-do-	1687/10-12-2004	Rs.86,400/-	Raw Agarbatti
Total Purchases			Rs,2,59,200/-	

However, the explanation of the assessee firm did not find favour with the A.O. The A.O was of the view that it was incomprehensible that the assessee firm despite having been supplied inferior quality of raw material by the aforesaid party, viz., M/s. Mamta Industries, Raipur on 01.02.2004, would have, thereafter, on two occasions, i.e, on 10.12.2004 and 24.12.2004 made further purchases from the said supplier party which too being of inferior quality would have been lying with it for being returned back to the said party. On being queried, it was the claim of the assessee firm that it had asked the supplier concern, viz., M/s. Mamta Industries, Raipur to take its damaged goods and for the time being only on the ground of humanity and business decorum had kept the said goods with it. As the explanation of the assessee firm did not find favour with the A.O, therefore, he made addition of the excess stock of Rs.2,59,200/- to its returned income.

4. Apart from that, the A.O observed that a perusal of "State purchase account" revealed that the assessee firm had made cash purchases of Rs.1,88,370/- from M/s. Ram Shyam & Sons Trading, Raipur (Proprietor : Shri Ramchand Nerwani). The assessee firm on being queried as to why the aforesaid cash purchase transactions may not be disallowed u/s. 40A(3) of the Act, submitted that as the payments were made to its agent, viz. Shri Ram Shayam and Sons Trading, Raipur

for purchasing raw agarbatti, therefore, its case was covered by sub-rule (f), (g) & (l) of Rule 6DD of the Income Tax Rules, 1962. On a perusal of the copy of the bill/cash memo dated 11.10.2004 that was filed by the assessee firm a/w. its aforesaid reply, the A.O observed that there were several cuttings, corrections, interpolations and overwritings both in respect of the quantity and its value and the ultimate payment was altogether different. On a further perusal, it was observed by the A.O that on the reverse side of the bill, there were details such as names of 11 persons, quantity of goods and its cost and the date mentioned was as of 10.10.2004.

5. The A.O in order to verify the authenticity of the aforesaid purchase transactions directed the assessee firm to produce the aforesaid party, viz., Shri Ramchand Nerwani (supra). In reply, it was the claim of the assessee firm that as the aforementioned person, viz. Shri Ramchand Nerwani (supra) had gone out of station, therefore, he could not be produced. Considering the aforesaid facts, the A.O concluded that the alleged cash purchases amounting to Rs.1,88,370/- were sham, false and fabricated and not genuine. The reasons leading to the aforesaid conclusion of the A.O are culled out as under:

- “(i) A perusal of the bill reveals that the alleged M/s Ram Shyam & Sons Trading is a trader and not at all an agent.,
- (ii) The bill does not contain address, telephone number and Sales-Tax registration number of the party.,

(iii) Letter addressed to M/s Ram Shyam & Sons Trading, Raipur on 13-7-2006 on the address given in the bill has been returned by the postal authorities with the remarks 'Incomplete Address".,

(iv) The assessee did not produce the party for verification even after allowing sufficient time for doing so.,

(v) As per the details written in Hindi on the reverse side of the bill, the goods i.e. 234 bags worth Rs 2,02,176/- were dispatched on 10-10-2004. However on the face of bill prepared on 11-10-2004 (in English) the quantity was first written as 320 bags worth Rs 2,76,480/- (in English) and the total has also been drawn at Rs 2,76,480/- at the bottom of the bill under some signatures. The quantity and amount has been struck-off later on by one Shri Bharat Kumar, an employee of the assessee who has written (in Hindi) the quantity as 234 bags and its value as Rs 2,02,176/-. If the quantity & cost were written as 234 bags and Rs 2,02,176/- on the reverse side on 10-10-2004, how could a higher quantity & amount be written on the face of the bill on 11-10-2004 (in English) i.e. on a latter date, which has been subsequently rectified in Hindi by Shri Bharat Kumar, employee of the assessee. Thus all the entries in Hindi have been made subsequently by making interpolations. This abundantly establishes that the document has been fabricated by the assessee to suit its convenience., and

(vi) Above all the details now appearing on the reverse side of the bill were not at all present at the time of Survey. The then Assessing Officer while releasing the books of account and documents to the assessee retained photo-copies of the books and documents including copy of the impugned document. From the said copy (Annexure- B to this order) it is evident that no such details were present while releasing the document to the assessee. The assessee has fabricated the document later on to escape the incidence of 'tax and penal consequences.'"

6. Also, the A.O while framing the assessment observed that the assessee firm had raised a claim for deduction of salary of Rs.1,33,800/-. As the assessee firm had not maintained any salary register and had supported its claim for deduction of the aforesaid expenditure on the basis of internal vouchers, the A.O doubted the genuineness of the claim of expenditure. Apart from that, the A.O observed that the assessee firm had not paid salary regularly on a monthly basis but had paid the same on a lumpsum basis and most of the said payments were made after the date of survey. On being queried, it was the claim of the assessee firm that as most of the employees were the relative of the partners, therefore, in order to make good

savings and buildup capital they were not withdrawing their respective salaries. Observing, that the aforesaid explanation of the assessee was incomprehensible for the reason that no employee would afford not to receive his salary after putting in one month's hard work, the A.O held a conviction that the assessee firm had inflated the salary expenditure with an intent to reduce its tax liability, and thus, disallowed 50% of the said expenditure resulting to a consequential addition/disallowance of Rs.66,900/-.

7. Also, the A.O taking cognizance of the fact that the assessee firm had though raised a claim of depreciation on van/vehicles of Rs.1,50,015/- but not maintained any log book in respect of the said vehicles; hence, holding a conviction that the personal usage of the said vehicles could not be ruled out disallowed 20% of the assessee's claim for depreciation and made a consequential addition/disallowance of Rs. 30,003/-. Also, the A.O backed by his aforesaid conviction disallowed 20% of the van expenses of Rs.25,865/- and made a consequential addition/disallowance of Rs.5,173/-.

8. Further, the A.O observed that the assessee firm had made payment of Rs.1,56,252/- to M/s. Nishant Enterprises as against bill of Rs.1,55,252/-. On being queried, it was though stated by the assessee firm that the said infirmity had crept in due to a clerical mistake, but the A.O did not find favour with the said claim and made an addition of Rs.1,000/- to the assessee's returned income. The A.O, after inter alia, making the aforesaid additions/disallowances, vide his order passed u/s.

143(3) dated 20.12.2007 determined the income of the assessee firm at Rs.9,65,970/-.

9. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success in so far the aforesaid additions/disallowance were concerned.

10. The assessee firm being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal.

11. I have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

12. Shri G.S. Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee firm at the very outset submitted that both the lower authorities had grossly erred in making/sustaining the additions/disallowances on the basis of misconceived facts and perverse observations. Adverting to the addition/disallowance made by the A.O, which, thereafter, had been sustained by the CIT(Appeals), the Ld. AR took me through the orders of the lower authorities. Apropos the addition made by the A.O towards excess stock of Rs.2,59,200/- (supra), the Ld. AR submitted that the assessee since inception, i.e., in the course of his statement recorded during the course of survey proceedings, and, thereafter,

had categorically stated on the basis of supporting documents that the impugned discrepancy, i.e., excess stock of Rs.2,59,200/- (supra) represented the inferior quality of goods that were supplied to the assessee firm by M/s. Mamta Enterprises, Raipur and, as the same were to be returned back, therefore, they were not accounted for in its books of accounts. Accordingly, it was submitted by the Ld. AR that both the lower authorities had erred in making/sustaining an addition of Rs.2,59,200/- towards impugned excess stock found in the course of survey proceedings.

13. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

14. I have given a thoughtful consideration to the issue in hand, i.e., sustainability of the addition of Rs.2,59,200/- (supra) that was made by the A.O on account of excess stock found in the course of survey proceedings. As observed by me hereinabove, it has been the claim of the assessee firm since the date of survey that the excess stock had surfaced because the raw agarbattis which it had received on three occasions from M/s. Mamta Industries, Raipur, being of an inferior quality were to be returned back, and, thus, were not accounted for in its books of account. As is discernible from the record, I find that the A.O in the course of assessment proceedings vide his letter dated 13.07.2016 had issued a notice u/s. 133(6) of the Act to M/s. Mamta Industries, Raipur wherein it was directed to furnish copy of the account of the assessee firm as appearing in its books of

account, Page 28 of APB. In reply, M/s. Mamta Industries, had vide its letter dated Nil furnished with the A.O the copy of account of the assessee firm appearing in its books of account, Page 28-33 of APB. On a perusal of the account of the assessee firm as appearing in the books of account of M/s. Mamta Industries, Raipur for the year under consideration, i.e., A.Y.2005-06, I find that the aforesaid three purchase transactions made by the assessee firm from the said supplier had therein duly been accounted for, viz., (i) 02.12.2004 : 82,944/-; (ii) 10.12.2004 : 86,400/-; and (iii) 25.12.2004 : 86,400/-, Page 31-32 of APB. As stated by Shri G.S. Agrawal, the Ld. AR the return of the aforesaid goods by the assessee firm in three tranches to the aforesaid supplier party, viz., M/s. Mamta Industries, Raipur is also duly accounted for in the account of the assessee firm as appearing in the books of account of the said supplier party, Page 34 of APB. It was, thus, the claim of the Ld. AR that now when both the aforesaid purchases and the return of the aforesaid goods in question were duly accounted for in the running account of the assessee firm as appearing in the books of account of the supplier party, viz., M/s. Mamta Industries, Raipur, therefore, there was no justification for the lower authorities to have discarded the duly substantiated claim of the assessee firm, i.e., the stock of Rs.2,59,200/- (supra) found in the course of the survey proceedings was the rejected/ inferior goods received by the assessee firm from M/s. Mamta Industries (supra).

15. Elaborating further on his aforesaid contention, the Ld. AR submitted that the impugned variance in the respective amount of purchases (three purchase

transactions) and value of the goods returned (three transactions) was on account of certain calculation mistake/amount of freight. The Ld. AR in support of his aforesaid contention, had placed on record a reconciliation of the variance in the value of the goods returned as against the value of the corresponding purchases, as under:

SNO.	BILL	AS PER BOOKS OF MAMTA INDUSTRIES - Page No. 30 to 34 A/C of Ramesh Chemical Industries		AS PER BOOKS OF RAMESH CHEMICAL IND. - Page No. 39A A/C of M/s Mamta Industries		DIFFERENCE	ADJUST IN A/C OF MAMATA IND.
		DATE	AMOUNT	DATE	AMOUNT		
1	1672	4/10/2004	77,760	4/10/2004	77,760	NA	
2	1673	5/10/2004	161,568	5/11/2004	161,568	NA	
3	1674	5/11/2004	82,080	5/11/2004	86,400	4,320	Exess goods
4	1675	5/17/2004	158,976	5/20/2004	158,976	NA	
5	1676	5/25/2004	158,976	5/27/2004	160,704	NA	
6	1678	6/16/2004	159,840	6/16/2004	159,840	1,708	Exess goods
7	1677	6/16/2004	86,400	6/16/2004	86,400	NA	
8	1679	6/28/2004	86,400	7/19/2004	86,400	NA	
9	1684	10/28/2004	202,176	10/28/2004	188,370	13,806	Rate difference
10	1686	12/2/2004	82,944	-	-	-	
11	1687	12/10/2004	86,400	-	-	-	REVERSED AMT. 257800/- - 21.04.2005
12	1688	12/25/2004	86,400	-	-	-	
13	1689	1/1/2005	86,400	-	-	-	
14	1690	1/12/2005	86,400	-	-	-	21-04-2005 TOTAL
15	1691	1/26/2005	86,400	-	-	-	REVERSED AMT. 385848.00/-
16	1692	2/5/2005	86,400	2/5/2005	86,400	-	NA
17	1693	2/15/2005	87,500	2/17/2005	86,400	1,100	Rate difference
18	1694	3/3/2005	87,500	3/3/2005	86,400	1,100	Rate difference
19	1695	3/21/2005	87,500	3/23/2005	87,500	-	-

Note 1. Total rate difference Rs 13806 + 1100 + 1100 = 16006 which is adjusted on 31/03/2006 by Mamta Industries

Backed by his aforesaid contention, the Ld. AR submitted that now when both the purchases and return of the goods were duly accounted for in the running account of the assessee firm as appearing in the books of account of the supplier party, there was no justification for the A.O to have summarily rejected the explanation of the assessee firm without placing on record any material to support the adverse inferences drawn by him.

16. I have thoughtfully considered the aforesaid claim of the Ld. AR in the backdrop of the material available on record. At the threshold, I may herein observe that though the A.O in the course of the assessment proceedings vide his notice u/s. 133(6) of the Act had called upon M/s. Mamta Industries, Raipur to place on record the copy of account of the assessee firm as appearing in its books of account, Page 28 of APB, in compliance where to, the said supplier party, viz. M/s. Mamta Industries, Raipur had vide its covering letter dated Nil furnished a copy of the ledger account of the assessee firm as appearing in its books of account, Page 34 of APB but strangely there is no reference about the same in the body of the assessment order. As is discernible from the copy of the account of the assessee firm as appearing in the books of account of the supplier party, viz. M/s. Mamta Industries, Raipur (supra), the purchase of goods in question by the assessee firm aggregating to an amount of Rs.2,59,200/- (supra) therein found to be duly accounted, Page 33 of APB. Although the return of the aforesaid goods are also recorded in the books of account of the supplier party on 21.12.2005 at Rs.2,57,800/-, i.e., an amount which is in variance against their purchase value of Rs.2,59,200/-, but the said difference had been reconciled by the assessee on the basis of a "Chart" that has been filed before me by Shri G.S. Agrawal, the Ld. AR. On a careful perusal of the reconciliation filed by the assessee firm as had been culled out by me herein above, the impugned variance in the value of goods received vide Challan No.101, Page 1 of APB is stated to be on account of a calculation mistake as regards the value that was initially taken at Rs.86,400/-, i.e.,

100 bags of raw agarbatti (@ Rs.864/- per bag) as against the actual purchase value, i.e., 96 bags (@ Rs.864/- per bags of Rs.82,944/-). Apart from that, the difference with respect to the remaining two purchase transactions, i.e., those made on 10.12.2004 vide bill No.1687; and on 24.12.2004 vide challan No.1 is stated to be on account of inclusion of the freight charges of Rs.11,000/- each w.r.t. both the said transactions. Although, I find substance in the claim of the Ld. AR that now when both the purchases of goods and their return had duly been accounted for in the books of account of the supplier party, viz. M/s. Mamta Industries, Raipur, therefore, the A.O could not have made an addition of the same by treating it as excess stock found in the course of the survey proceedings conducted at the premises of the assessee firm, but at the same time, I cannot remain oblivion of the fact that as the aforesaid reconciliation "Chart" that has been filed before me for the very first time and is not available before the lower authorities, therefore, the same cannot be summarily accepted on the very face of it and would require to be verified. I, thus, in terms of my aforesaid observations for the limited purpose the set-aside the addition of Rs.2,59,200/- (supra) sustained by the CIT(Appeals), and restore the matter to the file of the A.O with a direction to him to re-adjudicate the same after considering the aforesaid reconciliation chart filed by the assessee along with other supporting documentary evidence. 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 firm which shall remain at a liberty to substantiate its claim on the basis of fresh documentary evidence, if any. Thus, the **Ground of appeal**

No.1 raised by the assessee firm is allowed for statistical purposes in terms of the aforesaid observations.

17. I shall now deal with the grievance of the assessee firm that the CIT(Appeals) had erred in sustaining the addition of Rs.1,88,370/- made by the A.O by treating the purchases as sham/ingenuine.

18. As observed by me hereinabove, the A.O with respect to the aforesaid cash purchase transactions had initially called upon the assessee firm to explain as to why the same may not be disallowed u/s. 40A(3) of the Act. However, the A.O after perusing the bill/cash memo dated 11.10.2004 that was filed by the assessee firm with him had serious doubts as regards the genuineness of the said purchase transaction. Although the A.O in order to verify the veracity of the purchase transaction had directed the assessee firm to produce Shri Ram Chand Nerwani ,i.e., proprietor of the sister concern, but the latter was not produced before him for the reason that he at the relevant point of time was not available in town.

19. Before me, Shri G.S. Agrawal, Ld. AR had placed on record an “affidavit” of shri Ramchand Nerwani, S/o. Shri Narumal Nerwani, resident of Raipur wherein he had categorically admitted of having supplied goods, i.e., raw material of Rs.1,88,370/- on 11.10.2004 to the assessee firm. For the sake of clarity, the “affidavit” of Shri Ramchand Nerwani (supra) is culled out as under:

शपथ पत्र

मैं रामचन्द्र नारवानी आयु 72 वर्ष वल्द श्री नारुमल नारवानी निवासी -
आमासिवनी, रायपुर तहसील व जिला रायपुर छ.ग. यह शपथपूर्वक बयान करता
हूँ कि :-

1/ मैंने दिनांक 11.10.2004 को राँ अगरबत्ती जिसका मूल्य
1,88,370/- सप्लाई किया था।

2/ उपरोक्त वर्णित राँ अगरबत्ती विभिन्न निर्माताओं से खरीद कर भेजा था
। कुटीर उद्योग के रूप में अपने स्वयं के घर में बिना बिजली या मशीन के उपयोग के
निर्माण किया था।

3/ उपरोक्त अगरबत्ती को मैंने अपना कमीशन जोड़कर मे.रमेश केमिकल
इण्डस्ट्रीज बिलासपुर को सप्लाई किया था।

4/ चूँकि उपरोक्त राँ अगरबत्ती को मैंने छोटे छोटे निर्माताओं से खरीदकर
भेजा था और उन्हें नगद पेमेन्ट करना पड़ता है अतः मैंने रमेश केमिकल इण्डस्ट्रीज
से नगद पेमेन्ट मांगा व विभिन्न निर्माताओं को पेमेन्ट किया।

5/ उपरोक्त राँ अगरबत्ती वनोउपज से प्राप्त बाँस काड़ी मैदा छाल एवं
कोयला पावडर आदि से निर्मित थी।

Ram Shyam & Sons Trading



शम श्याम
शपथकर्ता Proprietor

6 FEB 2023

क्रमशः 2

[Handwritten signature]

On a perusal of the bill/cash memo dated 11.10.2004 (supra), I find that as observed by the A.O, and rightly so, there are certain cuttings, corrections, interpolations and over writings on the same, i.e., both with respect to the quantity of bags and amount of payment. The Ld. AR had taken me through the copy of the aforesaid bill/cash memo a/w. translated copy of the same (copy placed on record), Page 3 of APB. Also, my attention was drawn by the Ld. AR to the copy of the cash book (extract) of the assessee firm dated 14.10.2004, Page 42 of APB a/w. translated copy of the same, Page 5 of APB, which revealed that out of the opening cash in hand of Rs.3,52,491/- an amount of Rs.1,88,370/- was utilized towards purchase of 234 bags of agarbatti (tax free). Backed by the aforesaid facts, the Ld. AR submitted that now when purchase transactions of raw material, i.e., raw agarbatti that was purchased by the assessee firm had duly been accounted for in

its books of accounts, and the same was supported by bill/cash memo dated 11.10.2004, thus, there was no justification for the A.O to have dubbed the same as a bogus purchase transaction.

20. Per contra, the Ld. DR relied on the orders of the lower authorities.

21. I have thoughtfully considered the aforesaid issue in hand, i.e., sustainability of the view taken by the lower authorities who have held the purchase of raw agarbatti of Rs.1,88,370/- made by the assessee firm from/through Shri Ramchand Nerwani (supra) as a bogus and sham transaction and had made addition/disallowance of the said amount in its hands. Admittedly, it is a matter of fact borne from record that the assessee firm in the course of proceedings before the lower authorities had failed to produce Shri Ramchand Nerwani, i.e., the supplier party, and thus, the A.O had no occasion to verify the veracity of the aforesaid claim of the assessee firm of having made purchases from/through the aforementioned person. Although, the assessee as per Rule 10 of the Income Tax Appellate Tribunal Rules, 1963 had filed an "affidavit" of Shri Ramchand Nerwani (supra) wherein he had deposed of having supplied goods, i.e., raw agarbatti of Rs.1,88,370/- on 11.10.2004 to the assessee firm', and had also stated that he as a commission agent had procured goods from small time manufacturers of raw agarbatti to whom payments as insisted by them, were made in cash, but at the same time I cannot remain oblivion of the fact that as the said "affidavit" filed by the assessee before me was not there before the lower authorities, thus, they had no

occasion to verify/cross-verify the same. Accordingly, I am of the view that in all fairness, the aforesaid claim of the assessee requires to be verified by the A.O who is directed to re-adjudicate the same after considering the documents filed by the assessee before me a/w. the “affidavit” of Shri Ramchand Nerwani (supra).

22. Before parting with the issue in hand, I may herein observe that in case the claim of Shri Ramchand Nerwani (supra) that he had supplied goods, i.e., raw agarbatti, i.e., cottage industry product, to the assessee firm by procuring the same in the status of a commission agent from small manufacturers who had insisted for the purchase consideration in cash, is found to be in order, then, as stated by the Ld. AR, and rightly so, the said purchase transaction as per Rule 6DD(k) would be saved by rigors of Section 40A(3) of the Act. Apart from that, the A.O in the course of the set-aside proceedings is also directed to consider the assessee’s claim that the cash payments made towards purchase of raw agarbatti would even otherwise be saved by Rule 6DD(f) of the Income Tax Rules, 1962 w.r.t. applicability of Section 40A(3) of the Act.

23. I, thus, in terms of the aforesaid observations set-aside the matter to the file of the A.O who shall re-adjudicate the same after considering the aforesaid “affidavit” of Shri Ramchand Nerwani as had been filed by the assessee firm before me. 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 firm which shall remain at a liberty to substantiate its claim on the basis of fresh documentary

evidence, if any. Thus, the **Ground of appeal No.2** raised by the assessee is allowed for statistical purposes in terms of the aforesaid observations.

24. Now I shall deal with the claim of the Ld. AR that the CIT(Appeals) had erred in disallowing on an ad-hoc basis 50% of the assessee's claim of salary expenses of Rs.66,900/- (out of Rs.1,33,800/-).

25. Although, the A.O had observed that the assessee firm had not maintained daily attendance register or salary register and its claim for salary expenses was merely supported by internal vouchers, but the same in my considered view would not suffice to disallow any part of the said expenditure in absence of there being any whisper of any such expenditure that was not found to be in order. Although not maintenance of attendance register or salary register for the purpose of disbursement of salary can lead to certain doubts in the mind of A.O about the authenticity of the salary expenditure but the same on such standalone basis cannot justifiably form a basis for disallowing any part of the said claim. In so far the view taken by the A.O that the assessee has supported his claim of salary on the basis of internal vouchers, I find that except for so stating, he had not referred to any single instance of any such payment to the employees which was either not found to be incurred by the assessee firm wholly and exclusively for the purpose of its business; or in any way was not found to be in order. Merely, on the basis of a generalized observation the assessee's claim for deduction of salary expenses could not have been disallowed on an ad hoc basis by the A.O.

26. Although the A.O had observed that the claim of the assessee firm that it had paid lumpsum salary to the employees as majority of them were his relatives was incomprehensible, as no employee would work for the whole month without salary being paid, but the same has not been brought to a logical end by the A.O by carrying out the requisite enquiries from the employees or placing on record any material which would dislodge the authenticity of the said claim so raised by the assessee firm. Accordingly, I do not concur with the adhoc disallowance of 50% of the assessee's claim for salary expenses and thus, vacate the addition/disallowance of Rs.66,900/-.

27. Apropos the disallowance of 20% of the assessee's claim for depreciation on van/vehicles of Rs.30,003/- (out of Rs.1,50,015/-), I find that the very fact that the partners of the assessee firm were having a personal car substantially supports the claim of the assessee that the van/vehicles would not have been put to use for personal purpose. At the same time, as the assessee had failed to maintain a log book in respect of van/vehicles, therefore, personal usage of the same cannot be ruled out. Accordingly, in all fairness, I restrict the addition/disallowance to the extent of 10%, and thus, sustain the addition to the extent of Rs.15,002/-. On the same footing, disallowance of vehicles expenses is also upheld to the extent of 10%, i.e., Rs.2,587/-. As the Ld. AR had not placed any contention with respect to the addition of Rs.1000/- made by the A.O, therefore, the same is sustained. Thus,

the **Ground of appeal No.3** raised by the assessee firm is partly allowed in terms of the aforesaid observations.

28. As the Ld. AR had not pressed the **Ground of appeal No.4**, accordingly, the same is dismissed as not pressed.

29. **Ground of appeal No.5** being general in nature is dismissed as not pressed.

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

Order pronounced in open court on 05th day of December, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 05th December, 2023.

SB

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

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