

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'B', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ **ITA No. 187/CHD/2024**

निर्धारण वर्ष / Assessment Year : 2016-17

Radiant Cement Company Private Limited, Kala Amb, Sirmour	Vs. बनाम	The ITO, Nahan, Sirmour.
स्थायी लेखा सं./PAN No: AAACR8765J		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ REPSONDENT

S.A. No.13/Chd/2024

(आयकर अपील सं./ **ITA No. 187/CHD/2024**)

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निर्धारिती की ओर से/Assessee by : Sh. Rohit Goel, CA

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

सुनवाई की तारीख/Date of Hearing : 28.05.2024

उदघोषणा की तारीख/Date of Pronouncement : 21.06.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

Appeal in this case has been filed by the Assessee against the order dated 02.02.2024 of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi on following Grounds:

1. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making addition of Rs. 3,39,29,643/- on account of cash sales held to be unexplained cash during the year.*
2. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making addition of Rs. 2,18,46,898/- included in Rs. 3,39,29,643/- being cash sales made to M/s J M Enterprises.*
3. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making addition of Rs. 1,11,39,745/- included in Rs. 3,39,29,643/- being cash sales made to M/s Shree Ram Udyog.*
4. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making addition of Rs. 9,43,000/- included in Rs. 3,39,29,643/- being cash sales to unregistered dealer.*
5. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making double addition of Rs. 3,39,29,643/- by accepting the sales as genuine which was credited as income by assessee but at the same time rejecting receipt of cash against the such sales and making addition of such sales cash receipt as unexplained cash.*
6. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making addition*

of Rs. 3,39,29,643/- on account of cash sales during the year without rejecting the audited books of accounts of Assessee.

7. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making addition of Rs. 3,39,29,643/- in violation to principles of natural justice.*
8. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned A.O. in converting the limited scrutiny case to Complete Scrutiny without prior approval of Principal Commissioner of Income Tax.*
9. *The appellant craves leave to add to or amend the aforesaid grounds before disposal of the appeal.*

2. Assessee has also filed a Stay Application No. 13/Chd/2023 for stay of demand.

3. First, we shall deal with the appeal of the Assessee. At the very outset, the ld. Counsel of the Assessee requested the Bench to allow him to withdraw Ground No. 8 of the appeal, i.e., regarding Limited Scrutiny case converting in to a Complete Scrutiny. The Bench allowed him to withdraw the same and as such the appeal on this Ground is dismissed as withdrawn.

3. Appeal on Ground Nos. 1 to 7 is against the addition of Rs. 3,39,29,643/- being cash sales made by the Assessee held to be unexplained cash sales during the year.

4. Brief facts of the case are that during the year under consideration the Assessee had made cash sales to three parties, i.e., (i) M/s J.M. Enterprises amounting to Rs. 2,18,46,898/- (ii) M/s Shree Ram Udyog amounting to Rs. 1,11,39,745/- and (iii) M/s R.N.A. Steel amounting to Rs. 29,88,972/- and finally to an unregistered dealer amounting to Rs. 9,43,000/-. The Assessing Officer as well as Id. CIT(A) treated these cash sales as income over and above the sales already recorded in the books of account. The Assessing Officer in the assessment order stated that the Assessee has submitted the justification of cash-in-hand, which has been reproduced in the order as under:-

“4.8 As the assessee had contended that it had made cash sales to three parties at New Delhi, Rs. 2,18,46,898/- to M/s J.M. Enterprises, Rs. 1,11,39,745/- to M/s Shree Ram Udyog and Rs. 29,88,972/- to M/s R.N.A Steel; verification was made from the said parties. Letter dated 05.10.2018 were issued to all the parties and they were required to submit the assessee's ledger accounts as appearing in their books of accounts and copy of their Income Tax Return. The reply from Shri Mahadev Jindal, Prop. M/s

Shree Ram Udyog, Smt. Nirmala Devi, Prop. M/s J.M. Enterprises and Shri Rajeev Singhal, Prop. M/s R.N.A Steel has been received and they have submitted the ledger account of assessee as appearing in their books of accounts during the relevant period. Examination of these ledger accounts reveals that they have not made any payment in cash to the assessee on account of purchases made by them”

5. Against the order of the Assessing Officer, the Assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) in his order dated 2.2.2024 has discussed this issue in detail giving the background of the case. The ld. CIT(A) in his order has stated as under:-

“4.4 Before framing assessment in the case, it is pertinent to discuss the background as to why the case has been selected for scrutiny. The assessee had deposited cash in old currency in its bank account amounting to Rs.3,09,00,000/- during the period of demonetization i.e. between 8.11.2016 to 31.12.2016. It is further seen that Income Tax Return for assessment year 2016-17 has been filed on 31.03.2017 and cash-in-hand at the end of relevant assessment year has been reported at Rs.3,75,36,719/-.”

6. The ld. CIT(A) in his order has given findings regarding transactions with the above-mentioned enterprises, the relevant part thereof is reproduced as under: -

J.M. ENTERPRISES

“10. J.M. Enterprises concerned the tax payer says the transactions during the year were through bank at Rs.23378524 and through cash at Rs 21867175. Taxpayer has given a complete list of transactions in cash or cash sales as per the books of account. No invoices were produced during the appeal proceedings. As far as J. M .Enterprises is concerned, there was a total Sale bill of Rs 45245699 in the books of Radiant Cement that is the tax payer, out of this Rs. 23378524 where paid through bank and the remaining was paid in cash Rs.21867175. But this transaction is not confirmed in the books of J.M. Enterprises.”

.....

It is difficult to give credit for the payments in cash since the books of J.M. Enterprises has to confirm payment of cash at Rs. 21867175. As far as the books of J.M. Enterprises is concerned this amount of Rs. 21867175 is appearing as a closing balance for A.Y. 2015-16 and opening balance for A.Y. 16-17, 17-18 and 18-19 This amount is yet to be paid as far as the books of J.M. Enterprises is concerned.”

SREE RAM UDHYOG

“As far as transaction with Sree Ram Udhyog is concerned there is a credit balance of Rs. 27850233 as per the books of Shri Ram Udhyog. Thereafter during the current assessment year cash sales were made by the taxpayer to Sree Ram Udhyog Rs. 1,11,39,745/- was paid by Sree Ram Udhyog to the tax payer Radiant Cement during the assessment year under appeal. Since already there is a credit existing in the name of Shri Ram UDHYOG AT Rs.

27850233, the balance outstanding is only a debit in the books of Radiant Cements Co. Pvt. Ltd that is the assessee and Sree Ram Udhyog has to make the remaining payment of Rs 16710488. This is remaining outstanding as can be seen from the table below. So, there is Cash Sales made during the year by the tax payer during the current assessment year with Sree Ram Udhyog and the same can be given credit. The entire precise is built on understanding by the tax payer that the cash deposits are generated through cash sales. As far as this amount of Rs.11139745 is concerned this can be given credit as cash available towards making of cash deposits.

.....

what is understood is Shree Ram Udhyog paid part of the goods in cash towards purchases however it did not record the payments made in cash in their books. The total sales made by the tax payer to Shri Ram Udhyog is Rs. 39975264 in the assessment year in the Ay 2016-17 and out of that Rs. 11139745 was paid in cash and Rs. 12162259 was paid through bank. The remaining amount of Rs. 16672949 is outstanding as on 31-03-2016. When the amount is remaining payable in the books of the taxpayer it cannot be squared off. ...”

RNA STEEL

“Now coming to the third party i.e. RNA Steel which is the last party having with transaction with the tax payer, during the assessment year M/s RNA Steel has purchased a part of goods in cash. The total amount paid in cash by RNA Steel during the current assessment year is Rs. 2988972, this amount of Rs. 2988972 is available as cash sales during the year.

7. During the proceedings before us, the Assessee has filed written submissions on this issue, which is reproduced as under: -

“4.2 Transactions with M/s J.M. Enterprises Prop
Nirmala Devi (PAN AGIPD9379H)

Assessee Company has sold goods of Rs. 4,52,45,699/- to M/s J.M. Enterprises during the year. Out of this Rs. 2,18,46,898/- in cash as per details of CIT(A) order and Rs. 2,33,98,801/- on credit. The closing balance of M/s J.M. Enterprises as on 31.3.2016 as per books of Assessee is NIL, whereas balance of Assessee as per books of M/s J.M. Enterprises was Rs. 2,18,67,175/- Payable. As per their Books the amount remained payable upto 10-12-2018 as per copy of Account filed by them before AO. Apparently, M/s J.M. Enterprises did not record cash payment against sales of Rs.2,18,46,898/- in their books and falsely shown it as payable in the name of company till date.

Transaction with Shree Ram Udyog Prop Mahadev Jindal
(PAN AAIPJ3426H)

4.3 Assessee Company has sold goods of Rs. 3,99,75,264/- to M/s Shree Ram Udyog during the year. Out of this Rs. 1,11,39,745/- in cash and Rs. 2,88,35,519/- on credit. The closing balance of M/s Shree Ram Udyog in the books of Assessee as on 31-3-2016 is Debit Rs. 1,66,73,260/-, the amount in question was paid in subsequent year by M/s Shree Ram Udyog through bank transfers and closing balance as on 31-8-2016 was NIL. The balance of Assessee Company as per books of M/s Shree Ram Udyog as on 31.3.2016 was Rs. 2,78,50,233/-. As per their books the balance as on 31-8-2016 is Credit Rs. 1,11,77,284/-. Apparently, M/s Shree

Ram Udyog did not record cash payment against sales of 1,11,39,745/- in their books and falsely shown it as payable in the name of company till date.

8. Finally, the ld. Counsel of the assessee has summarised his arguments as under: -

“4.5 In fact during the year sales of Rs. 88,63,050/- was made from Head office which comprise sale Bill of Rs. 9,43,000/- dated 30-11-2015 vide BNo. 178 from Head office to Shri Chaman Lai of Jagadhri sold for Rs. 9,90,150/- including Tax. It was submitted to AO that this cash was deposited in bank on the same date in bank. AO took this transaction as unexplained out of total sales of Rs. 88,63,050/- excluding tax and made the additions which is not justified.

4.5 The following facts are worth consideration:

i. Assessee maintains the complete day to day books of accounts including cash book, ledger, stock ledger, purchase and sales vouchers, vouchers for expenses. There have been sufficient stock with the assessee and necessary invoices have been issued and stock has been reduced with quantity of sales.

ii. Books of accounts are audited by a Chartered Accountant.

iii That sales has been made from Himachal. As per Himachal VAT -XXVI-A under rule 61(1), under which complete details of sales with name and address, VAT details amount and other details of bills are to be uploaded on State Government online

and such form is accompanied with the Trade Invoice and verified at the barrier. In the circumstances there was no option with the assessee to backdate the sale transaction.

iv. The books of accounts are accepted. At the same time learned AO has placed suspicion on cash received against sales. The basic principle is the same in the law relating to income-tax as well as in civil law, namely, that if there is no challenge to the transaction represented by the entries or to the genuineness of the entries, then it is not open to the other side -in this case the revenue to contend that that which is shown by the entries is not the real state of affairs.”

9. The ld. DR relied on the order of the Assessing Officer and the CIT(A).

10. We have considered the findings of the ld. CIT(A) in his order which is mainly based on the findings of the Assessing Officer in the assessment order and written submissions filed by the Counsel of the Assessee. We find that the Counsel of the Assessee has brought it on record that all sales were through cheque or by cash were recorded in its books of account which was accepted by the Department. We also find that on all sales the Assessee has paid VAT and the VAT authorities have accepted the VAT returns of the Assessee of sales related to concerned parties. The Assessee has also produced before the Assessing Officer its complete set

of day to day books of account including cashbook ledger, stock ledger purchase and sale vouchers for expenses etc. The Assessing Officer has nowhere in the assessment order doubted the genuineness of the cash sales on the basis of such vouchers. We also find that the books of account of the Assessee has been audited by a Chartered Accountant and sales made from the Himachal Pradesh have been recorded on VAT bills and such bills have been uploaded on the State Government online and such forms are accompanied with trade invoices verified at the barriers. All these things have been accepted by the Assessing Officer and the Assessing Officer has also accepted the profit and loss earned on such cash sales and tax offered thereon.

11. The only basis of such addition was that the amount of cash sales are still shown as payable in the books of account of the above mentioned parties. The Counsel of the Assessee has argued on this issue that these parties have not made payment of this so called outstanding shown in their books of account even till date. It is because what they have already paid in cash, they are not going to make payment of the same amount again.

12. But after accepting the tax on cash sales the Assessing officer has disallowed the cash sales to the above-mentioned parties and made total addition of Rs. 3,69,18,615/- on this account.

13. We are of the opinion that once the cash sales have been accepted and tax on profit earned therefrom have been realised, the cash arising out of the same transactions cannot be disallowed and added back to the income of the assessee. It is because it will be tantamount to taxing the same amount twice, which is not permissible under Income Tax Act, 1961.

14. Both the Assessing Officer and the ld. CIT(A) have made an attempt to prove that the cash generated by sales by the assessee are something that may be treated as sales outside the books of account. But authorities below have failed to bring on record any evidence in support of their presumption. There is nothing on record to substantiate the claim of the Assessing Officer and the ld. CIT(A) that the cash deposited by the assessee during the demonetisation was generated through some other sources of income than the source of sales recorded by the assessee in its books of account. In the absence of any findings on this issue and evidence in support of the presumption of the Assessing Officer and CIT(A),

the addition made by the Assessing Officer and confirmed by the Id. CIT(A) of Rs. 3,69,18,615/- cannot be sustained. Accordingly, assessee's appeal on Ground Nos. 1 to 7 are allowed.

15. Appeal on Ground No.9 is general in nature.

16. In the result, the appeal of the assessee is partly allowed.

Stay No. 13/Chd/2024

17. Since the appeal of the Assessee has been decided on merits, the Stay Application filed by the Assessee has become infructuous and the same is accordingly dismissed as infructuous.

Order pronounced on 21.06.2024.

Sd/-

Sd/-

(A.D. JAIN)
Vice President

(DR KRINWANT SAHAY)
Accountant Member

“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

*187-Chd-2024 & SA-13-Chd-2024 –
Radiant Cement Company Pvt. Ltd., Sirmour, H.P.*

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar