

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**

**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA No. 81/Nag./2018**  
(Assessment Year : 2011-12)

Income Tax Officer,  
Ward -1, Amravati

..... Appellant

v/s

Shri Sanjay Nanasaheb Bharsakale  
1, Shivaji Nagar, Banosa,  
Daryapur, Dist. Amravati.  
PAN – AHRPB8625J

..... Respondent

Assessee by : Shri Manoj Moriyani, Advocate  
Revenue by : Shri Abhay Y.Marathe, Sr.Dr.

Date of Hearing – 09/07/2024

Date of Order – 16/07/2024

**ORDER**

**PER K.M.ROY, A.M.**

The present appeal has been preferred by the department challenging the impugned order dated 31/01/2018, passed u/s 250 of the Income Tax Act, 1961 (*"the IT Act"*) by the learned Commissioner of Income Tax (Appeals), Nagpur, [*"learned CIT"*], for the assessment year 2011-12, emanating against the order u/s 143(3) r.w.s. 147 of the I.T. Act, 1961, by ITO, Ward-1, Amravati, on 23/03/2015.

2. The department has raised following grounds of appeal:—

*“1. On the facts and circumstances of the case and in law the learned CIT (Appeals)-1 Nagpur has erred in deleting the addition of Rs.2,05,00,000/- as unexplained cash credit u/s 68 of the I.T.Act, when during the examination it is found that all the 17 creditors have meagre income from agriculture and even do not have minimum balance in their bank account on the date of deposit of money to the account of the assessee.*

*2. The findings recorded by the CIT (Appeals) in para 5.5.3 that the creditors are agriculturists having substantial agricultural income is perverse on the facts.*

*3. The findings recorded by the CIT (Appeals) in para 5.5.5(b) that these agriculturists believed in cash transactions is perverse in as much as the same defies logic as to how could they advance substantial sums to the assessee without any documented record of the same.*

*4. Any other ground which may be raised with the permission of the Hon'ble ITAT.*

3. The fact of the case of the appellant as culled out from the records as per Form 35 is as follows:-

*“ The appellant earns business income from lodging & restaurant, Video Game Parlour and Trading of Sand. The appellant is maintaining regular books of account and books of account were audited as per Section 44AB of the Income Tax Act. The appellant filed e-return of income declaring net taxable income at Rs. 4,60,290/- on 25/01/2012. The return was processed and assessment u/s. 143(1) was completed on 17/02/2012. The assessing officer has issued notice u/s. 148 the appellant filed submission and stated that the return filed on 25/01/2012 be treated in response to the notice U/s. 148. Enquiry u/s. 131 was conducted at the business premises of the appellant on 19/04/2013 by the Deputy Director of the Income Tax (Inv.), Unit-III, Nagpur. During the course of enquiry the DDIT, Nagpur noticed that the appellant has introduced cash of Rs.2.05 Crore on 03/01/2011 and on the same date appellant has deposited of Rs.1.60 Crores in the bank account with Central Bank of India, Daryapur. During the course of enquiry appellant stated that Shri Rajesh Hiwase has obtained license for extraction of sand from the Sand-ghats in Amravati District and to obtain rights of extraction of sand from the sand-ghats located in Daryapur Taluka, he had borrowed the sand amount from the various persons and then transferred the same to the account of Shri Rajesh Hiwase. During the course of assessment proceedings summon u/s. 131 were issued to the all the 17 persons from whom the appellant has taken money and their deposition were recorded on 29/12/2014. All have admitted and confirmed that they have given money to the appellant as sand advance and source thereof was stated to be out of agriculture and sand*

*business and they have also submitted all the documents as and when called by the assessing officer during the course of assessment proceedings. The learned assessing officer without going into merits of the case made addition of Rs.2,05,00,000/- as unexplained cash credits u/s. 68. The learned assessing officer also stated that the appellant repaid the loan amount by mode other than account payee cheque in violation of section 269T”*

4. Being aggrieved against the addition, the appeal was preferred before CIT(A). The CIT(A) has dealt elaborately as follows:-

“5.5.1 The appellant is trading in sand the appellant has introduced a sum of Rs. 2.05 crores being advances received from 17 parties, for sand in his books of account on 03/01/2011 during the previous year relevant to assessment year under consideration. The details in respect to amounts of Rs. 2.05 crores received in cash by appellant from these 17 parties have been tabulated by the A.O. at Para 4 of the assessment order. The aforesaid sum was received by appellant as booking advance for sand in cash. The aforesaid sums were duly reflected in the books of account of the appellant and in cash book. The appellant has deposited the aforesaid amount in his bank account No. 2159902651 with Central Bank of India, Daryapur.

5.5.2 In this case, an enquiry under section 131 of I.T. Act 1961 was conducted at the premises of the appellant on 19/04/2013 by the Deputy Director of Income Tax (Inv.) Unit-III. Nagpur. During the course of enquiry, the DDIT(Inv.) Unit-III Nagpur noticed that the appellant has introduced cash of Rs. 2.05 crores in his books of account on 03/01/2011 and on the same date the appellant made the cash deposit of Rs. 1.06 crores in the bank account with Central Bank of India, Daryapur., the sources of which was stated by the appellant to be out of cash advances of Rs. 2.05 received by him from the aforesaid 17 parties. On the basis of the enquiry, the A.O. - inferred that the nature and source of cash of Rs. 2.05 crores introduced in the books of appellant on 03/01/2011 has remained unexplained. Thus the A.O. added the amount of Rs. 2.05 crores to the returned income under section 68 of I.T. Act 1961.

5.5.3 Perusal of the evidences filed in the paper book indicates that the persons who have given money to the appellant are agriculturists having substantial agricultural income. The appellant remitted the aforesaid amounts in the account of Shri Rajesh S. Hiwase with Bank of India by way of RTGS towards booking advances for sand. This fact has not been denied by the A.O. It is seen that Shri Rajesh Hiwase has been granted the sand extraction from the Sand Ghats of Daryapur Taluka, Amravati District vide order dated 31/12/2010 of District Mining Office, Collector Office, Amravati for an amount of Rs. 6,09,21,000/-. The appellant had

borrowed the amount from his customers and then transferred the same to the account of Shri Rajesh Hiwase. The appellant has purchased the sand from Shri Rajesh Hiwase and he issued the bill in favour of appellant. The copies of bills, ledger account of appellant are on record. The A.O. also verified the aforesaid fact from the information obtained from District Mining Officer, Collector Office, Amravati under section 133(6) of I.T. Act 1961. The appellant had paid the VAT tax on the sale of sand and the same is reflected in the copy of VAT audit report filed in the paper book. The appellant also filed the copy of account of Shri Rajesh Hiwase showing the purchases made from Rajesh Hiwase.

5.5.4 During the course of assessment proceedings, the A.O. issued summons under sections 131 of I.T. Act 1961 to all the 17 parties from whom the appellant received the cash advances for sand and the depositions u/s 131 of I.T. Act 1961 in respect to 13 parties were recorded. All such depositions made u/s 131 of I.T. Act 1961 are filed in the paper book at pages 118 to 166. Perusal of the said depositions indicates that all the persons have accepted the fact of giving money in cash to the appellant for sand. They also explained that the sources of money given by them to the appellant are out of their agricultural income and sand business. The appellant filed the copies of reply filed by the parties in response to summons issued under section 131 of I.T. Act and they are placed at pages 175 to 188 of the paper book. The appellant also filed the copies of ledger accounts of all 17 persons at pages 189 to 208. The appellant has also filed the copy of statement of VAT Audit report in form No. 704 at pages 209 to 233 of the paper book. It is seen that all the transactions made with such persons were duly reflected in the books of account of appellant. It is also the grievance of the appellant that all the statements were recorded behind the back of the appellant and no opportunity to cross examine was granted to the appellant.

5. Upon careful consideration of the evidences and documents, learned CIT (Appeal) deleted the addition by holding as follows:

*“Considering the totality of the facts and circumstances of the case and the appreciation of the evidences filed on record, as well as the decisions relied upon by the appellant, I am of the considered view that the appellant has offered reasonable and satisfactory explanation, and discharged his obligations of proving the transactions. It is therefore held that the A.O. is not justified in making the addition of Rs.2,05,00,000/- under Section 68 of the I.T. Act 1961 on account of unexplained cash credits. The addition of Rs.2,05,00,000/- is accordingly deleted and the appeal on these grounds is allowed”.*

Accordingly, CIT (Appeals) has granted full relief to the appellant by directing deletion of the same u/s 68 of Rs. 2,05,00,000/-. Being aggrieved, the department is in appeal before us.

6. The learned DR, at the very onset vehemently argued that the creditworthiness of the lenders was very much in doubt because they are agriculturists and they may not have enough funds at their disposal to advance the same to the appellant. He, therefore, pleaded that the order of the Assessing Officer be restored. On the other hand, the learned AR submitted a voluminous paper book containing about 296 pages, containing the following documents:

- 1] Copy of acknowledgment of return alongwith computation of Income.
- 2] Copy of Audit Report alongwith Audited Profit & Loss Account, Balance Sheet and Schedules
- 3] Coy of Cash Book
- 4] Copy of statement u/s 131 of Ujjwal Ganeshrao Khedkar
- 5] Copy of statement u/s 131 of Bhagwant Sitaram Neware
- 6] Copy of statement u/s 131 of Anish Gyanchand Mahajan
- 7] Copy of statement u/s 131 of M. Brahim and Shri Mohd. Ibrahim
- 8] Copy of statement u/s 131 of Bundele Sagar Girdharji
- 9] Copy of statement u/s 131 of Vijay Mesare
- 10] Copy of statement u/s 131 of Ramesh Shriram Mesare
- 11] Copy of statement u/s 131 of Bharad Jankaramji Wasu
- 12] Copy of statement u/s 131 of Gajanan Ramda Shelke
- 13] Copy of statement u/s 131 of More Dilip Shahadeo
- 14] Copy of statement u/s 131 of Shri Prasad V. Mahajan
- 15] Copy of statement u/s 131 of Sanjay Gangaram Chavan
- 16] Copy of statement u/s 131 of Nilesh Popatlal Shaha
- 17] Copy of statement u/s 131 of Gawande Hareram Gulabrao
- 18] Copy of statement u/s 131 of Shivpal Puranji Maliye
- 19] Copy of statement u/s 131 of Mohd Hanif Sk Burhan s/o k.Burhan
- 20] Copy of reply to notice u/s 148 dated 20/11/2013
- 21] Copies of reply filed before the assessing officer
- 22] Copies of reply filed by persons before assessing officer to whom summons u/s 131 were issued along with copy of Summons u/s 131
- 23] Copy of ledger account of Ujjwal Ganeshrao Khedkar
- 24] Copy of ledger account of Bhagwant Sitaram Neware
- 25] Copy of ledger account of Anish Ghyanchand Mahjan

- 26] Copy of ledger account of M.Brahim Musabhai
- 27] Copy of ledger account of Sagar Girdharji Bundele
- 28] Copy of ledger account of Vijay Mesare
- 29] Copy of ledger account of Ramesh Shriram Mesare
- 30] Copy of ledger account of Sharad Janakramji Wasu
- 31] Copy of ledger account of Gajanan Ramda Shelke
- 32] Copy of ledger account of Dilip Shahadeo More
- 33] Copy of ledger account of Shiv Prasad V Mahajan
- 34] Copy of ledger account of Sanjay Gangaram Chavan
- 35] Copy of ledger account of Nilesh Popatlal Shaha
- 36] Copy of ledger account of Hariram Gulabrao Gawande
- 37] Copy of ledger account of Shivpal Puranji Maliye
- 38] Copy of ledger account of Mohd Hamid SH Burhani
- 39] Copy of ledger account of Mohd Ibrahim
- 40] Copy of account of Sharad Wasu
- 41] Copy of acknowledgement of Audit Report in Form 704
- 42] Copy of Statement of Audit Report in Form – 7-4
- 43] Copy of Written submission filed before CIT(A)-1, Nagpur
- 44] Copy of Remand Report filed by Assessing Officer
- 45] Copy of submission of rejoinder to remand report
- 46] Copy of order of Collector, Amravati, regarding  
Excavation of sand
- 47] Copy of further rejoinder to remand report alongwith  
Relevant details.

He had also submitted a paper book containing the following orders/  
judgments:-

- 1] (1980) 125 ITR 0713 (SC)  
**Kishinchand Chellaram vs. Commissioner of Income Tax**
- 2] Judgment of Hon'ble Income Tax Appellate Tribunal, Mumbai  
Bench, dt. 12/04/2017, vide ITA No. 1069 to 1071/Mum/2017
- 3] Judgment of Hon'ble Income Tax Appellate Tribunal, Delhi  
Bench "C" dated 24/02/2016 vide ITA No.5500/Del/2013
- 4] (2010) 322 ITR 0394 (Bom.HC)  
**Commissioner of Income Tax vs. Tania Investments (P) Ltd.**
- 5] (1973) 90 ITR 0396 (Bom HC)  
**Commissioner of Income Tax vs. U.M.Shah**
- 6] (2000) 245 ITR 0160 (M.P HC)  
**Commissioner of Income Tax vs. Metachem Industries**
- 7] (2003) 180 CTR 0166 (Raj. HC)  
**Kamal Motors vs. Commissioner of Income Tax**

- 8] (1976) 103 ITR 0344 (Patna HC)  
**Sarogi Credit Corporation vs. Commissioner of Income Tax**
- 9] (2016) 138 DTR 0361 (Cal.HC)  
**Principal Commissioner of Income Tax vs. Dutta Automobiles (P) Ltd.**
- 10] (2016) 138 DTR 0361 (Kol. ITAT)  
**Dutta Automobiles (P) Ltd vs. Assistant Commissioner of Income Tax.**
- 11] Judgment of Hon'ble Income Tax Appellate Tribunal, Mumbai Bench "D" Mumbai, dated 29/01/2024 vide **ITA No. 2117/Mum/2023** in case of **Income Tax Officer vrs. M/s Raj Maitry & Eskon Developer.**

7. We have perused the matter very thoroughly. It is pertinent to reproduce para 22 of the Assessment Order, as follows:

*"In view of above, I am not satisfied with the submission made by the assessee. Further also, I am not satisfied about the correctness and completeness of the accounts of the assessee and it is not possible to deduce the true income from the account maintained by the assessee. Since true profit cannot be deduced from such account, therefore, the books of accounts are rejected u/s 145(3) of the Income Tax Act, 1961, as not satisfactory and not reveal true picture of business affairs and as such assessment was to be made on best judgment."*

8. The learned AR argued before us that once the books of accounts has been rejected, there can be no separate addition u/s 68 of the Act. We find that the matter is covered by a similar judgment of ITAT, Chennai Bench, in ITA No. 3091/Chhy/2019 in case of **Assistant Commissioner of Income Tax -vs.- Shri S. Moorthy**. The Hon'ble Judicial Member being a party to the order has held as follows:

*"We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. It is an admitted fact that the AO has rejected books of account u/s.145(3) of the Act and estimated profit from the business by adopting 12.5% net profit on gross receipts. It is also an admitted fact that once books of account are rejected u/s.145(3) of the Act, no further additions can be made by relying upon same books of account either in respect of cash credits u/s.68 of the Act or unexplained commission expenses u/s.69C of the Act, because in order to invoke provisions of section 68 of the Act, it is essential that credit should be from the books of account of the assessee*

*maintained for that year. Once, the books of account maintained by the assessee is treated as no longer in existence by rejecting those books u/s.145(3) of the Act, then for all purposes including for the purpose of section 68 of the Act, said books of account ceased to exist and hence, those books cannot be relied upon to make addition towards unexplained credit u/s.68 of the Act. This legal position is supported by the decision of Hon'ble High Court of Rajasthan in the case of CIT vs. G.K. Contractor, supra, where it was clearly held that "AO having estimated the profit by applying a higher net profit rate to total contract receipts after rejecting assessee's books of account by invoking the provisions of section 14(3), no separate addition can be made on account of cash credit u/s.68, even though the assessee has failed to discharge its onus of proof in explaining the amount shown in the books of account". The Hon'ble High Court of Punjab and Haryana, in the case of CIT vs. Aggarwal Engg. Co., (2008) 302 ITR 0246 had considered an identical issue and held that "no separate addition on account of cash credit and on account of unexplained payments for purchases made outside the books can be made once the net profit rate is applied on contract receipts of an assessee for estimating his income from contract work". The Hon'ble High Court of Allahabad in the case of CIT vs. Banwarilal Banshidhar, (1998) 229 ITR 0229 had taken a similar view and held that "where income is assessed at G.P. rate by rejecting the books of assessee u/s.145(3), no disallowance can be made separately u/s.40A(3) of the Act". Therefore, from the above, it is very clear that to make additions u/s.68 or 69 of the Act, the essential condition is books of account should be maintained by the for the relevant financial year. If books of account of the assessee are rejected and income is estimated by applying certain profit rate, it would take care of all expenses necessarily to be incurred for earning profit and hence, when profit is estimated no separate addition can be made towards unexplained commission u/s.69 of the Act. The Id.CIT(A) after considering relevant facts has rightly held that the AO is erred in making addition towards cash credit u/s.68 of the Act and unexplained commission u/s.69C of the Act, when the books of account were rejected u/s.145(3) of the Act.*

9. We further find that the similar view has also been taken in the case of **Commissioner of Income Tax -vs- G.K.Contractor, (2009) 19 DTR 0305 (Raj.HC)**, wherein the High Court of Rajasthan has held as follows;

*“Estimation of profit after rejection of books of account – AO having estimated the profit by applying a higher net profit rate to total contract receipts after rejecting assessee’s books of account by invoking the provisions of s. 145(3), no separate addition can be made on account of cash credit under s. 68 even though the assessee has failed to discharge its onus of proof in explaining the amount shown in the books of account as ‘market outstanding’ – No substantial question of law arises for consideration.”*

We find the substantial merit in the forceful submission of AR.

10. On the other hand, the learned DR has referred to the following judgments:

[1] Hon'ble High Court of Allahabad's judgment in the case of **Commissioner of Income Tax-I vs. G.S.Tiwari & Co.** vide IT Appeal No. 5 of 2008 reported in [2014] 41 taxmann.com 17 (Allahabad) dated May 30, 2013.

[2] Hon'ble Supreme Court's Judgment in the case of **Basir Ahmed Sisodia vs. Income Tax Officer** vide Civil Appeal No. 6110 of 2009 dated April 24, 2020 reported in [2020] 116 taxmann.com 375(SC).

11. Upon perusal of the same, we find that the Hon'ble High Court at Allahabad in paragraph 10 of the order has clearly held that, *where the unexplained sundry creditors are referable to the business income and the AO is precluded from adding the said unexplained sundry creditors as undisclosed income from the business.*" The judgment of the Supreme Court was in regard to the fact that even during the penalty proceedings, documents can be filed to establish the genuineness of sundry creditors. These cases, in our humble opinion, are not at all relevant to decide the issue in hand. Accordingly, the ld. AR is correct in his view that when books of account were rejected, no addition can be made u/s 68 of the IT Act, 1961. The ld.AR also relied upon the judgment of Calcutta High Court in case of **Principal Commissioner of Income Tax vs. Dutta Automobiles (P) Ltd., [GA 1116 of 2016 & ITAT 142 of 2016] dated May 17, 2016** reported in **138 DTR 0361 (Cal.)**.

*"Income-Cash credits-Bogus liability-It appeared that nearly sum of Rs. 4 crores was found credited to books of accounts of assessee allegedly on account of advance received from buyers of motor cycles-AO was of opinion that bogus liability was created and AO, therefore, added amount to income of assessee-CIT(A) concurred with AO and added another ground that payments were all received in cash-Assessee failed to discharge burden that aforesaid credit entry was genuine entry-Tribunal deleted addition-Advance money, in present case, was adjusted with sale price of motor cycle and sale was disclosed in return of income i.e. trading account of assessee -AO and CIT(A) chose to draw inference*

*unfavourable to assessee because they insisted upon records which were not legally required-It was not required by law that before taking advance from customers of motor cycles, assessee should have obtained their PAN Card number-Assessee had taken advance against proper receipt and amount taken by way of advance had been adjusted at time of giving delivery of motor cycles as regards which full particulars were furnished-Held, aforesaid finding was recorded by Tribunal on basis of evidence disclosed before them which was also found in paper book filed before Court- It could not, therefore, be said that view taken by Tribunal was perverse-Question essentially was question of fact and Tribunal on basis of evidence was satisfied that money had in fact been received by way of advance and therefore, no question of any bogus liability being created was there as held by AO-In that view of matter, finding arrived at by Tribunal was not perverse-Section 68 in facts of the case had no applicability-Question was, thus, answered in favour of assessee.*

12. The Ld.DR could not satisfactorily rebut the proposition so placed. He then submitted that the lenders are all agriculturists and then there is no locus standi to advance for purchase of sand. It is a common fact that agriculture is a seasonal activity and farmers with marginal land holding find it difficult to sustain. So to augment their income level, there is no bar to try alternative avenues for generation of income. Even big corporates diversify and venture into new business ventures. So the hollow argument is rejected being devoid of any merit. In fact, these persons had unequivocally confirmed in the course of statement recorded u/s 131 that they have advanced for purchase of sand.

13. Be it as may, we find that all the 17 persons have appeared u/s 131 before the I.T.O. Ward-1, Amravati and have clearly confirmed that they have advanced to the appellant for the purchase of sand in cash. They have clearly mentioned that they have sufficient agricultural income from where the advance was given for purchase of sand. From the ledger accounts submitted, we further find that such advances were subsequently repaid by banking transactions or adjusted with sale of sand. The unimpeachable

testimony of these persons cannot be lightly brushed aside. The ratio decidendi is squarely applicable to the case in hand that when advances are later booked as income, no addition u/s 68 is possible. The learned CIT (A) had meticulously examined all the records and has rightly arrived at the conclusion that the addition of Rs.2,05,00,000/- is unwarranted. The Ld.DR cannot bring a new dimension in the case which is not borne out by assessment record at the time of oral pleadings. We thus confirm the order of the CIT (A) and further conclude that the addition made is not justified because once the books of account have been rejected and on the basis of the same set of rejected books, addition cannot be made. Hence, the addition u/s 68 for Rs.2.05 crores is without any merit.

14. In the result, the appeal of the department is rejected.

Order pronounced in the open Court on 16/07/2024.

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 16/07/2024.**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

True Copy

By Order

*Rajesh V. Jalit*  
*Private Secretary*

Sr. Private Secretary  
ITAT, Nagpur