

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.1728/Chny/2019
निर्धारण वर्ष /Assessment Years: 2015-16

M/s.Rai Ispat Private Limited,
No. 6/13 Park Avenue,
Kesavaperumalpuram,
Chennai-600 028.
[PAN: AAACR1743C]

Income Tax Officer,
Central Ward-5(4),
Chennai

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri B.Ramakrishnan, C.A

प्रत्यर्थी की ओर से /Respondent by

: Shri G.Suresh, JCIT

सुनवाई की तारीख/Date of Hearing

: 12.06.2024

घोषणा की तारीख /Date of Pronouncement

: 04.09.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the ITA No.38/2017-18/A-3 dated 26.03.2019 of the Learned Commissioner of Income Tax [herein after "CIT(A) for the assessment years 2015-16. Through the aforesaid appeal the assessee has challenged the ITA No.38/2017-18/A-3 dated 26.03.2019 passed by CIT(A), Chennai.

2.0 Through the grounds of appeal the appellant is contesting order of Ld. CIT(A) confirming addition of Rs.5.31 Crores u/s 68 made by the Ld. AO in respect of share application money by treating the same as

unexplained credits and of Rs.40,12,599/- on account of outstanding current liabilities.

3.0 At the outset it is seen that during the course of appellate proceedings, the Ld. Counsel for the assessee requested for submission of additional evidences within the meanings of Rule-29 of ITAT rules qua addition of Rs.5.31 Crores u/s 68 made by the Ld. AO in respect of share application money by treating the same as unexplained credits. It was submitted that the impugned additional evidences are necessary for adjudication of the matter and that their non-production before the lower authorities was purely unintentional. In support of its contentions, the Ld. Counsel for the assessee relied upon decision of coordinate bench of ITAT, Patna in the case of Abhay kumar Shroff vs ITO 63 ITD 144 postulating admission of additional evidences at the 2nd appellate stage before the tribunal for serving substantial cause.

4.0 We have heard the rival submissions in the light of material placed on records. The Ld. DR would make us believe that the order of the lower authorities is in consonance with the material on records and therefore does not require any interference at this stage. It was alluded that the act of presenting additional evidences now is a clear case of afterthought.

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5.0 We have noted that the impugned addition of Rs.5.31 Crores u/s 68 made by the Ld. AO in respect of share application money by treating the same as unexplained credits was done with the following findings:-

“.....On a perusal of Sch.6 of Balance Sheet as on 31.3.2015, it is seen that Assesse Company has received Share Application Money to the tune of Rs.5,31,10,000/- during the year under consideration. From the Bank Accounts and ledger accounts Submitted in this connection, it is seen that share application money was received from various parties and given as "Short term loans & advances" to the Director of M/s. RAI ISPAT PVT. LTD. and related persons of RKKR group as tabulated below:

IDBI Bank Ltd.

S.No.	Date	Name of the Person	Vch Type	Amount (in Rs.)
1.	17.03.2015	Rabilash Sharma	Receipt	11,65,000
2.	17.03.2015	Ramprasad Sharma	Receipt	14,06,000
3.	17.03.2015	Mamta Sharma	Receipt	12,11,000
4.	17.03.2015	Omprakash	Receipt	3,25,000
5.	17.03.2015	Manju Sharma	Receipt	7,35,000
6.	17.03.2015	Ramswroop Sharma	Receipt	30,45,000
7.	17.03.2015	Bhanawarlal Sharma	Receipt	23,48,000
8.	17.03.2015	R.Santosh	Receipt	8,90,000
9.	17.03.2015	Hariram Chowdhary	Receipt	7,05,000
10.	17.03.2015	Sahadev Ram Chaudhary	Receipt	7,10,000
11.	17.03.2015	Omprakash Chaudhary	Receipt	4,50,000
12.	17.03.2015	L.Hariram Chaudhary	Receipt	7,75,000
13.	17.03.2015	Bidami Devi	Receipt	5,35,000
14.	17.03.2015	Rameshwarlal Chaudhary	Receipt	10,00,000
15.	17.03.2015	Sahadev Ram Chaudhary	Receipt	8,35,000
16.	17.03.2015	Sahadev Ram Chaudhary	Receipt	8,65,000
17.	17.03.2015	Ramswroop Sharma	Receipt	5,00,000

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18.	25.03.2015	Ramswroop Sharma	Receipt	75,00,000
19.	26.03.2015	Ramswroop Sharma	Receipt	70,00,000
20.	27.03.2015	Omprakash Chaudhry H	Receipt	5,00,000
21.	27.03.2015	Hariram Chowdhary HUF	Receipt	2,50,000
22.	27.03.2015	Shadev Ram ChaudharyHUF	Receipt	5,00,000
23.	27.03.2015	Sahadev Ram Chaudhary	Receipt	57,50,000
24.	27.03.2015	Banwar Lal Sharma	Receipt	1,50,00,000

S.No.	Date	Name of the Person	Vch Type	Amount (in Rs.)
1.	16.03.2015	RKKR Steels Ltd	Payment	47,956
2.	16.03.2015	Ritesh Rai	Payment	6,51,374
3.	16.03.2015	Rajiv Rai	Payment	8,73,780
4.	16.03.2015	Rajiv Rai	Payment	6,51,374
5.	16.03.2015	Ram Krishan Kulwant Rai Holding Pvt.Ltd	Payment	22,14,378
6.	16.03.2015	Ram Krishan Kulwant Rai Holding Pvt.Ltd	Payment	1,25,00,000
7.	17.03.2015	Ritesh Rai	Payment	5,82,520
8.	17.03.2015	Ritesh Rai	Payment	2,91,260
9.	25.03.2015	Radha Industries	Payment	70,00,000
10.	26.03.2015	Radha Industries	Payment	70,00,000
11.	26.03.2015	Radha Industries	Payment	70,00,000
12.	26.03.2015	Ram Krishan Kulwant Rai Holding Pvt.Ltd	Payment	46,905
13.	27.03.2015	Radha Industries	Payment	1,50,00,000

The assessee company, vide its letter dated 22.6.17 has also mentioned that "share application money have not been allotted till date and the company is taking steps to refund the money.....

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.....

Thus, it is inferred that the parties are bogus parties and they are only used as a tool to circulate the unaccounted money of the company, Though it is seen from the bank statements produced by the parties that

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the receipt was from BELL TOWER ENTERPRISES LLP, in order to verify the credentials of BELL TOWER LLP, financials and bank statements were called for from that firm, u/s.133(6) of the I.T.Act vide this office letter dated 24.8.17.

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In view of the above findings, Share application money of Rs.5,31,10,000/- needs to be treated as unexplained credit u/s. 68 of the Income-tax Act. When this issue was brought to the notice of the assessee vide this office letter dated 16.10.17, the A/R replied vide letter dated 13.11.17 as under:

"Mr, Sahadev Chaudhary & family are persons known to the assessee company's group for the last 25 years. The assessee company is not aware of the source where they got their funds from. The assessee company states that the said party has knowledge of share trading as they are businessmen and often sort to trading of various items including shares. Accordingly, they on the request of the assessee company to raise capital have invested in the shares of Rai Ispat and form part of the "friends and family" category. We would submit that genuineness and creditworthiness is beyond doubt as the persons have appeared before your goodself and have testified their Investment In the shares of the assessee company. We would also submit that they have remitted the share capital to the assessee

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company via banking channels and cannot be called "unexplained credits". Confirmation of balances have also provided before your good self."

The contention of the A/R is considered carefully. It is mentioned by the A/R that the parties like family friends and at the request of the company, the parties have invested this huge amount in their company. This contention of the assesses beyond any imagination. The quantum of investment is Rs.5,31,10,000/-. These parties, who do have much source of income as evident from their P & L account, would not have made any investment in this company which is not at all doing well, that too, in this company which is writing off of its investments and not giving any dividend for the past many years, if the money received by them from M/s. BELL TOWER ENTERPRISES LLP is their hard earned money. The parties being family friends to the assessee company surely would not have done this mistake at all knowing fully well that M/s. RAI ISPAT PVT. LTD. is a loss making company. Hence, it is only the money of the assessee company which is routed through these parties. On this ground, the claim of the assessee is rejected and money received in the form the share application money but no shares allotted is treated as unexplained credit u/s.68 of the I.T. Act and brought to tax accordingly.

Addition: Rs. 5,31,10,000/-.....”

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6.0 It is clear from above that the Ld. AO had made the said addition on account of non-availability of requisite details from the assessee. The Ld. First appellate authority confirmed the addition made by the Ld. AO, inter-alia, containing following observations:-

“.....I have gone through the assessment order and remand report of the Assessing Officer and written submissions made by the appellant. The assessing officer in the remand report furnished has once again reiterated that the said share applicants do not have source of income as evident from their returns and the accompanied financials. The assessing officer has further stated that the impugned transactions involving the investment in the appellant company in the guise of share application money to the tune of Rs 5.31.10.000/- is bogus. Before me, the appellant through its authorized representatives failed to furnish any such evidence so as to substantiate the credit worthiness of the persons from whom monies received and the genuineness of the transaction.....”

7.0 From the position stated above, it is clear that the impugned addition had direct nexus with the non-availability of supporting evidences. Rule-29 of the ITAT rules empower admission of additional evidences in cases where substantial cause exists. We are of the view that in the case the addition made is for want of supporting evidences. We are of the view that the Ld. AO must be provided an opportunity of

examining the same before coming at any conclusion qua application of section 68 of the Act. Accordingly, we set aside the order of the lower authorities with the direction to the Ld. AO to readjudicate the issue of share application money in the light of impugned evidences. The Ld. AO would give all opportunities of being heard to the assessee and the assessee shall be duty bound to comply with all the notices and details solicited by the Ld. AO.

8.0 In the result, the grounds of appeal raised by the assessee qua addition of Rs.5.31Crores in respect of share application money stands allowed for statistical purposes.

9.0 The next issue is regarding the addition of Rs.40,12,599/- on account of outstanding current liabilities. On perusal of the Page-5 of order of the Ld. AO, it is seen that the Ld. AO has noted that above liabilities are outstanding for a long period since FY 12-13. The Ld. AO recorded that the books of said parties do not reflect any corresponding entries and that they have confirmed only advancing of loan to the assessee. The Ld. AO noted that “...*the outstanding balance which is not confirmed by the parties and which is outstanding for a long duration is brought to tax as income of the assessee...*”.

10.0 We have considered the rival's arguments in the light of material on records. At the outset, it is noted that the Ld. AO has made the

impugned addition without making any reference to any section of the act in which the same is made. Then again the Ld. AO has unequivocally demonstrated and admitted that the impugned addition of Rs.40,12,599/- is a brought forwarded balance from FY-2012-13. The order of the Ld. AO also indicates that he has made enquiries only with two of the three parties who had apparently stated that they have invested only in share application money of the impugned company. The Ld. AO further recorded that in respect of two parties their books did not indicate any amount. Further, out of three, the Ld. AO could enquire only in respect of two parties. Further, according to Ld. AO, the assessee had submitted that said parties have given loan to the assessee. The quantum and character of enquires done by the Ld. AO is also not explicitly clear in the order. On the impugned matter the order of the Ld. AO falls in the category of non-speaking cryptic order.

11.0 Accordingly, we deem it fit to set aside the addition made by the Ld. AO and the order of the Ld. CIT(A) on this account. Accordingly, we set aside the order of the lower authorities with the direction to the Ld. AO to re-adjudicate the issue of outstanding current liabilities. The Ld. AO would give all opportunities of being heard to the assessee and the assessee shall be duty bound to comply with all the notices and details

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solicited by the Ld. AO. The ground of appeal raised by the assessee qua this addition is allowed for statistical purposes.

12.0 In the result, the appeal raised by the assessee is allowed for statistical purposes.

Order pronounced on 4th, September-2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 4th, September-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF