

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1202/Bang/2024
Assessment year : 2017-18

The Income Tax Officer, Ward 1, Ballari – 583 102.	Vs.	Sha Ganeshmal Jewarraj Bohra, 4-2-188, Jawahar Road, Koppal Bazar S.O., Koppal – 583 231. <b>PAN: AAWFS 0750K</b>
APPELLANT		RESPONDENT

CO No.30/Bang/2024 [in ITA No.1202/Bang/2024]
Assessment year : 2017-18

Sha Ganeshmal Jewarraj Bohra, Koppal – 583 231. <b>PAN: AAWFS 0750K</b>	Vs.	The Income Tax Officer, Ward 1, Ballari – 583 102.
CROSS OBJECTOR		RESPONDENT

Revenue by	:	Shri Sridhar E., Jt.CIT(DR)(ITAT), Bengaluru.
Assessee by	:	Shri Ravishankar S.V., Advocate

Date of hearing	:	24.10.2024
Date of Pronouncement	:	26.11.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the revenue and CO by the assessee against the order dated 23.04.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18.

2. The ground of appeal of the revenue is as under:-

“The Learned CIT(A) erred in considering the additional evidences submitted by assessee during appeal proceedings which were not submitted before AO during assessment proceedings without calling for a remand report from AO under Rule 46A.”

3. Briefly stated the facts of the case are that the assessee filed return of income on 17.10.2017 declaring total income of Rs.70,76,020. As per information with the department through Insight Portal there is unexplained high value cash transaction of Rs.38,58,58,375 in assessee's bank account. The submission of assessee in compliance of summons u/s. 131 of the Act was verified and the AO noted that total bank credit of the assessee for FY 2016-17 is Rs.1,65,66,16,879 and total gross receipt declared in the return is Rs.1,27,07,58,504 and discrepancy between total bank credit and total turnover for FY 2016-17 was unexplained. The case was reopened and notice u/s. 148 was issued on 31.03.2021 after approval from the Id. Pr.CIT. In response the assessee filed return declaring total income of Rs.70,76,020. Subsequently other statutory notices were issued to assessee. Various opportunities were given to the assessee. The assessee filed submission on 10.12.2021 and 20.12.2021 with copy of bank account details, source of deposit, nature of business and detail transaction. As per bank account the total amount credited during the year was Rs.1,65,69,99,828/- whereas assessee itself declared total turnover of Rs.1,27,07,58,504. The assessee did not furnish any explanation/details for the difference amount of Rs.38,62,41,324. A

show cause notice was issued to assessee on 09.03.2022 regarding addition of the difference noted above amount as unexplained cash credit u/s. 68 of the Act. The assessee complied on 11.03.2022 with bank details wherein total credit amount was Rs.165,69,99,828 and reconciled the difference of Rs.38,62,41,324 between credit amount and turnover which was not accepted by the AO due to lack of documents that the same has been collected from debtors. Therefore, the AO made addition of Rs.38,62,41,324 and applied section 115BBE of the Act. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

4. The Id. FAA after considering the entire submissions of assessee allowed of appeal of the assessee observing as under:-

3.4 Aggrieved with the order, the assessee raised several grounds of appeal. However, I find that Ground No.6 of the such appeal is against the merit of the addition. During the appellate proceeding the assessee was again given an opportunity to reconcile the amount credited in the bank account and submitted an explanation for the difference with the turnover.

3.5 The assessee explained that the turnover declared in the P & L A/c. for Rs.127,07,58,504/- was the amount recognised following the Sale of Goods Act as accrued on transactions on sale of various materials during the year. It also submitted that the assessee allows credit to its debtors and most of the sales effected during the months of January, February and March remained unpaid. Similarly, it received payments from its debtors during the year where sales were effected in the preceding year.

3.6 The assessee submitted complete details of individual ledgers of 208 various debtors from whom payments were received during the year for a total sum of Rs.140,83,20,788/-. Such receipts were inclusive of receipts against current sales, as well as sales effected in earlier years.

3.7 Besides, it also stated that a sum of Rs.20,91,99,615/- had been the transfer entries from one bank account to another and there had been credit for closure proceeds of earlier year's fixed deposits to the tune of Rs.3,94,79,406/-. The relevant portion of the submission of the assessee is reproduced below:-

*"The details of Bank accounts transaction is as under:-*

Sl.No.	Name of the Bank	Branch	Account No.	Type of A/c.	Bank Credits (RTGS, NEFT & Transfers) in Rs.
01	Axis Bank	Koppal	882010200000091	Current A/c.	100,15,45,435.00
02	Axis Bank	Hubli	129010200003001	Current A/c.	1,72,49,054.00
03	Axis Bank	Bellary	267010200002448	Current A/c.	7,00,000.00
04	HDFC Bank	Koppal	19702560000248	Current A/c.	2,35,10,814.00
05	Corporation Bank	Koppal	510341000680270	Current A/c.	18,13,64,181.00
06	SBI Bank	Koppal	10563482251	Current A/c.	3,16,80,616.00
07	SBH Bank	Koppal	52164072198	OD A/c.	40,09,49,728.00
				<b>Total :-</b>	<b>165,69,99,828.00</b>

Sir, we are submitting each detail summary of credit transaction of all bank accounts. [Six current accounts and one overdraft account]

*The details of Bank Accounts transaction is as under:*

Sl.No.	Name of the Bank	Branch	A/c. No.	Type of A/c.	Bank Credits (RTGS, NEFT & Transfers) in Rs.
--------	------------------	--------	----------	--------------	--

01	Axis Bank	Koppal	882010200000091	Current	100,15,45,435.00
----	-----------	--------	-----------------	---------	------------------

**Particulars**

**Amount in Rs.**

Collection from debtors

96,62,57,515.00

**Credits from Other Banks of the same firm**

Corporation Bank	10,00,000.00
Axis Bank	25,00,000.00
FIRM FIXED DEPOSIT Closure	3,17,87,918.00
Other (paise rounded off)	2.00
<b>Total</b>	<b>100,15,45,435.00</b>

02 Axis Bank Hubli 129010200003001 Current 1,72,49,054.00

Particulars Amount in Rs.

Collection from debtors	1,72,49,054.00
<b>Total</b>	<b>1,72,49,054.00</b>

03 Axis Bank Bellary 267010200002448 Current 7,00,000.00

Particulars Amount in Rs.

Collection from debtors	7,00,000.00
<b>Total</b>	<b>7,00,000.00</b>

04 HDFC Bank Koppal 19702560000248 Current 2,35,10,814.00

Particulars Amount in Rs.

Collection from debtors	1,58,19,321.00
FIRM FIXED DEPOSIT Closure	76,91,488.00

					5.00
				<b>Total</b>	<b>2,35,10,814.00</b>
05	<b>Corporation Bank</b>	<b>Koppal</b>	<b>510341000680270</b>	<b>Current</b>	<b>18,13,64,181.00</b>
				<b>Particulars</b>	<b>Amount in Rs.</b>
				Collection from debtors	18,13,64,180.00
				<b>Total</b>	<b>18,13,64,180.00</b>
06	<b>SBI Bank</b>	<b>Koppal</b>	<b>10563482251</b>	<b>Current</b>	<b>3,16,80,616.00</b>
				<b>Particulars</b>	<b>Amount in Rs.</b>
				Collection from debtors	3,16,80,616.00
				<b>Total</b>	<b>3,16,80,616.00</b>
07	<b>SBH Bank</b>	<b>Koppal</b>	<b>52164072198</b>	<b>Overdraft</b>	<b>40,09,49,728.00</b>
				<b>Particulars</b>	<b>Amount in Rs.</b>
				Collection from debtors	19,52,50,121.00
				<b>Credits from Other Banks of the same firm</b>	
				Axis Bank	15,35,00,000.00
				Corporation Bank	3,74,00,000.00
				HDFC Bank	45,00,000.00
				State Bank of India	1,02,99,565.00

Other (paise rounded off)	42.00
<b>Total</b>	<b>40,09,49,728.00</b>
<b>Total</b>	<b>165,69,99,828.00"</b>

3.8 I have verified the above statement with the copies of bank statement submitted during the appeal proceedings along with the various party ledgers containing 291 pages.

3.9 On such examination I find that the assessee's submission, which was denied by the Assessing Officer as untenable, is not at all a prudent decision. Assessee has successfully reconciled its credit entries in the bank account and therefore, the addition made u/s.68 for a sum of Rs.38,62,41,324/- is found to be unsustainable and fit to be deleted.

3.10 Therefore, the appeal of the assessee is **allowed in full.**

4. Since I have decided the issue on merit, the other Grounds of Appeal on the technical issues of the reopening, is not adjudicated separately.

5. The Ground No.7 of the assessee relating to excessive charge of interest u/s.234A, 234B and 234C being consequential in nature, is also not adjudicated separately as it would be recast while giving effect to this order. This ground is **allowed for statistical purpose.**

5. Aggrieved from the above order of Id. FAA, the revenue is in appeal before the ITAT. The assessee has filed CO in support of order of FAA as well as on legal issues regarding reopening of the case u/s. 148.

6. The Id. DR strongly relied on the order of AO and submitted that during the course of appellate proceedings the Id. FAA has accepted

additional evidence filed by the assessee and the AO was not given opportunity on the additional evidence which is clear cut violation of Rule 46A of the Income Tax Rules 1962. The assessee had sufficient time to file the documents before the AO, but it has been filed before the FAA as additional evidence. The assessee has filed 208 individual ledgers of various debtors from whom payments were received during the year for a total sum of Rs.140,83,20,788 which was not filed during the assessment proceedings. He further submitted that the Id. FAA should have called for remand report from the AO which is missing in this case. Therefore he submitted that the matter be restored to the AO for verification of the amounts received from debtors.

7. On the other hand, the Id. AR relied on the order of the FAA and submitted that during the course of assessment proceedings, the entire details of bank and reconciliations of differences were submitted. The assessee only filed copy of ledger account of the debtors which is part of the financial statements and in support of reconciliation statement. The tax audit report, bank details and financial statements were submitted during the course of assessment proceedings to which the AO has not disputed and books of account have also not been disputed by the AO. During the pendency of appeal, assessee filed two rectification applications on 05.07.2022 and 13.07.2022 and filed written submissions on 01.09.2022 with details of amounts received from debtors, intra-transfer from other bank and fixed deposit closure. However the rectification proceedings are still pending. The assessee filed stay petition before the AO which was

rejected. Thereafter stay petition was filed before the CIT and copy of the entire ledger account was filed and assessee also requested to call for remand report from the AO. However, the stay petition is not disposed by the Id. CIT. Rectification application has also been filed by assessee on 1.9.2022 which is still pending. The entire documents viz., bank statement, copy of ledger account of debtors and encashment/maturity of fixed deposits were submitted. The entire facts were available to the AO and this is not additional evidence. The CIT(A) has power as per Rule 46(4) for calling documents in adjudicating the issue. He vehemently argued that if the AO had any doubt on the reconciliation statement of the assessee, he could have further called details instead of rejecting the submissions. If assessee had committed mistake, he would not ask to the Id. CIT for calling remand report from the AO for granting stay. He further submitted that as per Rule 46A(1)(b) & (c), the appellate authority is empowered to allow the assessee to produce additional evidence where the assessee was prevented by sufficient cause from producing the evidence. He relied on statement of facts before the CIT(A) which is placed at page 25 to 32 of appeal set. The Revenue has not challenged the issue on merits, it clearly shows that the revenue has no case on merits. The Id. AR also relied on following judgments:-

- (1) CIT, Central Patna v. Sagar Construction (P) Ltd. [2015] 56 taxmann.com 434 (Patna)
- (2) CIT v. Poddar Swadesh Udyog (P) Ltd. [2008] 168 Taxman 182 / 295 ITR 252 (Gauhati)

- (3) CIT v. Chandra Kant Chanu Bhai Patel [2011] 13 taxmann.com 131 (Delhi)
- (4) CIT v. Ramneet Singh [2010] 189 Taxman 263 (P&H)
- (5) CIT v. Shaw Wallace Distilleries Ltd. [2021] 124 taxmann.com 510 (Karnataka)
- (6) CIT v Vegetable Products Ltd. [1973] 88 ITR 192 (SC)

8. Considering the rival submissions, we note that the case of assessee was reopened on the basis of information through Insight Portal vide reference dated 15.03.2021 wherein it is stated that there is unexplained high value cash transaction to the tune of Rs.38,58,58,375 in the assessee's bank account. Thereafter on verification it was observed that there is discrepancy between total bank credit and total turnover declared by assessee in his return of income. Further as per Form 26AS and 360<sup>0</sup> / ITS profile in ITBA profile, it was noted that total creditor in the bank account for the year is Rs.165,66,16,879 and total gross receipts declared by assessee is Rs.127,07,58,504. Resultantly there is discrepancy between total bank credit and total turnover. During the reassessment proceedings, the assessee made compliance on 10.12.2021, 20.12.2021 & 11.03.2022 and furnished copy of bank account details wherein total credit amount was Rs.165,69,99,828, source of deposits nature of business and detail transactions and reconciliation statement was furnished and reconciled difference of Rs.38,62,41,326 between the credit amount and turnover which is clear from assessment order at para 4. Assessee also furnished total credit received from debtors and deposited into the bank

accounts, closure of fixed deposits and inter bank transfers which are as under:-

<b>Credits from debtors</b>			
Bank	Branch	Account No.	Amount
Axis Bank	Koppal	882010200000091	96,62,57,515
Axis Bank	Hubli	129010200003001	1,72,49,054
Axis Bank	Bellary	267010200002448	7,00,000
HDFC Bank	Koppal	19702560000248	1,58,19,321
Corporation bank	Koppal	510341000680270	18,13,64,180
SBI	Koppal	10563482251	3,16,80,616
SBH	Koppal	52164072198	19,52,50,121
Total			<b>140,83,20,807</b>

<b>Fixed deposits - Closure</b>			
Bank	Branch	Account No.	Amount
Axis Bank	Koppal	882010200000091	3,17,87,918
HDFC Bank	Koppal	19702560000248	76,91,488
Total			<b>3,94,79,406</b>

<b>Inter bank transfers - contra entries</b>			
Bank	Branch	Account No.	Amount
Corporation bank	Koppal	510341000680270	10,00,000
Axis Bank	Koppal /	882010200000091	25,00,000
	Hubli	/ 129010200003001	
Axis Bank	Koppal /	882010200000091	15,35,00,000
	Hubli	/ 129010200003001	
Corporation bank	Koppal	510341000680270	3,74,00,000
HDFC bank	Koppal	19702560000248	45,00,000
SBI	Koppal	10563482251	1,02,99,565
Total			<b>20,91,99,565</b>

9. The AO has not accepted the same merely due to lack of documents that the credits have been collected from debtors. During the appellate proceedings the assessee submitted documents furnished before the AO and copy of the ledger accounts and bank statements and these documents are also produced before us which is placed on record. In the statement of facts before the CIT(A), which is placed at page 25 of appeal set, the assessee submitted as under:-

- c) The appellant in response to the above notice filed replies dt: 09/12/2021 and 18/12/2021, offering clarifications to the queries raised. The appellant has also uploaded each of the bank accounts and filed a confirmation stating the details of the deposits made into the bank account and as to how the deposits were out of the receivables brought forward from the earlier year and thus the deposits were higher than the returned turnover.

- d) The proceedings have been transferred to the faceless centre and a show cause notice dt: 09/03/2022 came to be issued proposing to make additions of the purported difference of the receipts through banking channels and the reported turnover, as income of the appellant.
- e) The appellant in response to the above notice filed a response on 11/03/2022, by detailing the details of receipts in each account, the inter transfers made, the encashment of the fixed deposits, to demonstrate that the deposits and transfers received were all accounted in its financials and part of the record of the audited books of the appellant and that no amounts were unexplained, in so far as the deposits which the assessing officer has sought clarifications.

10. During the course of hearing, the Id. DR has not denied that the facts submitted before the CIT(A) are wrong. The sole and substantive ground raised by the revenue is that the CIT(Appeals) has accepted certain documents as additional evidence and that the assessee's case does not fall under any of the exceptions laid down under Rule 46A of the I.T. Rules, 1962. The department has not challenged the order of CIT(A) on merits of the issues involved.

11. From the above table in para 8, we note that assessee has received credits from debtors of Rs.140,83,20,807 which includes current year sales as well as previous year's outstanding amounts from the debtors which are deposited in the bank accounts. During the year there are two fixed deposits closed and it was deposited in Axis Bank and HDFC Bank accounts of Rs.3,94,79,406 and inter bank transfers – contra entries within the bank account of assessee of Rs.20,91,99,565, which totals to Rs.24,86,78,971 as transfer within the bank account from one account to other account and there is no any cash transaction

and rest of amount of Rs.13.76 crores were received from debtors. The main argument of the Id. DR is that the documents submitted before the CIT(A) are not available with the AO and Id. CIT(Appeals) has not given opportunity to the AO and no remand report has been called for on the additional evidence filed by assessee and the case may be remitted to the AO for de novo proceedings.

12. We note from the argument of the Id. Counsel of assessee and paperbook filed before us that the assessee has not filed application for admitting additional evidence, the documents filed consisted of bank accounts which is the basis for reopening the assessee's case. However, the ledger accounts filed before the CIT(A) are part of the audited financials which do not constitute additional evidence due to the fact that the same are already available in the form of opening balance and closing balance of the respective return from AY 2016-17 and 2017-18 and the reconciliation data were provided to the AO. During the summons u/s. 131 of the Act, the assessee had filed clarification insofar as the difference of credits in bank accounts compared to turnover achieved, but the AO was not satisfied and reopened the case. The assessee has filed chart with reference to the page nos. for referring to the entries made in corresponding ledgers and these documents were not filed before the AO and the assessee has conceded during the hearing. Since these documents are only reference/ clarificatory in nature for easy completion of the appellate proceedings and there is no financial transaction involved in this reference. Therefore it cannot be construed as additional evidence.

The Courts have held that the materials of clarificatory nature are not additional evidence. This issue arose before the Karnataka High Court in *Shankar Khandasari Sugar Mills v. CIT* [1992] [193 ITR 669](#)/[1991] [59 Taxman 405](#). The issue before the Court, in brief, was that the ITO framed the best judgment assessment under section 144 relying upon the material from the Commercial Tax Department relating to the turnover of the assessee. Before the Commissioner (Appeals), the assessee produced S.T. assessment order for the first time and refused to look into the same on the pretext of additional evidence. Holding the action of the Commissioner (Appeals) to be unjustified, the Court observed—

**“10.** It is also true that the assessee could have produced the sales-tax assessment order. But here, we are concerned with the propriety and fairness of the estimate made by the ITO, who ventured upon an investigation, which on the face of it is found to be incomplete. The ITO should have in fairness sought the details of sales-tax assessment order, so that he could have obtained the real figures of turnover regarding sales of sugar. In view of item 3IB of Schedule V to Karnataka Sales-tax Act, 1957, turnover relatable to sugar is not taxable under the said Act. If so, taxable turnover under the said Act would not disclose the real turnover pertaining to sugar.

**11.** This background to the case has to be appreciated while considering the legality of the appellate authority's order rejecting the order of assessment made by CTO produced by the assessee. The appellate authority should have accepted the material produced by the assessee, as clarificatory in nature and consider the same to test the fairness and propriety of the estimate of income made by the ITO. Though it was a belated production of a very relevant material, no prejudice (in its legal sense) would have resulted to the revenue by considering the material produced by the assessee. A consideration of such a material by the appellate authority would have rendered the best judgment assessment, a fair proceeding and the resultant assessment order would have been a most rational one.

12. Mr. Chanderkumar contended that the assessee could have invoked section 146 of the Act and his failure to do so read with the circumstance that no explanation is forthcoming for the delayed production of the assessment order, disentitles the assessee for any equitable considerations. This approach is acceptable only in case best judgment assessment is to be understood as a penal provision, enacted to penalise a defaulting assessee. The revenue must act fairly in the matter of assessment, as much as it is interested in collecting the tax. In the absence of any prejudice to the revenue, and the basis of tax under the Act is to levy tax, as far as possible, on the real income, the approach should be to be liberal in applying the procedural provisions of the Act. An appeal is but continuation of the original proceeding and what the ITO could have done, the appellate authority also could do.”

13. Further in the case of CIT vs Sagar Construction ( P.) Ltd. The court has held as under:-

“5. In our view the said submissions are not based upon a correct reading of Rule 46A of the Income Tax Rules as Sub-Rule (4) contained therein is an overriding power since it is a non obstante clause beginning with "nothing contained in this Rule". Thus, the power of the appellate authority clearly overrides the provisions of Sub-Rules (1), (2) and (3) of Rule 46 A and it is open to the said authority to look into any additional document if it considers the same as required to dispose of the appeal or for any other substantial cause. As a matter of fact, the principal reason for the CIT (Appeals) in allowing the appeal was the fact that the Assessing Officer had failed to issue specific notice with regard to the investment of Rs. 8 lacs made in M/s Rajesh Corporation Limited and further, he has come to the conclusion that Rs. 8 lacs was fully explained on the basis of balance sheet filed during assessment proceeding itself. It was only to further verify the statements in the balance sheet that he had additionally called for the bank statements to verify the said transaction of Rs. 8 lacs which had resulted in the balance sheet showing NIL in the account of M/s Sagar Sahkari Grih Nirman Samiti Limited in the assessment year in question. Thus, it was a clear cut case of exercise of the overriding power under Rule 46A(4) of the Rules and not really a case of permitting an assessee to file fresh document on the prayer of the assessee.”

14. Further in the case of CIT vs Rameet Singh noted above the court has held as under:-

**“2.** In the present case, the Assessing Officer, while framing the assessment of the assessee made certain additions on different grounds. Subsequently, the assessee filed an application for rectification. While allowing the said application, some of the additions were deleted. Thereafter, feeling aggrieved against the remaining additions made by the Assessing Officer, the assessee filed appeal before the Commissioner of Income-tax (Appeals), Karnal (hereinafter referred to as "the CIT(A)"), who, *vide* his order dated September 14, 2004, while deleting the said additions, came to the conclusion that the documents relating to the loans were produced by the assessee before the Assessing Officer during rectification proceedings, but the same were not considered on the ground that there is no mistake apparent on the record. Against the said order, the revenue filed appeal before the Income-tax Appellate Tribunal, raising the following grounds:

- (i) On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) has erred in law in deleting the addition of Rs. 1,53,500 on account of unexplained cash credits as the assessee failed to produce the alleged creditors before the Assessing Officer in spite of being given opportunity and the identity of the creditors remained unproved.
- (ii) On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) has erred in law in deleting the addition of Rs. 1,00,000 made by the Assessing Officer on account of unexplained investment in purchase of a bus.
- (iii) On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) has erred in deleting the addition of Rs. 3,87,696 made on account of unexplained loans shown in the names of M/s. Tata Finance Co. and M/s. Super Travels by entertaining additional evidence which was not produced before the Assessing Officer during the assessment proceedings contrary to the provisions of rule 46A of the Income-tax Rules.

**3.** Regarding ground No. 1, the Income-tax Appellate Tribunal has affirmed the order of the Commissioner of Income-tax (Appeals) while observing that the creditors were produced and their statements were recorded and in their statements, the creditors have confirmed having advanced loans to the assessee. It was held that in view of this material, the Assessing Officer was not justified in making addition

of Rs. 1,53,500 on account of unexplained cash credits. Regarding ground No. 2, it was observed that the Assessing Officer estimated the value of vehicles like bus, mini bus, etc., at Rs. 11 lakhs as against Rs. 10 lakhs offered by the assessee, without there being any basis to arrive at such conclusion. Therefore, it was found that the Commissioner of Income-tax (Appeals) was fully justified in deleting the addition of Rs. 1 lakh on that account. Regarding ground No. 3, it was observed that the assessee has produced sufficient documents during the appellate proceedings to show that the loan shown in the name of M/s. Tata Finance Co. and M/s. Super Travels has been received from these parties, therefore, there was no justification to add this amount on account of unexplained loans.

4. In our opinion, in this appeal, no substantial question of law is arising, as the Income-tax Appellate Tribunal has affirmed the finding of fact recorded by the Commissioner of Income-tax (Appeals), while taking into consideration the material available on the record. Therefore, we do not find any ground to interfere in this appeal.”

15. Further in the case of Shaw Wallace Distilleries Ltd. The Court has held as under :-

“5. On the other hand, learned counsel for the assessee while inviting our attention to substantial questions of law framed by this Court submitted that the revenue has not challenged the findings recorded by the Tribunal on the ground that the same are perverse. It has only been urged that the Tribunal committed an error of law in not remitting the matter to the assessing authority. Learned counsel for the assessee has taken us through paragraphs 5.7.3 to 5.7.7 of the order passed by the Tribunal with regard to the first substantial question of law and has submitted that the Tribunal on meticulous appreciation of evidence on record has recorded a finding of fact which does not suffer from any perversity. While taking us through paragraphs 5.8 to 5.8.5 of the order passed by the Tribunal, it is urged that the findings recorded on the 2nd issue is also based on meticulous appreciation of evidence on record and does not suffer from any infirmity. It is also urged that the entries made in the books of account are neither determinative nor conclusive and the crucial question which has to be determined is as to when the expenditure was incurred. It is also submitted that the Tribunal is the final fact

finding authority and could have recorded the findings of fact on the basis of the material placed before it. It is also urged that the aforesaid material was placed before the Commissioner of Income-tax (Appeals) also who did not take note of the same and rule 46A(3) of the Income-tax Rules has no application to the fact situation of the case as the aforesaid rule applies to the Appellate Authority and not to the Tribunal. In support of aforesaid submissions, reliance has been placed on the decision of the Supreme Court in *Taparia Tools Ltd. v. Jt. CIT* [2015] 55 taxmann.com 361/231 Taxman 5/372 ITR 605, *Bharat Earth Movers v. CIT* [2000] 112 Taxman 61/245 ITR 428 (SC) and *National Thermal Power Co. Ltd. v. CIT* [1998] 229 ITR 383 (SC).”

16. From the findings recorded above we note that the powers of the CIT(A) are coterminous with that of the assessing officer. The Ld. CIT(A) after considering the evidences on the file has deleted the impugned additions made by the assessing officer and even the department has not assailed the findings of the CIT(A) on merits and there was no new evidence filed by the assessee in support of its claim before the CIT(A). During the course of assessment proceedings the appellant has also uploaded each of the bank accounts and filed a confirmation stating the details of the deposits made into the bank account and as to how the deposits were out of the receivables brought forward from the earlier year and thus the deposits were higher than the returned turnover. We have observed from the statement of facts submitted before the CIT(A) and this fact has not been controverted by the revenue authorities. If the AO had any doubt on the documents submitted and the reconciliation statements furnished he should have called for further information from the assessee, which was not done and he simply added u/s. 68 of the Act. In view of the above

discussions, we do not find any merit in the present appeal of the revenue and the same is accordingly dismissed.

17. The assessee has filed CO contesting the reopening of the case and supporting the order of CIT(Appeals). Since we have adjudicated on the legal issue raised by the revenue in favour of assessee, therefore CO has become infructuous.

18. In the result, both the appeal by the revenue and the CO by the assessee are dismissed.

Pronounced in the open court on this 26<sup>th</sup> day of November, 2024.

Sd/-

( SOUNДАРARAJAN K.)  
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 26<sup>th</sup> November, 2024.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.