

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.71/RPR/2023  
निर्धारण वर्ष / Assessment Year : 2012-13

Subramaniam Swaminathan Iyer  
12-A/7, Nehru Nagar,  
Bhilai (C.G.)-490 020  
PAN: ANWPS2381P

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax-1(1),  
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : S/shri Milind Bhusari, Advocate  
Madhav Vichore, CA

Revenue by : Shri S.L Anuragi, CIT-DR

सुनवाई की तारीख / Date of Hearing : 10.12.2024

घोषणा की तारीख / Date of Pronouncement : 10.02.2025

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 31.01.2023, 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 26.03.2015 for the assessment year 2012-13. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. In the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming addition of Rs.2,00,00,000/- made by the A.O, being the amount credited to capital a/c, treating it to be unexplained credit u/s.68. The addition made by the A.O and sustained by the Ld. CIT(A) is arbitrary, illegal, baseless and not justified.

2. Ld. CIT(A) erred in confirming addition of Rs.68,62,394/- made by the A.O on account of amount being offered by appellant during assessment proceedings while explaining credit of Rs.2 crore in capital a/c. The addition represents double addition. The addition made by the A.O and sustained by the Ld. CIT(A) is arbitrary and not justified.

3. Ld. CIT(A) erred in confirming addition of Rs.6,12,607/- made by the A.O on account of amount shown as “deemed sales tax” in balance sheet treating it to be revenue receipt. The addition made by the A.O and sustained by the CIT(A) is arbitrary, baseless and not justified.

4. Ld. CIT(A) erred in confirming the addition of Rs.1,45,75,000/- made by the A.O on account of deemed dividend u/s.2(22)(e) without appreciating the facts/evidences. The addition made by the A.O and confirmed by the Ld. CIT(A) is arbitrary, illegal and not justified.

5. Ld. CIT(A) erred in confirming the disallowance of Rs.15,000/- out of donation expense. The disallowance made by A.O and confirmed by the Ld. CIT(A) is arbitrary and not justified.

6. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

Also, the assessee has raised an additional ground of appeal which reads as under:

“On the facts and circumstances of law, the learned CIT Appeal erred in confirming addition of Rs.8,87,725 out of disallowance of Rs.55,06,957 made by the A.O under section 14A”.

As the assessee based on the aforesaid additional ground of appeal has raised an issue, the adjudication of which would not require looking any further beyond the facts available on record, therefore, we have no hesitation in admitting the same. Our aforesaid view that where an assessee, had raised, though for the first time, an additional ground of appeal before the Tribunal the adjudication of which would require no further verification of facts, then, the same merits admission finds support from the judgment of the **Hon’ble Supreme Court** in the case of **National Thermal Power Company Ltd. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)**.

2. Succinctly stated, the assessee had filed his return of income for A.Y.2012-13 on 26.03.2015, declaring an income of Rs.2,23,52,780/- a/w.

agricultural income of Rs.2,00,000/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of assessment proceedings, the A.O observed that the assessee derived income from business of manufacturing, fabricating and trading of iron and steel under the name and style of M/s.Apex Industries at Trichy, which had two divisions, viz. (i) Apex Industries Unit-1; and (ii). Apex Industries (trading division). The A.O observed that a consolidated final accounts and audit report were filed by the assessee before him. The A.O further observed that the assessee had during the year credited an amount of Rs. 2 crore as additional capital with narration in the relevant part of "Balance sheet" as "Additional Capital (Transfer from Division)". On being queried, the assessee in his reply filed on 29.04.2014, inter alia, submitted that based on the requirement of the bank for infusion of at least 2 crores of funds, the sundry creditors/associates credit balances were reduced with a simultaneous increase that was projected as infusion of additional capital. Also, it was the assessee's claim that as the aforementioned aggregate amount of Rs.2 crore (supra) which was received on different dates were accumulated under different accounts heads, therefore, the same were brought under one head as addition to capital. The A.O called upon the assessee to put forth an explanation as to why the aforementioned amount of Rs.2 crore may not be added to his income as an unexplained cash credit in his capital account. As the reply filed by the

assessee did not find favour with the A.O, therefore, the latter held the entire amount of Rs.2 crore as an unexplained cash credit u/s. 68 of the Act.

4. Although the assessee had in his return of income disclosed the agricultural income of Rs.2 lacs, but as per the details filed by the assessee in the course of assessment proceedings, he had reflected the net surplus agricultural income (after all expenses) at Rs.13,78,830/-. As there was deficit/short agricultural income of Rs.11,78,830/-disclosed by the assessee in his return of income, therefore, the assessee filed before the A.O a consolidated statement of affairs as on 31.03.2012 for A.Y.2010-11 to A.Y.2012-13, as under:

S. No.	A.Yr.	Agricultrl. Income as per ITR Rs.	Agricultrl. Income as per reply Rs.	Difference short fall Rs.
1.	2010-11	16,00,00/-	80,19,60/-	641960/-
2.	2011-12	18,00,00/-	10,70,000/-	890000/-
3.	2012-13	200,000/-	1378830	1178830/-
	Total	540000/-	3250790/-	2710790/-

Ostensibly, as there were certain other credits of Rs.27,04,460/-, therefore, the assessee in order to buy peace of mind, vide his reply dated 18.09.2014 offered an aggregate amount of Rs.54,15,250/- as his additional income. Subsequently, the assessee vide his another reply dated 07.11.2014 revised

his offer of the additional income to Rs.68,62,394/- i.e. total shortfall of agricultural income and higher of opening and closing balance of "other credits". Although the assessee had claimed that an amount of Rs.27,10,790/- (supra) was the deficit/shortfall of agricultural income spread over the period of three years, the same did not find favour with the A.O for more than one reason, viz. (i) that the assessee had come up with a concocted story to regularize the credits appearing in his capital account; (ii) that it was incomprehensible that the assessee would have earned agriculture income of more than Rs.92,000/- per acre in the State of Chhattisgarh; and (iii) that in case the assessee would have received agriculture income which is exempted from tax, then, he would have disclosed the same in his return of income for the year in which the same was received/accrued. Accordingly, the A.O rejected the assessee's claim that the amount of Rs.27,10,790/- was deficit/short agricultural income and, thus, held the same as an unexplained cash credit u/s.68 of the Act.

5. As regards the balance amount of Rs.41,51,604/-, the A.O observed that the assessee had failed to place on record documentary evidence which would explain the nature of the said credits. Accordingly, the A.O held the said amount as an unexplained cash credit u/s.68 of the Act. Accordingly, the total credits of Rs.68,62,394/- appearing in the books of account of the assessee as agriculture income and other credits were added to his income u/s. 68 of the Act.

6. The A.O further observed that the assessee had shown an amount of Rs.6,12,607/- as deemed sales tax under the head “Advances and other Deposits”. The A.O, observing that the said amount as per the judgment of the Hon’ble Supreme Court in the case of Sahney Steel & Press Works Ltd. Vs. CIT, (1997) 228 ITR 253 (SC) was in the nature of a revenue receipt, therefore, made an addition of the same to the returned income of the assessee.

7. On a perusal of the records, the A.O further observed that the assessee had during the subject year made an investment in the equity share capitals of six companies and in agricultural assets aggregating to Rs.1,61,53,680/-. As the assessee had not disclosed on a *suo-motto* basis any disallowance u/s. 14A r.w.r. 8D, therefore, the A.O worked out the disallowance on the said count of Rs.55,06,957/-.

8. As the assessee had in two tranches received loans from M/s. Atmastco Pvt. Ltd., a company in which the assessee was having more than 10% shareholding, viz. (i) loan of Rs.1,35,00,000/-; and (ii) loan of Rs.10,75,000/-, therefore, the A.O made an addition of the same by treating it as “deemed dividend” u/s.2(22)(e) of the Act. Also, the A.O disallowed the assessee’s claim for donation of Rs.15,000/-.

9. Accordingly, the A.O vide his order passed u/s.143(3) of the Act, dated 26.03.2015 after, inter alia, making the aforesaid additions, determined the income of the assessee at Rs.6,99,24,738/-.

10. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals), but without success. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

**“4. DECISION:** The contention of the Appellant, the case laws relied upon in the statement of facts and the grounds of appeal have been considered. The order u/s.143(3) of the Act passed by the AO, (DCIT- 1(1)), Bhilai has also been perused.

4.1. The appellant filed his return of income for the A.Y. 2012-13 on 31.01.2013 declaring total income of Rs.2,23,52,780/- and agricultural income of Rs.2,00,000/-. The case was selected for scrutiny. Order u/s.143(3) was passed on 26.03.2015, assessing the income at Rs.6,99,24,740/- after addition of Rs.2,00,00,000/- on account of unexplained credit u/s 68 of the Act, addition of Rs.68,62,394/- on account of other credits, addition of Rs.6,12,607/- on account of deemed sales tax, addition of Rs.55,06,957/- u/s 14A read with rule 8D of the I. T. Rules, 1962 and disallowance of Rs. 1,45,75,000/- on account of deemed dividend u/s 2(22)(e) of the Act, disallowance of Rs.15,000/- on account of donation. The appellant derived income from business of manufacturing, fabrication & trading of iron & Steel under the name & style of Apex Industries, Tricky having fabrication & trading divisions. Appellant has also derived income as salary from Atmastco Pvt. Ltd., interest income & agricultural income. In case of Apex Industries, audited accounts along with Tax AUDIT Report were also filed with the department.

**5. Ground No.1:** In the ground No.1, the appellant has challenged the addition on account of unexplained credit u/s.68-Rs.2,00,00,000/-.

5.1. The propriety concern of the appellant has two divisions as Apex Industries Unit-1 and Trading Division, but consolidated final accounts and audit report were filed. During the year appellant had credited an amount of Rs.

2,00,00,000/- as additional capital with narration in relevant part of Balance Sheet as "Additional Capital (Transfer from Division)". The appellant is Director of a company named Atmastco (P) Ltd, Bhilai (for short APLB) and in order to justify the credits he filed copies of three ledger accounts of the said company one with narration "Atmastco (P) Ltd, Bhilai (Branch/Division)" and other two with narration "Atmastco (P) Ltd, Bhilai (Sundry Creditors)". The first ledger account of APLB relate to FY 2010-11 in the books of Apex Industries Unit-1. The other two ledger accounts of APLB relate to FY's 2010-11 and 2011-12 in the books of Apex Industries Trading Division and it is marked as "Atmastco (P) Ltd, Bhilai (Sundry Creditors)". Copies of these ledger accounts have been enclosed as Annexure-1 (collectively) and form part of the assessment order. The closing balance in these accounts are carried over to the respective balance sheets. The AO has observed that the claim of additional capital coming out of said accounts to explain the source is misleading. The AO has observed that the appellant's contention that le said amount of Rs.2 Crores was infused to reduce sundry creditors and associate credit balances is another false claim and it leads to the conclusion that relevant balances in sundry creditors and associate credit balance are also not correct. This establishes the fact that the appellant has made unexplained investment in acquisition of corresponding assets from his undisclosed income. The AO treated the amount of unexplained credit of Rs.2,00,00,000/- as unexplained cash credit under section 68 of the I.T. Act, 1961.

5.2. The appellant has submitted that it is the result of transfer entry made by appellant, transferring credit balances appearing in the account of creditors in the books of business concerns, to the capital account of appellant. These transfers have been made in two years: -

AY 2011-12	Rs.1,25,00,000/-
AY 2012-13	Rs.2,00,00,000/-
Total:	Rs.3,25,00,000/-

In AY 2011-12, a sum of "Rs.1,25,00,000/- was transferred from the account of Atmastco Pvt. Ltd., Bhilai to the capital account, debiting the account of party and crediting the capital account. This is evident by Schedule-1 and Schedule-6 of the balance sheet wherein the transfer entry of Rs.1,25,00,000/- is reflected/highlighted. However, such transfer of Rs.1,25,00,000/- was not made through passing of journal entry in the books and the adjustment was made in the schedules/financial statement prepared/on the face of balance

sheet. This is evident from the fact that in the books, in the account of Atmastco Pvt. Ltd., the total of outstanding credit balance is appearing to be the figure which is reflected in Schedule-6 of the balance sheet, before the adjustment of Rs.1,25,00,000/-. This closing balance as per books was carried forward as opening balance in the next year. In other words, balance of branch/division was reduced by Rs.1,25,00,000/- and balance in capital account was correspondingly increased by the same amount but this adjustment was not routed through books but was made only in the financial statements/schedules/on the face of balance sheet. In AY 2012-13, the capital account of appellant was credited with Rs.3,25,00,000/- which comprised of Rs.13,59,950/- and Rs.3,11,40,050/-, aggregating to Rs.3,25,00,000/-. The above adjustments were made to reduce the credit balance of creditors and to increase the capital of proprietor, for meeting the requirements of bank. With this entry, the capital account of appellant should have increased by Rs.3,25,00,000/- in AY 2012-13. However, in Schedule-1 to the balance sheet of AY 2012-13, the increase in balance of capital is Rs.2,00,00,000/- only, against the transfer entry of Rs.3,25,00,000/-. This is for the reason that in the books, transfer entries of Rs.3,25,00,000/- were passed in AY 2012-13 while in AY 2011-12, capital of appellant was already increased by Rs.1,25,00,000/-, but only in the balance sheet and not in the books. The amount of capital brought forward as opening capital of AY 2012-13 included the increased amount of Rs.1,25,00,000/-, which was effected outside the books, only in the balance sheet. According to the appellant, considering the effect in both the years, the entries in books are to the effect of reducing the creditors/credit balances by Rs.3,25,00,000/- and increasing the balance in capital account of appellant by Rs.3,25,00,000/- and the appellant has stated that the credit entry of Rs.2,00,00,000/- in the capital account of appellant which is shown in the schedule/balance sheet is the result of above explained adjustments only and there was no fresh infusion of fund.

5.2.1. The AO in the Remand Report has noted that these transfers/adjustments are not made through passing of entries in the relevant books of accounts of the appellant. In view of above, the claim of the appellant with regard to additional capital coming out of these accounts cannot be accepted. On carefully going through these documents, it is noted by the AO that the claim of the appellant that the credit of Rs.2 cr (as additional capital in the balance sheet) was intended to reduce sundry creditors and associate credit balances is misleading. In view of above, the unexplained credit

in the capital account in the balance sheet deserves to be treated as unexplained cash credit U/s. 68 of the IT Act, 1961.

5.2.2. The appellant in the rejoinder to the remand report reiterated that the addition of Rs.2 crore in the capital a/c does not represent any fresh flow of money in the account of appellant but it was only the result of transfer/adjustment made in the balance sheet. The appellant explained that increase of Rs.2 crore in the capital of appellant was by way of corresponding decrease in the outstanding amount of the creditors. The appellant has argued that the decrease in the amount of creditors has not been disputed by the AO. If adjustment is made on the face of balance sheet by transferring the amount from the creditors account to the capital account without making any entry in the books of accounts, no income arises in such a case. Such adjustment cannot lead to inference of income in the hands of the appellant. The appellant has argued that the addition was made invoking sec. 68 alleging unexplained cash credit. The fact that no fresh flow of money had come in the capital account of the appellant remains undisputed. When this position has remained undisputed, invoking sec. 68 was not justified. Secondly, if the relevant entry was not made in the books of accounts, invocation of sec. 68 itself fails. For invoking sec. 68, it is necessary that sum of money should be received/ credited in the books of the appellant. Since this requirement is not fulfilled, the addition is not justified even if any fault is found with the transfer/adjustment entries made.

5.3. The Grounds of appeal, statement of facts, submissions of the appellant, remand report, rejoinder of the appellant and the assessment order are considered. In the rejoinder, the appellant has submitted that the appellant may be allowed opportunity of explaining the evidences personally to the AO. It is seen that sufficient opportunities have been given to the appellant during assessment and appellate proceedings and therefore, the issue is being decided based on all the material and submissions of the appellant already filed. The AO has observed that a sum of Rs.2 crore was credited in the capital account of appellant with M/s Apex Industries, wherein the appellant is proprietor. To justify capital introduction, it was explained by the appellant that there were credit balance in the account of Atmastco (P) Ltd., Bhilai in the books of proprietorship concern of appellant i.e. Apex Industries (Manufacturing Division) and Apex Industries (Trading Division). Out of these credit balances, a sum of Rs. 2.00 crore was transferred by journal entry to the capital account of appellant in the instant year. The appellant has stated that he

was enjoying credit facility in the form of CC limit from State Bank of India and the appellant was required to bring in capital of Rs.2 crore so as to meet the bank's requirements; and therefore, the appellant transferred a sum of Rs.2 crore through transfer entries from the account of Atmastco (p) Ltd., debiting the account of above company and crediting his capital account. During the appellate proceedings, it is seen that the closing balances in the accounts of above parties were carried over to the balance sheets. These transfers/adjustments are not made through passing of entries in the relevant books of accounts of the, appellant. In view of above, the claim of the appellant with regard to additional capita' coming out of these accounts cannot be accepted. I find no reason to interfere with the AO's order on the above issue. Appeal on Ground no. 1 is dismissed.”

**6. Ground No. 2:** [In the ground No. 2, the appellant has challenged the addition on Account of other credits- Rs.68,62,394/-]

6.1. In the assessment order, the AO has mentioned that the appellant had shown agricultural income at Rs.2,00,000/-. The appellant submitted that he owns 14.95 acres of agricultural lands at village Mahamara and Ahivara; and is engaged in agricultural activities and the net surplus was more than Rs.92,000/- per acre, which was not accepted by the AO. The appellant has stated that there was difference in agriculture income shown in the return and agriculture income declared in reply dated 18/09/2014 as under:

S.No	A.Y.	Agricultural income as per ITR Rs.	Agricultural income as per reply Rs.	Difference short fall Rs.
1.	2010-11	1,60,000/-	8,01,960/-	6,41,960/-
2.	2011-12	1,80,000/-	10,70,000/-	8,90,000/-
3.	2012-13	2,00,000/-	1,37,830/-	11,78,830/-
	Total	5,40,000/-	32,50,790/-	21,10,790/-

The appellant filed consolidated Statement of Affairs as on 31/02/2012 and shown shortfall relating to agricultural income at Rs.11,78,830/-. The Statement of Affairs also shows "Other Credits" at Rs.27,04,460/-. The appellant offered the

income of Rs.68,62,394/- being total of shortfall of agricultural income and higher of opening and closing balance of 'Other Credits'. The AO asked the appellant to produce books of account and file other evidences to support the claim but no compliance was made. The AO observed that in the absence of any documentary evidence, in support of the claim that there was shortfall in the agricultural income amounting to Rs.27,10,790/- in three years as not acceptable and held that the appellant was only covering up the credits in capital account/balance sheet. Therefore, total credits amounting Rs.68,62,394/- appearing in the books of accounts under the head Agricultural income and other credits are added to the total income of the appellant u/s 68 of I.T. Act, 1961.

6.2. The appellant has stated that the amount of Rs.68,62,94/- comprised of following:

A.Y.	Particulars	Amount (Rs.)
2011-12	“Other credits” appearing in the personal balance sheet of appellant of 31.03.2011	41,51,604/-
2011-12	Agricultural income disclosed less in the return filed	15,31,960/-
2012-13	Agricultural income disclosed less in the return filed	11,78,830/-
Total		68,62,394/-

6.3. All the details have been perused. The appellant has argued that the amount of Rs.68,62,394/- was offered for tax only while explaining the credit entries of Rs.2.00 crore. The credit entry of Rs.2.00 crore has been separately added by the AO. Therefore, to the extent of Rs.68,62,394/-, 'here is double addition, which is not justified. The appellant has been giving contusing arguments to justify the credit entries. The appellant has argued that out of Rs.68,62,394/-, a sum of Rs.56,83,564/- (Rs.41,51,604/- + Rs.15,31,960/-) represents the difference in the earlier year and Rs.11,78,830/- only related to the year under consideration; therefore, to the extent of Rs.56,83,564/-, addition could not have been made. This argument of the appellant cannot be accepted. The appellant is trying to build up a case that he generated tax free agricultural income in earlier years which were not part of

returned income. I find no reason to interfere with the AO's order on the issue. The appeal on ground No.2 is dismissed.”

7. Ground No. 3: In the ground No.3, the appellant has challenged the addition on a/c of demand sales tax - Rs.6,12,607/-

7.1. In the assessment order, the A.O has noted that the appellant has shown an amount of Rs.6,12,607/- as deemed sales tax under the head Advances and other Deposits. The AO has observed that this is assessable as revenue receipt relying on the decision of the Hon'ble Supreme Court in the case of Sahney Steel and Press Works Ltd. vs CIT 1997 228 ITR 253 SC. Accordingly, the AO added this amount to the total income.

7.2. All the facts on the issue are considered. The appellant has submitted that in the balance sheet of the appellant, a sum of Rs.6,12,607/- is reflected as "deemed sales tax". The AO added this amount observing that it is apparently assessable as revenue receipt. The appellant has not furnished any explanation with regard to this addition. In view of the same, the appeal on Ground no. 3 is dismissed.”

8. Ground No. 4: In the ground No. 4, the appellant has challenged the Disallowance u/s 14A-Rs.55,06,957/-.

8.1. The AO applied Section 14A read with Rule 8D and disallowed Rs.55,06,957/-. The AO worked out the disallowance as under:

Particulars	Amount
Disallowance u/r.8D(20(ii) on account of interest	50,65,957/-
Disallowance of expenditure u/r.8D(2)(iii)	4,41,000/-
	55,06,957/-

8.2. The appellant has submitted that excessive disallowance has been worked out by the AO; the value of investment yielding exempt income was Rs.1,61,53,680/- (closing investment of 31.3.2012, as mentioned on page no. 6 & 7 of assessment order) and Rs.1,22,82,180/- (opening investment of 1.4.2011). The average of the correct Figures comes to Rs.1,42,17,930/- against which the AO has taken the figure of Rs.8,82,00,165/-.

Secondly, while wrongly taking the figure of all the assets in place of figure of investments yielding exempt income, it appears that from the total of all the assets as on 31.03.2012 (Rs. 10,95,20,585/-), the AO has deducted two figures

- (i) investment in Apex Steel Technology Pvt. Ltd.(Rs.12,75,000/-);
- (ii) Plot at Dhanora (Rs.25,96,500/-);
- (iii) loans and advances of Rs.5,70,000/- and
- (iv) cash & bank balances of Rs.4,92,601/-

In the same way, the value of opening investment has been taken considering the total of all the assets as on 31.3.2011 (Rs.7,51,41,475/-) and deducting therefrom

- (i) cash and bank balances Rs.27,57,628/- and
- (ii) loans and advances of Rs.5,70,000/-.

The AO has not mentioned as to how the figures of item "B" of the formula have been taken by him. If the corrected figures are replaced in the formula prescribed in Rule 8D(2)(ii), the result would be as under: -

$$\frac{A \times B}{C} = \text{Rs.}53,03,221/- \times \text{Rs.}1,42,17,930/- = \text{Rs.}8,16,636/-$$

$$\text{Rs.}9,23,31,014/-$$

As a result of above mistake on the part of AO, the amount of disallowance computed under clause (iii) of Rule 8D(2) is also computed at a higher figure because the figure derived at item "B" in the above formula is required to be adopted for computing disallowance under clause (iii) also. With the above correction, the amount of disallowance of Rs.4,41,000/- worked out in para (c) on page no. 8 of assessment order [under Rule 8D(2)(iii)] would also become Rs.71,090/- (i.e. 0.5% of Rs.1,42,17,930/- in place of 0.5% of Rs.8,82,00,165/-). Thus, with the above corrections, the amount disallowable as per AO would come to Rs.8,87,725/- (Rs.8,16,636/- + Rs. 71,090/-) in place of Rs.55,06,957/- taken in the assessment order. Thus, the appellant has argued that the disallowance made by the AO of Rs.55,06,957/- is otherwise also excessive by Rs.46,19,232/- (Rs.55,06,957/- (-) Rs.8,87,725/-). The appellant has also stated that the appellant had own funds of Rs.9,98,71,015/- as on 31.3.2012, which is much more than the value of investments yielding exempt income (Rs.1,61,53,680/-).

8.3. The submissions of the appellant have been considered. The addition is restricted to Rs.8,87,725/- (Rs.8,16,636/- + Rs.71,0901-), as claimed by the appellant in place of Rs.55,06,957/- taken in the assessment order. Appeal on ground No. 4 is partly allowed.

“9, Ground No. 5: In the ground No.5, the appellant has challenged the Disallowance on a/c of deemed dividend u/s.2(22)(e)- Rs.1,45,75,500/-

9.1. The appellant had obtained loan Rs.1,35,00,000/- from closely held company called Atmastco Pvt. Ltd Where he is a Shareholder having more than 10 percent of the shareholding. Similarly, further sum of Rs.10,75,000/- was received from the same company and shown in the consolidated statement of Affairs. The payment by said company by way of such loans is deemed dividend to the extent of accumulated profits available with the company. In the Balance Sheet part of return of income for the year 2012-13 of the said company, Profit and Loss Account reserves is shown at Rs.9,43,84,584/-. Since the accumulated profit is more than the total loans i.e, Rs.1,45,75,000/- the entire amount is assessed as deemed dividend under section 2(22)(e) of the Act and added to the total income.

9.2 The appellant has not furnished any explanation with regard to this addition despite repeated opportunities. In view of the same, the appeal on Ground No.5 is dismissed.

10. Ground No.6: In the ground No. 6, the appellant has challenged the Disallowance on account of Donation- Rs.15,000/-.

10.1. The appellant had made donation of Rs.72,157/- and debited the same to the Profit and Loss Account. However, in Computation of Income he offered only Rs.57,157/- to tax and the difference of Rs.15,000/- is left to be offered hence, the AO added the same to the total income.

10.2. The appellant has not furnished any explanation with regard to this addition, despite repeated opportunities. In view of the same, the appeal on Ground no. 6 is dismissed.

11. In the result, the appeal is partly allowed.”

11. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

12. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of 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.

13. Shri Milind Bhusari, Ld. Authorized Representative (for short 'AR') for the assessee, at the threshold of hearing, submitted that as per instructions he is not pressing ground of appeal No.5. Considering the concession of the Ld. AR the **Ground of appeal No.5** is dismissed as not pressed.

14. As multiple issues are involved in the captioned appeal, therefore, the same are being adjudicated in a chronological manner in the backdrop of the contentions of the Ld. Authorized Representatives of both the parties:

**(A). Re: Addition u/s. 2(22)(e) of the Act : Rs.1,45,75,000/-**

15. Apropos the addition of "deemed dividend" u/s. 2(22)(e) of the Act of Rs.1,45,75,000/-, Shri Milind Bhusari, Ld. AR submitted that the said loans were raised by the assessee from M/s Atmastco Pvt. Ltd. not during the year under consideration but the same were the brought forward balances of the preceding year i.e. A.Y.2011-12. The Ld. AR to buttress his aforesaid claim had taken us through the "balance sheet" of M/s. Apex Industries, Unit-1

for the immediately preceding year, i.e A.Y.2011-12, wherein loan of Rs.1.35 crore (supra) received from M/s Atmastco Pvt. Ltd. was reflected, Page 45 & 47 of APB. Also, the Ld. AR had specifically drawn our attention to the copy of the ledger account of M/s. Atmastco Pvt. Ltd. appearing in the books of M/s. Apex Industries, Unit-1 for the subject year i.e. A.Y.2012-13, wherein an amount of Rs.1.35 crore was brought forward as on 01.04.2011 as an opening balance. Also, the Ld. AR had taken us through the “balance sheet” of Shri Subramaniam Swaminathan Iyer i.e. the assessee as on 31.03.2011, which revealed an unsecured loan of Rs.10.75 lacs from M/s. Atmastco Pvt. Ltd., Page 48 of APB. Apart from that, the Ld. AR had taken us through the copy of the account of Shri Subramaniam Swaminathan Iyer (i.e the assessee) as appearing in the books of account of M/s. Atmastco Pvt. Ltd., Unit-1 which revealed that an amount of Rs.10.75 lacs was received by the assessee in three tranches during the preceding year i.e. A.Y.2011-12, Page 49 of APB, viz. (i) 19.05.2010 : Rs.45,000/-; (ii) 05.10.2010 : Rs.10 lacs; and (iii) 09.11.2010 : Rs.30,000/-. Carrying his contention further, the Ld. AR submitted that as the assessee had not received any loan from M/s. Atmastco Pvt. Ltd. during the year under consideration, therefore, there was no justification for the A.O to have made an addition during the subject year u/s. 2(22)(e) of the Act. The Ld. AR submitted that though the aforesaid fact was brought to the notice of the CIT(Appeals) but the latter had failed to deal with the same. The Ld. AR to buttress his aforesaid claim had drawn our

attention to the “Ground No.5” that was raised by the assessee before the CIT(Appeals), which revealed that the assessee had specifically stated that there was no payment made by the aforementioned company during the subject year.

16. Per contra, the Ld. Departmental Representative (for short “DR”) relied on the orders of the lower authorities.

17. We have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives of both the parties. Before proceeding any further, we deem it fit to cull out the provisions of Section 2(22)(e) of the Act, which reads as under:

“2. In this Act, unless the context otherwise requires,-

\*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*

**(22) “dividend” includes-**

\*\*\*                      \*\*\*                      \*\*\*                      \*\*\*                      \*\*\*

**(e) any payment by a company**, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, **by way of advance or loan to a shareholder**, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits”

**(emphasis supplied by us)**

18. As stated by the Ld. AR, and rightly so, as the company viz. M/s. Atmastco Pvt. Ltd had advanced a loan aggregating to Rs.1.45 crore (approx.) not during the year under consideration but in the preceding year, therefore, in absence of any payment by the company during the subject year, there was no justification for the A.O to have held the amount so received by the assessee in the preceding year as “deemed dividend” in his hand during the subject year. Accordingly, the addition of Rs.1,45,75,000/- made by the A.O u/s. 2(22)(e) of the Act made/sustained by the lower authorities is vacated. Thus, the **Ground of appeal No.4** raised by the assessee is allowed in terms of our aforesaid observations.

**(B). Re: Disallowance u/s. 14A r.w.Rule 8D : Rs.55,06,957/-**

19. As is discernible from the assessment order, the A.O observing that the assessee had though during the subject year made investments in equity share capital of various companies and agricultural assets, but had not offered on a *suo-motto* basis any disallowance of any expenditure incurred for earning of exempt income, thus, worked out a disallowance u/s. 14A of Rs.55,06,957/-, viz. (i) disallowance of interest under Rule 8D(2)(ii) : Rs.50,65,957/-; and (ii) disallowance of administrative expenses under Rule 8D(2)(iii) : Rs.4,41,000/-.

20. On appeal, the CIT(Appeals) observing that the A.O had wrongly adopted the average value of investment towards exempt income yielding shares, thus, scaled down the disallowance to an amount of Rs.8,87,725/-

21. We have heard the Ld. Authorized Representatives of both the parties on the aforesaid issue i.e. disallowance made/sustained by the lower authorities u/s. 14A r.w. Rule 8D.

22. Shri Milind Bhusari, Ld. AR, at the threshold of hearing, submitted that as the assessee during the subject year had not earned any exempt income, therefore, there was no justification for the A.O to have made any disallowance u/s. 14A of the Act. The Ld. AR in support of his aforesaid contention had relied on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Chettinad Logistics Pvt. Ltd. (2018) 257 Taxmann 2 (SC) and that of the Hon'ble High Court of Delhi in the case of Cheminvest Limited Vs. CIT, (2015) 378 ITR 33 (Delhi). The Ld. AR to buttress his claim submitted that the assessee had vide his "written submission" [filed before the CIT(Appeals)], submitted that as the assessee had not earned any exempt income during the year under consideration, therefore, the provisions of Section 14A of the Act could not have been invoked, Page 15 of CIT(Appeals)'s order.

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

24. We have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives of both the parties in the backdrop of the orders of the lower authorities. We are principally in agreement with the Ld. AR that in absence of any exempt income having been earned by the assessee during the subject year, the A.O as per the pre-amended Section 14A of the Act, as was applicable to the subject year, could not have worked out any disallowance in his hands. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Chettinad Logistics Pvt. Ltd. (2018) 257 Taxmann 2 (SC)** and also of the **Hon'ble High Court of Delhi** in the case of **Cheminvest Limited Vs. CIT, (2015) 378 ITR 33 (Delhi)**. In the backdrop of the facts involved in the case before us r/w. the aforesaid settled position of law, we find substance in the claim of the Ld. AR that now when the assessee had not received any exempt dividend income during the year under consideration, therefore, no disallowance u/s.14A of the Act was warranted in his case. However, we are of the view that as the aforesaid claim that the assessee was not in receipt of any exempt income during the subject year, cannot be summarily accepted on the very face of it, and would require verification, therefore, the matter in all fairness is restored to the file of the A.O for the limited purpose to verify the factual position. In case, the assessee's claim that he had not earned any exempt income during the subject year is found to be in order, then no disallowance u/s. 14A of the Act would be called for in his hands. Thus, the **Additional**

**Ground of appeal** raised by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

**(C). Re: Addition towards deemed sales tax: Rs.6,12,607/-**

25. Apropos the addition of Rs.6,12,607/- on account of deemed sales tax, disclosed by the assessee under the head “loan & advances” (asset) in his “balance sheet” for the subject year, we find that the A.O holding a conviction that as the same was in the nature of a “revenue receipt”, as held by the Hon’ble Apex Court in the case of Sahney Steel & Press Works Ltd. Vs. CIT, (1997) 228 ITR 253 (SC), thus, had made an addition of the same to his income.

26. Shri Milind Bhusari, Ld. AR submitted that the assessee was never called for to put forth an explanation on the aforesaid issue by the A.O while framing the assessment. The Ld. AR submitted that the assessee vide his letter dated 23.06.2016 submitted before the CIT(Appeals) that as the aforesaid amount was part of advances and other deposits, therefore, the same could not constitute the income of the assessee. The Ld. AR submitted that sales tax was payable by the assessee and sales tax a/c. was debited by an amount of Rs.6,12,607/- with a corresponding credit to the sales tax payable a/c. The Ld. AR submitted that as the sales tax was paid by the assessee on 14.04.2012 i.e. before the “due date” of filing the return of income, therefore, the same could not have been added to his income.

27. At the threshold, we may herein observe that the judgment of the Hon'ble Apex Court in the case of Sahney Steel & Press Works Ltd. Vs. CIT (supra) pertained to the issue of refund of sales tax, subsidy etc., i.e. as to whether or not the same were in the nature of production incentives, operational subsidies and not capital subsidies. The Ld. AR had placed on record the copy of the sales tax payable a/c., Page 33 & 34 of APB for F.Y.2011-12 & 2012-13 (as appearing in the books of M/s. Apex Industries Pvt. Ltd., Unit-1). The Ld. AR by referring to the aforesaid sales tax payable account, submitted that as the deemed sales tax of Rs.6,12,607/- had been paid by the assessee on 14.04.2012 i.e. prior to the "due date" of filing return of income under sub-section (1) of Section 139 of the Act, therefore, no disallowance of the said amount was called for in his hands.

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

29. We have thoughtfully considered the aforesaid issue, and are of the view that the explanation of the assessee qua the addition of Rs.6,12,607/- requires to be looked into in the backdrop of the documents that have been placed on our record, viz. (i) copy of sales tax payable A/c. for F.Y.2011-12 and 2012-13; (ii) copy of bank statement evidencing making of the payment; and (iii) copy of the bank receipts evidencing payment of Rs.6,65,030/- by the assessee on 14.04.2012. Accordingly, we herein restore the matter to the

file of the A.O for re-adjudication. 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 who shall remain at a liberty to substantiate his claim on the basis of fresh documentary evidence, if any. Thus, the **Ground of appeal No.3** raised by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

**(D). Re: Addition towards unexplained cash credit in capital A/c. u/s. 68 of the Act : Rs.2 crore.**

30. As is discernible from the assessment order, the A.O while framing the assessment, had observed, that there was an addition of Rs. 2 crore in the “capital a/c” of the assessee in his “balance sheet” of M/s. Apex Industries at Trichy for the subject year i.e. A.Y.2012-13. On being queried, it was submitted by the assessee that the addition in the “capital account” was sourced from reduction of the sundry creditors/associate credit balances. Ostensibly, the assessee to substantiate his aforesaid claim had filed before the A.O, viz. (i) the copy of the account of M/s. Atmastco Pvt. Ltd. (branch/division) for F.Y.2010-11 (appearing in the books of M/s. Apex Industries, Unit-1); (ii) copy of the account of M/s. Atmastco Pvt. Ltd., Bhilai (sundry creditor) for F.Y.2010-11 [as appearing in the books of M/s. Apex Industries (trading division)]; and (iii) copy of account of M/s. Atmastco Pvt. Ltd. (sundry creditor) for F.Y.2011-12 (appearing in the books of account of M/s. Apex Industries (trading division)). Although, the assessee had tried to

impress upon the A.O that the addition of Rs.2 crore (supra) made in his “capital a/c” during the subject year was primarily sourced out of the brought forward balances of the sundry creditors/associate credit balances pertaining to the preceding year which were taken over by him in his individual/personal capacity, but the same did not find favour with the A.O. Although the A.O while framing the assessment had observed that the copies of the accounts of the aforementioned parties that were filed by the assessee to explain the source of the source of the addition in his capital a/c. of Rs.2 crore (supra) related to the preceding financial year, except for, one entry dated 13.06.2011 which pertained to the subject year, but in absence of documentary evidence which would irrefutably support the said claim had rejected the same.

31. Shri Milind Bhusari, Ld. AR submitted that the capital addition of Rs.2 crore (supra) during the subject year was not in the nature of any fresh addition and no movement of funds was involved, but had occasioned pursuant to the outstanding liabilities of M/s Atmastco Pvt. Ltd. (supra) being taken over by the assessee in his personal/individual capacity. Elaborating further on his contention, the Ld. AR submitted that the addition in the “capital a/c” of Rs.2 crore (supra) was sourced out of, viz. (i) transfer out of the “opening balance” of Rs.2,32,61,506.37 as on 01.04.2011 of M/s. Atmastco P. Ltd., Bhilai (appearing in the books of account of M/s.

Apex Industries, Unit-1) : Rs.1,05,00,000/-; (ii) transfer out of the “opening balance” of Rs.1,49,10,000/- as on 01.04.2011 of M/s. Atmastco P. Ltd., Bhilai (appearing in the books of M/s. Apex Industries, trading division) : Rs.87,50,000/-; (iii) transfer from the account of M/s. Atmastco P. Ltd., Bhilai [as appearing in the books of M/s. Apex Industries (trading division)] during the year under consideration : Rs.7,50,000/-.

32. The Ld. AR to substantiate his aforesaid claim had drawn our attention to the “capital a/c” of the assessee in the books of M/s. Apex Industries, Unit-1 for the subject year i.e. A.Y.2012-13, which revealed the bifurcated details of the aforesaid addition aggregating to Rs.2 crore (supra), Page 8 of APB. Apart from that, the Ld. AR had taken us through a “Chart” which provided the complete bifurcated details a/w. narration of the bifurcated amounts aggregating to Rs.2 crore (supra) that were infused in the “capital account” of the assessee during the year under consideration, Page 1 of APB. Also, the Ld. AR to fortify his contention that the amounts infused by way of an addition to the “capital account” during the subject year were primarily sourced from the brought forward balances appearing in the account of the aforementioned sundry creditor/associate credit balances of the immediately preceding year, had drawn our attention to, viz. (i) copy of the ledger account of the M/s. Atmastco P. Ltd. in the books of account of M/s. Apex Industries (trading division) for F.Y.2010-11, which

revealed the closing balance of Rs.1,49,10,000/- on 31.03.2011, Page 9 & 10 of APB; and (ii) copy of the ledger account of M/s. Atmastco P. Ltd., Bhilai in the books of accounts of M/s. Apex Industries, (Unit-1) for F.Y.2010-11, which revealed the closing balance of Rs.2,32,61,506.37 (Cr.) as on 31.03.2011, Page 11 of APB. The Ld. AR had, thereafter, taken us through the copy of ledger accounts of M/s. Atmastco P. Ltd., Bhilai [appearing in the accounts of M/s. Apex Industries (trading division)] for F.Y.2011-12, i.e. the subject year, which revealed that an amount of Rs.87.50 lacs was transferred vide an inter division adjustment on 31.03.2012, Page 5 & 6 of APB to the assessee's "capital a/c" with M/s. Apex Industries, Unit-1, Page 8 of APB. Also, the Ld. AR had taken us through the copy of account of M/s. Atmastco Pvt. Ltd., Bhilai (as appearing in the books of M/s. Apex Industries, Unit-1) for the subject year i.e. A.Y.2012-13, which revealed that an amount of Rs.1.05 crore was transferred on 31.03.2012 vide a journal entry to the assessee's "capital a/c" with the said proprietary concern/division, Page 4 of APB. Also, the Ld. AR had drawn our attention to the copy of account of M/s. Atmastco Pvt. Ltd., Bhilai appearing in the books of account of M/s. Apex Industries (trading division) for F.Y.2011-12 i.e. A.Y.2012-13, Page 5 & 6 of APB, which revealed that an amount of Rs.7.50 lacs was vide an inter division adjustment transferred to the "capital a/c" of the assessee with M/s. Apex Industries, Unit-1, Page 8 of APB.

33. The Ld. AR based on his aforesaid contentions supported by the aforementioned documentary evidence, submitted that as the assessee in the course of the proceedings before the lower authorities had duly substantiated his claim that the addition of Rs.2 crore (supra) in his “capital a/c” with M/s. Apex Industries, Unit-1 during the year under consideration i.e. A.Y.2012-13 was sourced out of the accounts of M/s. Atmastco P. Ltd., Bhilai (appearing in the books of accounts of M/s. Apex Industries, Unit-1 and M/s. Apex Industries (trading division), which in turn were primarily sourced out of the brought forward balances of the preceding year, therefore, there was no justification for the A.O to have drawn adverse inferences and held the amounts so credited in the “capital a/c” of the assessee as unexplained cash credits u/s. 68 of the Act. Elaborating further on his contention, the Ld. AR submitted that as the assessee in the course of the assessment proceeding had duly discharged the onus that was cast upon him as regards explaining the “nature” and “source” of the credit of Rs.2 crore (supra) in his “capital a/c” with M/s. Apex Industries, Unit-1, therefore, he had wrongly been visited with the impugned addition u/s. 68 of the Act.

34. On being queried as to what was the purpose of the aforementioned inter division adjustment/transfer which had resulted to an accretion in the “capital a/c”, the Ld. AR fairly submitted that the same was in order to

reduce the credit balance of the creditors and increasing the “capital a/c” of the proprietor for meeting out the requirements of the bank.

35. Per contra, the Ld. Departmental Representative (for short “DR”) relied on the orders of the lower authorities.

36. We have heard the Ld. Authorized Representatives of both the parties on the aforesaid issue i.e. addition of Rs. 2 crore (supra) made by the assessee in his “capital a/c” during the subject year in the books of accounts of M/s. Apex Industries, Unit-1, which thereafter, had been held by the A.O as unexplained cash credit u/s.68 of the Act and approved by the CIT(Appeals).

37. On a careful perusal of the CIT(Appeals)’s order, it transpires that he had observed that the assessee had during the subject year as well as the immediately preceding year transferred an amount of Rs.3.25 crore in his “capital a/c”, as under:

A.Y.2011-12	Rs.1,25,00,000/-
A.Y.2012-13	<u>Rs.2,00,00,000/-</u>
Total:	<u>Rs.3,25,00,000/-</u>

On a conjoint reference to the aforesaid transaction, the CIT(Appeals) had observed that in so far the transfer of an amount of Rs.1.25 crore in A.Y.2011-12 was concerned, the said amount was not transferred through

passing of journal entry in the books of account but by way of adjustment made in the “Schedule/financial statement prepared/on the face of balance sheet”. The CIT(Appeals) had fortified his aforesaid observation based on the fact that in the books of account of M/s. Atmastco P. Ltd. the total outstanding “credit balance” was the same amount which was reflected in “Schedule-6” of the balance sheet, i.e. before adjustment of Rs.1.25 crore (supra). Further, the CIT(Appeals) observed that the closing balance of the “capital a/c” (before adjustment of Rs.1.25 crore) was, thereafter, carried forward as the “opening balance” to the next year i.e. the year under consideration. In other words, the CIT(Appeals) had observed that though the balance of “branch/division” was reduced by an amount of Rs.1.25 crore and the balance in the “capital account” was correspondingly increased by the same amount but the said adjustment was not routed through the books of account but was made only in the financial statement/Schedule/on the face of the balance sheet. Elaborating further, the CIT(Appeals), had observed, that the assessee during the year under consideration i.e. A.Y.2012-13, had though credited his “capital a/c” with an amount of Rs.3.25 crore, which adjustment was made to reduce the credit balance of the creditors and increasing the “capital a/c” of the proprietor, but as per the “Schedule-1” of the balance sheet for A.Y.2012-13 the increase in the balance of capital was Rs.2 crore only, against the transfer entry of Rs.3.25 crore. Referring to the aforesaid discrepancy, the CIT(Appeals), observed

that the same was for the reason that though transfer entries of Rs.3.25 crore were passed in A.Y.2012-13, but the capital of the assessee was already increased by Rs.1.25 crore in A.Y.2011-12 i.e. only in the balance sheet and not in the books of the account. Accordingly, the CIT(Appeals) observed that the amount of capital balance that was brought forward as “opening capital” of A.Y.2012-13 already included the increased amount of Rs.1.25 crore, which was effected outside the books of accounts, i.e. only in the balance sheet.

38. Accordingly, the assessee based on the aforesaid facts, claimed that there was an increase in the balance in his “capital a/c” by an amount of Rs.3.25 crore with a corresponding reduction of the creditors/associate credit balances of Rs.3.25 crore and, thus, based on the aforesaid adjustment there was an addition in the “capital a/c” of Rs. 2 crores (supra) during the year under consideration, but there was no fresh infusion of funds. The CIT(Appeals) based on the aforesaid facts called for a “remand report” from the A.O. In reply, the A.O submitted that the transfers/adjustments were not made through passing of entries in the relevant books of account of the assessee. Accordingly, the A.O submitted that the explanation of the assessee as regards the addition in the “capital a/c” of Rs. 2 crores (supra) did not merit acceptance. Rather, the A.O had stated that the assessee’s claim that the credit of Rs.2 crore (as additional

capital in the balance sheet) was intended to reduce sundry creditors and associate credit balances was misleading.

39. The assessee in his rejoinder to the “remand report”, submitted that the addition of Rs.2 crores in his “capital a/c” during the subject year did not represent any fresh flow of funds but was only a result of transfers/adjustments i.e corresponding reduction in the sundry creditors/associate credit balances. Once again, the assessee claimed that the addition of Rs.2 crores (supra) in his “capital a/c” was based on a corresponding decrease in the outstanding amount of the creditor/associate credit balance. Alternatively, it was stated by the assessee that even if observation of the A.O that the transfers/adjustments were not made through passing of entries in the relevant books of account, i.e the assessee had transferred the amounts from the sundry creditors/associate credit balances to his “capital account” without making any entry in the books of account was to be accepted, still no income would arise. Apart from that, the assessee had stated that if the A.Os version that the aforesaid entries, i.e. increase in the “capital a/c” by an amount of Rs.2 crore (supra) with a corresponding decrease in the outstanding amount of the sundry creditors/associate credit balances were not routed through the books of account, then on the said count itself the applicability of the provisions of Section 68 of the Act would fail. It was, thus, the claim of the assessee that

as Section 68 of the Act pre-supposes that sum of money is received/credited in the books of the assessee, therefore, based on the aforesaid observation of the A.O that the relevant entries were not routed through the books of account would in itself render the provisions of Section 68 of the Act as unworkable.

40. We find that considering the facts that the explanation of the assessee as regards the addition of Rs.2 crores (supra) in his “capital a/c” was considering the remand report filed by the A.O; the rejoinder filed by the assessee, had rendered the same as contentious, therefore, the assessee had requested the CIT(Appeals) that an opportunity may be allowed to him for explaining the evidences by personally appearing before the A.O. However, we find that the CIT(Appeals) had summarily rejected the said claim of the assessee, for the reason, that as sufficient opportunities were already allowed to him during the assessment/appellate proceedings, therefore, the issue was to be decided based on the material and submission that were available on record.

41. Ostensibly, the CIT(Appeals) had observed that the assessee in his attempt to justify the capital introduction of Rs.2 crores (supra) with M/s. Apex Industries, Unit-1, i.e a proprietary concern/division, had claimed that the same was based on transfer to the “capital a/c” by a journal entry passed in the ledger a/c of M/s. Atmastco Pvt. Ltd., Bhilai in the books of his

proprietary concerns, viz. (i) M/s. Apex Industries (manufacturing division); and (ii) M/s. Apex Industries (trading division). Also, the CIT(Appeals), observed, that the assessee had claimed before him that as he was enjoying a credit facility in the form of CC limit from State Bank of India, which had required him to bring a capital of Rs.2 crore, therefore, he had through the aforesaid transfer/adjustment entries in the account of M/s. Atmastco Pvt. Ltd., i.e by debiting the account of the aforementioned associate company in the books of account of his aforesaid proprietary concerns/divisions with a corresponding credit in his “capital a/c” projected the infusion of capital as was so required by the bank. We find that the CIT(Appeals) had not found favour with the aforesaid explanation of the assessee, for the reason, that he was of the view that as the transfers/adjustments were not made through passing of entries in the relevant books of account of the assessee, therefore, his explanation as regards the addition of Rs.2 crores (supra) in his “capital account” did not merit acceptance.

42. We have thoughtfully considered the observations of the CIT(Appeals) in the backdrop of the contentions advanced by the Ld. Authorized Representatives of both the parties. At the threshold, we may herein observe, that the observation of the CIT(Appeals) that the transfers/adjustments i.e. debiting the account of M/s. Atmastco P. Ltd., Bhilai in the books of the proprietorship concerns/divisions of the assessee, viz. (i) M/s. Apex

Industries (manufacturing division); and (ii) M/s. Apex Industries (trading division) were not made through passing of entries in the relevant books of account of the said concerns/divisions, apparently is not found to be in conformity with the material that has been placed on record by the assessee appellant. As observed by us hereinabove, the assessee had for the subject year filed before us copy of the ledger account of M/s. Atmasco Pvt. Ltd., Bhilai in the books of account of M/s. Apex Industries, Unit-1, which reveals that the amount of Rs.1.05 crore (supra) was debited in the account of the aforementioned company on 31.03.2012, Page 4 of APB. On a similar footing, the assessee had during the subject year filed before us copy of the account of M/s. Atmastco Pvt. Ltd., Bhilai in the books of account of M/s. Apex Industries (trading division), wherein an amount of Rs.87.50 lacs (supra) and Rs.7.50 lacs (supra) had been debited to the account of the aforesaid company as on 31.03.2012. Apparently, the CIT(Appeals) had remained guided by the facts of A.Y.2011-12, wherein the addition of an amount of Rs.1.25 crore to the assessee's capital a/c was not routed through his books of accounts, but the same was made only in the financial statement/Schedule/on the face of balance sheet.

43. We, thus, in terms of our aforesaid observation are of the view that the aforesaid issue, i.e. as to whether or not the assessee's claim that the addition of Rs.2 crores (supra) in his "capital a/c" (during the subject year)

was made by transfers/adjustments through passing of entries in the relevant books of account of the proprietary concerns/divisions of the assessee and not through adjustments made in the Schedule/financial statement/on the face of balance sheet would require verification.

44. At this stage, we may herein observe, that the observation of the CIT(Appeals) that the claim of the assessee that the amount of Rs.2 crores (supra) was infused in his “capital a/c” to reduce the sundry creditors/associate credit balances establishes that incorrect/bogus balance of the creditors/associate credit balances were projected which, thus, had sourced the investment in the acquisition of corresponding assets by him from his undisclosed income, we are afraid will have no bearing on the adjudication of the issue in hand for the year under consideration. We, say so, for the reason that to the extent, the balance in the sundry creditors/associate credit balances which were transferred as infusion to the “capital a/c” of the assessee during the subject year found its genesis in the preceding year, then, no adverse inferences much the less making of any addition during the year under consideration qua the said amount would be called for u/s.68 of the Act.

45. Be that as it may, we are of a firm conviction that considering the fact that the explanation of the assessee as regards the source of the addition of Rs.2 crores (supra) in his “capital a/c” during the subject year in the

backdrop of, viz. the documents/material placed on our record; the remand report of the A.O; the rejoinder filed by the assessee, had rendered the adjudication of the said issue as contentious, therefore, the CIT(Appeals) ought to have acceded to the request of the assessee for allowing an opportunity to him to explain the same, based on the evidences, by personally putting up an appearance before the A.O. We, thus, in terms of our aforesaid observations restore the matter to the file of the A.O with a direction to re-adjudicate the same. 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 who shall remain at a liberty to substantiate his claim on the basis of fresh documentary evidence, if any. Thus, the **Ground of appeal No.1** raised by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

**(E). Re: Addition u/s. 68 of the Act: Rs.68,62,394/-**

46. Apropos the addition of Rs.68,62,394/- made by the A.O u/s. 68 of the Act, we find that the assessee had disclosed agricultural income of Rs. 2 lacs in his return of income for the subject year. On being queried, the assessee claimed that he owned 14.95 acres of agricultural lands at Village :Mahamara and Village: Ahivara and was engaged in agricultural activities, from which, he had derived income @ Rs.92,000/- per acre. However, the A.O did not find favour with the aforesaid claim of the assessee.

47. During the course of the assessment proceedings, the assessee had filed before the A.O a “Chart” vide his reply dated 18.09.2014, wherein he had furnished details of difference in the agricultural income (as actually earned) vis-à-vis agricultural income (disclosed in the return of income) for the year under consideration i.e. A.Y.2012-13 and the immediately two preceding years aggregating to Rs.27,10,790/-, as under:

S.No	A.Y.	Agricultural income as per ITR Rs.	Agricultural income as per reply Rs.	Difference short fall Rs.
1.	2010-11	1,60,000/-	8,01,960/-	6,41,960/-
2.	2011-12	1,80,000/-	10,70,000/-	8,90,000/-
3.	2012-13	2,00,000/-	1,37,830/-	11,78,830/-
	Total	5,40,000/-	32,50,790/-	21,10,790/-

The A.O observed that a perusal of the statement of affairs as on 31.02.2012 filed by the assessee revealed, viz. (i) shortfall relating to agricultural income (for the subject year) : Rs.11,78,830/-; and (ii) other credits : Rs.27,04,460/-. As the assessee could not substantiate his claim of having earned agricultural income, based on which, he had worked out the short/deficit agriculture income of Rs.27,10,790/- for the aforementioned years (including the year under consideration), therefore, the A.O held the same as unexplained cash credit u/s. 68 of the Act. Apart from that, the

assessee had vide his letter dated 07.11.2014 come forth with an offer of a sum of Rs.41,51,604/- as unexplained credits. As the assessee had failed to substantiate the credits aggregating to Rs.68,62,394/- [Rs.27,10,790/- (+) Rs.41,51,604/-], therefore, the A.O held the same as the assessee's undisclosed income u/s. 68 of the Act.

48. On appeal, the CIT(Appeals) finding no infirmity in the view taken by the A.O approved the same.

49. Shri Milind Bhusari, Ld. AR submitted that as the assessee had filed the statement of affairs as on 31.03.2012 for explaining the sources of the capital introduction of Rs.2 crores (supra), therefore, there was no justification for the A.O to have made a separate addition of the said amount. On merits, the Ld. AR submitted that the entire short/deficit amount of Rs.27,10,790/- of agricultural income that was not disclosed by the assessee in his respective returns of income for the year under consideration and that of the immediately two preceding years, could not have been assessed as the subject year unexplained cash credit u/s. 68 of the Act. Alternatively, the Ld. AR submitted that as there was no movement of funds in the books of account of Rs.68,62,394/-, therefore, there was no justification for the A.O to have held the same as unexplained cash credit u/s. 68 of the Act. Also, the Ld. AR submitted that in case the credit

balances were to be held as ingenuine, then the addition of the same was liable to made in the respective years to which the same pertained.

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

51. We have considered the aforesaid issue and are unable to persuade ourselves to concur with the Ld. AR's claim. At this stage, we may herein observe, that the assessee initially in the absence of any plausible explanation as regards the "nature" and "source" of the credits in his books of account (compiled in the form of "statement of affairs" that was filed before the A.O), had vide his reply dated 18.09.2014 filed in the course of the assessment proceedings offered an additional income of Rs. 54,15,250/-, viz. (i). the total of short fall of agriculture income: Rs. 27,10,790/-; and (ii). Other credits: Rs. 27,04,460/- for buying peace of mind. Thereafter, the assessee vide his another reply dated 07.11.2014, had revised his offer for additional income to Rs. 68,62,539/-. As observed by the A.O, the revised amount of the additional income that was offered by the assessee for tax comprised of, viz. (i). the total of short fall of agriculture income; and (ii). the higher of opening and closing balances of "Other Credits". Ostensibly, now when the assessee in absence of any plausible explanation had offered the total credits of Rs.68,62,394/- (supra) appearing in his "books of account" as his undisclosed additional income, therefore, no infirmity can be

attributed to the view taken by the A.O who had rightly made an addition of the same u/s. 68 of the Act. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Punjab & Haryana** in the case of **Banta Singh Kartar Singh Vs. CIT (1980) 125 ITR 239 (P&H)**, wherein it was held that the order based on an agreement cannot give rise to grievances and the same cannot be agitated in appeal. The Hon'ble High Court while so concluding had relied on the order of the **Hon'ble High Court of Bombay** in the case of **Jivatlal Purtapshi Vs. CIT (1967) 65 ITR 261 (Bom)**. Accordingly, in the absence of any explanation of the assessee as regards the "nature" and "source" of the subject credits, the same in our view had rightly been held by the A.O as unexplained cash credit u/s. 68 of the Act. Thus, the **Ground of appeal No.2** raised by the assessee is dismissed in terms of our aforesaid observations.

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

Order pronounced in open court on 10<sup>th</sup> day of February, 2025.

Sd/-  
**ARUN KHODPIA**  
(ACCOUNTANT MEMBER)

Sd/-  
**RAVISH SOOD**  
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 10<sup>th</sup> February, 2025

\*\*\*##SB, Sr. PS

**आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.