

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.36/Nag./2024**  
(Assessment Year : 2017-18)

Asstt. Commissioner of Income Tax  
Central Circle, Akola ..... Appellant

v/s

R.B.S.D. AND FN Das (Export Firm)  
4<sup>th</sup> Floor, Rajkamal Building  
Wardha Road, Nagpur 440 012 ..... Respondent  
PAN – AAFFR4050C

Assessee by : Shri Mukesh Agrawal  
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 10/12/2024

Date of Order – 14/02/2025

**ORDER**

**PER V. DURGA RAO, J.M.**

The aforesaid appeal by the Revenue is emanating from the impugned order dated 29/11/20237, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In its appeal, the Revenue has raised following grounds:-

*"1. On the facts and in the circumstance of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,94,95,783/-.*

*2) On the facts and in the circumstance of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,90,13,453/-.*

3) *On the facts and in the circumstance of the case, the Ld. CIT(A) has erred in not appreciating that the transactions are not genuine.*

4) *On the facts and in the circumstance of the case, the Ld. CIT(A) has erred in appreciating the fact that the not genuine transaction has been established on the basis of statements of creditors recovered during search and post search investigation who denied of performing any work contract.*

5) *Any other ground that may be raised at the time of appellate proceedings."*

3. Facts in Brief:- The assessee is a Partnership Firm carrying business of extraction of Manganese Ore minerals. The assessee is maintaining regular books of account and audited under section 44AB of the Income Tax Act, 1961 ("*the Act*"). A search and seizure action under section 132 of the Act was conducted at the Radhika Group of cases, Vishakhapatnam on 25/08/2021. Consequent upon search and seizure operation in Radhika Group, a survey was conducted on 25/08/2021, at the office premises of the assessee situated at Vizianagram. The assessee filed original return of income under section 139(1) of the Act on 01/11/2017, declaring total income of ₹ 3,52,80,278. The case was selected for complete scrutiny and an assessment order was passed under section 143(3) on 18/11/2019, determining total income ₹ 3,52,80,280. Later on, the case was re-opened pursuant to order under section 263 and notice under section 143(2)) of the Act was issued to the assessee on 06/02/2023 and duly served. Notice under section 142(1) of the Act was also issued on 08/03/2023. Accordingly, the Assessing Officer completed assessment on 30/03/2023 determining total assessed income at ₹ 8,54,08,000, after making following additions:-

Sr. no.	Income Assessed	Addition made	On account of
1.	₹ 8,54,08,000	₹ 9,94,95,783	u/s 69C of the Act
		₹ 1,90,13,453	u/s 69C of the Act

Aggrieved, the assessee carried the matter before the learned CIT(A).

4. On appeal, the learned CIT(A) deleted both the additions viz. ₹ 2,94,95,783, on account of opening balances of sundry creditors and addition of ₹ 1,90,13,453, on account of credits in sundry creditors accounts aggregating to the total amount of ₹ 4,85,09,236 made by the Assessing Officer on the basis of following findings:—

*"Ground no. 4 is regarding the addition of Rs. 2,94,95,783/- towards Opening Balances of Sundry Creditors and addition of Rs. 1,90,13,453/-towards credits in sundry Creditors Accounts total amounting to Rs. 4,85, 5,09,236/- made under section of Act. In this ground there are two different additions are made: one is addition towards opening sundry creditors and second one is regarding addition towards credits in sundry creditors is discussed as below:*

*The AO during the assessment proceeding noticed that there are opening credit balances in accounts of 12 Sundry creditors totalling to Rs. 3,99,11,577/- out of which creditors totalling to Rs. 1,04,15,794/- have been declared by appellant as income under the Voluntary Disclosure of Income Scheme. The AO asked appellant to prove genuineness of remaining creditors totalling to Rs. 2,94,95,783/-. The appellant submitted various document such as Copy of bills raised by these parties in respective years, nature and quantity of work done by creditors, TDS details on bills raised, their ledger account in appellant's books of accounts, confirmation from parties and copy of income tax return filed by these creditors. However, the AO relied on statement of three creditors recorded at the time of survey and held the creditors as bogus and added the amount of Rs. 2,94,95,783/- as Unexplained Expenditure u/s 69C of IT act.*

*During appellate proceedings, the appellant submitted that the addition u/s 69C is unjustified as the credit balance of Rs. 2,94,95,783/- in the account of various creditors is opening balance brought forward from earlier years and since the expenditure has not been incurred in the previous year relevant to AY under reference, no addition could have been made u/s 69C of IT Act. For this argument appellant has relied on following judgements-*

*ITA No. 1078/Bang/2014 in Glen Williams v/s ACIT  
ITO Vs Rahul kantilal Shah ITA No. 6805/Mum/2018  
Syntensia Network Security Vs. ITO (ITA No.2927/Mum/2017)*

*The appellant further argued that even on merits these creditors are genuine, appellant has regular business transactions with them and they have been paid these amounts in the relevant previous year through banking channels. Appellant furnished various documents as mentioned in page 7 of the assessment order to support its claim of genuineness of the creditors.*

*Appellant also submitted that major part of this credit balance has been paid in the relevant previous year and subsequent years.*

*Appellant further submitted that the expenses on account of labour contractors were incurred in previous year relevant AY 2013-14 to AY 2016-17.*

*I have gone through the submission of the appellant and various documents furnished by him. The argument of the Appellant carries weight and I am in agreement with the same. It is undisputed fact the amount of Rs. 2,94,95,483/- added by AO u/s 69C of the Act is opening balance brought forward from earlier years. Appellant has neither incurred nor claimed expenses of Rs. 2,94,95,483/- in the previous year relevant to AY under reference i.e. AY 2017-18. As such this amount cannot be added u/s 69C of the Act in AY 2017-18. Hon'ble Delhi ITAT in Shri Vardhman Overseas Ltd. v. ACIT (27 CCH 053) has ruled as under-*

*10. We have carefully considered the rival submissions in the light of the material placed before us. From the perusal of copy of account of all the parties with regard to which the addition has been made, it revealed that no new amount has been credited by the assessee in their account during the year under consideration. Therefore, applicability of s. 68 is ruled out and addition could not be made under s. 68. Now, coming to the applicability of s. 41(1), it is observed that assessee company is a limited company and its accounts are accessible to general public. The balances are brought forward balances. If the same are added on account of their non-genuineness, then also these amounts cannot be added to the income of the assessee for the year under consideration as the question of genuineness thereof can be examined only in the year in which they were credited in the account of the assessee. The amount also cannot be considered to be the income of the assessee on the ground of expiry of limitation as, according to well settled law explained by Hon'ble Supreme Court in the case of Sugauli Sugar Works (P.) Ltd. (supra) in the absence of creditor, it is not possible for the Department to come to the conclusion that the debt is barred and has become unenforceable and there may be some circumstances which may enable the creditor to come with a proceeding for enforcement the debt even after expiry of the normal period of limitation as provided on the Limitation Act. It will be relevant to reproduce these observations of the orders from the said decision:-*

*"The question whether the ability is actually barred by limitation is not a matter which can be decided by considering the assessee's case along but it is a matter which has to be decided only if the creditor is before the concerned authority. In the absence of the creditor; it is not possible for the authority to come to a conclusion that the debt is barred and has become unenforceable. There may be circumstances which may enable the creditor to come with a proceeding for enforcement of the debt even after expiry of the normal period of limitation as provided in the Limitation Act."*

*11. In view of the above observations of Hon'ble Supreme Court, in the absence of creditor, it cannot be concluded by the Department that the debt is barred and has become unenforceable more particularly when the assessee is a limited company whose accounts are accessible to general-public. In the case of Sugauli Sugar Works (P.) Ltd. (supra) the assessee had credited the amount which was added to its income under s. 41(1) of the Act, but in the case of the assessee such amount has not even been credited to the P&L a/c. Thus, the case of the assessee is on sound footing than the case of the assessee in that*

case. Therefore, on the ground of expiry of limitation, the addition upheld by the CIT(A) under s. 41(1) cannot be held justified.

The above judgement of Delhi ITAT has been confirmed by Delhi High Court in CIT v. Vardhman Overseas Ltd reported in 343 ITR 408.

Similar view has been taken in following ITAT judgements that the opening balances cannot be added u/s 68/69 of IT Act.

ITA No. 1078/Bang/2014 in Glen Williams v/s ACIT  
ITO Vs Rahul kantilal Shah ITA No. 6805/Mum/2018  
Syntensia Network Security Vs. ITO (ITA No.2927/Mum/2017)

Respectfully following the views expressed by various ITAT the addition of Rs. 2,94,95,7887- mátech 569C of the Act is directed to be deleted as the appellant has mother incurred nor claimed any expenditure of Rs. 2,94,95,783/- during the year under consideration.

Now coming to the second part of the addition u/s 69C of the I T Act which is towards credit in Sundry Creditors Accounts total amounting to ₹ 1,90,13,453. The A.O. during assessment proceedings noticed that the appellant has incurred expenditure of ₹ 1,90,13,543/- towards mining expenses. These expenses are on account of extraction of manganese ore by following labour contractors.

1.	Bandaru Ramesh	₹43,96,254
2.	D. Govind	₹9,99,700
3.	D.S. Prakash	₹9,84,000
4.	E.V. Mani	₹9,83,000
5.	P. Suresh	₹9,85,000
6.	P. Suryaprakash	₹9,94,000
7.	S. Satyanarayana	₹9,91,000
8.	V. Ramesh	₹9,81,000
9.	N. Appalaramulu	₹14,41,180
10.	Pradeep Kumar Katakwar	₹45,06,179
11.	S. Hussain	₹17,52,140
	Total:	₹1,90,13,453

During assessment proceeding appellant has submitted copy of bills issued by labour contractors, their Ledger account in the books of appellant, copy of form 16A downloaded from Trades site and bank statements showing payments to them after due deduction of TDS However, The AO relying on the statement of one of the Employee of M/s. Radhika Group, has not accepted the submissions of the appellant and has treated the expenses incurred for labour contractors as bogus and added Rs. 1,90,13,453/- u/s 69C of the I T Act.

During appellate proceedings the appellant submitted that the Appellant is carrying on mining activities since 1944. The mines are open cast manual

*mine situated at Garividi, Dist.: Vizianagaram. As the mining activities are going on since 1944, the depth of the mine has reached over 250 Ft. To carry on such deep mining activities, huge teams of man-power in terms of labourers are required. The team of the management has appointed several labour contractors to carry out various mining activities. The work awarded to the labour contractor comprises of digging, carrying over burden, making path, stacking of ore and mutty, etc. The contractors are being appointed by the agent of the company who normally takes the stock situation of labour team, their financial condition and integrity of the contractor. After appointment, work is awarded to different contractors for different pits so as to calculate the work done by them. The agent personally supervises the work of each contractor and verifying the same directs the contractor to prepare his work bill. The work bill is being verified by the mining supervisor who transfers the said bill to the accounts department. After receiving the bills, the accounts department verifies the rates, etc. and after deducting "Tax at Source" makes payment to the contractor. The village Garividi is a very small place, and it is very difficult to find labour contractors, so some time it also happens that some known persons of the appellant's firm / staff also engage in contract work and with their acquaintances form a labour team they execute the contract work.*

*Appellant further submitted that the expenses on account of labour contractors are genuine business expenses, supported by bills issued by contractors, and their acceptance of it by showing contract receipts in Income Tax returns filed by them.*

*The appellant has discharged its onus by providing copy of bills submitted by these contractors' showing details of work done by them. Appellant has also provided their complete name, address and Phambers Payments to them has been through banking payment channel after due deduction and of TDS. The AO has not found any defect in the documents produced by the appellant nor has the AO falsified these documents. It is also undisputed at the appellant has sold goods worth Rs. 28.11 crores during the relevant previous year. Without employing labourers through contractors such sales would not have been possible. The Id. AO has not doubted appellant's production and sales figures. The addition made by the AO is solely based on surmises and conjecture without bringing any corroborative evidence on record which cannot be sustained. Therefore, the addition of Rs. 1,90,13,453/- made u/s 69C is directed to be deleted. Thus, the total addition made Rs.4,85,09,236/- u/s 69C is directed to be deleted and ground No. 4 is hereby allowed."*

5. The learned Departmental Representative could not make any effective arguments and relied upon the assessment order passed by the Assessing Officer.

6. The learned Counsel for the assessee reiterated the submissions made before the learned CIT(A). He submitted that the issues relating to additions

viz. ₹ 2,94,95,783, on account of opening balances of sundry creditors is covered by the decision of this Court rendered in assessee's sister concern in an appeal filed by the Revenue viz. ACIT v/s Radhika Metals & Minerals, ITA no.23/Nag./2024, for assessment year 2017-18, vide order dated 27/01/2025, wherein this Court has dismissed the appeal of the Revenue.

7. The learned Counsel further submitted that the second issue which relates to the addition of ₹ 1,90,13,453, on account of credits in sundry creditors accounts is also covered by the decision of the Co-ordinate Bench of the Tribunal, ITAT, Nagpur Bench, wherein identical issues have been decided by this Court in Revenue's appeal in Dy. Commissioner of Income Tax v/s R.B.S.D. And F.N. Das, ITA no.234/Nag./2023, for assessment year 2020-21, vide order dated 30/10/2024. Accordingly, the learned Counsel prayed that the Revenue's appeal be dismissed on both counts.

8. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. While going through the material available on record, we are in agreement with the learned Counsel for the assessee that both the additions viz. ₹ 2,94,95,783, on account of opening balances of sundry creditors and addition of ₹ 1,90,13,453, on account of credits in sundry creditors accounts aggregating to the total amount of ₹ 4,85,09,236 made by the Assessing Officer, these issues came up before this Court which were decided in favour of the assessee and against the Revenue. The addition of ₹ 2,94,95,783, on account of opening balances of sundry creditors which is identical to the issue raised herein is covered by assessee's sister concern case in an appeal filed by the

Revenue viz. ACIT v/s Radhika Metals & Minerals, ITA no.23/Nag./2024, for assessment year 2017–18, vide order dated 27/01/2025, wherein this Court has dismissed the appeal of the Revenue by holding as under:–

*"We have gone through the order of the authorities below as well as details submitted before us. It is undisputed fact that the amount of ₹ 3,14,08,070 added by Assessing Officer under section 69C of the Act is the sum of opening balance of various creditors brought forward from earlier years. No expenditure is incurred during the relevant previous year. The assessee has produced evidences regarding its payment in relevant previous year and subsequent years. The learned CIT(A) has decided this issue and the same is reproduced above. We find no infirmity in the order of the learned CIT(A). We decline to interfere with the order passed by the learned CIT(A) which is hereby upheld by dismissing the grounds raised by the Revenue."*

9. We also find that the issue which relates to the addition of ₹ 1,90,13,453, on account of credits in sundry creditors accounts is also covered by the decision of the Co-ordinate Bench of the Tribunal, ITAT, Nagpur Bench, wherein identical issue has been decided by this Court in Revenue's appeal in DCIT v/s R.B.S.D. And F.N. Das, ITA no.234/Nag./2023, for assessment year 2020–21, vide order dated 30/10/2024, wherein the Revenue's appeal was dismissed by deciding the issue in favour of the assessee by holding as under:–

"27. We find that the learned CIT(A) has dealt with this issue at Page-23 & 24 of the his order, which is reproduced below:–

*"Ground no. 6 is regarding the addition of Rs.25,06,079/- u/s 69C being unexplained Mining Expenses. The Assessing Officer, during assessment proceedings noticed that the appellant has incurred various expenses on mining of manganese ore. Amount those expense genuineness of following two expenses were questioned by the Assessing Officer.*

Name of Party	Date of Payment	Amount (Rs.)
Sri T Puranchandra Rao	27/01/2020	16,14,218/-
M/s. Bhomatha Real Properties	01/02/2020	8,91,86/-

*During assessment proceeding appellant has submitted copy of bills issued by labour contractors, their Ledger account in the books of appellant, copy of form 16A downloaded from Traces site and bank statements showing payments to them after due deduction of TDS. However, the Id. AO held that the appellant has not furnished copy of agreement for work contract nature and proof of services provided and hence, the expenses incurred for labour contractors is bogus and added it u/s 69C of the Act.*

*During appellate proceedings the appellant submitted that the Appellant is carrying on mining activities since 1944. The mines are open cast manual mine situated at Garividi, Dist.: Vizianagaram. As the mining activities are going on since 1944, the depth of the mine has reached over 250 Ft. To carry on such deep mining activities, huge teams of man-power in terms of labourers are required. The team of the management has appointed several labour contractors to carry out various mining activities. The work awarded to the labour contractor comprises of digging, carrying over burden, making path, stacking of ore and mutty, etc. The contractors are being appointed by the agent of the company who normally takes the stock situation of labour team, their financial condition and integrity of the contractor. After appointment, work is awarded to different contractors for different pits so as to calculate the work done by them. The agent personally supervises the work of each contractor and verifying the same directs the contractor to prepare his work bill. The work bill is being verified by the mining supervisor who transfers the said bill to the accounts department. After receiving the bills, the accounts department verifies the rates, etc. and after deduction "Tax at Source" make payment to the contractor. The village Garividi is a very small place, and it is very difficult to find labour contractors, so some time also happens that some known persons of the appellant's firm/staff also engaged in contract work and with their acquaintances form a labour team they execute the contract work.*

*Appellant further submitted that the expenses on account of labour contractors are genuine business expenses, supported by bills issued by contractors, and their acceptance of it by showing contract receipts in Income Tax return filed by them.*

*The appellant has discharged it onus by providing copy of bills submitted by these contractors' showing details of work done by them. Appellant has also provided their complete name, address and PAN numbers. Payments to them has been through banking channel after due deduction and payment of TDS. The AO has not found any defect in the documents produced by the appellant nor has the AO falsified these documents. It is also undisputed that the appellant has sold goods worth Rs. 55.15 crores during the relevant previous year. Without employing labourers through contractors such sales would not have been possible. The Id. AO has not doubted appellant's production and sales figures. The addition made by AO is solely based on surmise and conjecture without bringing any corroborative evidence on record which cannot be sustained. Therefore, the addition of Rs. 25,06,079/- made u/s. 69C is directed to be deleted and ground No. 6 is hereby allowed."*

28. The learned counsel for the assessee during the appellate proceedings argued that that the assessee has discharged its onus by providing copy of bills submitted by these contractors showing details of work done by them. The assessee has also provided its complete name, address, and PAN details. Payments to them have been made through proper banking channel after due

deduction and payment of TDS. The Assessing Officer has not found any defect in the documents produced by the assessee nor has the Assessing Officer falsified these documents. It is also undisputed that the assessee has sold goods worth ₹ 55,15 crore during the relevant previous year. Without employing labourer through contractors such sales would not have been possible. The Assessing Officer has not doubted assessee's production and sales figures. The addition made by Assessing Officer is solely based on surmise and conjecture without bringing any corroborative evidence on record which cannot be sustained.

29. We have gone through order of the learned CIT(A) as well as details submitted before us. We also find that the assessee is carrying on mining activities since the year 1944. The mines are open cast manual mine situated at Garividi, Dist. Vizianagaram. As the mining activities are going on since 1944, the depth of the mine has reached over 250 FT to carry on such deep mining activities, huge teams of man-power in terms of labourers are required. The team of the management has appointed several labour contractors to carry out various mining activities. The work awarded to the labour contractor comprises of digging, carrying over burden, making path, stacking of ore and mutty, etc. The contractors are being appointed by the agent of the company who normally takes the stock situation of labour team, there financial condition and integrity of the contractor. After appointment, work is awarded to different contractors for different pits so as to calculated the work done by them. The agent personally supervises the work of each contractor and verifying the same directs the contractor to prepare his work bill. The work bill is being verified by the mining supervisor who transfers the said bill to the accounts department. After receiving the bills, the accounts department verifies the rates, etc. and after deducting "Tax at Source" makes payment to the contractor. The village Garividi is a very small place, and it is very difficult to find labour contractors, so some time it also happens that some known persons of the assessee's firm/staff also engage in contract work and with their acquaintances from a labour team they execute the contract work. We are also gone through the assessment order, entire addition was made by the Assessing Officer under section 69C of the Act. The provisions of section 69 of the Act reproduced as under:-

*"SECTION 69C.  
Unexplained expenditure, etc.*

*Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the 2448[Assessing Officer], satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year.*

*From the plain reading of section 69C it is clear that there are two conditions for invoking section 69C. First is, that the assessee has incurred any expenditure in the relevant previous year, and second is that the assessee does not offer any explanation about source of such expenditure. If both the conditions are fulfilled then only section 69C can be applied. But in the present case*

*Assessee is a partnership firm carrying on business of Mining of Manganese Ore minerals. It maintains regular books of accounts which are audited u/s 44AB of I.T. Act.*

*A Survey u/s 133A of IT act was conducted at premises of the assessee on 25.08.2021. Assessee filed return of income on 13.02.2022 declaring total income of Rs.18,01,81,210/-. Case was selected for scrutiny and notice under section 143(2) and 142(1) were issued which were duly replied by the assessee. In the assessment order passed u/s 143(3) the AO has made entire addition additions U/s. 69C which are in dispute in appeal*

*In the present case though the assessee has incurred expenditure during the year but all these expenses are duly recorded in books of accounts and they have been incurred from the regular business income of the assessee. The AO has neither during entire assessment proceeding nor in the assessment order doubted about the source of such expenditure. In view of the above we are opinion that the second limb of section 69C is not attracted in the present case, therefore we are deleted the addition made U/s. 69C."*

*We have considering the rival argument of the learned Counsel for the assessee as well the learned D.R. The learned CIT(A) has rightly deleted the additions under section 69C and we uphold the order of learned CIT(A) and this ground of appeal of the department were dismissed. Hence, ground no.5, raised by the Revenue is dismissed."*

10. Since the issues for our adjudication are squarely covered by the aforesaid decisions of this Court as cited supra rendered wherein this Court has decided this issues in favour of the assessee and against the Revenue for the reasons stated supra, consistent with the view taken therein, we decline to interfere in the impugned order passed by the learned CIT(A) and dismiss the grounds raised by the Revenue.

11. In the result, appeal by the Revenue stands dismissed.

Order pronounced in the open Court on 14/02/2025

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

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

**NAGPUR, DATED: 14/02/2025**

Copy of the order forwarded to:

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

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur