

अपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER &
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं/.ITA No.306/RJT/2024

निर्धारणवर्ष /Assessment Year: 2012-13

Shree Balaji Lumbers Pvt.Ltd. Plot No.6-8, 25-25 Survey No.89 VillagePadana Gandhidham – 370 201 PAN : AALCS 7866 C	Vs.	ACIT, Circle Gandhidham -370 201
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

निर्धारितीकीओरसे/Assessee by : ShriChetan Agarwal, Id.AR

राजस्वकीओरसे/Revenue by : Shri Abhimanyu Singh Yadav, Sr-DR

सुनवाईकीतारीख/Date of Hearing : 27/01/2025

घोषणाकीतारीख/Date of Pronouncement : 23/04/2025

ORDER

PERDR. ARJUN LAL SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi[in short 'Ld.CIT(A)'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 15.09.2023, which in turn arises out of an assessment order passed by the Assessing Officer (AO) u/s143(3) r.w.s. 147 of the Act, dated 28.06.2019.

2. The grievances raised by the assessee are as under:



- “1. *The ld.CIT(A) erred in law as well as on fact in upholding addition of Rs.22,50,000/- made by ld.assessing officer u/s.68 of the I.T. Act.*
2. *The ld.CIT(A) erred in law as well as on facts in upholding addition merely on the basis of third party statement without providing copy of such statement and cross examination.”*

3.The facts necessary for disposal of the appeals are stated in brief.The assessee is a company and is involved in the business activity of trading in Timber logs. The assessee filed its original return of income on 12.09.2012 declaring therein total income of Rs.43,10,370/-. Thereafter the case of the assessee for assessment year(AY) 2012-13, was selected for scrutiny and an order u/s 143(3) of the Act was passed, determining the total income at Rs.44,10,370/ -. Thereafter, a notice under section 148 of the Act, was issued (after taking due approval from the Pr. CIT-1, Rajkot) on 25.03.2019, requesting the assessee to furnish its return of income within 30 days. In response to the notice under section 148 of the Act, the assessee has filed return of income on 20.04.2019, declaring therein total income at Rs.43,10,370/-. A copy of reasons recorded was provided to the assessee- company, vide letter dated 13.05.2019. Subsequently, notice u/s 143(2) of the Act, was also issued to the assessee.

4.The case of the assessee was reopened by recording the reasons that Shri Romesh Gupta has admitted that he is an accommodation entry provider and earning commission on these accommodation entries. During the assessment proceedings assessing officer also made inquiries from Asstt. Excise & Taxation Commissioner, Baddi, District Solan, Himachal Pradesh regarding the proprietary concern of the assessee which was found to be non-existent. This further confirms that the assessee was only providing accommodation entries through the bank accounts of his business concerns. It was found that the



assessee M/s. Shree Balaji Lumbers Pvt, Ltd. has taken accommodation entries from Shri Romesh Gupta during FY 2011-12 as follows:

<i>Sr.No.</i>	<i>Date</i>	<i>Amount (Rs.)</i>
1	18.11.2011	12,50,000/-
2.	23.03.2012	10,00,000/-

From the above departmental enquiry, the assessing officer noticed that it is clear that the assessee has indulged in the practice of taking accommodation entry from Shri Romesh Gupta for an amount of Rs. 22,50,000/- thereby reducing profits in the return of income filed.

5. Thereafter, a detailed questionnaire and notice dated 29.05.2019, was issued u/s 142(1) of the Act. In response to this notice, the assessee submitted the details/ explanation, before the assessing officer. The assessee submitted that the assessee made Sale transaction for Rs.12,75,000/- with Shri Romesh Gupta, prop. of Aar Kay International, Baddi against which the amount of Rs.12,50,000/- was received through bank and Rs.25,000/- in cash. The assessee had a genuine sale transaction with Shri Romesh Gupta. The assessee submitted before the assessing officer ledger of Aar Kay International, Baddi, Retail Invoice of the sale, Copy of the Bank Statement, where receipt of Rs.12,50,000/- is reflected and the ledger of Olam international Ltd, from whom the purchase was made and the sale was done, out of the said purchase. There was another transaction of Rs.10,00,000/- dated 23.03.2012 in the reopening notice. The assessee has not engaged in any transaction with Shri Romesh Gupta regarding Rs.10,00,000/-, but on 23/03/2012 Rs.10,00,000/- were received from Punjab Timber and not from Romesh Gupta or any of his entity, for this, the assessee submitted bank statement, along with the ledger account



of Punjab Timber, before the assessing officer. The assessee also submitted before the assessing officer, that the transaction amounting to Rs. 12,50,000/- is a Sale transaction, which is properly recorded in their books of accounts, so, the assessee has not reduced his profits in the return of income filed as the sale has been recorded in the books of accounts, of the assessee. The documentary evidences such as sale bill, Ledger of Aar Kay International (prop. Shri Romesh Gupta, Extract of bank statement highlighting the transaction, Ledger of Olam International Ltd. from whom the purchase was done were submitted before the assessing officer. The assessee also submitted the following evidences before the assessing officer:

(i) VAT return Form 201A (reflecting the Sale Transaction of Rs.12,75,000/-)

(ii) Form No. C

The assessee also submitted that the nature of the transaction carried out with Punjab Timber amounting to Rs. 10,00,000/- was Advance received towards sale but due to some reason, the sale transaction was not done and the advance received was paid back to the party. To prove this, the assessee submitted before the assessing officer the copy ledger of Punjab International and copy of the bank statement highlighting the transaction. The amount of Rs.10,00,000/- was received and the same was paid back to Punjab Timber. Therefore, it cannot be said that assessee had taken accommodation entry. It can be considered as a loan transaction as the amount was received and the same was repaid. Ultimately, no transaction took place with Punjab Timber during the year, as the amount received was paid back, therefore, no addition should be made in the hands of the assessee.



6. However, the assessing officer rejected the contention of the assessee and made addition to the tune of Rs.22,50,000/- (Rs.12,50,000 + Rs.10,00,000), as unexplained cash credit under section 68 of the Act.

7. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Id.CIT(A), who has confirmed the action of the assessing officer. The Id. CIT(A) observed that assessing officer received credible information that assessee paid cash to the accommodation entry provider which was returned via bank credit as sales proceeds. The assessee stated that Rs.12,50,000 was actual sales proceeds from Romesh Gupta and Rs.10,00,000 was received from Punjab Timber as an advance payment. However, both these claims were treated by the Id. CIT (A) as bogus, therefore Id. CIT(A), confirmed the addition made by the assessing officer.

8. Aggrieved by the order of the Id.CIT(A), the assessee is in appeal before this Tribunal.

9. The Id.Counsel for the assessee submitted that the reopening cannot be made on the sales transaction made by the assessee to the tune of Rs.12.50 lakhs, which is recorded in the books of accounts and offered for tax. Further, the reopening cannot be made in respect of advance received of Rs.10 lakhs, which is recorded in the books of accounts. Therefore, reassessment proceedings initiated by the assessing officer is itself bad in law, and hence, the reassessment proceedings may be quashed. On merits, learned Counsel for the assessee, submitted that assessee made a sale of Rs.12,50,000/- during the course of his business and received advance of Rs.10,00,000/- from customers, which is also during the course of business, and both these transactions are recorded in the books of accounts and due taxes, if any, were paid by the assessee, on these



transactions. Therefore, no addition should be made in the hands of the assessee.

10. On the other hand, the Id.DR for the Revenue, submitted that reassessment proceedings initiated on the assessee is valid, and it is as per the provisions of the Act. On merits, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

11. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We find that before the assessing officer, as well as, before the Id.CIT(A), the assessee had submitted following documents viz. (i) ledger account, sales bill, bank statement and import details (copy placed at PB Page No.21-25), (ii) VAT returns and C-Form, (copy placed at PB Page No.30-34), and (iii) Ledger account of Punjab Timber and bank statement (copies placed at paper-book on page nos.35 to 37).

12. After considering the above documents and evidences, we note that assessee made Sale transaction for Rs.12,75,000/- with Shri Romesh Gupta, prop. of Aar Kay International, Baddi against which the amount of Rs.12,50,000/- was received through bank and Rs.25,000/- in cash. The assessee submitted before the assessing officer ledger of Aar Kay International, Baddi, Retail Invoice of the sale, Copy of the Bank Statement, where receipt of Rs.12,50,000/- is reflected and the ledger of Olam international Ltd, from whom the purchase was made and the sale was done, out of the said purchase. Therefore, we find that assessee had a genuine sale transaction with Shri Romesh Gupta. The assessee



also submitted before the assessing officer, that the transaction amounting to Rs. 12,50,000/- is a Sale transaction, which is properly recorded in their books of accounts, so, the assessee has not reduced his profits in the return of income filed as the sale has been recorded in the books of accounts, of the assessee. The documentary evidences such as sale bill, Ledger of Aar Kay International (prop. Shri Romesh Gupta, Extract of bank statement highlighting the transaction, Ledger of Olam International Ltd. from whom the purchase was done were submitted before the assessing officer. The assessee also submitted the following evidences before the assessing officer:

(i)VAT return Form 201A (reflecting the Sale Transaction of Rs.12,75,000/-)

(ii)Form No. C

12. About another transaction of Rs.10,00,000/- dated 23.03.2012, we note that assessee has not engaged in any transaction with Shri Romesh Gupta regarding Rs.10,00,000/-, but on 23/03/2012, Rs.10,00,000/- were received from Punjab Timber and not from Romesh Gupta or any of his entity, for this, the assessee submitted bank statement, along with the ledger account of Punjab Timber, before the assessing officer. The assessee also submitted that the nature of the transaction carried out with Punjab Timber amounting to Rs. 10,00,000/- was Advance received towards sale but due to some reason, the sale transaction was not done and the advance received was paid back to the party. To prove this, the assessee submitted before the assessing officer the copy ledger of Punjab International and copy of the bank statement highlighting the transaction. The amount of Rs.10,00,000/- was received and the same was paid back to Punjab Timber. Therefore, it cannot be said that assessee had taken accommodation entry. It can be considered as a loan transaction as the amount was received and the same was repaid. Ultimately, no transaction took place with Punjab Timber during the year, as the amount received was paid back, therefore, no addition should be made in the hands of the assessee.



13. We also find that opportunity of cross-examination has not been provided to the assessee, during the assessment proceedings. During the course of assessment Proceedings, request for providing cross examination was specifically asked for from time to time, however, assessing officer has not provided cross examination of Shri Romesh Gupta, on whose statement assessee's case was reopened and addition was made. Apart from this, assessing officer had not made any independent inquiry or verification of facts, and simply on the basis of report of ADIT and statement of Shri Romesh Gupta, addition was made despite assessee's specific request for cross examination. We note that without providing opportunity of cross examination, the addition cannot be made. Under the Income Tax Act, the Assessing Officer is empowered to assess the correct income of the assessee. For this purpose, the assessing officer may make necessary enquiries and gather evidences or may rely upon the materials and evidences collected by the investigating agencies. However, natural justice demands that in such cases, assessing officer must bring these facts to the knowledge of the assessee for rebuttal. The principles of natural justice are an inalienable part of the Income-tax law, as provided under various provisions of the Act, namely, *audi -alteram partem*, that is, no man should be condemned unheard, decisions with adequate reasons, acting fairly, that is, without prejudice. In the case of **Krishna Chand Chela Ram v CIT 125 ITR 713 the Hon`ble Supreme Court** has held that cross-examination is must where assessing officer relies upon only on the statement of the third party unconnected with the assessee. The Hon'ble Supreme Court in the case of **Andaman Timber Industries Vs. CCE** reported in (2015) 62 Taxmann.com 3, wherein Hon'ble court observed as under:

"According to us, not allowing the assessee to cross examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the



assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority."

14. We, therefore find that opportunity of cross-examination has not been provided to the assessee, despite the request made by the assessee in this regard, during the assessment proceedings. The transaction amounting to Rs. 12,50,000/- is a Sale transaction, which is properly recorded in assessee's books of accounts, and a plethora of evidences were submitted by the assessee, which we have noted above. The nature of the transaction carried out with Punjab Timber amounting to Rs. 10,00,000/- was Advance received towards sale but due to some reason, the sale transaction was not done and the advance received was paid back to the party and to prove this fact, a plethora of evidences were submitted by the assessee, which we have noted above. Based on these facts and circumstances, we find that addition should not be made in the hands of the assessee. Hence, we are not inclined to accept the contention of the Assessing Officer in any manner and hence the addition so made is deleted. Hence this ground of the assessee is allowed.

15. Before parting, we make it clear that since we have adjudicated the issue on merit and entire addition has been deleted, therefore, all other arguments of learned Counsel for the assessee, on reopening of assessment, in the impugned assessment proceedings, are rendered academic and infructuous therefore, we do not adjudicate them.

16. In the result, the appeal of the assessee is allowed.



Order is pronounced in the open court on 23/04/2025

**Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

**Sd/-
(DR.ARJUNLAL SAINI)
ACCOUNTANT MEMBER**

राजकोट/Rajkot

दिनांक/ Date: 23/04/2025

*v/k

आदेशकीप्रतिलिपिअब्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकरआयुक्त/ CIT
- आयकरआयुक्त(अपील)/ The CIT(A)
- विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot