

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.180/RPR/2025

निर्धारण वर्ष / Assessment Year : 2013-14

Trilok Chand Jaiswal
Main Road, Near Santoshi Mandir,
Sakti Janjgir Champa,
Chhattisgarh-495 689
PAN: AEWPJ9961R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Ms. Namrata Kayarwa, CA
Shri Dinesh Kumar Agrawal, CA

Revenue by : Dr. Priynaka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 13.05.2025

घोषणा की तारीख / Date of Pronouncement : 21.05.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 11.02.2025 for the assessment year 2013-14 as per the grounds of appeal on record.

2. The relevant facts in this case are that the assessee is engaged in the business of trolley manufacturing in the name of M/s. Vandana Engineering and earn partner remuneration and interest from partnership firm M/s. Vandana Agro Industries and M/s. Vandana Tractors. The assessee had e-filed return of income for A.Y.2013-14 declaring an income of Rs.3,89,080/-. Information was received from the office of the erstwhile ACIT-2(1), Bilaspur that during the scrutiny assessment proceedings in the case of M/s.Vandana Trailors and Body MFG Pvt. Ltd., the assessment for A.Y.2016-17 stated that the assessee had advanced an unsecured loan of Rs.71,50,602/- to M/s.Vandana Trailors and Body MFG Pvt. Ltd during the F.Y.2012-13 relevant to A.Y.2013-14. In this regard, the assessee was requested to establish the nature, source and genuineness of the loan transaction providing identity, creditworthiness and genuineness of the transactions from whom the assessee claims to have received fund before providing loans. That as per the facts emanating from the assessment order, the assessee could only provide identity of the

lenders, however, failed to pass the rigours of provision to Section 68 of the Act in terms of creditworthiness of the parties and genuineness of the transactions. That on perusal of the bank account/pass book regarding loan creditors which are as follows:

Sl	Name of the lender	Amount (Rs.)	Date of loan	Return income shown by the lender (Rs.)	Cash deposited into respective Bank A/c of the lenders before loan
1	Girdhar Jaiswal	7,00,000	18.02.2013	3,48,740/-	Rs.7,00,000/- on 18.02.2013
2	Livendra Kumar Jaiswal HUF	6,00,000	30.03.2013	1,84,700	Rs.6,00,000/- on 30.03.2013
3	Girdhar Jaiswal HUF	7,00,000	30.03.2013	1,82,750	Rs.700000/- on 30.03.2013
4	Yeshwant Kumar Jaiswal	6,00,000	30.03.2013	1,95,750	Rs.6,00,000/- on 30.03.2013

5	Trilok Chand Jaiswal (HUF)	11,00,000	26.03.2013	No ITR furnished by the assessee	Rs.11,00,000/- on 26.03.2013
	Total	37,00,000/-			

It was noticed by the A.O that just before providing loan an equal amount of cash was deposited into the respective bank account of the loan creditors with very meagre balances in their respective accounts before and after the transaction. That it was held by the A.O therefore, such loan creditors were mere accommodation entry provider. At the stage of the A.O, the assessee could only furnish balance sheet of M/s.Girdhar Jaiswal, HUF but with regard to the other loan creditors, the assessee could not establish the source of cash nor could file balance sheet in respect of those parties. That in the given factual matrix, out of the total Rs.37 lacs of loan given, the A.O accepted identity, creditworthiness and genuineness in respect M/s. Girdhar Jaiswal, HUF. Accordingly, the A.O allowed an amount of Rs.7 lacs and balance amount of Rs.30 lacs was held as unexplained cash credit within the meaning of Section 68 of the Act and added the same to the total income of the assessee, making taxable @30% under the provisions of Section 115BBE of the Act.

3. When the matter travelled before the Ld. CIT(Appeals)/NFAC, it has observed and held as follows:

“6.3 On perusal of all the information and material available on record, I find it imperative to examine in detail all the fundamentals of the case. My observations are outline below-

- Identity of the lenders is not in dispute as all the alleged lenders acknowledged to have given the loan to the appellant as well as documents substantiating identity of the said persons are duly placed on record. However, the other two limbs of section 68 of the Act i.e. genuineness and creditworthiness of

the transaction remain in doubt. As far as the creditworthiness of the lenders is concerned, it is observed that none of the lenders have income commensurate with amount of loan given or cash deposit made. The same is discernible from the following chart which is also available in the impugned order:

Name of lender	Gross total Income as per return of income	Amount of loan given	Capital balance
Giirdhar Jaiswal & Sons (HUF)	1,82,750/-	7,00,000/-	7,76,700/-
Livendra Kumar Jaiswal & Sons (HUF)	1,84,700/-	6,00,000/-	9,49,600/-
Yeshwant Kumar Jaiswal HUF	1,95,750/-	6,00,000/-	8,23,150/-
Trilok Chand Jaiswal & Sons (HUF)	1,93,200/-	11,00,000/-	11,85,950/-

- It is seen that all lenders have deposited cash into their respective Bank accounts with very meagre balances before and after the transactions on the same day on which loan amount was to be transferred. However, source of such cash cannot be justified on the basis of financials and return of income placed on record. Thus, the above lenders are merely accommodation entry providers, who routed cash through such transactions. Hence, genuineness of transaction remains unjustified.

- Further, the contention of appellant that the Assessing Officer did not point out any defects or discrepancies in the documentary evidences placed on record is not tenable. The Assessing Officer has rightly pointed out lack of genuineness and creditworthiness involved in the impugned transactions.

- It is evident that all the impugned parties are related either by family or by business. Hence, cash deposits on the day of loan and lack of financial capacity of lenders is sufficient to prove the said transaction to be sham. The appellant challenged the

examination of Assessing Officer, to be out of jurisdiction provided under section 68 of the Act, rather than justifying its case on merits. The appellant failed to rebut the evidence and the inference drawn in rejecting the explanation offered as unsatisfactory. Section 68 itself provides that where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income tax as the income of the assessee of the previous year, if the explanation offered by the assessee, about the nature and source of such sums found credited in the books of the assessee, is in the opinion of the Assessing Officer not satisfactory. Such opinion found itself constitutes a prima facie evidence against the assessee, viz., the receipt of money, and if the assessee fails to rebut the said evidence, the same can be used against the assessee by holding that it was a receipt of an income nature. In the instant case, the Assessing Officer concurrently found the explanation offered by the appellant unacceptable. The appellant did not take the plea that even if the explanation was not acceptable, the material and attending circumstances available on record did not justify the sum found credited in the books to be treated as a receipt of an income nature. The burden in this regard was on the appellant. No such attempt had been made during appellate proceedings.

- The initial onus cast upon the assessee to prove all the three limbs of section 68 has been discharged, but the same are not found satisfactory by the Assessing Officer. The continuous assertion of appellant that it has discharged onus cast upon him is of no avail, if the documents placed on record prove the contrary. It is evident from the assessment order, that all the observations of the Assessing Officer are based on examination of documents available on record, appreciation of facts and surrounding circumstances. The Hon'ble Supreme Court in case of CIT v. P. Mohanakala [2007] 291 ITR 278/161 Taxman 169 clearly held that in case where explanation offered by the assessee about the nature and source of sums found credited in the books of account is not satisfactory then same would constitute prima-facie evidence against the assessee. In such backdrop of facts and respectfully following decision of the Hon'ble Apex Court, addition within meaning of section 68 is rightly made to the returned income of appellant.

- The decisions relied upon by the appellant can be rightly appreciated in light of facts based on material evidences. Given that the merits of the case suggest a different story of cash transactions; decision cannot be passed in favour of appellant merely based on earlier decision of Courts or Tribunal, unless it goes to the root of matter.

6.4 The grounds of appeal are accordingly dismissed.

7. The ground of appeal no. 4 is general in nature hence, no separate adjudication is required.

8. In the result, the appeal is dismissed.”

4. I have carefully considered the submissions of parties herein, documents on record and analyzed the facts and circumstances in this case. The Ld.CIT(Appeals)/NFAC observed upholding the order of assessment that initial onus is on the assessee to explain simultaneously the identity, creditworthiness and genuineness of the transaction in respect of Section 68 of the Act. The Hon'ble Apex Court in the case of CIT Vs. P. Mohanakala [2007] 291 ITR 278/161 Taxman 169 clearly held that in case where explanation offered by the assessee about the nature and source of sums found credited in the books of account is not satisfactory then same would constitute prima-facie evidence against the assessee. The main evidence to understand the creditworthiness and genuineness of the transaction is the books of account and balance sheet of the lenders who are providing funds to the assessee for making unsecured loan. That as evident at the stage of the A.O, the balance sheet of M/s. Girdhar Jaiswal, HUF was provided, to which, extent relief was given by the A.O to the assessee. However, regarding the remaining lenders, the amounts were added in the hands of the assessee. In this regard, it was submitted by the Ld. Counsel that a/w. Form 35 they have uploaded as additional evidences the balance sheet of the respective lenders and to demonstrate

these facts, the Ld. Counsel had placed before me the copy of the said Form, in which, it is clearly mentioned that in the column attachments, there were attachments of balance sheet of the lenders, identity of the lenders, written submission and lenders financials. Unfortunately, the Ld. CIT(Appeals)/NFAC has not considered these additional evidence in terms with Rule 46A(3) of the Income Tax Rules. Therefore, the order of the Ld. CIT(Appeals)/NFAC is bereft of facts and is perverse since as quasi-judicial authority, it should have considered all the relevant evidence and should have called for a remand report from the A.O regarding those additional evidences and thereafter, should have come up with a speaking order. However, the Ld. CIT(Appeals)/NFAC has miserably failed to do this exercise which therefore renders the order legally untenable since the substantive rights and liabilities of the parties herein remained unadjudicated by the Ld. CIT(Appeals)/NFAC. In the interest of natural justice, I set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file with a direction for denovo adjudication as per law. In order to consider the additional evidences as per Rule 46A(3) of the Income Tax Rules a remand report may be called from the A.O and thereafter, the Ld. CIT(Appeals)/NFAC shall pass order in terms with Section 250(4) & (6) of the Act within three months from receipt of this order. The assessee shall also comply with all the hearing notices from the office of the Ld. CIT(Appeals)/NFAC and represent the matter on merits.

5. As per the above terms, the grounds of appeal raised by the assessee are allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 21st day of May, 2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 21st May, 2025.

SB, Sr. PS

आदेश की प्रतिलिपि अद्येषित / Copy of the Order forwarded to :

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

आदेशानुसार / BY ORDER,

// True Copy //

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