

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.19/Nag./2016
(Assessment Year : 2011-12)

Dy. Commissioner of Income Tax
Central Circle-2(2), Nagpur

..... Appellant

v/s

Shree Agarwal Coal India Pvt. Ltd.
216, Devi Kripa Society
Wardhaman Nagar, Nagpur 440 008
PAN – AAFCS6709L

..... Respondent

Assessee by : Shri Sachin V. Luthra
Revenue by : Shri Harshad S. Vengurlekar

Date of Hearing – 14/05/2025

Date of Order – 15/05/2025

ORDER

PER K.M. ROY, A.M.

The aforesaid appeal by the Revenue is directed against the impugned order dated 18/12/2015, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2011-12.

2. The Revenue has raised following grounds:-

"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in directing the Assessing Officer to delete the addition of Rs. 6,05,00,000/- made on account of unexplained cash credits. The CIT(A) failed to appreciate that though the assessee has explained the identity and genuineness of the creditors but failed to prove credit worthiness of alleged depositors.

2. On the facts and circumstances of the case, the learned CIT(A) erred in deleting the disallowance made on account of expenditure claimed of Rs. 55,83,523/- on account of bad debts & EMD lapsed.

3. Any other ground that may be urged at the time of hearing."

3. Facts in Brief:- The assessee herein, during the year, was engaged in the business of trading and liasoning of coal and wind power. On 16/03/2011, a search and seizure action was conducted in assessee's group cases namely M/s. Shree Agarwal Coal India Pvt. Ltd. The above mentioned assessee is one of the members of this group. The assessee, on 29/09/2011, for the year under consideration, filed its return of income under section 139(1) of the Income Tax Act, 1961 ("*the Act*"), disclosing total income of ₹ 1,78,41,161. Pursuant to search and seizure operation conducted under section 132, on 24/09/2012, statutory notice under section 153A of the Act was issued. In the high pitched assessment under section 143(3) r/w section 153A, the Assessing Officer made various additions by examining the Profit & Loss Account, Tax Audit Report determining total assessed income at ₹ 41,20,69,270, by making following additions:-

1.	<i>Addition for purchases</i>	₹ 3,03,94,825
2.	<i>Agricultural income treated as business income</i>	₹ 3,74,537
3.	<i>Disallowance u/s 40A(2)(b)</i>	₹ 36,89,290
4.	<i>Deemed dividend u/s 2(22)€</i>	₹ 7,70,943
5.	<i>Deemed Dividend u/s. 2(22)(e)</i>	₹ 9,63,76,334
6.	<i>Unsecured loans added</i>	₹ 14,97,50,912
7.	<i>Sundry creditors added</i>	₹ 10,72,87,744
8.	<i>Expenses disallowed</i>	₹ 55,83,523
9.		₹ 39,42,28,108

The assessee being aggrieved by the issuance of the assessment order so passed by the Assessing Officer, is in appeal before the first appellate authority.

4. Before the learned CIT(A), the assessee filed additional ground challenging that the impugned assessment order passed by the Assessing Officer was without jurisdiction and bad-in-law as the jurisdiction under section 153A of the Act was vitiated and the addition being not based upon any incriminating material found during the course of search. During the first appellate proceedings, the learned CIT(A) dismissed the additional ground of appeal as there was still time for issuance of notice under section 143(3) of the Act and proceeded to dispose off the appeal filed by the assessee on merits of the case wherein the learned CIT(A) deleted all the additions, as tabulated above, vide his impugned order dated 18/12/2015 supra. Against this order, the Revenue preferred appeal before the Tribunal.

5. Before us, the learned Departmental Representative, Shri Sandipkumar Salunke, appearing for the Revenue, placed reliance on the remand report furnished by the Assessing Officer and submitted that the additions are correctly made by the Assessing Officer for the detailed reason indicated in the remand report. He thus prayed that the impugned order passed by the learned CIT(A) be reversed by upholding the assessment order passed by the Assessing Officer.

6. The learned Counsel, Shri Sachin V. Luthra, appearing on behalf of the assessee, reiterated the submissions made before the authorities below and submitted that the learned CIT(A) has dealt with and considered each and every issue raised by the assessee and thereafter passed the impugned order by deleting the additions so made by the Assessing Officer and hence prayed that the impugned order passed by the learned CIT(A) be not disturbed and

dismiss the appeal filed by the Revenue. The point-wise arguments put forth by the learned Counsel before us against the grounds of appeal raised by the Revenue are quoted below.

"j) The assessee has discharged its burden to prove the identity and genuineness of the unsecured loans taken by the assessee. Once the assessee has filed confirmation letters, PAN, address of the lenders and balance sheet, AO could have verified the creditworthiness of the lenders. However, the lenders refused to give their bank statements and merely because bank statements of the borrowers are not produced, after providing IT returns, etc, the credits cannot be treated as explained. Once the assessee had provided above documents to prove the identity, genuineness and credit worthiness, then bank statements are not required. The various case laws support our contention. The financial statements clearly establish creditworthiness of the lenders. The transaction is through proper banking channel. On above undisputed factual position, identity and creditworthiness as well as genuineness of the transaction stand established.

The Ld. AR supported the above contention by quoting the case of ITAT Mumbai in the case of M/s Jr Fiber Glass Industries Pvt Ltd Vs NFAC (31/01/2024) ITA No.2848/MUM/2023 wherein it was held that -Despite the assessee furnished the details of creditors/investors, the AO didn't make any enquiry from the data base of the department, but insisted on the assessee to produce the creditors (according to assessee, at the far end of assessment, assessee was asked to produce the share subscribers or they could have been produced). Taking into consideration, the overall facts and circumstances of the case in hand, we are of the view that assessee discharged the burden to prove the nature and source of the credit entry of Rs.2.15 cr in AY. 2009-10 and then the onus shifted to the AO to counter the same by adducing contrary material, which in this case, the AO has failed to do. Therefore, Ld. CIT(A) erred in confirming the addition. Therefore, we direct deletion of addition of Rs.2.15 cr.

➤ Hon'ble Supreme Court in the case of CIT Vs Orissa Corporation (P) Ltd. 159 ITR 78. (SC)

In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were income tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under S.131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

ii) The assessee has complied with conditions mentioned u/s 36(1)(vii) for write off of bad debts. The same cannot be disallowed by AO by simply stating that the debt cannot be written off as it is not proved that they have turned bad. The EMD lapse is regular business expense in coal trading business and is fully allowable u/s 28 of the Act since it is a business loss arising during the normal course of business. The various case laws support our contention."

7. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We have also gone through the impugned order passed by the learned CIT(A) thoroughly wherein he has given his findings on each separate ground. It is, thus, relevant to quote the findings of the learned CIT(A) on each ground separately, wherein he has dealt with the issues by dismissing all the grounds. Now we proceed to adjudicate the issues raised by the Revenue in the grounds of appeal.

8. Ground no.1, raised by the Revenue relates to the addition of ₹ 6,05,00,000 made by the Assessing Officer on account of unexplained cash credits.

9. The learned CIT(A) directed to delete the addition by observing as follows:-

"41. I have carefully considered all the facts about this addition. The break up of total unsecured loans of Rs. 14,97,50,912 is as under:

<i>Opening balances of unsecured loans</i>	<i>Rs. 1,67,09,217</i>
<i>Unsecured loans taken from related concerns</i>	<i>Rs. 7,25,41,695</i>
<i>New unsecured loans taken in previous year from outside parties</i>	<i>Rs. 6,05,00,000</i>
TOTAL	Rs.14,97,50,912

In the remand report dt. 19.11.2014 AO has observed that after his verification, the credits to the extent of Opening balances of Rs.1,67,09,217 stand explained. He mentions in remand report that assessee has proved the identity, genuineness and credit-worthiness in respect of credits worth

Rs.7,25,41,695 which are advanced by related concerns, family members etc. and sources have been verified from their respective bank accounts and were found to be satisfactorily explained. About the fresh unsecured loans advanced of Rs. 6,05,00,000, the AO in his remand report he has mentioned on Page No. 7 as under:

".... In this case, the transaction being through banking channels, its genuineness stands established and the identity is also proved as Permanent A/c No. and address has been given. But the assessee failed to prove the credit-worthiness of the lender. In the course of present verifications also, the assessee could not produce the lender or furnish the copy of bank statement of the lender. Hence the source of cash credits is not satisfactorily proved by assessee in all the above cases. In view of this, the addition of Rs. 6,05,00,000 made on account of unexplained cash credits are fully justified."

I have gone through the documents filed by assessee and I am of the opinion that the identity of the creditors and genuineness of transactions stands established. The AO had himself accepted the identity around genuineness of said unsecured loans. But the AO had not accepted the creditworthiness of lenders only because the bank statement of lenders is not produced by the assessee. The assessee had submitted audited balance sheet of said lenders, TDS returns showing TDS effected on interest paid, PAN no., address etc. of the lenders before the AO in the remand proceedings as well as before me in the appellate proceedings. The details of repayment of loans are also furnished by the assessee. In my considered view that the evidences produced by the assessee proves the genuineness and creditworthiness of the lenders. Once the assessee had filed, confirmation letters, PAN, address of the lenders and balance sheet, the AO can verify the creditworthiness of the lenders. In my considered opinion, the assessee had discharged its burden to prove the identity genuineness and creditworthiness of the unsecured loans taken by the assessee. Moreover the AO had not brought anything on record to substantiate his claim that the creditworthiness of lenders are not proved by the assessee. The assessee explained that the lenders refused to give their bank statements. Merely because bank statements of borrowers are not produced the credits cannot be treated as unexplained.

It has been held in Guruprerna Enterprises V/s. ACIT (ITA Nos. 255,256 & 257/Mum/2010) (ITAT Mumbai), wherein the honorable member of the Tribunal after referring to the verdicts of Apex Court as well as the Bombay, Patna, Gujarat Madras High Courts has held as under:

"The addition cannot be made by making an observation that the loans do not appear to be genuine. The AO could not gather any evidence to contradict the submissions made by the assessee. The issue is whether the assessee has discharged the Burden of Proof that is on it. In this case, the answer is Yes. What else can the assessee do. The onus shifts to Revenue on submission of the documents and the Revenue has not discharged the same. There is no material to support the addition. Thus on these factual matrix, we uphold the contentions of the assessee that, it has done everything possible to prove the genuineness of these transactions and that the departmental authorities have not found any falsity in the evidences and that the addition has been made and sustained only on the basis suspicion." of surmises, conjectures and suspicion."

44. Besides, the Hon'ble Bombay High Court has held in the case of CIT VS U. M. Shah [40CCH 184] [90 ITR 396] that when all the payments have been made by cheques and the interest was also paid by cheques and all the lenders

and the broker were all Income-tax assesseees and the lenders had confirmed having lent the amounts in question, we are unable to agree with the Department that there was any prima facie suspicion or reason to doubt the genuineness of the loans. In the case, the Tribunal found that the following circumstances had been established.

- 1) That all the hundi loans taken by the assessee through crossed cheques which had passed through recognized banks.
- 2) That those hundi loans were obtained through a broker name had been disclosed, namely
- 3) That the brokerage was paid to this broker through a crossed cheque which had also passed through a bank.
- 4) That the interest on the loans was also paid through the respective bankers by cheques.
- 5) That the assessee had given the complete names and addresses of all the bankers who had advanced moneys to him and the amount borrowed from them.

All these bankers were themselves income-tax assesses and the present assessee had also given their G.I. R. numbers as recorded in the IT Office.

- 6) Summonses to those hundi bankers as also the brokers were duly served.
- 7) Those bankers had submitted confirmatory letters before the ITO confirming having made the advances to the assessee.

Now the conclusion which the Tribunal reached was that upon this material there was absolutely no suspicion or doubt regarding these loans and that they were perfectly genuine and could not be held to be undisclosed income of the assessee. This finding given by the Tribunal was a pure finding of fact. The Tribunal also remarked that the ITO had not brought on record any evidence to show that the evidence which the assessee had adduced was incorrect or untrue in any manner. That again shows that the finding arrived at by the Tribunal was based purely upon appreciation of evidence and that no question of law arises out of that finding.

The decision was the given by the Hon'ble High Court in favour of the assessee.

In the case of ACIT vs. s. Suretech Hospital and Research Centre Ltd (2006) 104 TT (ITAT Nagpur), it was held by the Hon'ble ITAT that addition u/s 68 was rightly deleted where the assessee had produced all the relevant information about the creditors including name, address, details of cheques, repayment of loan by cheques; the assessee had thus discharged its primary onus and as such revenue failed genuine. to prove that the transactions were not genuine.

45. Considering the fact and circumstances of the assessment order of the AO, the remand report of the AO, the arguments of the assessee and the judgments of the various Courts supra, I am of the view that the addition made by the AO of RS.14,97,50,912/- as unexplained credits in para-10 of the assessment order is not justified and is deleted. The AO is accordingly directed."

10. Ground no.2, raised by the Revenue relates to the disallowance made on account of expenditure claimed of ₹ 55,83,523 on account of bad debts & EMD lapsed.

11. The learned CIT(A) directed to delete the addition by observing as follows:-

"54. The assessment order made by the AO, remand report and submission of the assessee are considered. As regards the bad debts of Rs. 32,86,410, it is a settled position of law that all the assessee has to prove that this amount has been offered to income in earlier years and the same has been actually written off in the books of the assessee. The impossibility of recovery of debts or effects of recovery made by assessee or soundness of each party concerned is not required to be seen It has been held by the Hon'ble Supreme Court in TRF Limited Vs. CIT that bad debts don't have to be proved irrecoverable u/s 36(1)(vii) and it is sufficient if they are written off by the assessee. The conditions laid down in section 36 (2) are fully satisfied by the assessee. Since these two conditions are satisfied I am of the considered opinion that the disallowance of bad debts of Rs.32,86,410/- is not justified. Addition made by the AO on this account is deleted. The AO is accordingly directed.

55. Regarding the EMD lapse of Rs.22,97,113, it is observed that it is a regular business loss since the deposit kept with Supplier is lapsed because goods are not lifted in time or lesser quantity of coal is lifted. The EMD if adjusted by coal producers like WCL OR SECL which are PSU companies, will naturally amount to business loss for the assessee. This is clearly a revenue loss as per nature of business of trading of coal. Further I find substantial force in case laws relied by the assessee on this issue. assessee. This is clearly a revenue loss as per nature of business of trading of coal. Further, there are numerous judgments of the Courts on the issue in which it has been held that the forfeiture of the secured deposit is in the nature of business loss and has to be allowed as deduction. In the case of Thackers HP & Co. Vs. CIT(010 Taxmann 0187) it was held by the Hon'ble Madhya Pradesh High Court that the deposit of security amount by assessee was made as a business expenditure in the course of business and the loss was a business loss. A similar view was taken by the Hon'ble ITAT Delhi in 130 TTJ 0007 in the case of Pyoginan Vs. ACIT.

In view of the above, considering the facts involved and the view taken by the AO in the remand report as well as the judgments of the Courts, I hold that the addition of Rs.22,97,113/- due to loss of earnest money deposit (EMD) is not justified since the loss is a business loss and needs to be allowed.

Thus, the total addition of Rs.55,83,523 (32,86,410 + 22,97,113) is deleted. The AO is accordingly deleted."

12. Once the repayment has taken place subsequently and the Revenue has not doubted the same, no addition is sustainable under section 68 of the Act, as held by the Hon'ble High Court of Gujarat in CIT v/s CIT Vs Ayachi Chandrashekhar Narsangji, [2014] taxmann.com 251 (Guj.) and CIT v/s Mahavir Crimpers, [2018] 95 taxmann.com 323 (Guj.). Therefore, keeping in view the overall facts and circumstances of the issues raised by the Revenue and the case laws relied upon by the learned Counsel for the assessee in support of his arguments cited supra, the evidence placed on record and the reasoning provided by learned CIT(A), we are inclined to agree with the findings of the learned CIT(A) which is hereby upheld by dismissing the grounds raised by the Revenue. The CIT(A) has appropriately addressed the issues raised by the Assessing Officer with respect to grounds no.1 and 2. After thoroughly reviewing the entire case, we are of the considered view that the learned CIT(A) has correctly deleted the additions made by the Assessing Officer and nothing warrants us to deviate from the findings of the learned CIT(A) cited supra on both the grounds. Accordingly, the grounds no.1 and 2, raised by the Revenue are dismissed.

13. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 15/05/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 15/05/2025

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