

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

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.344/RPR/2025
निर्धारण वर्ष / Assessment Year : 2017-18

Dipak Raheja
15/191, Near Agrasen Bhawan, Jawahar Nagar,
Ravigram, S.O- Raipur
PAN: AHXPR1047E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Bikram Jain, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 23.06.2025
घोषणा की तारीख / Date of Pronouncement : 25.06.2025

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

This appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 17.03.2025 for the assessment year 2017-18 as per the grounds of appeal on record.

2. The brief facts emanating from the assessment order are as follows:

3. Variation proposed:-

3.1. In this case information received/available on Insight Portal regarding High Risk Case CRIU/VRU Information and its falls under Hon'ble CBDT's instruction dated 04.03.2021 and 09.03.2021 vide no.1 (iii).

Credible information has been received in this case from DDIT(Inv.)kolkata. As per this information search & seizure action u/s 132 of the Act was carried out in R.K. Transport and Construction Ltd. (RKTC Group) on 22.01.2019.

During the course of search and seizure proceedings statement on oath u/s 132(4) of the Act of Shri Suresh Agrawal one of the directors of M/s Rashi Steel and Power Ltd. Was recorded on 22.01.2019, 24.01.2019, 30.01.2019 and 14.03.2019 and Shri Suresh Agrawal has admitted that he used to provide entries to the beneficiaries through bogus share capital premium and unsecured loan in lieu of commission through various companies managed and controlled by him and through his employees. He has also admitted tha he had made arrangements for accommodation entries through shell/paper/jamakharchi companies which are managed and controlled by Shri Praveen Agrawal. There are 86 shell/paper/jamakharchi companies through whom he had provided accommodation entries for share capital and unsecured loan.

3.2. Assessee was requested to submit the following information vide notice u/s 142(1) of the act:-

"information received through Insight Portal and further information received from DDIT, Investigation, Kolkata wherein it was informed that you are one of the beneficiary who has taken accommodation entry from Shri Suresh Agrawal through his shell/paper company, on account of fictitious capital of Rs.1,20,16,408/- during the F.Y. 2016-17.

You are requested to furnish the complete details, nature, genuineness and business exigency of the above transactions along with supporting documentary evidences.

Please explain your business relationship with Shri Suresh Agrawal and kindly explain the above transaction with documentary evidences."

3.3 In response to notice u/s 142(1) & SCN, Assessee has submitted the following information:-

"That the case of the assessee has been reopened u/s 148 of the I.T.Act, 1961 after following the procedure u/s 148A of the Income Tax Act. During the course of proceeding u/s 148A, the Ld. A.O. has furnished the information/ reason to the assessee company that as per the Information received from Central Circle-Raipur, it is gathered that the assessee company has received unsecured loan of Rs. 1,20,16,408/- from shell companies managed and control by Suresh Agrawal. Further the Ld. A.O. have stated that the PAN of the assessee was utilized from transferring fund from one account to another account only and there is no actual business transaction, but only funds of undisclosed money were shifted by various entities for evading tax. Therefore, the Ld. A.O. have reason to believe that there is an income of Rs. 1,20,16,408/- is escaped from assessment.

Further the assessee has filed the reply by stating that, the Ld.A.O. have not mentioned the name of the parties/companies from whom loan has been received. Further, it was submitted that, the assessee company has not received any capital/loan from any of the parties/lender during the year. In support of the said contention, the assessee has submitted Bank statement of the assessee company and requested to drop the proceeding u/s 148A. The same can be verified from the submission filed during the proceeding u/s 148A.

However, the Ld. A.O. without considering the various objection se and submission of the assessee, has passed the order u/s 148A(d) of the Income Tax Act, 1961 by simply stating that as per the information available with the department, the assessee has received accommodation entry and is a fit case for reopen of the case u/s 148 of the Income Tax Act, 1961.

That the present proceeding has been initiated on the basis of a wrong information that the assessee has received share capital or loan of Rs. 81,83,185/- which is not correct. During the year the assessee has not received any amount from the alleged bogus companies as mentioned in the list under annexure recorded with statement of Shri Suresh Agrawal u/s 132 of the Act."

The assessee has submitted the copy of ITR, Computation of Income, Bank Statement and other relevant documents.

3.4 Further, in respect of cross examination, the assessee's argument that "The entire case against the assessee appears to have been based on the statement made by a third person. The assessee has not been given the opportunity to cross examine Shri Suresh Agrawal one of the directors of M/s Rashi Steel on the allegations made by him. A necessary ingredient of a fair investigation is missing in the case of Assessee Company. Without an opportunity for cross examination, statement made by third person cannot be accepted as a fact and used against the assessee. Hence, it is hereby requested again to provide an opportunity to cross examine Shri Suresh Agrawal one of the directors of M/s Rashi Steel." is not acceptable as in this regard, it is humanly not possible for persons to be present for Oral cross examination in all the cases where the magnitude of the case is not less than a scam. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established as the admissibility of documents, evidence or material differs greatly in income tax proceedings and criminal proceedings respectively. In criminal proceedings, the charge is to be proved by the State against the accused, establishing it beyond doubt, whereas as per the settled proposition of law, the income tax liability is ascertained on the basis of the material available on record, the surrounding circumstances, human conduct and preponderance of probabilities.

Following Hon'ble Supreme Court and lower courts' decisions establishing this proposition are

relied upon: "The proceedings for assessment before the Assessing Officer have been described as quasi-judicial in character by Hon'ble Supreme court in Indian & Eastern Newspaper Society v. CIT (1979) 119 ITR 996(SC). In Mahindra & Mahindra Ltd. v. Union of India AIR 1979 SC 798 it has been held that though the AO has the same powers as are vested in a court for the limited purposes mentioned in section 131, the proceedings before him are not strictly judicial proceedings, though they are deemed to be such for limited purposes.

The Hon'ble Delhi High court in CIT (Addl.) v. Jay Engineering Works Ltd. (1978) 113 ITR 389 (Del.) held that the Assessing Officer has, no doubt, to hear "evidence", but such evidence may consist of material which would be wholly inadmissible in a court of law.

The Hon'ble Supreme court in CIT v. East Coast Commercial Co. Ltd. (1967) 63 ITR 449(SC), held that even information contained in some judgment or admissions before a Commission's proceedings, before they were declared ultra-virus, were also to be treated as material available on record.

In the case of Baghat Halwai, in re (1928) 3 ITC 48 (Allahabad) it has been held, that AO's proceedings are to some extent, in the nature of a private inquisition; they are confidential and they are not open to the public. To some extent, he is a party and a judge in his own cause.

The Hon'ble Supreme court in Gadgil (SS) v Lal & Co. (1964) 53 ITR 231 (SC), held that the AO is, no doubt, an Authority appointed by the State to exercise statutory powers to ascertain the income of a subject and the tax payable by him to the State, but his position cannot be equated to that of a judge or a court deciding a "lis" between a citizen and the State. He is not bound to lead "evidence" on his own account with a view to rebutting the evidence of the assessee.

In CIT v. Metal Products of India (1984) 150 ITR 714 (P&H), it was held that the AO may gather information in any manner he likes, behind the back of the assessee and utilize the same against the assessee, even if it does not, in all respects satisfy the requirements of the Indian Evidence Act. What is necessary is that he should have material upon which to base the assessment; "material" as distinguished from "evidence" which includes direct and circumstantial evidence.

In Gopinath Naik v. CIT (1936) 4 ITR 1 (All.), the Hon'ble Allahabad High Court held that the very nature of the proceedings for assessing the income tax liability, necessitates the use of such media as the AO chooses for collecting information which he may not like to disclose to the assessee and he would be perfectly within his rights to refuse to disclose to the assessee the source of his information and the name of the informant.

In the case of S.S. Gadgil v. Lal & Co. (1964) 53 ITR 231 (SC) Hon'ble Supreme court held that proceedings for assessment is not a suit for adjudication of a civil dispute. The argument that income-tax proceeding is in the nature of a judicial proceeding between the contesting parties, is a matter which is not capable of even a plausible argument. The income-tax authorities who have power to assess and recover tax are not acting as judges deciding litigation between the citizen and the State: they are administrative authorities whose proceedings are regulated by statute, but whose function is to estimate the income of the taxpayer and to assess him to tax on the basis of that estimate. Tax legislation necessitates the setting up of machinery to ascertain the taxable income, and to assess tax on the income, but that does not impress the proceeding with the character of an action between the citizen and the State.

It has been held by the Hon'ble Allahabad High court in ITO v. Jyoti Prasad Agarwal (1962) 44

ITR 574 (All.) that proceedings for assessment are not proceedings relating to a civil right. The liability to income-tax is not a civil right enforceable as such in courts of law. Such proceedings are of the nature of revenue proceedings." The Assessing Officer is not fettered or bound by technical rules about evidence contained in the Indian Evidence Act, and he is entitled to act on material which may not be accepted as evidence in a court of law.

The reply of the assessee has been duly considered and taken on record. The reply of the assessee is not acceptable. On carefully perusal/examination of the documents/information available on the ITBA Portal and submissions made by assessee, following is the observation: -

The contention of the assessee is not acceptable. Such contention made by the assessee does not hold ground as the information is the outcome of a search and seizure proceedings conducted by the department. The findings of the search and post search proceedings show the outcome of the modus operandi followed by Sri Suresh Agrawal and other entry operators wherein various beneficiaries have received accommodation entries in form of share capital/premium and unsecured loan. It is the fact of the case that the assessee has undertaken such transactions with shell companies which are in the nature of accommodation entries to route its unaccounted money back into its books of accounts.

The assessee has contended that while re-opening the assessment, there must be some material available for formation of belief of escapement, which is necessary condition for invoking section 147.

The contention of the assessee is not acceptable. The search proceedings include detailed examination and verification of the modus operandi adopted by the lending companies and the findings have further been supported with tangible evidences such as seized documents, statement given on oath and other documentary evidences. Consequent upon receipt of such information, the assessing officer has examined and analyzed the information before taking remedial action in the case of the assessee. The evidences seized during the search proceedings and the investigation/enquiry made in respect of the findings of the search prove that the assessee has routed its unaccounted money through Kolkata based shell companies and entry operators and finally brought back into books of accounts as unsecured loan. The documentary evidences seized during the search constitute tangible evidences which are sufficient for formation of belief of escapement. The statements recorded on oath u/s 132(4) of the I.T. Act during the search and post search proceedings also constitute evidence. Reliance is placed on the decision of the Punjab and Haryana High Court in the case of *Rakesh Mahajan vs. CIT* cited at 642 of 2007 (*Taxpert*) and 214 CTR 218 wherein it has been held that -

"It is well settled that admissions constitute best price of evidence because admission are self-harming statements made by the maker believing it to be based on truth. It is well known that no one will tell a lie especially harming one's own interest unless such a statement is true."

The statement recorded under section 132(4) is evidence to be used by the department and declaration made by the entry operators and key persons/directors of the shell companies is itself evidence.

The assessee has contended that the assessee has not been provided information/report received from Central Circle, Raipur. The assessee has been provided with all information vide notice bearing DIN No. ITBA/COM/ F/17/2022-23/1043131509 (1) dated 24.05.2022.

As elaborately discussed in the preceding Paras, the assessee has received accommodation entries in guise of unsecured loan from Kolkata based shell companies during the period under consideration. The search operation in the cases of RKTC Group and Sri Suresh Agrawal show that various beneficiaries including the assessee have routed their unaccounted money through Kolkata based shell companies managed and controlled by Sri Suresh Kumar Agrawal, Sri Praveen Agrawal and other entry operators. The findings of the search is further supported with various incriminating documents, statements of key persons and entry operators on oath, findings of the department through survey and enquiries made in the cases of shell companies and entry operators. Consequent upon the search proceedings, the search assessment of the income of the Sri Suresh Kumar Agrawal and various shell companies have been completed wherein Sri Suresh Kumar Agrawal has offered Rs.3,87,36,543/- for taxation (Rs.3.85 Crores in respect of the commission/interest income).

The findings of the search and various enquiries conducted have established that the books of accounts of the shell companies involved and the assessee do not show true and correct matter of affairs. From the outcome of the search and relevant evidences seized, it is found that the assessee company has brought into its books its own unaccounted income in the form of unsecured loan. On the face of it, the transaction appears perfectly legal. The investment has been brought in by way of banking channels which the assessee company relies upon to prove the genuineness of the transaction. The assessee submitted its contention to discharge its onus. However, it is a colorable device adopted by the assessee company to camouflage the real transaction.

For an entry to escape the clutches of provisions of section 68 three conditions need to be fulfilled – identity, creditworthiness and genuineness of the transaction and the same remains unexplained in respect of the loan received by the assessee from the shell companies.

It is the fact of the case that there has been a mushrooming growth of professional entry operators in Kolkata who provide accommodation entry for share application money/loans for a commission ranging from 2% to 10% of the share application/loan money given. The commission rate for providing such accommodation entries at Kolkata are reported to be cheapest in the country which is why a major portion of Black Money from throughout the country is routed via the paper companies of the Kolkata entry operators and are shown as genuine share capital/loan in the beneficiary companies. Such investigation during the course of search and post search and during the course of assessment proceedings in the cases of Sri Suresh Agrawal and various shell companies, the worthlessness of the subscriber and lending companies have been established by marshalling their financial data.

In the case of the assessee, it has been provided with opportunities vide notices issued to furnish a justified explanation along with documentary evidences. It was provided with the reason of reopening well in time to prepare its explanation in respect of the findings in its case. However, it has failed to submit a justified explanation as to why the receipt of unsecured loan from the Kolkata based shell companies should not be considered as unexplained cash credit in its books of accounts. It has thus failed to discharge its onus. The assessee has further raised objections and given reference to a no. of judicial pronouncements which have been delivered in view of the facts and circumstances of the particular cases which are not applicable to the instant case.

In view of the above discrepancies and since the assessee has failed to disclose fully and truly all material facts necessary for that assessment year, therefore, an amount of Rs.1,20,16,408/- has escaped assessment for the A.Y.2017-18. Therefore the same is hereby added to the total income of the assessee.

3. When the matter came up before the first appellate authority, the Ld. CIT(Appeals)/NFAC after considering the material available on record and assessment order had held and observed as follows:

“5.1 It is pertinent that in order to decide this appeal in a timely manner a number of notices/communications through ITBA portal were sent to the appellant, viz. Communications dated 21.02.2025, 28.02.2025 and 05.03.2025. However, there evidently has been no response from the appellant till date. There is no gain saying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. It clearly appears that the appellant's compliance or rather lack of it, the appellant has not even bothered to pursue this appeal in any productive manner. Hence, in view of the aforesaid total non-compliance/non prosecution of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed off, as under, ex-parte, primarily on the basis documentation available on record.

5.5 The Appellant had filed his Return of Income for A.Y. 2017-18 on 23.03.2018 declaring total income of Rs. 82,87,080/-. The AO issued notice u/s.148 of the act on 14.07.2022. In response to the notice issued, the appellant filed return of income on 08.05.2023 declaring total income of Rs.82,87,080/-. The same was treated as invalid in view of the ordinary delay in filing of return u/s. 148 of the act. The AO completed the assessment proceedings u/s. 144 of the act and made addition of Rs.1,20,16,408/- and treated the same as unexplained credits u/s. 68 of the act.

5.6 It is pertinent to note that even during the instant appellate proceedings, neither appellant nor his representative filed any submissions in response to the notices issued from time-to-time and had in fact chosen to remain silent and failed to substantiate or cooperate by filing the details called for, which shows the appellant is not interested in pursuing his appeal. However, it was noted that despite several opportunities were given to the appellant, he has not responded for the reasons best known to him. Needless to mention that in order to prove their point, the appellant should substantiate and back his point by providing relevant details, which he has failed to do so.”

4. At the time of hearing, the Ld. Counsel for the assessee submitted that the reason for non-compliance by the assessee before the Ld. CIT(Appeals)/NFAC was that the hearing notices have been sent in the wrong email id by the department. In this regard, the email id that has been provided to the department for communication purpose is “ketanparmar628@gmail.com”. However, the communications as per ITBA portal regarding hearing notices for all the three dates i.e.21.02.2025, 28.02.2025 and 05.03.2025 were sent to some other email id which does not belong to the assessee. The said email id as per screen shot of the ITBA portal regarding hearing notices from the department to the assessee was communicated at “cnmurty2006@gmail.com” which was not the communication address given by the assessee to the department. That since all notices of hearing were sent to wrong email id, therefore, it was not possible for the assessee to know regarding the hearing notices, thus, there was no compliance from the assessee.

5. We are of the considered view after perusing all the documents on records which suggests that indeed the department had sent hearing notices to wrong email id, therefore, it was not possible for the assessee to respond to the same which resulted in an ex-parte order.

6. In the overall spectrum of an ex-parte order being passed due to non-compliance by the assessee before the Ld.CIT(Appeals)/NFAC, we refer

to the order of the ITAT, "Division Bench", Raipur in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur, IT(SS)A Nos.1 to 6, 8 & 9/RPR/2025, dated 20.03.2025** wherein the Tribunal had dealt with similar issue on the same parameters of ex-parte order passed by the Ld. CIT(Appeals)/NFAC and remanded the matter back to the file of the Ld. CIT(Appeals)/NFAC.

7. Respectfully following the aforesaid order on the same parity of reasoning, we are providing final opportunity to the assessee to represent his case before the first appellate authority. Accordingly, we set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file for denovo adjudication as per law while complying with the principles of natural justice. The Ld. CIT(Appeals)/NFAC is also directed to be particular with regard to the sending of the hearing notices and they should be alert while sending such hearing notices for compliance by the assessee so that it is sent on the correct email id provided by the assessee.

8. Before parting, we may herein observe that this is not simply an ex-parte order. In fact, this is a case where the assessee has received accommodation entries in guise of unsecured loan from Kolkata based shell companies during the period under consideration. The search operation in the cases of RKTC Group and Shri Suresh Agrawal shows that various beneficiaries including the assessee had routed their unaccounted

money through Kolkata based shell companies managed and controlled by Shri Suresh Kumar Agrawal and other entry operators. The findings of the search is further supported with various incriminating documents, statements of key persons and entry operators on oath, findings of the department through survey and enquiries made in the cases of shell companies and entry operators. The findings of the search and various enquiries conducted have established that the books of accounts of the shell companies involved and the assessee do not show true and correct matter of affairs. That from the outcome of the search and relevant evidences seized, it was found that the assessee company has brought into its books its own unaccounted income in the form of unsecured loan. The A.O further observed that there was a colorable device adopted by the assessee company to camouflage the real transaction. Therefore, we are of the considered view that as a matter of common knowledge in Kolkata there has been a mushrooming growth of professional entry operators in Kolkata who provide accommodation entry for share application money/loans for a commission. That the Income Tax Department, Investigation Wing, Kolkata had also made search and enquiry and had come up with a detailed investigation report regarding tax evasion committed through such *modus-oparandi* and on PAN India basis wherever such link is found with regard to beneficiaries from this accommodation entry providers the said report is forwarded to the concerned A.O of such

beneficiary assessee, based on which, the A.O further investigates the matter.

9. In the present case of the assessee, it is already on record that the assessee had received accommodation entries in the guise of unsecured loan from the Kolkata based shell companies and it is therefore now onus on the part of the Ld. CIT(Appeals)/NFAC to verify and examine in detailed manner whether any fraud has been committed by the assessee towards the department. That though on the ground of natural justice, one final opportunity has been given to the assessee but the genesis of the entire facts and circumstances needs proper verification by the department so to find out whether any lawful taxes remain unpaid to the department due to sham transactions adopted which will be within purview of tax evasion amounting to fraud to the revenue and in such case, fraud vitiates everything including natural justice.

10. The application of principle of fraud was even considered by the **Hon'ble Supreme Court** in the case of **Badami (deceased) by her LRs v. Bhali in Civil Appeal No.1723/2008, dated 22/05/2012** wherein the Hon'ble Supreme Court has held as follows:-

"20. In S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others AIR 1994 SC 853 this court commenced the verdict with the following words:-

"Fraud-avoids all judicial acts, ecclesiastical or temporal"

It had been held that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court.

11. In another decision of the Hon'ble Supreme Court in the case of **Smt. Shrist Dhawan v. M/s. Shaw Brothers AIR 1992 SC 1555**, it has been held that fraud and collusion vitiates even the most solemn proceedings in any civilized system of jurisprudence including natural justice. Further, the **Hon'ble Supreme Court** in the case of **Mc Dowell & Company Ltd. Vs. CTO [1985] 154 ITR 148 (SC)** has held that "Tax planning may be legitimate provided it is within the framework of law, Colourable devices cannot be part of tax planning....".

12. Therefore, in our considered view, in the present matter it is the responsibility of the revenue authorities to investigate if there is any tax evasion as per the transactions entered into by the assessee and in such circumstances additions are to be sustained in the hands of the assessee.

13. As per the aforesaid terms, the grounds of appeal raised by the assessee stands allowed for statistical purposes.

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

Order pronounced in the open court on 25th day of June, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
PARTHA SARATHI CHAUDHURY
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 25th June, 2025.
SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / 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, 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.