

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI DUVVURU RL REDDY, VICE PRESIDENT AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

I.T.A. No. 133/Ran/2023 (Assessment Year-2018-19)

(Virtual Hearing)

A.C.I.T., Circle-1, Dhanbad.	Vs.	Sri Vikas Agarwal, Ground Floor, New Market, Bank More, Dhanbad. PAN No. ABUPA 4083 E
Appellant/ Revenue		Respondent/ Assessee

Department represented by	Shri Khubchand T. Pandya, Sr.DR
Assessee represented by	Shri P.K. Bansal with Shri Neeraj Mangla, A.Rs.
Date of hearing	24/07/2025
Date of pronouncement	30/07/2025

ORDER

PER: RATNESH NANDAN SAHAY, A.M.

1. This appeal by the revenue is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/ learned Commissioner of Income Tax (Appeals), [in short, the Id. CIT(A)] dated 08/04/2023 for the Assessment Year (AY) 2018-19.
2. Facts of the case, in brief, are that the appellant is an individual and carrying on business of wholesale as well as retails trade in metal and metal ores in the name and style of proprietary concern namely M/s Jai Balajee Enterprises. During the assessment year under consideration, the assessee filed income tax return on 30/03/2019 declaring total income at ₹ 42,45,610/-. The case was selected for limited scrutiny under E-assessment Scheme, 2019 on the following two issues (i) unsecured loans and (ii) income from house property. During the assessment proceedings, the Assessing Officer noticed from the

audit report filed by the assessee that the assessee has taken unsecured loans of ₹ 1.00 crore from M/s Amar Steels, ₹ 1,40,27,614/- from M/s Kamdhenu Enterprises and ₹ 36,10,000/- from M/s JDK Furnitech. Regarding the unsecured loan from M/s Amar Steels amounting to ₹ 1.00 crore, the assessee submitted that the material delivered by the party was not accepted because waste material was supplied by the supplier and the same was rejected as the material was not resalable. Further, the assessee submitted that the said party was not traceable and the assessee was unable to make any contact even after repeated attempts to reach him and that's why the transaction was considered as unsecured loan. The money is shown in the balance sheet as unsecured loan, however, it was actually a trade creditor. The appellant also produced the ledger of M/s Amar Steels in his books of account reflecting purchases on various dates and copy of purchase bills in respect of purchases from M/s Amar Steels and also the copy of transportation bills. The appellant further contended that the party did not file GST return and hence input GST credit could not be claimed by the assessee.

3. Regarding the unsecured loan of ₹ 1,40,27,614/- from M/s Kamdhenu Enterprises, the assessee submitted before the Assessing Officer that he had purchased goods worth ₹ 1,40,27,614/- but the said party was suffering through financial crunches so immediate payment was not possible and hence the credit balance appearing in the books of account was shown as a liability against the party. The assessee, therefore, submitted that, this is not an unsecured loan but it is also a trade creditor. In support of its claim, the assessee submitted ledger of M/s Kamdhenu enterprises in his books of account and purchase bills and transportation bills from Kamdhenu Enterprises,

the assessee also submitted that the said purchases were made during pre-GST period but VAT credit was not claimed by the assessee. The assessee also contended that the goods purchased from Kamdhenu enterprises were not sold and was reflected in closing stock as on 31/03/2018.

4. Regarding unsecured loan of ₹ 36,10,000/- from JDK Furnitech, the assessee submitted before the Assessing Officer confirmation from JDK Furnitech, return of income of JDK Furnitech for A.Y. 2017-18, 2018-19 and 2019-20 and also its bank statement reflecting credit entries from JDK Furnitech.
5. The Assessing Officer, however, not convinced by the above explanation of the assessee. The Assessing Officer treated all the unsecured loans taken by the assessee amounting to ₹ 1.00 crore from Amar Steels, ₹ 1,40,27,614/- from Kamdhenu Enterprises and ₹ 36.10 lacs from JDK Furnitech as unexplained on the ground as under:

"6.2.1. On perusal of audited books of accounts of the assessee for A. Y. 2019-20 and 2020-21, as available in the e-filing portal, the transactions with Amar Steels and Kamdhenu Enterprises are still reflecting as unsecured loan.

6.2.2. Notice u/s. 133(6) dated 01.01 .2021 was issued to J. Gandhi & Co., CAs, the auditor of the assessee for A. Y. 2018-19, to ascertain the nature of transaction of the assessee with Amar Steels and Kamdhenu Enterprises during the year under consideration. J. Gandhi & Co., CAs vide response dated 12.01 .2021 have stated that the amount of Rs. 1,00,00,000/- received by the assessee from Amar Steels and Rs. 1,40,27,614/- from Kamdhenu Enterprises are unsecured loans and no purchase/sale was made by the assessee from Amar Steels and Kamdhenu Enterprises during the year under consideration. J. Gandhi & Co., CAs have also submitted copy of ledger of Amar Steels and Kamdhenu Enterprises in the books of the assessee reflecting receipt of Rs. 1,00,00,000/- and Rs. 1,40,27,614/- on 20.01.2018 and 31.03.2018 respectively.

6.2.3. Further, notice u/s. 133(6) dated 24.01 .2021 was issued to J. K. Sultania & Co., CAs. the auditor of the assessee for A. Yrs. 2019-20 & 2020-21, to

ascertain the nature of transaction of the assessee with Amar Steels and Kamdhenu Enterprises during A. Y. 2018-19 in A. Yrs. 2019-20 & 2020-21. J. K. Sultania & Co., CAs vide response dated 01 .02.2021 have submitted confirmations signed by the assessee that the transaction of the assessee with Amar Steels and Kamdhenu Enterprises during A. Y. 2018-19 of Rs. 1,00,00,000/- and Rs. 1,40,27,614/- were unsecured loan as on 01.04.2018, 31 .03.2019 and 31.03.2020. J. K. Sultania & Co., CAs have submitted confirmations signed by the assessee in respect of sundry creditors as 01 .04.2018, 31 .03.2019 and 31.03.2020 where neither Amar Steels nor Kamdhenu Enterprises are reflected.

- 6.3. *In view of the above, it is clearly evident that the claim of the assessee that the amount of Rs. 1,00,00,000/- and Rs. 1,40,27,614/-, as reflecting in his books of accounts as on 31 .03.2018 are unsecured loan taken from Amar Steels and Kamdhenu Enterprises respectively during the year. are actually purchases from the respective parties which remained unpaid, is nothing but an afterthought.*
- 6.4. *Notice u/s. 133(6) dated 07.09.2020 and reminder notice u/s. 133(6) dated 05.12.2020 were issued and served to Kamdhenu Enterprises to verify the nature of transaction with the assessee during the year. However, no response has been received till date from Kamdhenu Enterprises.*
- 6.5. *Further, Amar Steels as well as both the transporters from whom the assessee has claimed to have arranged transportation of goods allegedly purchased from Amar Steels and Kamdhenu Enterprises are not registered on e-filing portal.*
- 6.6. *The assessee has failed to provide copy of bank statement of JDK Furnitech highlighting the debit entries in respect of loan payment to the assessee as well as books of accounts of JDK Furnitech reflecting the loan given to the assessee, to substantiate the unsecured loan of Rs. 36,10,000/- from JDK Furnitech during the year.*
- 6.7. *The assessee has failed to submit his VAT/GST return, party wise details of purchases & sales and stock register to substantiate his claim of purchases from Amar Steels and Kamdhenu Enterprises during the year.*
- 6.7.1. *Hence, the contention of the assessee that Amar Steels and Kamdhenu Enterprises were trade creditors for Rs. 1,00,00,000/- and Rs. 1,40,27,614/- respectively instead of unsecured loans is hereby rejected."*

6. Aggrieved by the order of Assessing Officer, the assessee preferred appeal before the Id. CIT(A), who vide impugned order after giving a detailed reason, deleted the addition on the ground that the addition made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 (in short, the Act) is not sustainable in the eyes of law on the ground that the said transactions were merely by way of book adjustments, journal entries and there is no actual cash/cheque receipts.
7. Aggrieved by the order of Id. CIT(A), the revenue has preferred this appeal by taking following grounds of appeal:

- "1. *Whether the Ld.CIT(A) has erred in law and in facts in allowing the appeal based on documents explaining the unsecured loans taken amounting to Rs.2,76,77,214 from M/s Amar steels, M/s Kamdhenu Enterprises and JDK Furnitech as being explainable, which have been furnished for the first time during appellate proceedings, which amounts to a clear violation of the mandate of the Rule 46A of the Income Tax Rules.*
- (ii) *Whether the Ld.CIT(A) has erred in law and in facts in relying on fresh evidences /arguments during appellate proceedings without seeking the remand/comments of the AO, which is a clear violation of rule 46A of the Income Tax Rules.*
- (iii) *Whether the Ld.CIT(A) has erred in law and in facts while considering the Amounts of Rs. 1,00,00,000/- and Rs. 1,40,27,614/- received from M/s Amar Steels and M/ s Kamdhenu Enterprises respectively as just being Journal entries and also holding that journal entries are not within the ambit of section 68 of the IT Act, 1961, while it is an established fact that journal entries backed by an actual transactions carried out are well within the ambit of section 68 of the IT Act, 1961.*
- (iv) *Whether the Ld. CIT(A) has erred in law and in facts while deleting the additions amounting to Rs.36, 10,000/- stating the fact that out of the unsecured loan of Rs. 36, 10,000/-received from JDK Furnitech, Rs. 10,50,000/- have been returned back by the appellant in AY 2019- 20, whereas the fact remains that during the assessment proceedings for AY 2018-19, under appeal, the unsecured loan amounting to Rs. 36,10,000/- remained unexplained.*
- (v) *Any other grounds and facts to be raised at the time of hearing."*

8. The Id. Sr.DR for the revenue supported the order of Assessing Officer and submitted that the first ground of appeal raised by the revenue is that the Id. CIT(A) erred in allowing the appeal based on documents explaining the unsecured loans amounting to ₹ 2,76,77,214/- from three parties namely M/s

Amar Steels, M/s Kamdhenu enterprises and JDK Furnitech which have not been furnished before the Assessing Officer and were produced for the first time before the Id. CIT(A) and therefore, this is amounting to a clear violation of Rule 46A of the Income Tax Rules, 1962 (in short, the Rules). The Id. CIT(A) should not have admitted fresh evidence during the appellate proceedings without seeking the remand report or comments of the Assessing Officer as provided under Rule 46A of the Rules.

9. On the other hand, the learned Authorised Representative (Id. AR) of the assessee filed a paper book and reiterated what was stated before the Id. CIT(A) and submitted that the firstly, transactions with these three parties were in the nature of trade credits and not unsecured loans and therefore, the addition made by the Assessing Officer under Section 68 of the Act is not justified and the Id. CIT(A) has rightly deleted the addition by giving a detailed reason in the body of the appellate order.
10. We have considered the submissions of both the parties and it is found that though, the Id. CIT(A) has examined the said transactions in detail and deleted the additions by giving the detailed reasons both on facts and on legal positions involved in this case. However, it is found that the Id. CIT(A) has admitted those evidences which were not produced before the Assessing Officer and the Assessing Officer was not given the opportunity of examining the same either by way of a remand report or otherwise. We, therefore, think it proper to restore the matter back to the file of Id. CIT(A) for giving the Assessing Officer a reasonable opportunity of being heard and by seeking a remand report on the fresh/new evidences produced before the Id. CIT(A) and

also the submissions made by the assessee before the Id. CIT(A). In the result, grounds of appeal raised by the revenue is allowed for statistical purposes.

11. In the result, this appeal of revenue is allowed for statistical purposes only.

Order pronounced in open court on 30th July, 2025.

Sd/-
(DUVVURU RL REDDY)
VICE PRESIDENT

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Ranchi, Dated: 30/07/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi