

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

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

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष  
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

**आयकर अपील सं./ ITA No. 220/RPR/2022**

**निर्धारण वर्ष / Assessment Year : 2012-13**

Santosh Chopra,  
D-3, Faristha Complex, G.E Road,  
Raipur (C.G.)-492 001  
PAN : ACIPJ9443J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Circle-3(4), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Praveen Jain &  
Smt. Priya Godheja, CAs

Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 09.05.2023

घोषणा की तारीख / Date of Pronouncement : 11.05.2023

**आदेश / ORDER****PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 13.09.2022, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 28.03.2015 for the assessment year 2012-13. The assessee has assailed the impugned order on the following grounds of appeal:

“1. "On the facts and in the circumstances of the case, the order appealed against is perverse, arbitrary, unjustified and bad in law;

2. That there is no justification either in law or on facts with the Ld. CIT(A) to sustain the addition of Rs.26,72,250/- in total income for the transaction taken place between lender of unsecured loan & assessee without proper enquiry by challenging genuinity of the transaction, when sufficient and appropriate evidence is submitted by assessee to prove genuinity. Therefore, addition of Rs.26,72,250/- in total income by CIT (A) is illusionary and based on suspicion and surmises without scrutinizing/enquiring about the documents submitted by assessee is incorrect, unjustified & deserves to be deleted;

3. That, there is no enabling provision now which permits to challenge the genuinity of transaction without scrutinizing to the utmost extent the documents submitted by the assessee, If the assessee has submitted sufficient & appropriate evidence to prove;

4. That during the assessment proceeding assessee books of accounts was not rejected under the provision of section 145(3)

of The Income Tax Act, 1961. Hence, the addition is illusory and based merely on suspicion and so should be deleted.

5. That the addition sustained by the Ld. CIT (A) is arbitrary under the facts and circumstances of the case and also, there is no justification for the Ld. CIT(A) to sustain the disallowance of loan as explained above; and

6. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

2. Succinctly stated, the assessee which is engaged in the business of earning commission and brokerage on sale of agricultural produce, had e-filed his return of income for A.Y.2012-13 on 29.03.2013, declaring an income of Rs.3,29,527/-. Return of income filed by the assessee was processed u/s.143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that as per the records the assessee had outstanding unsecured loans of Rs. 62,89,310/- (Cr.). The A.O in order to verify the authenticity of the aforesaid loan transactions directed the assessee to place on record the confirmations a/w the bank accounts of the lenders. As is discernible from the assessment order, the assessee though filed the confirmations of

the lenders but failed to produce their bank accounts. The A.O considering the fact that the assessee despite specific directions had failed to produce the copies of the bank accounts of the lenders, held the unsecured loans that were raised by the assessee during the year from three parties aggregating to Rs. 26,72,250/- as unexplained cash credits. Accordingly, the A.O after making the aforesaid additions, vide his order passed u/s.143(3) dated 28.03.2015 assessed the income of the assessee at Rs. 30,06,000/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

6. I have heard the Ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the ld. A.R to drive home his contentions.

7. On a perusal of the record, I find that the A.O in the course of assessment proceedings in order to verify the authenticity of the unsecured loans that were claimed to have been raised by the assessee, had directed him to place on record the confirmations of the lenders a/w their bank accounts. As observed by me hereinabove, the assessee had though filed the confirmations of the lenders but failed to produce their bank accounts. Ostensibly, the unsecured loans of Rs. 62,89,310/- (supra) comprised of two parts, viz. (i) old unsecured loans of Rs.36,17,060/-; and (ii) unsecured loans that were raised by the assessee during the year from three parties of Rs. 26,72,250/-. Bifurcated details of the impugned unsecured loans raised by the assessee during the year is culled out as under:

Sr. No.	Particulars	Amount
1.	Loans raised from Shri. Raj Kumar Jain on 18.05.2011 & 18.01.2012).	RS. 16,20,000/-
2.	Loan raised from M/s Surana Khandsari Products Pvt. Ltd. on 04.10.2011	Rs. 10,00,000/-

3.	Loan raised from Shri. Akash Jain on 22.09.2011	Rs. 52,250/-
Total		Rs. 26,72,750/-

The A.O holding a conviction that as the assessee despite specific directions had failed to produce the bank accounts of the lender parties, therefore, held the impugned unsecured loans of Rs.26,72,250/- that were received during the year under consideration as unexplained cash credits and made additions of the said amount to the assessee's returned income.

8. On a perusal of the order of the CIT(Appeals), I find that the assessee even in the course of proceedings before him had failed to substantiate the authenticity of the loan transactions in question. It is a matter of fact that the assessee in the course of the proceedings before the CIT(Appeals) had failed to produce the bank accounts of the aforesaid lender parties. Rather, the assessee in the course of the proceedings before the CIT(Appeals), had tried to impress upon him as regards the authenticity of the loan transactions under consideration by harping upon the confirmations of the aforesaid lenders. The CIT(Appeals) was,

however, not inspired by the contentions advanced by the assessee. It was observed by the CIT(Appeals) that the assessee had failed to substantiate the identity and creditworthiness of the lenders, and also the genuineness of the loan transactions under consideration. Apropos the confirmations which were filed by the assessee, the same did not find favour with the CIT(Appeals), who observed that the same suffered from serious infirmities, as under:

“1. The appellant has furnished 3 confirmations in respect of 3 loan creditors from whom loans claimed to have been received of totaling to Rs. 26,72,250/- (i.e. Shri Rajkumar Jain Rs. 16,20,000/- on 18/05/2011 and 18/01/2012, Shri Akash Jain Rs. 52,250/- on 22/09/2011 and Surana Cold Rs. 10,00,000/- on 04/10/2011). Even in the confirmation in the case of Surana Cold Storage written as below of the confirmation, the full name had not been given in the top of the confirmation wherein the name was given as "Surana Cold". It is unbelievable that a cold storage is not maintaining any letterhead giving its full name and the confirmation was issued for loan transactions (single) of Rs.10,00,000/-.

2. In none of the confirmations there is address, least to say complete address of the loan creditor so that any verification in this regard could be made by the AO during assessment proceedings. The said Address of the loan creditors has also not been furnished during the appellant proceedings.

3. In none of the cases of loan creditors PANs, Phone Nos., detailed nature of transaction as to from which bank accounts such amount of loan had been given by the loan creditors etc. had been given as apparent from the confirmations scanned and pasted above.

4. In none of the cases the details of the bank accounts of the creditors and due confirmations as requisitioned for by the AO during assessment proceedings had been furnished before the

AO so that necessary verification could be made to ensure the creditworthiness and genuineness of the loan transactions, even though specific requisitions had been given by the AO vide Notice u/s.142(1) dated 13/01/2015 fixing the case on 15/01/2015. Even the accountant of the appellant and the appellant himself had appeared in the next fixed date of hearing on 19/01/2015 before the AO but failed to furnish the said details and evidences.

5. All the loan confirmations have been signed in short form (illegible signature) without giving full names of the signatories so that the signatories could be identified, questioned to verify the genuineness of issue of such loan confirmations by them and in one case i.e. for Surana Cold Storage, the same has been signed by Manager and it is not clear as to whether he was the Authorized Signatory.

6. The copies of bank statements of the appellant filed in respect of Oriental Bank of Commerce (Punjab National Bank w.e.f. 01/04/2020) though revealed such credits of loans received by the appellant, no details relating to the sender of the amount of loans so credited are available from the bank account statement.”

9. On the basis of the aforesaid observations, the CIT(Appeals) was of the view that the assessee had failed to substantiate the identity and creditworthiness of the lenders and also, genuineness of the transactions under consideration. After drawing support from a host of judicial pronouncements, it was observed by the CIT(Appeals) that the assessee had neither furnished proper confirmations duly signed by the lenders alongwith their complete addresses, PAN Nos., phone numbers, bank account details, nor had filed copies of their returns of income on the basis of which their creditworthiness could have

been proved. Observing that the assessee had failed to discharge the onus that was cast upon him as regards proving the authenticity of the loan transactions in question, the CIT(Appeals) finding no infirmity in the view taken by the A.O upheld the addition of Rs. 26,72,250/- that was made by him. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as under:

“6.3.5 In view of the various judicial decisions cited by the undersigned regarding (i) proving of identity of the creditors, creditworthiness of the creditors and genuineness of transactions and subsequently (ii) accountability of the assessee to prove the source of any credit in the name of third party thereby fulfilling the aforesaid three criteria vis-a-vis the scanned confirmations of the loan creditors filed by the appellant as pasted above, it is crystal clear that the appellant under consideration could not prove any one of the aforesaid three criteria, least to say all the three criteria to further prove, the source of the credits of Rs.26,72,250/- made in assessee's books of accounts in the name of three loan creditors as detailed above and, therefore, necessarily the said credits are required to be treated as assessee's unexplained credits u/s. 68 of the Act from undisclosed income.

6.3.6 The appellant in the submission quoted above, as it appears, had emphasised more on form rather than substance of the facts of the case. The appellant had never tried to establish with necessary details and supporting evidences either before the AO or before the undersigned thereby explaining the source of the credits in the name of third party loan creditors in appellant's books. The appellant did not furnish the proper confirmation duly signed by the creditors with complete addresses, PANs, Phone Nos., Bank Accounts details of the creditors from which such loans claimed to have been received, least to say the copies of accounts or the returns of income of the loan creditors filed thereby explaining the source of such credits in appellant's books. As already stated above, for such credits in appellant's books of Rs. 26,72,250/-,

neither the identity of the creditors could be proved nor the creditworthiness of the creditors had been established and least to say about the genuineness of transactions by and between the creditors and the appellant. When factual details and supporting documents had not been furnished by the appellant relating to such credits of the loan creditors in appellant books of accounts and further the accountability or burden of the appellant had not been discharged by any iota of documents/particulars, mere furnishing of a number of judicial decisions in support of appellant's claim that such credits should be treated as explained as far as their source were concerned and could not be treated as appellant's unexplained credits and further that the action of the AO was based on suspicion and surmises, in my considered opinion is merely a hollow shouting having no solid materials or foundation to substantiate such shout and re-iteration raising allegation wrongly against the AO defining the same as incorrect and unjustified.

6.3.7 The appellant has cited certain decisions in para 3 such as Khandelwal Constructions Vs. CIT [1998] 145 ITR 65: [1997] 227 ITR 900 (Gau) wherein it was held that there was no proper inquiry to ascertain whether the explanation was genuine. The Tribunal also had totally overlooked the matter and therefore the addition made by the ITO for the assessee Firm doubting the genuineness of transaction had to be deleted. In this connection, the appellant emphasized on the proper inquiry for invoking the power u/s.68 by the AO emphasizing that satisfaction must be derived from relevant facts on the basis of proper inquiry and the inquiry must be reasonable thereby citing the above decision. Another decision was cited by the appellant in the case CIT Vs. Shamsundar & Co. [1990] 181 ITR 187 (Cal) wherein it was held that the cash credit would not be the income of the assessee wherein the Tribunal had given a finding that such credits were genuine as the confirmatory letters from creditors, their Income Tax file Number etc. were given and the officer did not summon any of the creditors for examination. As apparent from my observation and findings given, there was no scope in whatsoever in nature to make necessary enquiry in respect of the cash credits found in the books of the appellant of Rs. 26,72,250/- as no iota of information including addresses PANs, Phone Nos., full names of the creditors, Bank Statements, Copies of Accounts or copies of returns of income filed by the creditors etc. had been furnished either before the AO or before the undersigned and, therefore, there was no question of initiating any enquiry as to whom such enquiry could be made and on the basis of what. The appellant, in fact, as apparent from the nature of confirmations filed, in my opinion, had filed the bogus/ false

confirmations as the aid confirmations did not reflect any of the above mentioned information. Therefore, the cases cited stating that enquiry should have been made by the AO and his satisfaction should have been there before treating the amount of cash credits as appellant's income is baseless, as the same could not be performed in reality in absence of any such details/particulars furnished by the appellant.

6.3.8 The appellant has cited in para 4 of the submission quoted above further a number of decisions such as Radhakrishna Bihari Lal Vs. CIT (1954) CIT 26 ITR 344 (Pat), Jainarayan Balaba Kas of Khamgaon Vs. CIT [1957] 31 ITR 271 (Nag) and also certain other decisions contending that in the said cases it was held that the AO does not have any material proof of making addition and therefore cash credit in the names of third parties in the assessee's books cannot be treated as the income of the assessee from an undisclosed source unless that Department has adequate material to prove that the cash credits belonged to the assessee. I have already made a detailed factual analysis of the appellant's case as above thereby pointing out specifically that the appellant had not furnished any materials whatsoever in nature barring 3 confirmations which are totally incomplete and in the nature of false/ bogus confirmations thereby giving my reasoning above and, therefore, the facts of the case of the appellant under consideration, in no case, can be equated with the facts of the cases cited by the appellant as above.

6.3.9 The appellant has also cited the Hon'ble Supreme Court's decision in the case of CIT Vs. P. K. Noorjahan [1999] 237 ITR 570 (SC) contending that the satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as income of the assessee u/s. 68 of the Act. The law as explained by the Tribunal and approved by the High Court in the case of Dy. CIT Vs. Rohini Builders [2002] 256 ITR 360, 370 (Guj). Special leave petition filed was dismissed as reported in [2002] 254 ITR (St.) 275 (SC). I do not find that the said case is applicable in the case of the appellant under consideration as the explanation given by the appellant in his case thereby filing a totally incomplete, bogus/ false confirmations having no details of any nature to prove the cash credits in his books, cannot be equated with the said case and therefore the deeming provisions of section 68 of the Act treating such cash credits as unexplained and undisclosed by the AO was justified and therefore such addition made treating the said credits as appellant's unexplained credits was in accordance with law.

6.3.10 In view of the foregoing discussion of the facts of the case of the appellant and also various judicial decisions cited by the undersigned, I am of the considered opinion that the AO had correctly treated the cash credits of Rs.26,72,250/- representing in the names of three loan creditors as appellant's unexplained cash credits and his income thereby adding the same to the total income. No interference in AO's decision is called for in this regard. The addition so made of Rs.26,72,250/- is hereby confirmed. Ground No.1 raised by the appellant is accordingly dismissed.”

10. Controversy involved in the present appeal lies in a narrow compass, i.e. sustainability of the addition of Rs.26,72,250/- (supra) that was made by the A.O u/s 68 of the Act and thereafter, confirmed by the CIT(Appeals).

11. Before proceeding any further, I may herein observe that the assessee had filed before me an application requesting for admission of certain documents as “additional evidence”. On a perusal of the application filed by the assessee, it transpires that the same does not mention any reason as to why the said documents could not be filed before the lower authorities. In fact, I find that the assessee had filed the said documents in the “paper book” and had merely mentioned in his application that some of the documents forming part of the paper book are in the nature of additional evidence. I am unable to comprehend this novel method of filing of application by the assessee for admission of

“additional evidence”. Be that as it may, as the assessee had not come up with any cogent reason to explain as to why the aforesaid documents could not be filed before the lower authorities, therefore, I find no reason to admit the same. Accordingly, the application filed by the assessee for admission of additional documentary evidence is rejected.

12. Adverting to the merits of the case, I find that it is a matter of fact borne from record, that the A.O in the course of assessment proceedings had, inter alia, directed the assessee to produce the bank accounts of the three lender parties from whom unsecured loans aggregating to Rs.26,72,250/- were stated to have been raised during the year under consideration. On a perusal of the records, I find that the assessee had merely filed before the A.O confirmations of the aforementioned parties. At this stage, it would be relevant to point out that neither of the aforementioned parties had appeared before the A.O. Coming back to the confirmations of the aforementioned parties (forming part of APB), I concur with the view taken by the CIT(Appeals) that the same for the reasons culled out by him in his order

suffers from serious infirmities and does not inspire any confidence at all.

13. Be that as it may, I find that the assessee had not only failed to produce the bank accounts of the aforementioned parties before the A.O, but had also allowed the said serious lapse on his part to perpetuate in the course of the proceedings before the CIT(Appeals). In fact no attempt had even been made to seek placing on record the copies of the bank accounts of the lenders as “additional evidence” before me [even the documents which the assessee had filed before us and/or sought to place on record as additional evidence (Page1-77) does not contain the bank accounts of the lenders in question]. It remains an unresolved mystery as to why the assessee had failed to place on record the copies of the bank accounts of the aforementioned lenders? On a specific query by the bench as to why the bank accounts of the lenders which were indispensably required for establishing the creditworthiness of the parties were not produced in the course of the proceedings before the lower authorities, it was submitted by the Ld. AR that the same was due to the non-cooperative approach adopted by the lenders who had refused to provide the

copies of their bank accounts to the assessee. On further being queried by the bench, that in case the lenders were not co-operating and making available the copies of their bank accounts, then, considering the fact that the A.O had in the course of the assessment proceedings specifically directed the assessee to produce the bank statements of the lenders, was any request filed by the assessee with the A.O to call for the said bank accounts from the lenders u/s 133(6); or summon the said lenders u/s.131 of the Act, the Ld. AR answered in the negative. Also the Ld. A.R on being queried as to whether the aforesaid loans had been repaid by the assessee failed to come forth with any reply.

14. It was, however, the claim of the Ld. AR, that as one of the main lender, viz. M/s Surana Khandsari Products Pvt. Ltd. was a company of substantial creditworthiness, therefore, there was no justification for the A.O to have disbelieved the authenticity of the loan that was raised by the assessee from the said party. It was averred by the Ld. AR, that now when the assessee in the course of the assessment proceedings had filed before the A.O confirmations of the respective parties, wherein their addresses, PAN and mobile numbers were clearly stated, then, the A.O in

case of any doubt should have carried out necessary enquiries on his own. I am unable to concur with the aforesaid contention of the Ld. AR. As the primary onus to substantiate the authenticity of the loan transactions was cast upon the assessee, therefore, the contention of the Ld. AR that in case if the A.O had any doubts as regards the said transactions, then, he should have carried out necessary enquiry on his own, cannot not be accepted. On the basis of my aforesaid deliberations, I am of a strong conviction that the assessee in the case before me had clearly failed to discharge the primary onus that was cast upon him as regards proving the identity and creditworthiness of the lenders and also, genuineness of the transactions in question. Apropos the judicial pronouncements that have been pressed into service by the ld. A.R, as under:

- (i) CIT Vs. Orissa Corporation (1986) 25 Taxman 80F (SC)
- (ii) CIT Vs. Ranchhod Jivabhai Nakhava (2012) 21 taxmann.com 159 (Guj.)
- (iii) Nemi Chand Kothari Vs. CIT (2004) 136 Taxman 213 (Gauhati)
- (iv) CIT Vs. Divine Leasing & Finance Ltd., 299 ITR 268 (Del.)
- (v) ACIT Vs. Shri Joitkumar B. Jain, ITA No.5638/MUM/2017
- (vi) Lanchand Dhariwal Vs. ITO, ITA No.2623/AHD/2016

, he had tried to impress upon me that now when address, PAN, mobile number of the lenders were available with the A.O, then, he was precluded from drawing any adverse inferences as regards the authenticity of the loan transactions under consideration. I am unable to persuade myself to subscribe to the said contention of the ld. AR. As observed by me hereinabove, the assessee had failed to discharge the primary onus that was cast upon him as regards proving the authenticity of the loan transactions in question on the basis of any credible documentary evidence. The failure of the assessee, till date, by neither producing the copies of the bank accounts of the lenders despite specific directions of the A.O; nor requesting the latter in the course of the assessment proceedings to call for the bank accounts of the lenders under Sec 133(6); or verify the factual position by summoning the said lenders u/s 131 of the Act, is in itself self-speaking about the gross failure of the assessee in discharging the onus that was cast upon him as regards proving the authenticity of the loan transactions under consideration. I may herein reiterate, that the reason given by the assessee for not producing the copies of the bank accounts of the lenders, i.e non-cooperation of the said

parties also does not inspire any confidence. As observed by me hereinabove, in case the said lenders were non-cooperative and had refused to provide copies of their bank accounts as were specifically called for by the A.O, then, it is beyond my comprehension as to why the assessee had not brought the said fact to the notice of the A.O, with a request that the requisite details be called for from the parties concerned u/s 133(6) of the Act. On the basis of the aforesaid facts, I am constrained to hold that the assessee had intentionally withheld the bank accounts of the respective lenders for the reasons best known to him.

15. Be that as it may, I am of the considered view that as the assessee had failed to discharge the primary onus that was cast upon him as regards proving the identity and creditworthiness of the aforementioned lenders, as well as genuineness of the transactions under consideration, therefore, finding no infirmity in the view taken by the CIT(Appeals) who had on the basis of a well-reasoned order rightly held the impugned loans aggregating to Rs. 26,72,250/- (supra) as unexplained cash credits u/s.68 of the Act, I uphold the same.

16. In the result, the appeal of the assessee is dismissed in terms of my aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board on 11<sup>th</sup> day of May, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 11<sup>th</sup> May, 2023.

\*#SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

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

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur