

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. 219/RPR/2022

निर्धारण वर्ष / Assessment Year : 2015-16

M/s. Shivam Tractor
Shivam Tractors, Raipur Road,
Dhamtari (C.G.)-493 773

PAN : ACLFS1313H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-Dhamtari (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B. Doshi, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 12.10.2023

घोषणा की तारीख / Date of Pronouncement : 16.10.2023

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 08.09.2022, 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 07.12.2017 for the assessment year 2015-16. The assessee has assailed the impugned order on the following grounds of appeal:

“1. Ld. CIT(A) erred in confirming addition of Rs. 1,06,000/- made by the AO on account of alleged unexplained investment u/s 69. The addition made by the AO and sustained by Id. CIT(A) is illegal & is not justified.

2. Ld. CIT(A) erred in confirming addition of Rs. 18,30,000/- made by the AO on account cash credit treating it to be unexplained cash credit u/s 68. The addition made by the AO and sustained by Id. CIT(A) is not justified.

3. Ld. CIT(A) erred in confirming disallowance of Rs. 3,10,400/- made by the AO, being 1/10th of various expenses. The addition made by the AO and sustained by Id. CIT(A) is not justified.

4. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.

2. Succinctly stated, the assessee company, which is engaged in the business of trading of tractors, trolleys, and spare parts, had filed its return of income for A.Y 2013-14 on 08.03.2016, declaring an income of Rs.4,93,500/-. The case of the assessee was, thereafter, selected for scrutiny assessment u/s.143(2) of the Act.

3. Assessment was thereafter, framed by the A.O vide his order passed u/s.143(3) of the Act dated 07.12.2017, wherein its income was assessed at Rs.27,39,900/- after making the following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Addition as regards unaccounted sales of Gyroveter vide Bill No.186	Rs.1,06,000/-
2.	Addition of trading advance received by the assessee from three persons, viz. (i) Shri Akbar Kashyap; (ii) Shri Janak Lal Sahu; and (iii) Shri Jitendra Sahu	Rs.18,30,000/-
3.	Ad-hoc disallowance of expenses	Rs.3,10,400/-

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 Id. Authorized Representatives of both the parties, perused the orders of the lower authorities as well as material available on record. As the assessee has assailed three additions/disallowances made by the A.O, which, thereafter had been sustained by the CIT(Appeals), I shall deal with the same in a chronological manner as under:

(I) Addition as regards unaccounted sale of Gyroveter vide Bill No.186 : Rs.1,06,000/-

7. As is discernible from the orders of the lower authorities, it transpires that the A.O., during the assessment proceedings, had come across an unaccounted sale of a gyrovator to Shri. Krishan Kumar Soni vide Bill No.186 dated nil for Rs.1,06,000/-. The sale of gyrovator was not found accounted for by the assessee in its total gyrovator sales of Rs.4,76,782/-. Also, it was observed by the A.O. that the aforesaid sale of gyrovator was not included in the sale of the tractor on 29.06.2014 to the aforesaid customer, viz. Shri. Krishan Kumar Soni (supra). As the assessee could neither submit the purchase details corresponding to the aforesaid sale transaction nor the quantitative details of sales, therefore, the A.O made an addition of the entire value of the sale transaction in question of Rs.1,06,000/- u/s.69 of the Act.

8. At the very threshold of the hearing, the Authorized Representative (for short, "AR") submitted that the A.O. had grossly erred in treating the supply of gyrovator by the assessee firm to Shri. Krishna Kumar Soni as its suppressed sales. The Ld. A.R submitted that as the aforesaid gyrovator was as per the policy/scheme of the company provided by the assessee firm free of cost to its customer, viz. Shri. Krishan Kumar Soni (supra), therefore, there was no justification in treating it as its unaccounted sale. Alternatively, the Ld. A.R submitted that the A.O had grossly erred in observing that the purchase of the gyrovator that was sold by the assessee firm to Shri Krishna Kumar Soni (supra) through Bill No.186 for Rs.1,06,000/- was not accounted for in its books of account. Rebutting the aforesaid observation of the A.O., it was submitted by the Ld. AR that the aforesaid gyrovator was supplied by

the assessee firm to its aforesaid customer out of its duly accounted purchases lying as stock with it.

9. I have thoughtfully considered the aforesaid issue in the backdrop of the contentions advanced by the Ld. authorized representatives of both parties. As the Ld. AR could not substantiate his claim that gyrovator in question was supplied free of cost to its customer, viz. Shri. Krishna Kumar Soni (supra), as per the company's directive/policy/scheme; therefore, I am unable to accept the same. At the same time, I am of the view that the A.O. had, without placing on record any material, summarily observed that the assessee firm had sold the gyrovator out of its unaccounted purchases. In my considered view, if the purchase of the gyrovator was accounted for in the books of accounts of the assessee firm, then addition in its case was liable to be restricted only to the extent of profit which it would be made by carrying out the sale of the same outside its books of account. However, as the aforesaid fact would require verification, therefore, in all fairness, the matter is restored to the file of the A.O. with a direction to re-adjudicate the same after carrying out necessary verification as regards the authenticity of the claim of the assessee firm. Needless to say, the A.O. shall, in the course of the set-aside proceedings, afford a reasonable opportunity of being heard to the assessee firm, which shall remain at liberty to substantiate its claim on the basis of fresh documentary evidence. Thus, **Ground of Appeal No.1** raised by the assessee is allowed for statistical purposes in terms of my aforesaid observations.

(II). Addition of trading advance received by the assessee from three persons, viz. (i) Shri Akbar Kashyap; (ii) Shri Janak Lal Sahu; and (iii) Shri Jitendra Sahu : Rs.18,30,000/-

10. As is discernible from the assessment order, the A.O in the course of the assessment proceedings, had observed that the assessee had claimed to have received advance towards the supply of tractors/trolley from three persons, as under:

Sl. No.	Name of the customer	Date of receipt	Amount (Rs.)	Date of sales	Amount (Rs.)
1.	Shri Akbar Kashyap	16/06/2014	2,20,000/-		
		13/06/2014	3,00,000/-		
		19/11/2014	2,50,000/-		
				20/12/2014	2,00,000/- Trolley
				01/03/2015	3,70,000/- Tractor
2.	Shri Janak Lal Sahu	01/06/2014			
		21/10/2014	2,80,000/-		
			3,00,000/-		
				02/02/2015	5,80,000/-
3.	Shri Jitendra Sahu	12/04/2014	2,00,000/-		
		10/06/2014	1,80,000/-		
		22/06/2014	2,00,000/-		
				02/03/2015	5,80,000/-
				Total	Rs.18,30,000/-

Observing that the assessee received the aforesaid amounts 2 to 10 months prior to the sale of the tractors/trolley to the aforementioned persons, the A.O held a conviction that it had in the garb of the aforesaid advance(s) routed its unaccounted money through its books of account. On being called upon to substantiate the authenticity of the aforesaid advances, the assessee firm placed on record a copy of the account of the aforementioned customers a/w. delivery challans in support of subsequent delivery of vehicles to them. However, the A.O. did not find favor with the aforesaid explanation of the assessee. The A.O. was of the view that it was incomprehensible that any person would provide an entire amount of sale consideration in advance for purchasing vehicles after a gap of many months. Accordingly, the A.O. being of the view that the amounts shown by the assessee firm in the garb of advance were its unaccounted cash credits, therein made an addition of the entire amount of advances of Rs.18,30,000/- u/s. 68 of the Act.

11. On appeal, the CIT(Appeals), finding no infirmity in the view taken by the A.O., upheld the same. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as follows:

“6.3.3 I have carefully perused the written submission and documents uploaded by the appellant with reference to the view expressed in the assessment order on the above issue of cash received by the appellant and deposited in its bank account during the period relevant to the impugned assessment year. The appellant has contended that the said three customers have paid certain amount in advance and due to certain KYC norms the sale bill was made later though the vehicles were delivered to the customers on payment of the entire amount of sale price. In support of the same. appellant submitted the delivery challan and ledger account. It is seen from the chart that in all the three cases, the date of sale bill is several months after the vehicles have been delivered. In the absence of registration certificate of the vehicles, insurance documents of the vehicles, I concur with the opinion and

stand taken by the Assessing Officer that the explanation of the appellant is dissatisfactory and lacks conviction. The above explanation is weird and abnormal far from reality. In fact, the appellant has not been able to explain with relevant documents. In the present case, the appellant needs to produce, all the documents, cash book, statement of bank- account, registration certificate of vehicles, motor insurance policy, and ledger accounts of the customers together to prove genuineness of its explanation. It is undisputable that there are cash credit entries in the books of accounts of the appellant during the financial year relevant to the impugned assessment year and therefore the onus lies on the appellant to explain the source of such credit entries to the satisfaction of the Assessing Officer. Appellant has failed to discharge the onus cast upon it to substantiate its explanation with documentary evidence. In the said facts and circumstances of the case, in my considered opinion, the action of the Assessing Officer is in conformity with the provisions laid down in section 68 of the Income Tax Act, 1961. The addition of Rs.18,30,000/-made u/s.68 is confirmed. Accordingly Ground No. 4 is dismissed.”

12. Before me, it was submitted by the Ld. AR that the A.O had most arbitrarily held the aforementioned amount of trade advances as unexplained cash credit u/s.68 of the Act. Elaborating on his aforesaid contention, it was averred by the Ld. AR that the assessee firm had specifically during the year itself delivered vehicles to all the aforementioned persons, and the said sale transactions had not been doubted by the A.O. Carrying his contention further, the Ld submitted that the A.O while framing assessment, had not rejected the books of account of the assessee u/s.145(3) of the Act. The Ld. AR had drawn my attention to the copies of invoices, delivery challans, and copies of ledger accounts of the aforementioned persons as appearing in the books of account of the assessee firm. Apart from that, the Ld A.R submitted that the assessee firm had, in the course of the assessment proceedings, placed on record confirmations/letters of the aforesaid persons wherein they had duly explained the reasons as to why the purchase/delivery of the tractors/trolley was delayed in their respective cases. On the basis of the aforesaid facts, the Ld. AR

submitted that as the amounts received from the aforementioned persons were duly established as trading advances that were received from them towards the sale of vehicles, there was no justification for the A.O. to have held the same as unexplained cash credits u/s.68 of the Act.

13. I have thoughtfully the aforesaid issue, i.e., recharacterization of the advances received by the assessee firm from the aforementioned three persons as unexplained cash credits u/s.68 of the Act by A.O. Although there is some substance in the view taken by the A.O. that it is incomprehensible that the aforementioned persons would have parted with their money as advance for purchase of tractors/trolley many months prior to purchase/delivery of the said vehicles, but such doubt on a standalone basis cannot suffice to treat the said amounts as unexplained cash credits u/s.68 of the Act. I say so for the reason that it is a matter of fact borne from the record that not only the assessee had substantiated the aforesaid sale transaction on the basis of invoices, delivery challans, and copies of accounts of the aforesaid persons, but also the said persons had duly confirmed of having advanced the respective amounts to the assessee firm and explained the reasons for delay that was involved for taking delivery of vehicles from the assessee firm. I also cannot remain oblivious of the fact that, on the one hand, the A.O. had drawn adverse inferences as regards the authenticity of the aforesaid trade advances received by the assessee firm but at the same time by not rejecting the books of accounts of the assessee firm had impliedly approved the respective sale transactions wherein the

said advances were adjusted against the sale price of tractors/trolley which were sold by the assessee firm to the aforesaid persons.

14. Be that as it may, I am of the considered view that, as the assessee firm, on the basis of documentary evidence, had duly discharged the primary onus that was cast upon it for substantiating the nature and source of the cash credits in its books of account, the onus, thereafter, was shifted upon the A.O who was obligated to place on record material/evidence to dislodge the veracity of the aforesaid claim of the assessee firm before drawing any adverse inferences as regards the same. My aforesaid view is fortified by the Judgment of the **Hon'ble High Court of Chhattisgarh** in the case of **Pawan Kumar Agrawal Vs. ITO, Ward-2(2), Bilaspur**. In the aforesaid judgment, it was observed by the Hon'ble High Court that once the assessee has discharged its onus by placing on record supporting documentary evidence, then the A.O is bound to issue notice u/s.133(6) or 131 of the Act, failing which, no adverse inferences qua the authenticity of the transaction in question could be drawn on its part.

15. Considering the aforesaid facts, I am of the considered view that in order to arrive at the true state of affairs as regards the aforesaid transactions under consideration, the matter in all fairness requires to be restored to the file of the A.O with a direction to re-adjudicate the same. Needless to say, the A.O. shall, in the course of the set-aside proceedings, afford a reasonable opportunity of being heard to the assessee, who shall remain at liberty to substantiate the same on the basis of

fresh documentary evidence. Thus, the **Ground of Appeal No.2** raised by the assessee is allowed for statistical purposes in terms of my aforesaid observations.

(III) Ad-hoc disallowance of expenses: Rs.3,10,400/-

16. As is discernible from the orders of the lower authorities, it transpires that the A.O had worked out an ad-hoc disallowance of Rs.3,10,400/- i.e., @10% out of expenditure totaling Rs.30,26,087/- i.e., Rs.3 lacs; AND 1/10th of depreciation on vehicles/car of Rs.10,400/-. For the sake of clarity, the relevant observations of the A.O on the aforesaid issue are culled out as under:

“Further on perusal of the profit and loss a/c, it was found that the assessee has debited expenses on a/c of Commission exp. Rs.10,00,000/-, Kishan Sarmelan exp. Rs.2,18,740/-, Telephone exp. Rs.60,519/- Travelling exp, Rs. 1,86,37W-, Petrol, Repairing & maintenance exp, Rs.10,71,134/-, Office exp Rs. 2,78,086/-, other expenses Rs 1,28,803/- and Stationary exp. Rs. 82,426/- Totaling to. Rs.30,26,087/-. The assessee has submitted ledger a/c and bills and vouchers In this regard it was found that, some of the payments were made in cash and also not duty supported by bills. Some of vouchers are found to be self drawn and therefore genuineness of the expenses could riot be verified. In view of these facts, the expenses are not completely verifiable and therefore, 10% of totaling amount of Rs. 30,26,087/- i.e. Rs.3,00,000/- is being disallowed and added back to the total income of the assessee on a/c of unverifiability and personal use in this regard. The assessee has claimed depreciation on vehicle/car at Rs.1,04,186/-. For the reasons narrated above i.e. for personal use, 1/10th of the depreciation which comes Rs.10,400/- is being disallowed and added back to the total income the assessee firm.

17. On appeal, the CIT(Appeals) finding no infirmity in the view taken by the A.O, upheld same.

18. Before me, it was averred by the Ld. AR that aforesaid disallowance made on an ad-hoc basis was without any basis. Elaborating on his aforesaid contention, it was averred by the Ld. AR that as the A.O had failed to point out any specific

instance where the expenditure or any part of the same was either incurred for a purpose other than business purpose or was not supported on the basis of supporting material, therefore, such disallowance worked out by him in an arbitrary manner could not be sustained and was liable to be struck down.

19. I have given thoughtful consideration and find substance in the claim of the Ld. AR. Admittedly, it is a matter of fact borne from the record that the A.O had worked out an ad-hoc disallowance i.e @10% of the total expenses, viz. commission expenses, kisan sammelan expenses, telephone expenses, traveling expenses, petrol, repairing and maintenance expenses, office expenses, other expenses, and stationary expenses alongwith 10% disallowance of vehicle/car depreciation. Although I concur with the 1/10th disallowance of telephone expenses and vehicles and car expenses, petrol and repair & maintenance expenses as incurring part of the said expenses for personnel usage cannot be ruled out, but I am unable to comprehend on what basis the A.O had worked ad-hoc disallowance out of the remaining expenses. As stated by the Ld. AR and, rightly so, as the A.O. had failed to point out any such specific expenditure which was either not incurred for the purpose of business or was not substantiated by documentary evidence/material; therefore, no part of such disallowance can be sustained. Accordingly, I uphold the addition of Rs. 1,14,205/- i.e 10% of 11,42,053/- [Rs.60,519/- (+) Rs.10,400/- (+) Rs.10,71,134/-]. Thus, the **Ground of Appeal No.3** raised by the assessee firm is partly allowed in terms of my aforesaid observations.

20. The **Ground of appeal No.4**, being general in nature, is dismissed as not pressed.

21. In the result, the appeal of the assessee is partly allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in open court on 16th day of October, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 16th October, 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, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.