

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

(Through Virtual Court)

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 335/RPR/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Income Tax Officer,
Ward-2(1), Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Hanumant Ingots Pvt. Ltd.
A-4, 1st Floor, Radha Mohan Complex,
Bhaisthan, Samta Colony,
Raipur (C.G.)
PAN : AACCH4665D

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ravi Agrawal, AR
Revenue by : Shri G.N Singh, DR

सुनवाई की तारीख / Date of Hearing : 09.02.2022

घोषणा की तारीख / Date of Pronouncement : 09.05.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the revenue is directed against the order passed by the CIT (Appeals)-1, Raipur, dated 01.07.2016, 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 25.03.2015 for assessment year 2012-13. Before us the Revenue has assailed the impugned order on the following grounds of appeal:

"1. Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.66,65,000/- made by the AO u/s.68 of the Income Tax Act, 1961 on account of bogus share capital and share premium received by the assessee, even though the identity, creditworthiness and genuineness of the transactions could not be established?

2. Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.98,25,000/- made by the AO u/s.68 of the Income Tax Act, 1961 on account of bogus unsecured loans received by the assessee, even though the identity, creditworthiness and genuineness of transactions could not be established."

3. Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) has erred by giving a finding which is contrary to the evidence on record as the Ld. CIT(A) has accepted the submission of the assessee which is factually incorrect, thereby rendering the decision which is perverse?

4. The order of the Ld. CIT(A) is erroneous both in law and on facts?

5. Any other ground that may be adduced at the time of hearing."

2. Succinctly stated, the assessee company which is engaged in the business of manufacturing of M.S. Ingots had filed its return of income for the

assessment year 2012-13 on 26.09.2012, declaring an income of Rs.2,82,249/-. 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 the assessee company during the year under consideration, i.e., its first year of operation was in receipt of share capital/premium amounting to Rs.66,65,000/- from 16 persons. Also, it was noticed by him that the assessee company had during the year under consideration raised loans from various parties.

4. In order to verify the genuineness and veracity of the share capital /premium claimed by the assessee to have been received during the year under consideration, the A.O called for certain details from the share applicants vide notices issued u/s.133(6) of the Act. However, the aforesaid notices were not complied with by the respective parties and remained unanswered. Observing, that the assessee had failed to discharge the onus that was cast upon it as regards establishing the identity and creditworthiness of the share applicants, as well as proving the genuineness of the transactions of receipt of share capital/premium from the parties concerned, the A.O held

the entire amount of Rs.66.65 lac as the income of the assessee from undisclosed sources u/s.68 of the Act.

5. As regards the loans that were claimed by the assessee company to have been received during the year under consideration, it was observed by the A.O that the assessee had though placed on record the confirmations of the respective lenders, but had failed to place on record any such documents which would substantiate the authenticity of the respective loan transactions and discharge the onus cast upon the assessee. Observing, that the notice that was issued to one of the lender i.e. M/s Dynamic Architectures Pvt. Ltd. seeking certain information u/s.133(6) of the Act had remained un-complied with, the A.O, for the said reason held the entire amount of the loans aggregating to Rs.98.25 lacs as the income of the assessee from undisclosed sources u/s. 68 of the Act. Backed by his aforesaid deliberations, the A.O vide his order passed u/s. 143(3), dated 25.03.2015 assessed the income of the assessee company at Rs.1,68,15,010/-.

6. Aggrieved, the assessee assailed the assessment order passed by the A.O u/s.143(3), dated 25.03.2015 before the CIT(Appeals). In so far the addition of the share capital/premium of Rs.66.65 lacs as an unexplained cash

credit u/s 68 by the A.O was concerned, it was observed by the CIT(Appeals) that the aforementioned amounts were received by the assessee company from 16 persons wherein 13 persons were either family members or close relatives of the directors of the assessee company. It was observed by the CIT(Appeals) that the assessee in the course of the assessment proceedings had furnished with the A.O PAN Nos., copies of returns of income, computation of income, share application forms, bank statements, balance sheets, bank account details a/w. source of payment of the aforementioned amounts by the respective share applicants. It was further noticed by the CIT(Appeals) that the A.O had not drawn any adverse inferences as regards the aforesaid documentary evidence which were filed by the assessee before him. Also, it was observed by the CIT(Appeals) that the bank statements of the respective share applicants that were filed in the course of the assessment proceedings clearly revealed the sources from where the respective amounts were paid by them. Observing, that the share applicants were not artificial entities but persons in existence who had duly substantiated the sources out of which the amounts in question were paid by them towards share capital/premium, the CIT(Appeals) not finding favour with the view taken by the A.O that the assessee had failed to discharge the onus that was cast upon

it as regards proving the authenticity of the transactions of receipt of share capital/premium, thus, vacated the addition of Rs.66.65 lacs made by him.

7. As regards the addition of unsecured loans of Rs.98.35 lacs that was made by the A.O by dubbing the same as unexplained cash credits u/s.68 of the Act, it was observed by the CIT(Appeals), that though the assessee in the course of the assessment proceedings had placed on record loan confirmations a/w. PAN cards of the respective lenders, however, the A.O without giving any reason as to why the same were not being relied upon, had most arbitrarily drawn adverse inferences as regards the authenticity of the said loan transactions. It was observed by the CIT(Appeals) that the addition of the loan amount of Rs.98.25 lacs that was raised by the assessee from 9 parties, was made for the reason that one of the lender, viz. M/s Dynamic Architectures Pvt. Ltd. to whom a notice u/s.133(6) of the Act was issued, had failed to comply with the same and had not furnished the requisite details. It was observed by the CIT(Appeals) that the failure on the part of the one of the lender to furnish the requisite details could not have formed a basis for drawing of adverse inferences as regards the authenticity of the loan transactions of the assessee with the other parties. Observing, that the assessee had in the course of the assessment proceedings placed on record

confirmations of the lenders a/w. their respective PAN cards/copies of returns of income (in some cases), therefore, the onus that was cast upon it to prove the authenticity of the loan transaction stood discharged. It was observed by the CIT(Appeals), that in case if the A.O still had any doubts as regards the authenticity of the loan transactions, then, onus was cast upon her to prove otherwise. The CIT(Appeals) after relying on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Orrisa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC) therein observed, that now when the assessee had placed on record the names and addresses of the lenders a/w. their income tax credentials i.e. PAN/copies of returns of income (in some cases) and the Revenue had not chosen to carry out any further verification as regards the creditworthiness of the said lenders, then, no adverse inferences were liable to be drawn as regards the authenticity of the loan transactions in question by the A.O. Accordingly, the CIT(Appeals) on the basis of his aforesaid deliberations vacated the addition of Rs.98.25 lac that was made by the A.O by dubbing the loan transactions as unexplained cash credits u/s. 68 of the Act.

8. Aggrieved with the order of the CIT(Appeals), the Revenue has carried the matter in appeal before us.

9. We 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 them to drive home their respective contentions.

10. We shall first deal with the grievance of the revenue that the CIT(A) had erred in vacating the addition of Rs. 66.65 lac that was made by the A.O. by treating the share capital/premium that was claimed by the assessee to have been received from 16 parties as an unexplained cash credit u/s 68 of the Act. Adverting to the facts pertaining to the aforesaid issue as are discernible from the order of the CIT(Appeals), we find that the assessee in the course of the assessment proceedings, had duly filed with the A.O the copies of the returns of income, computation of income, balance sheet, confirmations of account, PAN and bank statements of the 16 share applicants from whom an amount of Rs. 66.65 lac was received towards share capital/premium, as under :

S.N.	Name of the shareholders & his relationship	Amount (Rs.)	Document furnished
1.	Manoj Kumar Agrawal (Director of the company)	5,00,00.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
2.	Shiv Kumar Agrawal (Director of the company)	8,00,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card

3.	Anand Agrawal (Brother of Director Manoj Agrawal)	2,00,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
4.	Basudeo Agrawal (Father of Director Manoj Agrawal)	1,60,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
5.	Basudeo Agrawal HUF (HUF father of Director Manoj Agrawal)	4,30,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
6.	Sandeep Kumar Agrawal (Brother of Director Manoj Agrawal)	3,75,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
7.	Neelam Agrawal (Wife of Director's Brother)	5,40,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
8.	Kailash Prasad Agrawal (Uncle of Director)	2,00,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
9.	Deepak Kumar Agrawal (Cousin of Director)	7,50,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
10.	Saroj Devi Agrawal (Chachi of Director)	4,75,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
11.	Sita Devei Agrawal (Chachi of Director)	5,25,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
12.	Bharpayi Agrawal (Distant Relative)	7,00,000.00	ITR, Computation, confirmation, Balance sheet
13.	Murli Manohar Agrawal (Distant Relative)	3,00,000.00	ITR, Computation, confirmation
14.	Kamla Devi Agrawal	2,60,000.00	ITR, Computation, confirmation

15.	Kamta Prasad	2,00,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card
16.	Mishri Lal Agrawal	2,50,000.00	ITR, Computation, confirmation, Balance sheet, Bank statement, PAN Card

As observed by the CIT(Appeals), we find that the A.O had not drawn any adverse inferences qua the aforesaid documentary evidence that was filed by the assessee company in discharge of the primary onus that was cast upon it, i.e, proving the identity and creditworthiness of the share applicants, as well as the genuineness of the transaction of having received the share capital/premium from the aforesaid applicants.

11. During the course of the proceedings, the Ld. Authorized Representative (for short 'AR') for the assessee took us through the aforesaid documentary evidence which was filed by the assessee with the A.O. On a perusal of the aforesaid documents, we find that the assessee had duly substantiated the identity and creditworthiness of the share applicants, as well as the genuineness of the respective transactions. We find that the share applicants had duly confirmed the respective transactions by filing their confirmations. Also, we find that a perusal of the respective bank accounts of the share applicants from where the aforesaid investments were sourced, do

not raise any doubts which would have justified the dubbing of the same as accommodation entries by the A.O. Neither of the bank accounts perused by us there is any cash deposit prior to the payment of the amount by the respective share applicant, nor any such chain of events are discernible therefrom which would have otherwise raise any doubts as regards the genuineness of the transactions in question. Be that as it may, we are of the considered view, that as the assessee by placing on record the aforesaid documentary evidence had duly discharged the primary onus that was cast upon it, therefore, the A.O without dislodging the same on the basis of any material and/or evidence could not have held the amounts therein received as unexplained cash credit u/s.68 of the Act. We, thus, in terms of our aforesaid observations are unable to persuade ourselves to concur with the view taken by the A.O. Accordingly, finding no infirmity in the view taken by the CIT(Appeals) who had vacated the addition of Rs.66.65 lacs made by the A.O u/s.68 of the Act, uphold his order to the said extent. Thus, the **Ground of appeal No.1** raised by the Revenue is dismissed in terms of our aforesaid observations.

12. We shall now advert to the claim of the Revenue that the CIT(Appeals) had erred in vacating the addition of Rs.98.25 lacs that was made by the A.O

by holding the loans received by the assessee company during the year under consideration as unexplained cash credits u/s.68 of the Act.

13. On a perusal of the records, we find that the assessee during the year under consideration had received the aforesaid loans amounting to Rs.98.25 lac (supra) from the following 9 parties :

S.N.	Name of the party	Amount (Rs.)	Document furnished
1.	Shree Nakoda Industries Ltd. RYP	50,00,000.00	confirmation, PAN Card
2.	Chouhan Housing Pvt. Ltd., Bhilai	20,00,000.00	Confirmation, Pan Card
3.	Raj Jewellers, Durg	15,00,000.00	ITR, Confirmation
4.	Sunita Agrawal	2,25,000.00	ITR, Confirmation
5.	Sanjay Rathod	3,00,000.00	Confirmation
6.	Harsha Rathod	2,00,000.00	Confirmation
7.	Jyoti Rathod	1,00,000.00	Confirmation
8.	Bharat Rathod	3,00,000.00	Confirmation
9.	Rukmani Singh	2,00,000.00	Confirmation

As observed by us hereinabove, the assessee in order to substantiate the authenticity of the aforesaid loan transactions had placed on record the confirmations of the respective parties a/w. copies of the returns of income and PAN cards of the respective lenders. On a perusal of the assessment

records, we find that the A.O had not drawn any adverse inferences as regards the authenticity of the aforesaid documentary evidence that was filed by the assessee with the AO to discharge the primary onus that was cast upon it as regards proving the identity and creditworthiness of the lenders as well as genuineness of the loan transactions in question. On the contrary, we find that the aforesaid loan transactions have been held by the A.O as bogus for the reason that a notice u/s.133(6) of the Act that was issued by her to one of the lender, viz. Dynamic Architectures Pvt. Ltd. Had remained uncomplained with by the said party. We are unable to comprehend that as to on what basis the failure on the part of one lender to furnish the requisite details as was called for by the A.O u/s.133(6) of the Act would justify drawing of adverse inferences as regards the authenticity of the loan transactions of the assessee qua the remaining parties. At this stage, we find that interestingly the loan transaction of the assessee with M/s. Dynamic Architectures Pvt. Ltd. was accepted by the A.O and no adverse inferences as regards the same were drawn by him. We, thus, in terms of our aforesaid deliberations are unable to persuade ourselves to subscribe to the adverse inferences drawn by the A.O. as regards the loans aggregating to Rs. 98.25 lac received by the assessee company during the year under consideration from 9 parties, and finding no

infirmity in the view taken by the CIT(Appeals), uphold his order to the said extent. Thus, the **Ground of appeal No.2** raised by the Revenue is dismissed in terms of our aforesaid observations.

14. We shall now advert to the grievance of the Revenue that the CIT(Appeals) had on the basis of perverse findings allowed relief to the assessee, i.e., by accepting its submissions which were factually incorrect. Before us, the Ld. Departmental Representative (for short 'DR') on specifically being queried as regards the basis of the aforesaid grievance, failed to support the same.

15. In the backdrop of the aforesaid fact that the Ld. DR had failed to support the aforesaid grievance of the department, much the less place on record on record any documentary evidence/submission in support thereof, therefore, finding no merit in the aforesaid claim of the revenue, we herein dismiss the same as such. Thus, the **Ground of appeal No.3** raised by the revenue is dismissed.

16. The **Grounds of appeal No. (s) 4 and 5** being general in nature are dismissed as not pressed.

17. In the result, appeal of the Revenue is dismissed in terms of our aforesaid observations.

Order pronounced in open Court on 09th day of May, 2022.

Sd/-
JAMLAPPA D BATTULL
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 09th May, 2022
**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,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	06.05.2022	Sr.PS/PS
2	Draft placed before author	06.05.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		