



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.232/CTK/2020

Assessment Year : 2013-14

Sri Sukhmaya Das, At-N/3/69, IRC Village, Nayapalli, Bhubaneswar	Vs.	DCIT, Circle -3(1), Bhubaneswar.
PAN/GIR No. AEPPD 2993 A		
(Appellant)	..	(Respondent)

Assessee by : Shri J.M.Pattnaik, AR
Revenue by : Shri S.C. Mohanty, DR

Date of Hearing : 28/05/ 2021
Date of Pronouncement : 14 /06/2021

ORDER

This is an appeal filed by the assessee against the order of the CIT(A)-2, Bhubaneswar dated 1.11.2017 for the assessment year 2013-14.

2. The assessee has raised following grounds of appeal:

"1. Addition of Rs.29,56,900/- u/s.68 of the I.T.Act as unexplained cash credit.

- a) For that the Id AO is erred by making aforesaid addition on his sweet will without due application of mind even if not considering the pick credit of the bank accounts while determine unexplained cash deposits.
- b) For that the AO erred by invoking section 68 of the IT Act by taking figure from the bank account where as the bank accounts are not treated as books of account, thereby invoking section 68 is bad in law.

c) For that in absence of cash book, the AO is erred by invoking section 68 of the I.T.Act by determining unexplained cash deposit, where as the cash deposits are very well explained from the sale of agricultural products being deposited in the bank account.

2. Addition of Rs.1,15,028/-.

For that the AO has failed to taking into consideration the evidences in support of claim of rebate u/s.80C of the IT Act even though the appellant has submitted the same, thereby the addition ought to be deleted.”

3. At the time of hearing, Id A.R. of the assessee did not press Ground No. 1(a) and Ground No.2 of appeal. Therefore, these grounds are dismissed as not pressed.

4. Apropos Ground Nos.1(b) & (c) of appeal, facts are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee had made cash deposits as under:

i)	Axis Bank	A/c. No.551010100067713	Rs.27,49,000/-
		(wrongly taken by AO -919937020925)	
ii)	Bank of Baroda	A/c No.27650100002950	Rs. 1,53,000/-
iii)	Yes Bank	A/.c No.009390100005513	Rs. 50,000/-
iv)	P & N Bank	A/c No.4188000100012522	<u>Rs. 1,89,000/-</u>
			Rs.31,41,900/-

The Assessing Officer required the assessee to prove the source of deposits in bank accounts, however, the assessee failed to offer explanation regarding proof of cash deposits in bank, except agricultural income of Rs.1,85,000/-. As the assessee failed to prove sources of deposits in his

bank account, the unexplained cash deposits of Rs.29,56,900/- (Rs.31,41,900 – Rs.1,85,000) was added to the total income of the assessee u/s.68 of the Act, which was upheld in first appeal.

5. I find that the Id CIT(A) has dismissed the appeal of the assessee exparte without hearing the assessee. I find that the Hon'ble Gujarat High Court in the case of CIT (Exceptions) vs Shree Nirman Foundation Charitable Trust in R/Tax Appeal No.1335 of 2018 order dated 30.7.2019 in paras 16 & 17 of the said judgment held as under:

"16. There is one another valid reason for us to say that ordinarily the matter should not be remitted by the Appellate Tribunal to the Id CIT(A) if the Appellate Tribunal is in a position to decide the appeal on its own merits having regard to the evidence on record. Such remand orders lead to unnecessary delays and cause prejudice to the revenue. The Supreme Court in the case of Ashwinkumar K Patel vs Upendra J.Patel, reported in (1999) 3 SCC 161, in context with an order of remand passed by the High Court under order 41 Rule 23 of the CPC, observed as under:

"The High Court should not ordinarily remand a case under order 41 Rule 23 CPC to the Lower Court merely because it considers that the reasoning of the lower court, in some respects, was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have, itself, decided the appeal one way or the other,. It could have considered the various aspects of the case mentioned in the order of the Trial Court and considered whether the order of the Trial court ought to be confirmed or reversed or modified.

17. In such circumstances, referred to above, the impugned order "passed by the Appellate Tribunal is not sustainable in law. We are of the view that we should quash the order passed by the Appellate Tribunal and direct the Appellate Tribunal to hear the appeal filed by the assessee afresh and decide it on its own merits."

6. I find that although the Id CIT(A) in the impugned order has not discussed anything regarding the issue and dismissed the appeal exparte, but the issue can be decided after hearing both the sides and materials available on record in view of the judgment of Hon'ble Gujarat High Court in the case of Shree Nirman Foundation Charitable Trust (supra). Ld D.R. did not object to the hearing of appeal on merits,. Accordingly, I proceed to decide the appeal on merits after hearing both the parties.

7. At the outset, Id A.R. of the assessee submitted that the Assessing Officer has invoked wrong section i.e. section 68, which is not attracted in the present case. Since the provisions of section 68 of the Act applied in this case is no more res intrega, therefore, on technical ground, the appeal has to be allowed.

8. Even otherwise, on merits, Id A.R. of the assessee submitted that the AO called upon the assessee to substantiate the source of deposits of the alleged amount of Rs.31,41,900/- and the assessee has submitted the confirmation regarding selling of paddy to M/s. Rameswar Agro Industries Pvt Ltd., Nayapali, Bhubaneswar amounting to Rs.24,55,250/- but the AO did not accept the contention of the assessee. Ld A.R. of the assessee submitted that the entire sale proceeds as disclosed by the assessee with supporting documents was not accepted by the AO for the reason that the expenses claimed in the profit and loss account have not been supported

with any documentary evidence. Ld A.R. submitted that the AO while examining the bank accounts has not whispered about the genuineness of the transactions instead the assessee has explained the cash deposits in the bank accounts relating to selling of agricultural produces i.e. paddy out of trading activities of paddy. He submitted that the AO has partly accepted the agricultural income of Rs.1,85,000/- without considering the gross receipts.

9. He submitted that when the assessee has submitted that the bank deposits are out of sale of paddy supported with confirmations of the purchasing company and without examining the same, the AO has abruptly held that the deposits are unexplained without conducting necessary enquiries. He submitted that it was incumbent upon the AO to summon the purchaser of the paddy and examine him to know the truth, which was not adhered by the income tax authorities. He submitted that even the AO has not called upon the assessee-depositor to explain the sale proceeds. For this proposition, Ld A.R. relied upon the decision in the case of Pabitra Mohan Samal vs ITO, 181 ITD 391, to submit that the AO cannot act whimsically without applying his judicial mind. He submitted that the AO has acted only on presumptions and assumptions. Ld A.R. submitted that the assessee had furnished the evidence of sale of paddy at Rs.24,55,250/- supported with confirmation certificate alongwith ledger A/c of M/s. Rameswar Agro Industries Pvt Ltd., as a source of deposits in the bank

accounts against the alleged cash deposits of Rs.31,41,900/- after due adjustment of the same alongwith net agricultural income i.e. Rs.31,41,900 – Rs.24,55,250 + Rs.1,85,000/-) = Rs.5,01,650/-. He, therefore, submitted that the addition of Rs.24,55,250/- made by the AO and confirmed by the Id CIT(A) is illegal and non-application of mind.

9. Ld A.R. further submitted that in this case section 68 of the Act is not attracted at all. He relied on the following judicial pronouncements:

- i) Baladin Ram, vs CIT, 71 ITR 427 (SC)
- ii) Anandram Raitani vs CIT, 223 ITR 544 (Gau)
- iii) Smt. Madhu Raitani vs ACIT, 45 SOT 231 (Gau)TM
- iv) Smt. Manasi Mahendra Pitkar vs ITO, 73 Taxman.com 68.
- v) Mehul vs Vyas vs ITO, 80 Taxman.com 311
- vi) Amitabh Bansal vs ITO, 175 ITD 401 (Del)
- vii) CIT vs Bhaichand H Gandhi, (1983) 53 company cases 400 (Bom)

10. Ld DR submitted that the assessee has failed miserably to furnish necessary documents either before the AO or before the Id CIT(A), therefore, the addition is justified and do not call for any interference. Ld D.R. submitted that invoking of section 68 as alleged by Id A.R. is not a basis to intervene the order of the Id CIT(A). He also pointed out that it is not clear that the complete confirmation was produced before the AO, therefore, this confirmation cannot be relied.

11. Placing rejoinder to above, Id AR referred to page No.37 & 38 of paper book, containing confirmation and ledger account of M/s. Rameswar

Agro Industries pvt Ltd., supported with bank statement of Axis Bank for the period 29.3.2012 to 8.4.2013 (APB 26 to 31), which matches the cash deposits in bank.

12. On careful consideration of the rival submissions, I find that the Assessing Officer has invoked section 68 of the Act as the assessee has failed to prove the cash deposits in the various bank accounts of Rs.31,41,900/-. It is the claim of the assessee that the cash deposits in the bank are out of sale proceeds of paddy to M/s. Rameswar Agro Industries Pvt Ltd., and in support of this, the assessee has furnished confirmation letter and ledger account of M/s. Rameswar Agro Industries Pvt Ltd, which is not accepted by the AO. **Section 68 of the I.T.Act is as follows:**

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

13. Section 68 of the Act is attracted (a) when the assessee fails to prove the genuineness of the transaction that has entered into his book of accounts; (b) when there is no satisfactory explanation provided on the part of the assessee to the AO with respect to the amount credited into the accounts; & (c) when there are documentary evidences required to support the validity of the amount credited but there are no such documents furnished by the assessee.

14. But in the present case, the assessee has provided the confirmation letter of the purchaser of paddy M/s. Rameswar Agro Industries Pvt Ltd., alongwith its ledger account to support that the purchaser had purchased paddy and paid the amount. It is not in dispute that the assessee has not maintained any books of account and whatever credit entries are found by the AO, it was from the bank accounts of the assessee in which deposits were made at different point of time. Even passbook issued by the bank cannot be termed to be the books of account of the assessee as per the judgment of Hon'ble Bombay High Court in the case of Bhai Chand N. Gandhi (supra). Therefore, provisions of section 68 of the Act cannot be invoked on various deposits/credit found recorded in the bank account of the assessee in absence of books of the assessee maintained for that previous year.

15. In view of foregoing discussion, I am satisfied that the assessee submitted confirmation from the purchaser of paddy before the authorities below and this was the best possible evidence under his command to establish that the impugned amount was actually sale proceeds of paddy, which was purchased from open market/farmers and sold the same without maintaining any books of account to M/s. Rameswar Agro Industries Pvt Ltd. Even as a man of ordinary prudent, one cannot disagree with the contention of the assessee that even if he is a director in the purchase company i.e. M/s. Rameswar Agro Industries Pvt Ltd, he cannot be

refrained from making sale of paddy to the company in which he is a director. However, I am cautious about the provisions of section 40A(2) & (3) of the Act, wherein, the department has right to examine the expenses and payments made to related parties by the related parties but it is not the allegation of the AO in the present case. I am also not in agreement with the contention of Id DR that if sale has not been shown by the assessee in the return of income, then entire amount has to be taxed in the hands of the assessee as his income because if purchase and sale, both transactions have been undertaken without maintaining books of account then only profit element received by the assessee inclusive of sale proceeds can be taxed as income of the assessee because the assessee has to be given credit of the amount incurred for purchase of goods which was sold by him against receipt of sale consideration. To support of this, Id A.R. relied on the decision of Hon'ble Gujarat High Court in the case of CIT vs. P. Sathyanarayan P.Rathi, 351 ITR 150 (Guj), wherein, it has been held that only the profit element and not the entire amount of the purchases can be added to the income of the assessee.

16. Considering the totality of facts and circumstances and respectfully following the ration laid down by Hon'ble Gujarat High Court in the case of P. Sathyanarayan P.Rathi,(supra), as vehemently relied by Id A.R. of the assessee, I deem it just and proper and reasonable to cover all possible leakage of revenue, to tax only profit element embedded in the sale

proceeds received and deposited by the assessee in the bank account. In view of facts stated above, I direct the AO to tax 10% of the total impugned amount as profit/income of the assessee from sale of paddy and to delete the remaining amount. Accordingly, Ground No.1(b) & (c) is partly allowed.

17. In the result, appeal of the assessee is partly allowed.

Order pronounced on 14.6.2021

Sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 14/06/2021

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Sri Sukhmaya Das, At-N/3/69,
IRC Village, Nayapalli, Bhubaneswar
2. The Respondent. DCIT, Circle -3(1),
Bhubaneswar.
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack