



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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA No.51/CTK/2016  
ITA No.320/CTK/2018  
Assessment Year : 2011-12**

Dibyajyoti Chemicals Pvt Ltd., At/PO: Bhuban, Kanakhai, Dhenkanal-759017	Vs.	DCIT, Circle -1(1), Bhubaneswar.
PAN/GIR No.AABCD 7057 J		
<b>(Appellant)</b>	<b>..</b>	<b>( Respondent)</b>

Assessee by : Shri P.K.Harichandan, AR  
Revenue by : Shri J.K.Lenka, DR

**Date of Hearing : 15 /11/2019  
Date of Pronouncement : 08/01/2020**

**ORDER**

**Per L.P.Sahu, AM**

ITA No.51/CTK/2016 filed by the assessee is against the order of the CIT(A),1, Bhubaneswar, in the matter of assessment u/s.143(3) of the Act for the assessment year 2011-12.

2. ITA No.320/CTK/2018 filed by the assessee is against the order of the Id CIT(A)-1, Bhubaneswar, in the matter of penalty u/s.271(1)(c) of the Act for the assessment year 2011-12.

3. In ITA No.51/CTK/2016, although the assessee has raised several grounds of appeal but the sole issue involved is that the Id

CIT(A) erred in confirming the addition of Rs.8,00,000/- on account of unexplained cash credit u/s.68 of the Act.

4. Facts in brief as emanated from the orders of lower authorities are that during the course of assessment proceedings, the Assessing officer noticed that the assessee has shown unsecured loans of Rs.43,04,368/-. The Assessing Officer required the assessee to furnish its bank accounts and the details of all the loan creditors with sources of cash deposits in their bank accounts. Before the AO, the assessee furnished its bank statement with both the loan creditors namely, Shri Basanta Bihari and M/s. Kalinga Minerals. On perusal of bank statement of Shri Basanta Bihari, the AO found that Rs.90,000/- and Rs.8,00,000/- were received by the assessee on 30.6.2010 and 8.10.2010, respectively. The AO found that Shri Bihari has deposited cash of Rs.7,90,000/- in his bank account No.501010100029120 on 8.10.2010 and same day an amount of Rs.8,00,000/- was transferred to the bank account of the assessee vide cheque No.58640 leaving a balance of Rs.47,058/-. According to the AO, the account of Shri Bihari did not show any huge cash deposit before or after such cash transaction. The assessee could not show documentary evidence regarding creditworthiness of Shri Bihari to give loan to the assessee. On the basis of backdrop that

the Assessing Officer disbelieved the creditworthiness of the lender and added Rs.8,00,000/- to the income of the assessee u/s.68 of the Act.

5. On appeal, the Id CIT(A) confirmed the action of the Assessing Officer.

6. Feeling aggrieved by the order of the CIT(A), the assessee is in appeal before us.

7. At the time of hearing counsel for the assessee argued that the assessee in case of cash credit was required to prove the three ingredients such as identity of the creditor, genuineness of the transaction and creditworthiness of the creditors. He argued and submitted that the Assessing Officer himself in the assessment order has admitted to the fact that the assessee has filed the copy of bank account of the loan creditor Shri Basanta Bihari and explained that the transaction was through cheque. He submitted that the creditor Shri Basanta Bihari is one of the Director of the assessee company having PAN No.AGNPB 9280 C and regularly filing the income tax returns showing the source of income. Ld counsel submitted that the loan transaction of Rs.8,00,000/- is not a single transaction but Shri Bihari has given advances on several occasions to the assessee being a Director of

the assessee company. Thus, the assessee discharged its burden and it was thereafter for the Assessing Officer to show by bringing material on record that cash creditor was not genuine or that the cash creditors did not have creditworthiness to advance the money to the assessee. He argued that no such material has been brought on record by the Assessing Office as well as the CIT(A) and, therefore, the addition made cannot be sustained in law.

8. On the other hand, Id Departmental Representative relied on the orders of lower authorities. He submitted that merely because the loan transaction was sought to be relied upon by the assessee, as that transaction was made by cheque, by itself will not prove the genuineness of the transaction. He further submitted that the day on which the creditor has deposited the cash on the same day, he has issued the cheque to the assessee, therefore, the creditworthiness of the creditor is doubtful, and, therefore, he did not have capacity to advance the money as loan to the assessee. He submitted that the order of the lower authorities must be upheld. There is no iota of evidence regarding creditworthiness of the lender except acknowledgement of income tax return filed by the lender.

9. We have heard the rival submissions and perused the record of the case. We find that in support of the cash transaction of Rs.8,00,000/-, the assessee has filed bank statement of the loan creditor before the Assessing Officer and explained that the transaction was through cheque. However, on perusal of income tax return filed by the loan creditor for the assessment year 2011-12, we find that the creditor has filed total gross income at Rs.3,94,788/- and after deduction under Chapter VI-A of Rs.1,00,000/-, the total income of the assessee comes to Rs.2,94,788/-. Further, if the household expenditure of the creditor for the said assessment year is taken into consideration then, there will be no surplus in hand to advance the money to the assessee. On other hand, the assessee was unable to submit that there is any interest has been paid on this loan to the lender in the impugned year or in the subsequent year. It was for the assessee to prove that the loan creditor had advanced the money out of the income of any other source like his capital i.e. saving of earlier years or receipt from any other person from which the loan creditor could have advanced the loan. The observation of the Assessing Officer while making the addition u/s.68 of the Act is that the loan creditor has deposited the amount in cash of Rs.7,90,000/- before issuing cheque of an amount of

Rs.8,00,000/- to the assessee on the same day. On perusal of the bank statement of the creditor filed by the assessee, it is observed that nowhere it is shown that the assessee has any other income routed through the bank. From the above, it can be inferred that the creditor is a man of means and the creditworthiness of the lender is not substantiated by furnishing the required details as called for by the Assessing Officer as per section 68 of the Income tax Act. In our considered view, the AO is justified in making the addition of Rs.8,00,000/- and Id CIT(A) is fully correct in confirming the same. Therefore, this appeal is dismissed.

**ITA No.320/CTK/2018:**

10. The grievance of the assessee is that the Id CIT(A) is not justified in confirming the penalty of Rs.2,47,000/- under section 271(1)(c) of the Act.

11. At the outset, Ld. Counsel for the assessee submitted that in this case, notice u/s 274 r.w.s. 271 was issued on 12.3.2014 and the inappropriate words in the said notice have not been struck off. Therefore, it is not understood as to under which limb of provisions of Section 271(1)(c) of the Act, the Assessing Officer has levied penalty. Since the said show cause notice issued u/s 274 did not specify the charge against the assessee as to whether it was for concealing the particulars of income or for

furnishing inaccurate particulars of income, therefore, the penalty order passed under Section 271(1)(c) of the Act in pursuance to the said notice deserves to be set aside. The Ld. AR relied upon the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory reported in 359 ITR 565 and also the decision of the Hon'ble Apex Court in case of CIT Vs. SSA's Emerald Meadows (2016) 73 Taxman.com 248 (SC). The Ld. AR accordingly submitted that the order of the CIT(A) be set aside and the penalty levied u/s 271(1)(c) be deleted.

12. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

13. We have heard the rival submissions and perused the material available on record, inter alia, notices u/s.274 read with section 271(1)(c) of the Act dated 12.3.2014. We find the only issue to be decided in the grounds of appeal is regarding the sustainable of penalty levied u/s 271(1)(c) when the inappropriate words in the notice issued u/s 274 r.w.s. 271 of the Act have not been struck off. A perusal of the notices issued u/s 274 r.w.s. 271 dated 12.3.2014 show that the inappropriate words in the said notice have not been struck off. Even the last line of the said notice only speaks of Section 271 and does not even mention of section 271(1)(c) of the I.T. Act. It is pertinent to note here that the penalty order is based on furnishing of inaccurate particulars but the notice is not specifying exactly on which limb the penalty u/s 271(1)(c) has been initiated. From the

notice dated 12.3.2014 produced during the hearing, it can be seen that the Assessing Officer was not sure under which limb of provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. The issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadows (supra). Since in the instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(1)(c) is not sustainable and has to be deleted. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied u/s.271(1)(c) of the Act of Rs.2,47,200/- and allow the appeal of the assessee.

14. In the result, appeal of the assessee in ITA No.51/CTK/2016 is dismissed and appeal in ITA No.320/CTK/2018 is allowed.

Order pronounced on 08/01/2020.

Sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

sd/-  
**(Laxmi Prasad Sahu)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 08/01/2020  
B.K.Parida, SPS



**Copy of the Order forwarded to :**

1. The Appellant : Dibyajyoti Chemicals Pvt  
Ltd.,At/PO: Bhuban, Kanakhai, Dhenkanal-759017
2. The Respondent. DCIT, Circle -1(1), Bhubaneswar.
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1 , Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**