

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No.178/RPR/2017

(निर्धारण वर्ष / Assessment Year :2011-2012)

M/s SCC Investments, Sewa Kunj Road, Near Girls College, Raigarh(CG)	Vs	ITO-Ward-1, Raigarh
PAN No. : ABSFS 6955 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri R.B.Doshi, CA
राजस्व की ओर से /Revenue by	:	Shri G.N.Singh, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	25/07/2022
घोषणा की तारीख/ Date of Pronouncement	:	02/08/2022

आदेश / O R D E R

Per Arun Khodpia, AM :

This appeal is filed by the assessee against the order passed by the CIT(A), Bilaspur, dated 27.02.2017 for the assessment year 2011-2012, on the following ground:-

- In the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming addition to the extent of Rs.10,07,534/- out of the addition of Rs.1,00,75,342/- made by the AO invoking sec.68 on account of loan received from Karnimata Commerce Pvt. Ltd. The addition sustained by CIT(A) is arbitrary and not justified.*
- Ld. CIT(A) erred in confirming disallowance of Rs.75,342/- made by AO on account of interest on unsecured loan. The disallowance is not justified.*

2. Brief facts of the case are that the case of the assessee is connected to Radheshyam Agrawal Group of cases in which search operation u/s.132 of the Act was carried out on 17th & 18th October, 2011 and certain incriminating documents were seized. In this case, the AO issued notice u/s.148 of the Act to the assessee after recording the

reason and in compliance to the same, assessee submitted that return filed u/s.139 of the Act dated 13.02.2012 may be treated as filed in compliance to the notice u/s.148 of the Act. Thereafter the AO issued statutory notices and in response to which written submission on behalf of the assessee was filed. During the course of assessment proceedings, the AO noted that the assessee failed to discharge the burden lying upon her u/s.68 of the Act and has failed to prove creditworthiness and genuineness. It was also noted by the AO that the unsecured loan received by the assessee from Karnimata Commerce Private Limited is not genuine and, therefore, made addition of Rs.1,00,00,000/- u/s.68 of the Act. Further the AO made disallowance of interest of Rs.75,342/- on the unsecured loan of Karnimata Commerce Private Limited.

3. Against the said order of AO, the assessee preferred appeal before the CIT(A) and the CIT(A) partly allowed the appeal of the assessee, based on findings of the settlement commission in the case of Radheshyam Agarwal and group, wherein Ld CIT(A) has concluded his findings as under:-

In view of the finding given by the Hon'ble Settlement Commission in Para 39.3 as reproduced hereinabove, I also treat 10% of the amount credited in the books of account of the assessee as income of the assessee and reject the account furnished by the learned AR that the assessee had incurred interest also. Thus, the 10% of amount added by the AO is hereby treated as income of the assessee keeping in view the respectful finding of Hon'ble Settlement Commission because the assessee is beneficiary of the Modus Operandi adopted by the members of the group. Thus out of 1,00,75,342/- added by the AO Rs.10,07,534/- is confirmed. (Relief-90,67,808/-)

4. Now, the assessee is in further appeal before the Tribunal against the additions sustained by the CIT(A).

5. Ld. AR before us filed his written submissions, which read as under:-

1. *Only basis of addition is letter dated 21.12.2012¹ submitted to DDIT(Inv.) by the husband of assessee Shri Sunil Kumar and her brother in law Shri Sanjay Kumar Agrawal, mentioning that the cash deposits in account of five persons was made by these persons (page 2 of the assessment order, observations just after the table on the top) :-*
 - i) *If the money was owned by above named 2 persons, it was liable to be considered in their hands.*
 - ii) *Such letter dated 2.1.12.2011 was obtained from them under pressure. Both persons filed application before hon'ble Settlement Commission (ITSC) wherein it was stated that since the letter was forcibly obtained from them, it is not binding on them.*
 - iii) *The entries in the bank account of the 5 persons were explained before ITSC to be relating to hawala business of Shri Sunil Kumar Agrawal and all the transactions in the 5 bank accounts were considered for the purpose of offering additional income before ITSC (page no. 32 of PR, para 2.2). Income from hawala business appearing in the computation part of the order of ITSC (page no. 95 of PB).*
 - iv) *Shri Sunil Kumar Agrawal had received loan of Rs.20.94 crore from Karnimata Commerce I\ Ltd. (table on page no. 45 of PR). No addition on this account was made in the hands of Sunil Kumar Agrawal before ITSC.*
 - v) *Hon'ble ITSC specifically observed in para 31 of its order (page no. 80 of PB) that Department was not able to establish re-routing of funds as alleged and the inference drawn would not be warranted and that the department's assumptions are superfluous.*
 - vi) *Issue settled by ITSC. Different view could not have been taken here.*
2. *Disclosure letter dated 21.12.2011 accepted by ITSC to be not binding on the assessee and the allegation of paper company could not be substantiated by the Department before ITSC. Foundation of the addition is lost.*
3. *In support of loan, legal and cogent evidences submitted (page no. 4 to 24 of PB). All the evidences remained uncontroverted. Nothing brought on record to disprove these evidences. Burden cast upon the assessee u/s 68 discharged. No enquiry whatsoever by the AC) and the onus never shifted back to the assessee. In view of this, no addition could have been made. Reliance on: -*

- i) *CIT vs Orissa Corporation P. Ltd. (1986) 159 ITR 78 (SC) (PN 103 to 108 of PB).*
 - ii) *CIT vs Metachem Industries (2000) 245 ITR 160 (MP) (PN 109 to 112 of PR. relevant finding on PN 112. para 5).*
 - iii) *DCIT vs Rohini Builders (2002) 256 ITR 360 (Guj.), SLP dismissed vide 254 ITR (St.) 275 (PN 113 to 115 of PB).*
 - iv) *Claris Lifesciences Ltd. vs ACTT (2008) 112 ITD 307 (Ahd.) (PN 116 to 129 of PB, relevant finding on PN 123- last 5 lines).*
 - v) *ACIT vs M/s Sunder Nagar Filing Station (PN 130 to 133 of PB. relevant finding on PN 132).*
4. *CIT(A)'s action of sustaining 10% of addition is illogical and based on incorrect understanding of ITSC's order. ITSC did not sustain addition of 10% of loan from Karnimata Commerce. It estimated contract business income of applicants at 10%.*

CIT(A) misunderstood facts.

Applicants before ITSC rejected their own books & estimated contract business profit @ 8% of contract receipts.

Fact of suo moto rejection of books on PN 41 of PB, 2nd to 5th line from top.

It was this estimate of 8% which was revised to 10% voluntarily by them (PN 81 of PB, 1st para, last 3 lines)

Same conclusion in para 39.3 of ITSC's order, PN 91 of PB.

6. On the other hand, Id. Sr. DR, vehemently supported the orders of the authorities below.

7. We have considered the rival submissions and perused the relevant material available on record. On perusal of the assessment order as well as appellate order, we found that the assessee as well as other members of Radheshyam Agarwal Group have received certain amounts from M/s Karnimata Commerce Pvt. Ltd., Kolkata. The AO in the course of assessment proceedings found that there has been rerouting of the

money through various layers like the deposits in the name of persons of no means and the same had been deposited in the banks and after depositing in the bank, the amount had been transferred to M/s Karnimata Commerce Pvt. Ltd., Kolkata, a closely held company, from which the assessee had received Rs.1.00 crores on 29.06.2010. The AO treated the above amount as unaccounted income of the assessee by invoking provisions of section 68 of the Act, after relying on the statement of Mr. Sunil Agarwal, who is husband of the assessee, recorded u/s.132(4) of the Act and also statement recorded in response to summon issued u/s.131 of the Act. The relevant observations of the AO while making the addition in the hands of assessee in the order of AO are as under :-

"On perusal of the above details it can be seen that out of the fund transferred from other account to UBI account of Raigarh Branch being operated by Shri Sunil Kumar Agrawal. husband of the assessee and fund received by him in his individual capacity was surrendered as his undisclosed income vide his letter submitted by him before the JGT(Inv.). Raipur on 21.12.2011 as discussed above. On the other hand in this case also Smt. Seema Devi Agrawal wife of Shri Sunil Kumar Agrawal received unsecured loan of Rs.1.00 crore from the same company i.e. Karnimata Commerce Pvt. Ltd. and claims that this company is an NBFC company and assessed to tax having worth to the tune of Rs.23 crores hence the loan taken from the said company is genuine is not acceptable.

In nutshell the creditor has advanced unsecured loan to three persons of this group i.e. Shri Sunil Kumar Agrawal. M/s S.C.C. Investment and Smt. Seema Devi Agrawal. Major portion of the loan was received by Shri Sunil Kumar Agrawal in his individual capacity and surrendered before the JCIT(Inv.). Raipur vide his letter dated 21.12.2011 as discussed above. On perusal of the bank account as mentioned above it is seen that the fund advanced to the assessee as also earlier transferred from other account to the UBI, Raigarh branch account and out of this part of the fund was received in this case also whereas major portion was received in the case of Shri Sunil Kumar Agrawal which he surrendered as his undisclosed income. In his case Shri Sunil Kumar Agrawal has filed return on search period before the Settlement Commission and had surrendered huge amount as his undisclosed income. As mentioned above he was required to explain under which head how

much amount he had surrendered before the Settlement Commission for the search period but he has not disclosed these details before me on the ground that this is confidential. Moreover, he has not offered any explanation in respect of the treatment of amount received from Karnimata Commerce Pvt. Ltd. in his case whereas the JC'IT(Inv.). Raipur has observed in his appraisal report that dealyering of funds received by Shri Sunil Kumar Agrawwal from Karnimata Commerce Pvt. Ltd. in the grab of unsecured loan was attempted and extensive delayering excise has been carried out as a matter of hot-pursuit post search enquiries. The result of this exercise conclusively showed that the cash deposits in the accounts of Holiram Yadav. Chamar Singh Yadav and Laxmi Prasad Yadav has been routed to the account of Karnimata Commerce Pvt. Ltd.. Subsequently, on 21.12.2011, the assessee submitted a letter and owned up the funds belongs to him. Thus, the assessee miserably failed to discharge the initial onus laid down upon the assessee in terms of section 68 of the I.T. Act, 1961 i.e. creditworthiness and genuineness of the transaction was not proved.

7. The statement of Shri Sunil Kumar Agrawal, the key person, who was operating the bank account, made admission before the investigation wing. Thereafter Sunil Kumar Agrawal filed an application before the Settlement Commission Bench at Kolkata, which was decided on 28.09.2015. The operating part of the observations of the Settlement Commission, which has been incorporated by the CIT(A) in its order, as under :-

Para 27.2- The admitted position in view of the documents collected at the time of search in the form of loose papers, diaries and documents found, indicated that some purchases and bills of expenses were arranged from outside parties, which inflated either purchases or expenses under different heads. Consequent to such incriminating papers, the Settlement Application have been filed by the applicants in which the books of accounts maintained were therefore not reliable and were liable to be rejected. This being the admitted position, the books of account maintained in the manner maintained have been rejected by them, while these applications.

Para 27.3-The applicant's main thrust with reference to the unexplained cash credit regarding the bank accounts of Horilal, Chamar Singh, Laxmi Prasad, Bipin Mishra and Munish Kumar to route the unaccounted income back through specific transactions in the form of Kolkata based companies, as alleged by the CIT has been denied, as the Department has not been able to prove by

leading legal and cogent evidence to support the allegation. It has been submitted that the CIT had impliedly accepted this in para 3.3 of the Rule 9 report as per the applicant.

Para 30.1..... The Department on the basis of enquiries under section 245D(3) has submitted that on the basis of enquiries conducted details of information relating to Kolkata bases companies mentioned have been gathered and enclosed along with the, report as Annexure-VIII to X. In the case of Karnimata Commerce Pvt. Ltd. at Annexure-VIII, the applicant had paid no - interest to the company.

Para 30.3-..... The Pr. CIT vide his report dated 10.09.2015 admitted to analyze the balance sheet to show substantial increase in unsecured loans which did not possess the creditworthiness for advancing such loans. He reiterated that the unsecured loans were preplanned affairs and the amounts are not to be paid back to the Kolkata entities, although apparently so claimed in the books of account. This modus operandi of the applicants need to be noted as the applicants had not made full and true disclosure.

Para 39.3- To sum up in the cases of M/s Radhey Shyam Agrawal, Shri Sunil Kumar Agrawal and Shri Sanjay Kumar Agrawal, since the main allegation of the Department that the unaccounted money were routed back by way of unsecured loans could not have been established by the department, the Bench is of the considered view that an estimate of 10% in the cases of the above applicants will be in a more proper manner of working their income than making additions substantially in their hands.

8. Further the Settlement Commission in para 33 has held that Shri Sunil Agrawal was the key family member, who was handling funds on behalf of the other assessee/applicants. The relevant observations of the Settlement Commission is as under:-

33. It is further relevant to note that after considering all relevant facts, we note that substantial part of the income is derived by the three applicants from execution of Government contracts. The main person controlling the affairs of the group is, however, Shri Sunil Kumar Agrawal. The seized diary at Annexure BS-II/2/25 in the form of a diary has credit entries in the diary amounting to Rs.7,95,75,044/- and unaccounted business expenses of Rs.61,08,500/-. Though Shri Sunil Kumar Agrawal has submitted that he was doing 'hawala', for others, we have held that it is only an assertion. The 'undisclosed balance sheet' as on 1.03.2012 at APB 844 indicating 'Investment in Gold bullion' have to be seen in similar light. The undisclosed dealings in cash indicate that he was the key family member handling funds on behalf of other applicants.

9. It is observed that the assessee is wife of Shri Sunil Kumar Agrawal and Shri Sunil Kumar Agrawal in his oath on 17.10.2011 & 18.10.2011 before the JCIT(Inv.) Wing, Raipur has stated that he wished to voluntarily disclose an amount of Rs.22 crores. The details of amount received from Karnimata Commerce Pvt. Ltd., Kolkata by the different members/firm of this group are as under :-

Financial Year	Lender	Receiver	Amount
F.Y.2010-11	Karnimata Commerce Pvt. Ltd.	Sunil Kumar Agrawal	Rs.20.94 Crores
--do--	--do--	Smt. Seema Devi Agrawal	Rs.1.05 Crore
--do--	--do--	S.C.C.Investment	Rs.1.00 crores
F.Y.2011-12	--do--	Sunil Kumar Agrawal	Rs.1.65 crores

10. In view of the above, it is clear that the unsecured loan received by the assessee from Karnimata Commerce Pvt. Ltd. is also part of unaccounted money available with the group which was laundered and re-introduced in the grab unsecured loan through the bank account of the creditor and the assessee having failed to establish the genuineness of the transaction and creditworthiness of the creditor. Therefore, CIT(A) has rightly treated 10% of the amount credited in the books of account of the assessee as income of the assessee following the findings given by the Settlement Commission, thus, the Modus Operandi of the assessee cannot be treated differently than the Modus Operandi adopted by the members of the group. Accordingly, we do not see any reason to distinguish the case of assessee from the cases of other assessee's of the Group, where a considered finding of the Settlement Commission is already in place. Accordingly, we refrain ourselves from interfering with

the just and proper findings recorded by the CIT(A) in this regard. Thus, we uphold the same and dismiss ground No.1 of the assessee.

11. With regard to ground No.2 in respect of disallowance of Rs.75,342/- made by the AO on account of interest on unsecured loan, on perusal of the findings given by the Settlement Commission in this regard, we found that the assessee could not prove the creditworthiness of the lender company in view of the enquiry report submitted by the Pr.CIT, Central Circle. Since, the findings of Settlement Commission are applied in the case of assessee and a relief of 90% has already been given to the assessee on her unexplained income U/s 68 of the Act, no expense with respect to the said income can be further allowed. Thus, we are of the considered opinion that the interest paid with reference to the impugned unsecured loan of Rs.1,00,00,000/- cannot be allowed to the assessee and, therefore, we uphold the order of the CIT(A) on this ground. Accordingly, the ground No.2 of the assessee is also dismissed. Consequently, the appeal of the assessee is dismissed.

12. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 02/08/ 2022.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 02/08/2022

Prakash Kumar Mishra, Sr.P.S.(on tour)

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur