

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCH, 'B', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &  
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **186/CHD/2024**

निर्धारण वर्ष / Assessment Year : 2015-16

Radiant Cement Company Private Limited, Kala Amb, Sirmour	Vs. बनाम	The ITO, Nahan, Sirmour
स्थायी लेखा सं./PAN No: AAACR8765J		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

**S.A. No.12/Chd/2024**

(आयकर अपील सं./ ITA No. **186/CHD/2024**)

निर्धारण वर्ष / Assessment Year : 2015-16

Radiant Cement Company Private Limited, Kala Amb, Sirmour	Vs. बनाम	The ITO, Nahan, Sirmour.
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निर्धारिती की ओर से/Assessee by : Sh. Rohit Goel, CA  
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

सुनवाई की तारीख/Date of Hearing : 28.05.2024  
उदघोषणा की तारीख/Date of Pronouncement : 21.06.2024

**आदेश/Order**

**Per Dr. Krinwant Sahay, A.M.:**

Appeal in this case has been filed by the Assessee against the order dated 01.02.2024, of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi on following Grounds:

1. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making addition of Rs. 68,91,444/- on account of cash sales held to be unexplained cash during the year.*
2. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making double addition of Rs. 68,91,444/- by accepting the sales as genuine which was credited as Income by assessee but at the same time rejecting receipt of cash against the such sales and making addition of such cash receipt as unexplained cash.*
3. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making addition of Rs. 68,91,444/- on account of cash sales during the year without rejecting the audited books of accounts of assessee.*
4. *That learned CIT(A) (NFAC) has erred in law and on facts in confirming the actions of learned AO in making addition of Rs. 68,91,444/- in violation to principles of natural justice.*

5. *The appellant craves leave to add to or amend the aforesaid grounds before disposal of the appeal.*

2. Assessee has also filed a Stay Application No. 12/Chd/2023 for stay of demand.

3 First, we shall deal with the appeal of the Assessee. Appeal on Ground Nos. 1 to 4 are against the addition of Rs. 68,91,444/- on account of cash sales held to be unexplained cash and its confirmation by the Id. CIT(A).

4. Brief facts of the case are that the Assessee is engaged in manufacturing of Stainless-Steel Flats / Sheets i.e. Steel Product during the relevant period. While reporting about the business activity, the Assessee has stated, *‘with reference to nature of business activities it is submitted Assessee is engaged in manufacturing of stainless steel flat by using stainless steel scrap, manganese another consumables as raw material. That stainless steel scrap is first melted in the furnace chamber. The melted steel is processed for removing impurities, adding manganese metal alloy and other metal components as per the requirement of lot. The melted steel is molded for production of ingot. This ingot is further rolled for production of Flat which is a final product ultimately sold to the*

*customers*'. During the course of assessment proceedings, it was explained to the Assessing Officer that Assessee company had transferred the goods from Head office to Branch office at village Asgarpur, Kala Amb Road, District Yamuna Nagar (TIN 06811618488) on different dates starting from 27-1-2015 to 28-3-2015 for a total consideration of Rs. 73,03,800/-, that against these, goods worth Rs. 68,91,447/- plus VAT of Rs. 3,44,571/- totalling Rs. 72,36,018/- was sold against cash; that the goods sold were subject to VAT of 5% and duly declared and assessed by VAT authorities. The Assessing Officer telephonically made enquiry from M/s Krishna Steelage Private Limited a unit at Kalamb through its Accountant Mukesh who says that SS Flat is to be further processed before use for utensils and it is not justified for someone to purchase it in small quantity and on this basis Assessing Officer concluded that sales from Yamuna Nagar branch in cash is not justified. Again, neither such enquiry was ever confronted to assessee nor the Assessee was given opportunity to cross examine Mukesh. It was submitted that the learned Assessing Officer has relied on the decision in the case of 'CIT vs. Metal Products of India', 150 ITR 714 (P&H), wherein it is held that *'the Assessing Officer may gather information in any manner he likes, behind the back of the assessee and utilize the same*

*against the assessee, even if it does not, in all respects satisfy the requirements of the Indian evidence Act.*

5. After giving this finding, the Assessing Officer made an addition of the entire amount of cash sales from this unit at Village Asgarpur, Yamunanagar amounting to Rs. 68,91,444/-. The Ld. CIT(A) in his order has given his findings as under:-

*“4.9 The assessee is a manufacturer of Stainless Steel Flats (herein after referred to as S S Flats) as discussed in Para-3 above. The utility of said S S Flats have been verified and it is revealed that the said flats are basically still a raw material and have to undergo two other important processes before it can be utilized by a person who has a manufacturing unit of utensils. Telephonically information was obtained from one of the customers of the assessee namely M/s Krishna Steelage Pvt Ltd, who has a unit at Kalaamb Sh Mukesh, the Accountant of the unit stated that the S.S. Flats purchased by them from M/s Radiant Cement P Ltd, is a raw material for them and cannot be used by a utensil manufacturer directly, process of converting S. S. Flats to S. S. Patti is carried out at their unit M/s Krishna Steelage Pvt Ltd. Thus for a normal person, the finished product of S S Flats. The same has to be converted to S. S. Patti and the same to the Assessee is of no use. It was further stated by Sh. Mukesh, Accountant that they are dealing with the assessee regularly and the unit does not have the Hot Rolling Machine and Cold Rolling Machine and manufactures only S. S. Flats. No manufacturer having a Hot Rolling Mill or a Cold Rolling Mill will purchase the SS. flats in such a small*

*quantity, as is apparent from the other customers to whom the assessee has sold its finished product, which has been purchased in bulk. Further buying the S S Flats in small quantity, is not at all economically viable to the purchasers for further processing it through the Hot Rolling Machine and Cold Rolling Machine*

*.....it is held that the cash available with the assessee is not on account of the sales vouchers submitted by it in respect of its unit at Yamunanagar and is thus unexplained cash credit. The Hon'ble Punjab and Haryana High Court in case CIT vs. Metal Products of India (1985), 150 ITR 714 (P&H), has held that 'the AO may gather information in any manner he likes, behind the back of the assessee and utilize the same against the assessee, even if it does not, in all respects satisfy the requirements of the Indian Evidence Act. What is necessary is that he should have material upon which to base the assessment; "material" as distinguished from "evidence".'*

6. Accordingly, the ld. CIT(A) confirmed the addition made by the Assessing Officer.

7. During the proceedings before us, the ld. Counsel of the assessee brought on record following facts which is reproduced as under:-

- i. Assessee maintains the complete day to day books of accounts including cash book, ledger, stock ledger, purchase and sales vouchers, vouchers for expenses. There have been sufficient stock with the assessee and necessary

invoices have been issued and stock has been reduced with quantity of sales.

- ii Books of accounts are audited by a Chartered Accountant.
- iii That sales have been made from Himachal. As per Himachal VAT -XXVI-A under rule 61(1), under which complete details of sales with name and address, VAT details amount and other details of bills are to be uploaded on State Government online and such form is accompanied with the Trade Invoice and verified at the barrier. In the circumstances there was no option with the assessee to backdate the sale transaction.
- iv The books of accounts are accepted. At the same time learned AO has placed suspicion on cash received against sales. The basic principle is the same in the law relating to income-tax as well as in civil law, namely, that if there is no challenge to the transaction represented by the entries or to the genuineness of the entries, then it is not open to the other side -in this case the revenue to contend that that which is shown by the entries is not the real 'state of affairs. In the case of [2014] 42 taxmann.com 349 (Punjab & Haryana) HIGH COURT OF PUNJAB AND HARYANA Commissioner )f Income-tax, Patiala v. Dulla Ram, Labour Contractor "A bare reading of Section 68 of the Act would

reveal that it would not apply to a situation where account books have not (sic) been rejected." IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH ITA No. 194 of 1999 Date of decision: February 21, 2014 M/s S.V. Auto Industries, Phagwara v. Commissioner of Income Tax, Jalandhar and another "Concededly, books of accounts including stock register maintained by the assessee in the course of manufacturing process and business operations, have neither been doubted in their correctness nor have been questioned much less rejected under Section 145 of the Act. Once the books of accounts have not been doubted in their correctness and much less are rejected, there is absolutely no explanation coming forth from the revenue as to why the Assessing Officer as also the appellate authorities including the Tribunal went on to substitute their own judgment for the actual figures of wastage emerging from stock register and from the books of accounts of the assessee? When the books of accounts including stock register etc. have neither been rejected nor are doubted, accounts could not be by passed merely on the whims and fancies of the authorities.

5. It is a settled law that once the assessee has already included the amount of sale in Profit and Loss Account and determined the income on that basis no further addition could be made u/s 68 of the Act as it would tantamount to double taxation of same income.



8. The ld. DR relied on the findings given by the AO and the Ld. CIT(A).
9. We have considered the findings of the Assessing Officer and the Ld. CIT(A) as well as arguments of the ld. DR and arguments and submissions of the ld. Counsel of the Assessee.
10. The Ld. Counsel has further submitted that the Assessing Officer observed as under:

*“that telephonically enquiry was conducted from M/s Krishna Steelage Private Limited a unit at Kalamb through its Accountant Mukesh who says that SS Flat is to be further processed before use for utensils and it is not justified for someone to purchase in small quantity and on this basis AO concluded that sales from Yamuna Nagar branch in cash is not justified. Again neither such enquiry was ever confronted to assessee.*

11. We find that the assessee maintains the complete set of books of account including cash book, ledger, stock register, purchase and sales vouchers etc. It is also on record that the books of account of the assessee were audited by a Chartered Accountant. Further, it is seen that sales have been made from Himachal as per Himachal VAT XXVI-A under Rule 61(1) under which complete details of sales with name and address, VAT details with amount and other details of bills are uploaded on a State Government online and the same are accompanied with the trade invoice

and they are verified at toll barrier. Keeping in view all this, the sale of goods and its movement from Himachal Pradesh to Village Asgarpur, Yamunanagar cannot be denied. We further find that the Assessee's books of account have been accepted by the Assessing Officer. The only suspicion has been put on cash received against sales. In fact, there is no challenge to the transaction reported by entries or its genuineness, then it is not open to other side or for the Revenue to conclude that such entries of sales are not genuine. As it has also been brought on record by the Id. Counsel of the Assessee that sales realisation cannot be treated as deemed income u/s 68 of the Act. It is a settled law that once the assessee has included the amount of sales in its profit and loss account and determined the income on that basis, no further addition can be made u/s 68 of the Act as it would amount to double taxation of same income.

12. The Assessing Officer in his assessment order has cited the case of 'CIT Vs Metal Products of India', 150 ITR 714 (P&H), wherein it is held that 'the Assessing Officer may gather information in any manner he likes, behind the back of the assessee and utilize the same against the assessee, even if it does not, in all respects satisfy the requirements of the Indian evidence Act. The Counsel of the Assessee has further argued

that the plain reading that Section 142(3) of the Act of the Income Tax Act clearly says that *‘The assessee shall, except where the assessment is made under section 144, be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry under sub-section (2) [or any audit under sub-section (2A)] and proposed to be utilised for the purposes of the assessment.’*

13. We have considered the case laws put by the Assessing Officer in his assessment order particularly in the case of ‘CIT vs. Metal Products of India’ (supra). Here, in this case the profit of the Assessee was very high even more than 50% of the turn over but in the instant case, the Counsel of the Assessee has contended that the profit is very low as low as 2% to 5% only, so, the issue decided in the case of Metal Products of India (supra) may not be applied to the instant case. Further, the Counsel of the Assessee has brought on record the case law of ‘Kishanchand Chellaram vs. CIT’, 125 ITR 713, in which the Hon'ble Supreme Court has held that any material collected at the back of the Assessee and not confronted and no opportunity given to cross-examine, such material cannot be relied upon against the Assessee.

14. Finally, after taking into consideration all the facts, findings of the Assessing Officer and the CIT(A), and submissions as well as arguments

put forward by the Counsel of the Assessee, in our view, the confirmation of addition of Rs. 68,91,444/- cannot be sustained. Accordingly, Assessee's appeal on Ground Nos. 1 to 4 are allowed.

15. Appeal on Ground No. 5 is general in nature.

16. In the result, appeal of the Assessee is allowed.

**Stay No. 12/Chd/2024**

17. Since the appeal of the Assessee has been decided on merits, the Stay Application filed by the Assessee has become infructuous and the same is accordingly dismissed as infructuous

Order pronounced on 21.06.2024.

Sd/-

Sd/-

**( A.D. JAIN )**  
**Vice President**

**(DR KRINWANT SAHAY)**  
**Accountant Member**

“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,  
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar