

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH-SMC " A "**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

I.T.A. No.374/Bang/2017 (Assessment Year : 2011-12)		
Smt. Manjushree, No.6, 12 th Cross, Vasantha-Vallabha Nagar, Subramanyapura Post, Bengaluru-560 061 PAN AIVPM 5615L	Vs.	Income Tax Officer, Ward 10(2), Bengaluru.
Appellant		Respondent.

Appellant By : Shri P. Dinesh, Advocate. Respondent By : Shri AR.V.Sreenivasan, JCIT (D.R)

Date of Hearing : 23.03.2017.

Date of Pronouncement : 28.04.2017.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the order dt.15.12.2016 of Commissioner of Income Tax (Appeals) for the Assessment Year 2011-12.

2. The assessee has raised the following grounds :

1. The order of the learned CIT (A) insofar as it is prejudicial to the interest of the appellant, is bad and unsustainable in the eye of law.

2. CIT(A) ought to have appreciated that for the purposes of S.68 of the it is the amount/sum credited in the books of accounts and not pass book as held by various courts; and hence the addition was bad in law.
3. Without prejudice, the CIT(A) ought to have appreciated that the appellant had discharged the burden of offering explanation about the deposit in bank (joint)account, had identified source, the creditor and the transaction and hence the addition as made by the AO was unsustainable in the eye of law.
4. Without prejudice, the CIT(A) ought to have appreciated that the appellant had explained the whole transaction as appearing in the pass book & the AO having not found any evidence contrary but for merely alleging as "after thought", hence the addition which is without basis is liable to be deleted.
5. Without prejudice, the CIT(A) ought to have appreciated that even the ratio decidendi of the Apex court in the case of CIT .Vs. P.K. Noorjahan was also applicable and ought to have deleted the addition.
6. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.

3. The only issue raises in this appeal by the assessee is whether in the facts and circumstances of the case the CIT (Appeals) is erred in confirming the addition made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 (in short 'the Act') on account of cash deposited in the bank account. During the assessment proceedings, the Assessing Officer found from the AIR information that cash deposit aggregating to Rs.35,13,300 was made in the S.B. A/c. of the assessee which was jointly operated by her husband **Mr. S. Babu**

Rao and her son Mr. B. Chetan. The Assessing Officer called for explanation with regard to the deposit in cash from the assessee. In response the assessee explained that the money was deposited by the account holders, the break up of the deposits was given. Subsequently, the assessee filed revised statement vide letter dt.20.11.2013, the break up of the cash deposit made in the bank account as under :

i. Shri Babu Rao	Rs.63,500.
ii. Shri B. Chethan	Rs.3,41,000.
iii. Smt. Manjushree	Rs.31,02,500.

In this regard, the assessee stated that She has sold agriculture land on 23.06.2008 for Rs.46,99,500. The sale consideration was held in cash and the same was utilized for making cash deposits in the bank account. The assessee has again revised the break up of the cash deposit made in the bank account as under :

i. Shri Babu Rao	Rs.3,99,500.
ii. Shri B. Chethan	Rs.3,31,000.
iii. Smt. Manjushree	Rs.30,62,500.

The Assessing Officer rejected the claim of the assessee and source of the deposit as sale consideration of agriculture land. However the Assessing Officer accepted the explanation furnished by **Mr. B. Chetan** to the extent of

Rs.3,31,000 as well as the explanation furnished by **Mr. S. Babu Rao**, the husband of the assessee to the extent of Rs.3 lakhs. The Assessing Officer had also accepted the explanation furnished by the assessee to the extent of Rs.5 lakhs. Accordingly, the Assessing Officer has accepted the source of deposit of cash to the extent of Rs.11,31,000 and made the addition of the balance of Rs.27,23,100. The assessee challenged the action of the A.O. before the CIT(Appeals) and contended that the assessee was having opening cash balance of Rs.6,23,364 as on 1.4.2010 and subsequent cash withdrawal made by her from her bank account. The CIT (Appeals) did not accept the explanation of the assessee on the ground that the assessee has changed her stand from sale of land to opening cash balance and withdrawal from bank account. Hence the CIT (Appeals) has confirmed the addition made by the Assessing Officer.

4. Before us, the learned Authorised Representative has submitted that when the assessee has explained the source of deposit as sale consideration of land amounting to Rs.46,99,500 and further the assessee also explained that there was opening balance of cash of Rs.6,23,364 as on 1.4.2010 apart from cash withdrawal from her bank account are more than sufficient to explain the source of the deposit in the bank. The learned Authorised Representative has further contended that the transaction of sale of agriculture land has not been

disputed by the Assessing Officer however because of the time gap the availability of cash with the assessee has denied.

5. The second leg of argument of the learned Authorised Representative is the provision of Section 68 cannot be applied in the case of deposit in bank account as it was not a credit in the books of accounts. The learned Authorised Representative has then relied upon the decision of the co-ordinate bench of this Tribunal dt.8.9.2016 in the case of **Mrs. Farha Kausar Vs. ITO** in ITA No.1059/Bang/2016 and submitted that the Tribunal has held that Section 68 can be invoked only in the case of cash credit in the books of accounts. The bank passbook cannot be treated as books of accounts and therefore no addition can be made under Section 68 of the Act when there is no credit in the books of accounts. He has also relied upon the decision of Delhi Bench of Tribunal dt.8.2.2013 in the case of **Vijendra Kumar Jain & Sons (HUF) Vs. ITO** in ITA No.1315/Del/2011. Thus the learned Authorised Representative has submitted that the provisions of Section 68 cannot be invoked in the hands of the assessee.

6. On the other hand, the learned Departmental Representative has submitted that the Assessing Officer has already allowed the source explained by the assessee to the extent of Rs.5 lakhs and further to the extent of Rs.3

lakhs deposit made by the husband of the assessee and Rs.3,31,000 by the son of the assessee. He has relied upon the decision of Hon'ble High Court of Allahabad in the case of **Smt. Renu Aggarwal Vs. ITO** 358 ITR 483. In rejoinder the learned Authorised Representative has submitted that the decision of Hon'ble Allahabad High Court has decided the issue of jurisdiction of the Tribunal under Section 254(2) of the Act and not on the applicability of the provisions of Section 68.

7. Having considered the rival submissions as well as the relevant material on record, it is noted that the Assessing Officer has accepted the source of the deposit in the bank account to the extent of Rs.11,31,000 out of total deposit of Rs.37,93,000. Thus addition was made by the Assessing Officer of Rs.27,23,100 under Section 68 of the Act. The assessee explained the source of deposit as sale consideration of the agriculture land for Rs.46,99,500. The Assessing Officer did not accept the said explanation due to the reason that the agriculture land was sold in the year 2008 and there is no explanation why this cash was not deposited in the bank account prior to this year. Before the CIT (Appeals) it was submitted that apart from the sale consideration there was a cash balance of Rs.6,23,364 as on 1.4.2010 and there was cash withdrawals made by the assessee from her bank account. The CIT (Appeals) has not

accepted this explanation because of the change of stand by the assessee. It is pertinent to note that the Assessing Officer has not disputed the sale of agriculture land on 23.6.2008 for a consideration of Rs.46,99,500. Therefore when this amount of sale consideration was not utilized by the assessee for any other purpose then merely because the assessee has not deposited this amount in the bank prior to this year cannot be a reason for denial of explanation. Accordingly, when the assessee was having sufficient cash with her as a sale consideration of agriculture land then the same cannot be ignored or denied as a source of deposit in the bank.

8. Further there is no dispute that this is a transaction of deposit in the bank therefore the issue of applicability of Section 68 arises in view of the various decisions of this Tribunal as well as the decision of Hon'ble Bombay High Court in the case of **CIT Vs. Bhaichand N Gandhi** 141 ITR 67. The co-ordinate bench of this Tribunal vide order dt.8.9.2016 in the case of **Mrs. Farah Kausar Vs. ITO** (supra) after considering a series of decisions on this point has held in paras 10 to 12 as under :

"10. We have heard both parties.

10.1 In the present case the Assessing Officer/CIT (Appeals) has acted merely on suspicion and assumption, there was no material on record to suggest that the explanation furnished by the assessee was not satisfactory.

11. *In the case of Kamal Kumar Mishra in ITA No.398/LKW/2012, it is held as under :*

The aforesaid provisions of [section 68](#) of the Act can only be invoked 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. In that eventuality, the said sum so credited may be charged to income-tax as the income of the assessee of that previous year. Meaning thereby maintenance of books of the assessee, in which credit entry so found, is a condition precedent for invoking the provisions of [section 68](#) of the Act. Now the question arises whether the passbook issued by the bank with regard to the accounts of the assessee can be termed to be the books of the assessee for the purpose of [section 68](#) of the Act. This issue was examined by the Hon'ble Bombay High Court in the case of [CIT vs. Bhaichand N. Gandhi](#) (supra) and while answering the question i.e. whether on the facts and circumstances of the case, the Tribunal was justified in holding that cash credit for the previous year shown in the assessee's bank passbook issued to him by the bank, but not shown in the cash book maintained by him for that year does not fall within the ambit of [section 68](#) of the Act and as such the sum so credited is not chargeable to income tax as the income of the assessee of that previous year, their Lordships of the Hon'ble Bombay High Court categorically held that passbook supplied by the bank to the assessee could not be regarded as book of the assessee, that is, a book maintained by the assessee or under his instruction. The relevant observations of the Hon'ble Bombay High Court are extracted hereunder:-

"[In Baladin Ram v. CIT](#) [1969] 71 ITR 427, it has been held by the Supreme Court that it is now well settled that the only possible way in which income from an undisclosed source can be assessed or reassessed is to make the assessment on the basis that the previous year for such an income would be the ordinary financial year. Even under the provisions embodied in s.68 of the said Act it is only when any amount is found credited in the books of the assessee for any previous year that the section will apply and the amount so credited may be charged to tax as the income of that previous year, if the assessee offers no explanation or the explanation offered by him is not satisfactory.

As the Tribunal has pointed out, it is fairly well settled that when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary. Applying this principle, the pass book supplied by the bank to its constituent is only a copy of the constituent's account in the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent, nor can it be said that the pass book is maintained by the bank under the instructions of the constituent. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his

instructions. In our view, the Tribunal was justified in the conclusions at which it arrived."

In the case of [Anand Ram Ratiani vs. CIT](#) (supra), the Hon'ble Gauhati High Court has also held that perusal of [section 68](#) of the Act shows that in relation to expression "books", the emphasis is on the word "assessee" meaning thereby that such books have to be the books of the assessee himself and not of any other assessee. In that case, the books of account of the partnership firm were not treated as those of the individual partner and accordingly the additions made in the hands of the individual partners on the basis of the books of the partnership firm was deleted.

In the instant case, it is an undisputed fact that the assessee has not maintained any books of account and whatever credit entries are found by the Assessing Officer, it was from the bank accounts of the assessee in which deposits were made at different point of time. Even the passbook issued by the bank cannot be termed to be the book of the assessee as per the judgment of the Hon'ble Bombay High Court [CIT vs. Bhaichand N. Gandhi](#) (supra). Therefore, provisions of [section 68](#) of the Act cannot be invoked on various deposits/credits found recorded in the bank account of the assessee in the absence of books of the assessee maintained for that previous year.

The Id. CIT(A) has adjudicated the issue in the light of the aforesaid judgment and has held that provisions of [section 68](#) of the Act cannot be invoked. Besides, he has also examined the additions made by the Assessing Officer through grounds No.1 to 6 on merit also and has noted that in each and every case the assessee has furnished plausible and reasonable explanations with respect to the deposits found recorded in the bank passbook of the assessee and on merit also the Id. CIT(A) did not find any justification in the additions made by the Assessing Officer. Though we are of the view that provisions of [section 68](#) of the Act cannot be invoked on the deposits made in the bank account of the assessee, yet we have examined the veracity of the additions made by the Assessing Officer on certain deposits by invoking the provisions of [section 68](#) of the Act and we find that before the Id. CIT(A) the assessee has furnished reasonable and plausible explanations along with confirmation with regard to the different deposits. Since the Id. CIT(A) has adjudicated the issue on merit also in the light of the explanations and confirmations placed before him, in a proper perspective and we find no infirmity therein, we confirm the same. Accordingly, finding no merit in the Revenue's appeal, we dismiss the same.

In the result, appeal of the Revenue and Cross Objection of the assessee are dismissed.

12. Respectfully following the decision of the Tribunal in the case of Kamal Kumar mishraa (supra), we allow the appeal of the assessee."

9. A similar view has been taken by the Delhi Bench of Tribunal in the case of

Vijendra Kumar Vs. ITO (supra) in paras 7 & 8 as under :

7. Similar view has been taken by Hon'ble Gauhati High Court in the case of Anand Ram Rai Tani vs. CIT in which it was held that: -

"223 ITR 544 Anand Ram Raitani vs. CIT(Gau.): We have gone through sec. 68 of the Act. The AO before invoking the power u/s 68 of the Act must be satisfied that there are books of account maintained by the assessee and the cash credit is recorded in the said books of account and if the assessee fails to satisfy the AO, the said sum so credited has to be charged to income tax as the income of the assessee of that previous year. The existence of books of account is a condition precedent for invoking of the power. Discharging of burden is a subsequent condition. If the first point is not fulfilled the question of burden of proof does not arise. The AO made the assessment by making addition of the amount for which disallowance was claimed. Mr. Bhuyan very candidly admits that addition was made in exercise of the power u/s 68 of the Act, therefore, the first condition necessary for invocation of the power is the existence of the books of account."

8. Similar view has been taken in the case of CIT vs. Bhai Chand Gandhi by Hon'ble Mumbai High Court in which there held that Pass Book supplied by the bank to the assessee cannot be regarded as the book of the assessee. Therefore, cash credit for the previous year shown in the assessee's bank Pass Book but not shown in the cash book maintained by the assessee for that year does not fall within their ambit of section 68 of the Income Tax Act, 1961. No contrary decision was brought to our knowledge by the ld. DR on this aspect. Therefore, in our opinion no addition can be made u/s 68 only on this basis that the amount credited in the Pass Book is not the book maintained by the assessee. We, therefore, on this basis itself the addition made should have been deleted.

10. As regards the decision of Hon'ble Allahabad High Court in the case of

Smt. Renu Aggarwal Vs. ITO (supra) the said decision is on the question of

dismissal of the application of the assessee under Section 254(2) and not on

applicability of Section 68. Therefore the Hon'ble High Court though made an

observation that in case Section 68 is not applicable the provisions of Section

69 would be applicable, however, the question before the Hon'ble High Court is only with regard to the jurisdiction of the Tribunal under Section 254(2) of the Act in the proceedings of order giving effect to the Third Member forming the majority view.

10. In view of the above facts and circumstances of the case as well as the decision of co-ordinate bench of this Tribunal, the addition made under Section 68 of the Act is deleted.

11. In the result, the appeal of the assessee is allowed.
Order pronounced in the open court on 28th April, 2017.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Bangalore,
Dt. 28.04.2017.

*Reddy gp

Copy to :

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Assistant Registrar
Income Tax Appellate Tribunal
Bangalore.