

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

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.113/CTK/2017
Assessment Year : 2013-14

Satya Narayan Pradhan, At/PO: Handidhua Chhak, SD-Talcher, Angul.	Vs.	ITO, Angul Ward, Angul
PAN/GIR No. ALGPP 5974 P		
(Appellant)	..	(Respondent)

Assessee by : Shri S.S.Padhy, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 09 /08/ 2017
Date of Pronouncement : 11 /08/ 2017

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-2, Bhubaneswar, dated 16.12.2016 for the assessment year 2013-14.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the addition of Rs.9,00,000/- u/s.69 of the Act.

3. The brief facts of the case are that the Assessing Officer found that the assessee has made cash deposit of Rs.9,00,000/- on 5.7.2012 in his IDIBI account. The assessee was required to explain the source of such deposit. The assessee submitted that he had declared income u/s.44AE of the Act and he did not maintain the books of account and, therefore, it was difficult for him to explain the source of cash deposit. The assessee

also informed the Assessing Officer that he had four trucks and the source of cash of Rs.9,00,000/- was from the income of these trucks. The Assessing Officer did not accept this explanation of the assessee. On analysing the bank account of the assessee, he observed that large receipts of Rs.3,00,000/- and Rs.1,50,000/- are through RTGS and NEFT transfer. The Assessing Officer noted that that the chances of cash receipts are more in local transport, but there is also cash expenditure. There is no large withdrawal from the bank account to explain the deposit of Rs.9,00,000/- on 5.7.2012. He observed that substantial withdrawals are only on two occasions of Rs.48,500/- on 5.6.2012 and 10,000/- on 8.6.2012. Considering all these aspects, the Assessing Officer concluded that the source of cash deposit of Rs.9,00,000/- is unexplained and added the same to the income of the assessee.

4. On appeal before the CIT(A), the assessee repeated the submission made before the Assessing officer.

5. The CIT(A) confirmed the action of the Assessing Officer by observing as under:

"3.3 I have examined the assessment order as well as the submissions made by the appellant during the course of appeal proceedings. It is seen that the appellant has deposited cash of Rs. 9,00,000/- on 05.07.12 and on the same day this amount was utilised for investment in fixed deposit. The appellant has four trucks and he has disclosed income of Rs. 6,00,000/- from these trucks. This amount will be required by the appellant for running his household and other expenses. There are no sufficient withdrawals from which the source of cash deposit of Rs. 9,00,000/- can be explained. The appellant has not furnished cash flow statement from which the availability of cash for depositing in bank could be ascertained. The appellant has relied upon the decision of Hon'ble ITAT in the case of Nand Lai Popli in ITA No. 1161 and ,162/Chd/2013 and

in the case of Manasi Mahendra Patkar (2016) 73 taxmann.com 68 (Mumbai Trib.). In the case of Nand Lai Popli. the issue was whether addition of unexplained expenditure u/s. 69C could be made when the income is declared u/s. 44AD on presumptive basis. This is not the issue in the case of the appellant. In the case of Manasi Mahendra Pitkar the issue was whether a bank pass book is a 'book' maintained by the appellant for the purpose of section 68. In this case, the assessing officer has held that the cash deposit in bank which has been converted into fixed deposit is an unexplained investment of the appellant u/s. 69 of the I.T. Act, 1961. Therefore, the case laws relied upon by the appellant are not applicable to the case of the appellant.

3.4 This issue was before Special Bench of Hon'ble Tribunal (Delhi) in the case of s. Deputy Commissioner of Income Tax(2008) reported in 113 ITD 377 (Delhi)(SB). The Hon'ble Tribunal has held that where the assessee is not maintaining any books of account, though section 68 will not be applicable, yet cash deposit in bank should be explained by the assessee under section 69 or section 69B and when the appellant by any clinching evidence, fails to show nature and source of money deposited into his bank account, it should be added as assessee's unexplained income. The relevant portion of the judgement is reproduced below:

"Though section 68 might not be strictly applicable since the assessee was not maintaining any books of account and the bank statement could not be considered as the assessee's books of account, on the basis of the judgment of the Supreme Court in the case of A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807, it is the onus on the assessee to explain the cash received by him and if there is no explanation or acceptable evidence to prove the nature and source of the receipt, the amount may be added as the assessee's income on general principles and it is not necessary to invoke section 68 nor is it necessary for the income-tax authorities to point out the source of the monies received. Even if section 68 is not applicable in such cases, the cash deposit in the bank can be asked to be explained by the assessee under section 69 or section 69B. In the absence of any clinching evidence to show the nature and source of the monies deposited into the bank account which belonged to the assessee, the Assessing Officer was justified in adding the amount of Rs. 15 lakhs as the assessee's unexplained income."

3.5 The decision of Hon'ble High Court of Punjab and Haryana is also on this issue and is in favour of the revenue in the case of Sudhir Kumar Sharma(HUF) vs. Commissioner of Income-tax-III, Ludhiana (2014) reported in 46 taxmann.com 340 (Punjab & Haryana). The head notes are as below: -

"Section 68 of the Income-tax Act, 1961 - Cash credits (Cash deposits) -Assessment year 2007-08 - During assessment proceedings, Assessing Officer noticed that assessee had deposited huge amount of cash in his bank account -In view of failure of assessee to explain source of said deposits, Assessing Officer added

amount so deposited to assessee's taxable income by invoking provisions of section 68 - Tribunal confirmed said addition - Whether since various amounts in cash were deposited in bank account of assessee, onus was upon assessee to explain nature and source of said cash deposits - Held, yes -Whether since assessee failed to give list of persons who advanced cash to him along with their confirmation in respect of said cash credits, impugned addition was to be confirmed - Held, yes [Para 9] [In favour of revenue] "

3.6 The decision of Hon'ble High ITAT Agra Bench (Third Member) is also on this issue and is in favour of the revenue in the case of Smt. Renu Agrawal vs Income Tax Officer, 3(3), Mathura (2012) reported in 22 taxmann.com 94(Agra). The relevant portion is reproduced as below:

" Even if the assessee is technically taken to be not 3.7 maintaining any books of account in relation to the passbook entries, it must be appreciated that the passbook credits have ultimately gone into the books of the assessee by way of credit in capital account as found by the Accountant Member. The addition could very well be justified even under section 69. It is for the assessee to prove the sources of the credits in the bank account as the bank itself has acknowledged that the assessee has an asset in the form of credits in the passbook. It is only for this reason that the assessee ventured into furnishing the evidence in support of the claims of gifts slated to have been received by her. The assessee being found to be the owner of a particular asset is definitely under the obligation to disclose all the sources thereof to the satisfaction of the tax authorities. So, the quarrel whether it is section 68 or section 69 should not make a difference having regard to the subsisting obligation of the assessee to explain all the credits and sources of the investments found by the Revenue. The Judicial Member was unnecessarily in haste to get into the case laws without properly appreciating the facts of the case. The record that was produced by the assessee before the authorities and before the Tribunal is sufficient to indicate the fact relating to the maintenance of the books of account by the assessee, as discussed by the Accountant Member. Therefore, deleting the addition only on the legal grounds without appreciating the facts on record does not bring proper result. To this extent, the view of the Judicial Member cannot be appreciated. [Para IJ]"

3.7 I am in agreement with the AO that the investment of Rs.9,00,000/- in fixed deposit is unexplained. The addition made by the AO is confirmed and the grounds of appeal are dismissed."

6. Before me, Id A.R. reiterated the submission made before the lower authorities. He submitted that Rs.9,00,000/- was the accumulated receipts from transportation business, which was deposited by the

assessee in his bank account. It was, therefore, his submission that the assessee has shown income from four trucks owned by it u/s.44AE of the Act and hence, no addition was called for.

7. Ld D.R. on the other hand supported the orders of lower authorities and argued that the assessee could not satisfactorily explain the source of cash deposit either before the Assessing Officer or before the CIT(A) and, therefore, addition was fully justified. Ld D.R. further submitted that it will be observed from the order of the CIT(A) that the assessee submitted before him that as the assessee was not maintaining books of account, therefore, it was difficult for him to explain the source of cash deposit.

8. I have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts are that the Assessing Officer during the course of assessment proceedings, observed that the assessee has made cash deposit of Rs.9,00,000/- on 5.7.2012 in his bank account maintained with IDBI Bank. The assessee could not satisfactorily explain the source of the deposit before the Assessing Officer. Therefore, the Assessing Officer added the same to the income of the assessee u/s.69 of the Act.

9. Before the CIT(A), the assessee submitted that he was not maintaining books of account and, therefore, it was difficult for him to explain the source of cash deposit in the bank. Therefore, the CIT(A) confirmed the action of the Assessing Officer.

10. Before me, Id A.R. submitted that Rs.9,00,000/- was the accumulated receipts of his transportation business, which was deposited by the assessee in the bank account. When questioned by the Bench where are the bills for transportation charges to demonstrate that Rs.9 lakhs was the transportation business receipts of the assessee, Id A.R. expressed his inability to produce the same.

11. In the above facts and circumstances of the case without any evidence being produced before me, the contention of Id A.R. that Rs.9 lakhs was the receipts of his transportation business cannot be accepted. I, therefore, find no good and justifiable reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the assessee is dismissed.

12. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 11 /08/2017.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 11/08/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant : Satya Narayan Pradhan, At/PO:
Handidhua Chhak, SD-Talcher, Angul.
2. The Respondent. The ITO, Angul Word, Angu
3. The CIT(A) -2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack

