

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
 INDORE BENCH, INDORE  
 BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
 AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.339/Ind/2016  
 Assessment Year: 2011-12**

Shri Sourabh Jain 101-A, Ganga Nagar, A.B.Road, Dewas	Vs.	Income Tax Officer, Dewas
(Appellant)		(Respondent )
<b>PAN No.AGHPJ1855F</b>		

Respondent by	Shri K.G. Goyal, Sr.DR
Appellant by	Shri Hitesh Chimnani,CA (AR)
<b>Date of Hearing:</b>	<b>08.01.2018</b>
<b>Date of Pronouncement:</b>	<b>16.01.2018</b>

**ORDER**

**PER MANISH BORAD, AM.**

This appeal filed by the Assessee is directed against the order of Id. Commissioner of Income-tax (Appeals), Ujjain [in short referred to as the CIT (A)] dated 22.01.2016 arising out of the order u/s 143(3) of the Income Tax Act dated 28.02.2016 framed by the Income Tax Officer, Dewas pertaining to Assessment Year 2011-12.

2. The assessee has raised following grounds of appeal.

*“1 On the facts and the circumstances of the case the Ld.CIT(A) has erred in appreciating the fact the Bank account in Dena Bank belongs to co-owner Shri Kailash Jain and amount deposited in said account pertains to him, as evidenced by registry of property sold by Kailash Jain (co-owner) Total amount of Rs.13,21,200/-*

*2. On the facts and the circumstances of the case the Ld.CIT(A) further erred in making addition of total deposit made in other two accounts (Axis Bank Rs.61,38,545/-) which pertains to construction & bill discounting activities of the assessee and income of which is offered in Income Tax return, assessed has produced all necessary evidences before A.O and is on record.*

*3. On the facts and the circumstances of the case the Ld.CIT(A) has not decided upon legal objection on applicability of sec. 68 in this matter.*

*4. Consequently, interest u/s 234B, 234C is wrongly calculated and need to be amended”.*

3. Briefly stated facts as culled out from the records are that the assessee is an individual engaged in civil construction business as well as bill discounting. Return of income filed on 29.08.2011 declaring total income of Rs.2,13,562/-. Case selected for scrutiny. Notices u/s 143(2) and 142(1) of the Act were duly served upon the assessee. Information received by the department about the alleged cash deposits in the bank account held with Dena Bank and Axis Bank totaling to Rs.74,59,745/-. Information was called for from the assessee. However, on behalf of the assessee the family member replied as the assessee has gone abroad for employment. Two of the bank accounts was jointly held with assessee's father. Statement of father was recorded on 31.01.2014 wherein he categorically stated that all the transactions in the impugned bank account relates to assessee, accordingly the Ld.A.O completed the assessment assessing income of Rs.76,73,310/- after making

addition u/s 68 of the Act for unexplained cash credit of Rs.74,59,745/-.

4. Assessee filed appeal before the Ld. CIT(A) but failed to succeed and impugned addition was sustained. Now the aggrieved assessee is in appeal before the Tribunal raising various grounds.

5. We First take up Ground No.1.

*1.On the facts and the circumstances of the case the Ld.CIT(A) has erred in appreciating the fact the Bank account in Dena Bank belongs to co-owner Shri Kailash Jain and amount deposited in said account pertains to him, as evidenced by registry of property sold by Kailash Jain (co-owner) Total amount of Rs.13,21,200/-*

6. The Ld. Counsel submitted that the bank account held with Dena Bank jointly belongs to Kailash Chand Jain, father of the assessee. During the year i.e. on 18.11.2010, Kailash Chand Jain sold the property situated at Plot No.127, Ward-9, Ganga Nagar Colony, Dewas which for a consideration in cash of Rs.12,31,000/- and this amount was deposited in Dena bank account. He further submitted that Kailash Chand Jain has shown this transaction of sale of plot in his income tax return and therefore this amount should not be treated as unexplained.

7. On the other hand the Ld. Departmental representative vehemently argued and supporting the order of lower authorities and further added that Shri Kailash Chand Jain has himself denied of any such transaction in the statement given before the Ld. Assessing Officer.

8. We have heard the rival contentions and perused the records placed before us. In Ground No.1 the assessee has challenged the action of Ld.CIT(A) confirming the addition of Rs.13,21,200/- .

9. After going through the submissions of Ld. Counsel as well as perusing the related pages in the paper book we find that the assessee holds account with Dena Bank jointly with his father Kailash Chand Jain. Cash of Rs.13,21,200/- alleged to have been deposited. The property situated at Ward No.9, Ganga Nagar Colony, Dewas owned and possessed by Kailash Chand Jain was sold during the year on 18.11.2010. As per the sale agreement Kailash Chand Jain received sale consideration in cash at Rs.12,31,000/-. These facts goes un un-rebutted by the Revenue authorities. Further Kailash Chand Jain has verified all these details including sale of plot of land on the affidavit filed before the lower authorities. We therefore under the given facts and circumstances of the case are of the view that out of total cash deposited of Rs.13,21,200/- we are satisfied with the explanation for depositing cash of Rs.12,31,000/- which the assessee's father received from sale of plot of land. The remaining amount i.e Rs.90,200/- (Rs.13,21,200/- (-) Rs.12,31,000/-), in our view is also deemed to the part of gross turn over of Rs.7,20,000/- shown by the assessee in the profit and loss account attached with the income tax return. We therefore delete the addition of Rs.13,21,200/- and allowed Ground No.1 of the assessee.

10. Now we take up Ground No.2 and 3.

*2. On the facts and the circumstances of the case the Ld.CIT(A) further erred in making addition of total deposit made in other two accounts (Axis Bank Rs.61,38,545/-) which pertains to construction & bill discounting activities of the assessee and income of which is offered in Income Tax return, assessed has produced all necessary evidences before A.O and is on record.*

*3. On the facts and the circumstances of the case the Ld.CIT(A) has not decided upon legal objection on applicability of sec. 68 in this matter.*

11. The Ld. Counsel for the assessee arguing on the legality of the applicability of section 68 of the Act on the alleged cash deposits of Rs.61,38,545/- in the Axis Bank pleaded that the assessee is not maintaining any regular books of accounts therefore section 68 is not applicable. Further on merits it was pleaded that the alleged cash deposits are part of the business receipts as contractor and bill discounting. He further submitted that the Ld.A.O should have calculated the peak credit of the cash in hand with the assessee rather than adding the total amount of cash deposited.

12. On the other hand the Ld. Departmental Representative submitted that the assessee has not been able to prove that the alleged cash deposits are on account of business receipts or in the alternative the same cash has been withdrawn and deposited and therefore no benefit of peak credit should be allowed.

13. We have heard rival contention and perused the records placed before us. There is no dispute to the fact that cash of Rs.61,38,545/- was deposited in two bank accounts held with Axis Bank out of which one was jointly owned with his father Kailash

Chand Jain and another held with Sonal Jain. Before Ld. CIT(A) it was accepted on behalf of the assessee that Rs.61,38,545/- (Rs.43,69,845/- (+) Rs.17,68,700/-) very much pertains to assessee only and they were received on account of construction activities and bill discounting activities. We also find that the assessee has filed cash flow statement which is actually the cash book wherein it has shown opening cash balance of Rs.3,59,707.83, which however has no basis and further in this cash book inflow and outflow of cash has been shown.

14. Further it was also not disputed by the revenue authorities that the assessee is doing the business of construction activities as well as bill discounting because the income shown in the income tax return has been accepted by the Assessing Officer apart from the additions made. Assessee is also agreeing that these are business receipts. The revenue has also been unable to lay hands on evidence or documents about any undisclosed assets owned by the assessee which can show that the alleged total cash deposits of Rs.61,38,545/- being unaccounted income has been invested thereon.

15. We therefore are of the considered view that the alleged cash deposits of Rs.61,38,545/- should be treated as a part of business receipt of the assessee only. Certainly only the profit element embedded in such business receipt is to be taxed. We for the purpose of estimating income, referred to the profit and loss account prepared by the assessee in the financial year 2010-11

wherein net profit @28% has been disclosed on the gross construction receipts. We however taking a lenient view accepting possibility that in the alleged cash deposits, there may be some amount pertaining to capital receipt or advance or otherwise find it justified to apply a net profit rate of 20% on the alleged cash deposits of Rs.61,38,545/- which will work out income of Rs.12,27,709/-. We accordingly do so and partly allow the assessee's Ground No.2 by deleting addition of Rs.49,10,836/- and sustaining the remaining amount of Rs.12,27,709/-. This ground of assessee's appeal is partly allowed.

16. As far as Ground No.3, challenging the legality of applicability of section 68 of the Act on the alleged cash deposit is concerned we find that this ground is devoid of any merit because the assessee has himself prepared cash book, profit and loss account and balance sheet which itself forms the part and parcel of regular book of accounts being maintained by the assessee and therefore this ground of appeal is dismissed.

17. Ground No.4 is consequential and Ground No.5 is general in nature which needs no adjudication.

18. In the result the appeal of the assessee is partly allowed.

The order pronounced in the open Court on 16.01.2018.

Sd/-

**( KUL BHARAT)**

**JUDICIAL MEMBER**

Sd/-

**(MANISH BORAD)**

**ACCOUNTANT MEMBER**

दिनांक /Dated : **16<sup>th</sup> January, 2018**

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Private Secretary/DDO, Indore**

1. Date of dictation : 12/01/2018
2. Date on which the typed draft is placed before the Dictating Member : 15/01/2018
3. Date on which approved draft comes to the Sr.P.S./P.S: 15.1.2018
4. Date on which the fair order is placed before the dictating Member for pronouncement: 15.1.2018
5. Date on which the fair order comes back to the Sr.P.S./P.S.: 16.1.2018
6. Date on which the file goes to the Bench Clerk: 16.1.2018
7. Date on which the file goes to the Head Clerk:17.1.18
8. The date on which the file goes to the Assisstant Registrar for signature of the order.
9. Date of Despatch of the Order: