

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA ACCOUNTANT MEMBER, AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER

ITA Nos. 5430 & 5432/DEL/2011
[Assessment Years: 2010-11 to 2012-13]

Smt. Babbal Bhatia
D- 45, Rajori Garden
New Delhi

Vs.

The I.T.O
Ward 45(2)
New Delhi

PAN : AVIPB 7991A

[Appellant]

[Respondent]

Date of Hearing : 08.06.2018

Date of Pronouncement : 08.06.2018

Assessee by : Shri Vijay Wadhwa, CA

Revenue by : Shri Ravi Kant Gupta, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

These three appeals by the assessee are preferred against three separate orders of the CIT(A) - 15. Delhi dated 10.02.2017 pertaining to A.Ys 2010-11 to 2012-13. Identical issues are involved in the captioned appeals, therefore, they were heard together and are being

disposed of by this common order for the sake of convenience and brevity, though the quantum may differ.

2. The common grievance of the assessee in the impugned appeals relates to the additions made u/s 68 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] in respect of the amounts of cash found to be deposited in the band accounts of the assessee.

3. Vide a letter dated 12.03.2018, the assessee raised an additional ground of appeal which reads as under:

“The Assessing Officer has erred in law in making addition being cash deposits in the bank accounts u/s 68 of the Act despite the fact that the appellant admittedly does not maintain books of account and, therefore, the said charging of section 68 cannot be pressed to service.”

4. Since the grievance raised vide additional ground goes to the root of the matter, we decided to hear the representatives of both the sides on this point of law.

5. Briefly stated, the facts of the case are that as per the ITD system, the Assessing Officer came to know that the assessee has

deposited cash in bank accounts maintained with Indian Bank, State Bank of India and State Bank of Hyderabad and has also received rent. On finding that no return was filed, proceedings u/s 147 of the Act were initiated after recorded reasons and accordingly, statutory notice u/s 148 of the Act was issued and served upon the assessee. In response to the notice, the assessee filed returns of income for the respective assessment years.

6. The assessee was asked to explain the sources of the cash deposited in the bank accounts. The assessee filed cash flow statement alongwith with the submission that part of the cash deposited was received from sales and balance amount represents withdrawals made from other banks.

7. The Assessing Officer was of the opinion that the returned income of the assessee does not in any manner justify the claim of receipts of cash from sales and deposits in the bank accounts.

8. The Assessing Officer proceeded by invoking the provisions of section 68 of the Act and made addition of Rs. 56.03 lakhs in

assessment year 2010-11, Rs. 84.50 lakhs in assessment year 2011-12 and Rs. 4.50 lakhs in assessment year 2012-13.

9. The assessee carried the matter before the ld. CIT(A) but without any success.

10. Before us, as mentioned elsewhere, the ld. counsel for the assessee vehemently stated that the additions made u/s 68 of the Act is uncalled for as the assessee had made it very clear in the return of income itself that she is not maintaining any books of account. Therefore, making addition u/s 68 of the Act is untenable in law as the said section is applicable only when the credits are found in the books of account of the assessee. In support of his contention, the ld. counsel for the assessee relied upon various judicial decisions which we will discuss later on.

11. The ld. DR strongly objected to the additional ground raised by the assessee stating that this plea was never taken before the first appellate authority. The ld. DR further stated that it is immaterial under which section the addition is made as long as the assessee is unable to explain the sources of cash deposits in the bank accounts. It

is the say of the ld. DR that the assessee never filed return of income voluntarily and it was only after detection of the cash found to be deposited in the bank accounts, the assessee filed return of income for the respective assessment years. The ld. DR continued by stating that though the assessee has claimed to have filed return of income under presumptive taxation, but nowhere in the return of income the assessee has shown that the income has been filed under presumptive taxation. The ld. DR pointed out that even the returned income is not as per the presumptive rate of tax as mentioned u/s 44AF of the Act. It is the say of the ld. DR that the turnover and the profit shown by the assessee does not entitle the assessee to claim immunity under presumptive taxation.

12. Opposing the judicial decisions relied upon by the ld. counsel for the assessee and in support of his claim, the ld. DR relied upon the decision of the Tribunal [Special Bench] Delhi in the case of Manoj Aggarwal, Bemco ITA No. 163/ASR/2003. The ld. DR further relied upon the decision of the coordinate Bench of the Tribunal in the case of Renu Aggarwal 22 Taxmann.com 94 which was affirmed by the Hon'ble High Court of Allahabad in 358 ITR 483. The ld. DR also relied

upon the decision of the Hon'ble Bombay High Court in the case of Arun Kumar J. Muchhala [2017] 85 Taxmann.com 306.

13. The ld. DR concluded by stating that the additions have been made by the Assessing Officer because the assessee could not explain the sources of cash deposits in the bank accounts and it is immaterial to say that the additions cannot be made u/s 68 because in any case the additions have to be made.

14. Representative of both the sides were heard at length, case records carefully perused and judicial decisions carefully considered. The undisputed fact is that the cash was deposited in the bank accounts of the assessee. It is true that the returned income does not match the presumptive rate of tax on the gross turnover of the assessee. It is equally true that in the returns of income itself the assessee made it very clear that she is not maintaining books of account. If the revenue authorities were of the view that the returns have not been filed as per provisions of section 44AF of the Act, nothing prevented the officers to treat the return of income as invalid return of income.

15. The Assessing Officer straightaway proceeded by applying the provisions of section 68 of the Act to the cash found deposited in the bank accounts knowing fully well that the assessee was not maintaining any books of account.

16. The coordinate Bench in the case of Om Prakash Sharma 2256/DEL/2009 has held as under:

“9. Coming to the merits of the case, undisputedly, the addition of `913000 was based only on some entries in the bank account of the assessee. The assessee was found not to have maintained any books of account. Now, as correctly observed by the CIT(A), the passbook/bank statement supplied by the bank to the assessee does not amount to a book of account of the assessee. It being only a copy of customers' account in the books maintained by the bank, a bank does not act as an agent of its customer. It also cannot be said that banker maintains a passbook under the instructions of the account holder. The provisions of [section 68](#) of the Act are, therefore, not attracted where the assessee does not maintain books of account. The CIT(A), in this regard, has rightly placed reliance on '[CIT vs. Bhaichand H. Gandhi](#)', 141 I.T.R. 67(Bom.), '[Sampat Automobile vs. ITO](#)', 96 TTJ(D)368, 'Ms. Mayawati vs. DCIT', 113 TTJ 178(Del.) and '[Sheraton Apparels vs. ACIT](#)', 256 I.T.R. 20(Bom.). It is correct that since no books of account are maintained in the ordinary course of the business of

the assessee, in the absence of any corroborative evidence to support action u/s 68 of the Act, no such addition is tenable.”

17. In the case of *Baladin Ram Vs. CIT [1969] 7 ITR 427*, the Hon'ble Supreme Court has held as under:

“4. [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 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.

5. 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.”

18. The Hon'ble jurisdictional High Court of Delhi in the case of CIT Vs. Ms. Mayawati reported in 338 ITR 563 [DEL] has held as under:

“As the ITAT has come to the conclusion that [Section 68](#) has no applicability to the facts of the present case as the assessee is not maintaining any books of accounts. If that be so [Section 68](#) does not apply in this case for the simple reason cheque received from Mr.Pankaj Jain has been deposited in her bank account in this regard. The ITAT was of the opinion that balance sheet/statement of the affairs cannot be equated to books of account because a pass book of the bank cannot be treated as a book of account of the assessee because this is proved by the banker, which is given to its customer and is only a copy of the customer’s account in the books maintained by the bank. The bank does not act as an agent of the customer nor can it be said that the banker maintains the pass book under instructions of the customer (assessee) the relationship between the banker and customer is one of the debtor and creditor only. Therefore, a cash credit appearing in assessee’s pass book relevant to a particular previous year, in a case where the assessee does not maintain books of account, does not attract the provisions of [Section 68](#).

19. All the aforementioned decisions reveal that an addition u/s 68 of the Act can only be made where any sum is credited in the books of the assessee maintained for any previous year. Thus, the very sine qua non for making of an addition u/s 68 of the Act presupposes a credit of the amount in the books of the assessee. We are not being oblivious of the settled position of law that the statutory provision has to be strictly construed and interpreted as per its plain literal interpretation and no word howsoever meaningful it may so appear can be allowed to be read into a statutory provision in the garb of giving effect to the underlying intent of the legislature. The scope and gamut of the aforesaid statutory provision is to be construed by according a plain meaning to the language used in section 68. We are of the considered view that a credit in the bank account of an assessee cannot be construed as a 'credit' in the books of the assessee for the very reason that the bank account of an assessee cannot be held to be 'books' of the assessee. The account of the assessee in the books of the bank is different from the books of the assessee.

20. Our view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Bhaichand N Gandhi 141 ITR 67 wherein the Hon'ble High Court has held as under:

“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.”

21. In the case of Anandram Ratiani, the Hon'ble Guwahati High Court has also held that a 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 books of the assessee himself and not of any other assessee.

22. It is correct that since no books of account are maintained in the ordinary course of business of the assessee, no such addition u/s 68 of the Act is tenable.

23. Coming to the decisions relied upon by the ld. DR, the first relates to the Special Bench of the Delhi Tribunal in the case of Manoj Aggarwal [supra] which was pronounced on 25.07.2008. As mentioned elsewhere, the judgment of the Hon'ble Delhi High Court in the case of Ms/ Mayawati [supra] is dated 03.08.2011 which means that the judgment of the Hon'ble jurisdictional High Court was not available before the Special Bench. Reliance was also placed on the judgment of the Hon'ble High Court of Bombay in the case of Arun Kumar J. Muchhala [supra], but we find that in that case the assessee took the plea for the first time before the Hon'ble court that he has not maintained books of account and, therefore, those amounts cannot be considered u/s 68 of the Act. Whereas in the case in hand, the undisputed fact is that the assessee had made it very clear in the returns of income that she is not maintaining books of account and yet the Assessing Officer proceeded to make assessment by invoking provisions of section 68 of the Act.

24. The ld. DR has also relied upon the decision of the coordinate bench in the case of Renu Aggarwal [supra] which has been affirmed by the Hon'ble High Court of Allahabad. But we find that the facts of this case are clearly distinguishable from the facts of the case in hand in as

much as in that case the assessee was maintained books of account of her proprietorship concern and claimed to have received the gifts in her individual bank account and the bench was of the view that the deposits so made was utilized in the regular business of the assessee for which the assessee has maintained regular books of account.

25. As discussed hereinabove, there are decisions in favour of the assessee and there are decisions in favour of the Revenue. But, as mentioned elsewhere, the Hon'ble jurisdictional High Court of Delhi in the case of Ms. Mayawati [supra] has decided similar issue in favour of the assessee and we are governed by the Hon'ble jurisdictional High Court of Delhi. Accordingly, respectfully following the same, we allow the additional ground of appeal so raised by the assessee and direct the Assessing Officer to delete the additions so made u/s 68 of the Act in the respective assessment years which are under appeal before us.

26. Since we have directed for deletion of addition on the point of law, we do not find it necessary to dwell into the merits of the additions. Appeals filed by the assessee are accordingly allowed.

276. In the result, the appeals of the assessee in ITA Nos. 5430 to 5432/DEL/2011 stand dismissed.

The order is pronounced in the open court on 08.06.2018.

Sd/-

**[N.K. CHOUDHRY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 08th June, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi