

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH: AGRA**

BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER

**I.T.A No. 122/Agra/2018
(ASSESSMENT YEAR-2011-12)**

Harsh Saluja S/o Shri Harvinder Saluja 32-A/B, Krishna Nagar, Mathura (U.P.) 281004 PAN No.AYRPS3957K (Assessee)	Vs.	ITO,-1(3)(2), Mathura. (Revenue)
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Assessee by	Shri Navin Gargh, AR.
Revenue by	Shri Waseem Arshad, Sr.DR.

Date of Hearing	13.06.2018
Date of Pronouncement	14.06.2018

ORDER

This is assessee's appeal for A.Y. 2011-12 against confirmation of concealment of penalty levied on the assessee.

2. Heard. The AO levied the penalty on total concealed income of 12,97,291/-.

The Id. CIT(A) has confirmed the same. The assessee is in appeal.

3. The Id. Counsel for the assessee has placed reliance on the Tribunal order (APB 1-8) dated 1.12.2017. The Id. Counsel states that by this order, the Tribunal has deleted the addition of Rs.12,97,291/-, for forming basis of the penalty.

4. The Id. DR has placed reliance on the impugned order.

5. The penalty was levied on the addition of Rs.12,97,291/-. The Tribunal, however, has deleted the entire addition by holdings as follows:

“4. The ld. Counsel for the assessee has contended that the ld. CIT(A) has erred in making the addition of Rs.12,97,291/- u/s 68 of the IT Act, representing the deposits as unexplained. The argument is that the bank passbook is not a book of account of the assessee and, therefore, no addition u/s 68 of the Act can be made. Reliance has been placed on ‘Bhaichand N. Gandhi’, 11 Taxman 59 (Bom), ‘CIT vs. Taj Borewells’, 291 ITR 232 (Mad), both followed by this Bench in order dated 25.09.2007 in ITA Nos. 249 and 250/Agra/2007, for A.Y. 2003-04 (copy filed), in Narendra Kishore Goswami’.

5. On the other hand, the ld. DR has placed strong reliance on the impugned order. It has been contended that as correctly observed by the ld. CIT(A), the assessee has not been able to show as to why the cash deposits in the bank ought not to be treated as unexplained cash in the hands of the assessee under the provisions of the u/s 68 of the Act. The ld. DR has further argued that alternatively, if the addition is not to be sustained u/s 68 of the Act, the same be upheld by invoking the provisions of section 69, which, according the ld. DR, is within the power of the Tribunal.

6. I have heard the parties and have perused the material on record. In ‘Bhaichand N. Gandhi’ (supra),

‘Taj Borewells’ (supra) and ‘Narendra Kishore Goswami’(supra), it has categorically been held that in case of bank deposits, bank passbook not being a book of account, no addition can be made by following the provisions of section 68 of the Act. No decision contrary to the above decisions has been cited.

7. *Apropos the Department’s contention that in case the addition u/s 68 of the Act was not to be sustained, the same be sustained by invoking the provisions of section 69 of the Act. I do not find substance in this contention. Nothing has been brought before me to show that this course of action can be adopted by the Tribunal. Rather, in ‘Smt. Sareka Jain vs. CIT’, 84 Taxmann. Com 64(Allahabad), it has been held that where the subject matter of the dispute in the appeal before the Tribunal is the addition made under section 68 of the I.T. Act, the Tribunal cannot travel beyond the scope of the appeal to convert the addition to one under section 69A of the Act.*

8. *In view of the above, the addition made by the ld. CIT(A) is deleted.*

9. *In the result, the appeal is allowed.”*

6. The impugned order was passed on 30.11.2017, whereas, the Tribunal order is dated 1.12.2017. Therefore, obviously, the ld. CIT(A) did not have the benefit of the Tribunal order.

7. The entire addition of Rs.12,97,291/- having been deleted by the Tribunal, the very basis for the levy of the penalty no longer survives. Accordingly, the penalty is deleted.

8. In the result, the appeal is allowed.

Order pronounced in the open court on 14/06/2018.

**Sd/-
(A.D. JAIN)
JUDICIAL MEMBER**

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR