

आयकर अपीलीय अधिकरण "एक-सदस्य" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री अनिल चतुर्वेदी, लेखा सदस्य, के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No. 862/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Zaheer Abdulhamid Mulani
Flat No. 604, D Wing,
Gagan Avenue, Opp. Sai
Service Station, Kondhwa (kurd),
Pune- 411 048.
PAN : AIVPM7557R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 7(2), Pune.

.....प्रत्यर्थी / Respondent

Appellant by : Shri K. Srinivasan
Respondent by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 16.08.2018	घोषणा की तारीख / Date of Pronouncement : 31.08.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals), Pune-5, dated 30.11.2016 relating to assessment year 2011-12 against order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case, Assessing Officer erred in invoking provisions of Sec. 68 of the IT Act, 1961 to the deposits in the bank account (in the name of the appellant and his wife) ignoring Hon. High Court's decisions on the subject and CIT(Appeals) erred in confirming such addition and the same may be deleted as bad in law and quashed.

2. Without prejudice to the above the Assessing Officer and the CIT Appeals have erred in making and confirming respectively the addition u/s.68 of the Act, in respect of bank deposits from relatives when clear evidences were before them relating to such deposits.

3. The Assessing Officer has merely made an additions on account of alleged agreement when the same is contrary to the judicial pronouncements and CIT(Appeal) has ignored evidences and remand report before her violating the principles of natural justice and their action may be held as bad in law and quashed or any other appropriate orders passed to give relief as considered fit in the circumstances of the case.

4. Appellant craves leave to add/ alter/amend any grounds of appeal and produce additional evidence at the time of hearing.”

3. The issue arising in the present appeal is against the addition made under section 68 of the Act.

4. Briefly in the facts of the case, the assessee had furnished return of income declaring total income of Rs.1,33,385/-. The case of the assessee was selected for scrutiny under CASS. The assessee had received salary from three concerns. However, assessee had declared the salary received from only one concern in the return of income. When facts were brought to the notice of the assessee, he agreed to furnish revised return of income and paid taxes thereon. The total salary of Rs.6,26,374/- was added to the returned income of the assessee as income from salary and penalty proceedings were initiated under section 271(1)(c) for furnishing inaccurate particulars and concealing the income. Further, the Assessing Officer noticed that the assessee had deposited cash of Rs.32,50,000/- with Punjab National Bank on various dates. The assessee was asked to explain the source of cash deposits with evidences and the bank accounts. The assessee submitted that it had received the said amount from relatives and partly from the previous savings i.e.

Rs.7,00,000/-. The assessee was asked to furnish the details of relatives who had given gift and also to establish saving of Rs.7,00,000/-. The assessee was unable to furnish evidences in respect of the same and vide office Order Sheet entry dated 07.02.2014, the assessee and Authorized Representative agreed for addition of Rs.32,50,000/-. The said sum was added as unexplained cash deposit under section 68 of the Act. Penalty proceedings under section 271(1)(c) of the Act were initiated for furnishing inaccurate particulars and concealing the income.

5. The assessee filed appeal against the order of Assessing Officer before the CIT(A) after delay of 22 months and 2 days. He explained the reasons for delay in filing the appeal late before the CIT(A) which are incorporated at page 2 to 4 of the appellate order. The assessee pointed out that he was advised that no appeal could be filed against the assessment order as he had admitted to the addition. But the said additions were subject to no penalty under section 271(1)(c) of the Act would be levied. However, after the charge was taken over by another Assessing Officer, he levied the penalty under section 271(1)(c) of the Act and thus, the assessee was constraint to seek advice from another consultant who advised him to file appeal. The CIT(A) condoned the delay in filing the appeal late. However, in respect of explanation of the assessee of having received money from his relatives on occasion of marriage or gift or loan, accumulated savings, the assessee filed explanation and affidavit as additional evidence before the CIT(A). The said additional evidence was sent to the Assessing Officer for remand report. The Assessing Officer in remand proceedings issued summons to the four persons and also to the assessee, whose statement were recorded on oath and were cross examined. The Assessing Officer did not comment on the result of this enquiry but stressed that the assessee had agreed for addition in the absence of evidence. The CIT(A) vide para 5.9 observed that since the assessee had agreed to the addition then the same could not be

brushed aside. Therefore, explanation of the assessee was rejected and the addition made by the Assessing Officer was upheld.

6. The assessee is in appeal against the order of CIT(A) before us.

7. The Ld. AR for the assessee stressed that during the course of assessment proceedings, the assessee had agreed to the addition subject to no penalty being levied under section 271(1)(c) of the Act. But penalty proceedings were initiated against the assessee and thereafter, the assessee filed appeal, affidavit of relatives and also produced them. Our attention was drawn to the remand report at page 40 to 43 of the paper book. However, the Assessing Officer failed to come to any conclusion. He further pointed out that the Assessing Officer in the remand report, however, stated that the affidavit submitted by the assessee may be considered by the CIT(A). But the CIT(A) upheld the addition made by the Assessing Officer on the ground that the assessee, during assessment proceedings, had agreed to the aforesaid addition.

8. On the other hand, the Ld. DR for the Revenue stressed that since the assessee had agreed to the aforesaid addition, hence the same merits to be upheld.

9. We have heard the rival contentions and perused the record. In the facts of the present case, there was cash deposit in the bank account of the assessee, which he claimed to have received from his relatives as under :

<i>“1. From Mother-in-law</i>	<i>Rs.12,00,000/- as gift</i>
<i>2. From accumulated savings</i>	<i>Rs.7,00,000/-</i>
<i>3. From father</i>	<i>Rs.1,50,000/- on occasion of marriage</i>
<i>4. From Sister in law</i>	<i>Rs.12,00,000/-”</i>

10. The said cash totaling Rs.32,50,000/- was deposited in Punjab National Bank. The assessee during the course of assessment proceedings, agreed to the addition as complete evidences were not available with the assessee. The agreed addition was made subject to the condition that no penalty proceedings would be initiated under section 271(1)(c) of the Act. However, successor Assessing Officer levied penalty under section 271(1)(c) of the Act. The assessee thereon i.e. after delay of 22 months 2 days filed the appeal before CIT(A) and also made request for condonation of delay in filing the appeal late before CIT(A). He in his petition pointed out that the addition was made subject to no penalty being levied. However, since penalty for furnishing inaccurate particulars and concealing the income was levied, he is agitating the addition.

11. The first issue which arises is whether the assessee can agitate the addition, if he had agreed to the same during assessment proceedings. The assessee had received the loan/ gift from his relatives and not from any outside party. The assessee had been able to furnish affidavit of the said relatives before the CIT(A), who confirmed the same before Assessing Officer. In the remand proceedings, the said relatives were produced by the assessee, their statements were recorded and they were also cross examined. No discrepancy has been pointed by the Assessing Officer in the said statements recorded. In such circumstances, where initially the assessee had agreed to the addition because of lack of evidences, reasons for which was certain family disputes and once the evidences were available with the assessee and also because the explanation of the assessee had not been accepted in entirety, the assessee is at liberty to raise the issue before the CIT(A). Accordingly, we are of the view that in view of the principle of natural justice, the person cannot be condemned on his admission of addition, which was made for lack of availability of evidence. Once the evidences were available with the assessee and they have been properly examined by the Assessing Officer in the remand proceedings, then it was

incumbent upon the CIT(A) to adjudicate the issue on merits and not dismiss the same on the ground that the assessee had agreed to the addition. The totality of the facts and circumstances of each case should be kept in mind before rejecting the claim of the assessee.

12. A perusal of the remand report at page 40 to 42 and page 43 reveals that the Assessing Officer in the remand proceedings had issued summons to the persons and "their affidavit were filed, they were cross examined and their statement were recorded on oath" and the same were forwarded to the CIT(A) who has failed to take cognizance of the same. The assessee before us, had filed said evidences i.e. affidavit of the persons, their statement which were recorded at page 20 to 39 of the paper book. In the totality of the evidences available with the assessee, statements of the persons recorded and their cross examination in which no disparity has been found or detected, then explanation offered by the assessee merits to be accepted in toto. Accordingly, we hold that there is no merit in making addition on this count in the hands of the assessee.

13. Before parting, we may also note the fact that the addition under section 68 of the Act has been made in the hands of the assessee because of cash deposit in the bank account i.e. savings account maintained by the assessee. The Hon'ble Bombay High Court in the case of CIT Vs. Bhaichand Gandhi reported 141 ITR 67/30 taxmann.com 20 has approved the proposition that a bank Pass Book maintained by the bank cannot be regarded as a book of the assessee for the purposes of section 68 of the Act. Applying the said principle, the Mumbai Bench of the Tribunal in the case of Smt. Manasi Mahendra Pitkar Vs. ITO, in ITA Nos.4223 & 4224 (MUM.) of 2015 order dated 12th August, 2016 had held that where the assessee was not maintaining any books of account and section 68 had been invoked by the Assessing Officer only on the basis of the bank pass book ; the invoking of section 68 has to fail

because the bank Pass Book or bank statement cannot be construed to be a book maintained by the assessee for any previous year as understood for the purposes of section 68. Applying the said principle also to the facts of the present case, we hold that no addition is warranted in the hands of the assessee under section 68 of the Act on account of cash deposit in saving account. Thus, the grounds of appeal raised by the assessee are allowed.

14. In the result, appeal of the assessee is allowed.

Order pronounced on this 31st day of August, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st August, 2018
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals), Pune-5, Pune.
4. The Pr. CIT, Pune-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.