

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 2483/Del/2015

AY: 2011-12

Vijay Kumar Prop. V.K. Medical Hall C/o Kapil Goel, Adv. F-26/124, Sector-7, Rohini, Delhi. BHHPK5632D	vs.	ITO Ward-2 Faridabad.
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(Appellant)

(Respondent)

Assessee by : Sh. Kapil Goel, Adv.

Revenue by : Sh. Surender Pal, Sr. DR

Date of Hearing : 06/11/2018

Date of Pronouncement: 27/11/2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been preferred by assessee against order dated 27/02/15 passed by Ld. CIT (A), for assessment year 2011-12 on following grounds of appeal:

Incorrect Addition u/s 68 : Cash deposits in bank

A. That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in not accepting faultless explanation of assessee regarding cash deposits of Rs. 60,00,000/- and thereby erroneously sustaining wrongful addition of Rs. 60,00,000/- made on basis of conjectures and surmises.

B. That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in not deleting the addition of Rs. 60,00,000/- which is sustained on basis of non speaking order passed in violation of principles of natural justice.

That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated herein above, either before or at the time of hearing of this appeal.”

2. Brief facts of the case are as under:

Assessee filed its return of income on 16/12/11 declaring total income of Rs.1,40,750/-. Case was selected for scrutiny and notice under section 143(2) of the Act along with notice under section 142(1) and questionnaire was issued to assessee. In response to statutory notices, representative of assessee appeared before Ld.AO and filed requisite information as called for.

3. Ld.AO received AIR information, according to which, cash amounting to Rs. 60 Lacs was deposited in saving bank account held by assessee with Punjab National Bank, Uklana. Ld. AO accordingly, called upon assessee to explain source of cash deposited in saving bank account. In reply, assessee submitted that said amount was deposited in bank out of token money received against sale of agricultural land at measuring 45 Kanal, 19 Marla situated at village Sahu, through Sale Agreement dated 27/11/10 from Sh. Faqir Chand S/o Sh. Nand Lal resident of village Sahu. Assessee also filed photocopy of Sale Agreement.

4. To verify genuineness of submissions, assessee was asked to produce Sh. Faqir Chand S/o of Sh. Nand Lal for recording his statement and to ascertain correctness of alleged advance, claimed to have been received by assessee against sale of agricultural land. Assessee produced Sh. Faqir Chand on 09/01/14, and his statement was recorded.

4.1 Subsequently, assessee was called upon to produce agents being other person's. Ld.AO from details filed Ld. AO made addition under section 68 in hands of assessee as income from undisclosed sources.

5. Aggrieved by addition made by Ld. AO, assessee preferred appeal before Ld. CIT (A) who dismissed appeal of assessee.

6. Aggrieved by order of Ld. CIT (A) assessee is in appeal before us now.

7. Assessee, vide application dated 05/11/18, has raised additional ground of appeal which reads as under:

Additional ground of Appeal:

“That impugned assessment order passed by Ld. Assessing Officer u/s 143(3) of the Act making addition u/s 68 on basis of cash deposit in saving bank account with Punjab National Bank, amounting to Rs. 60,00,000/- treating the bank statement as books for purpose of section 68 of the Act as evident from para 3 and 4 of assessment order which is sustained and approved as such by Ld. CIT(A), is invalid and unlawful, inasmuch as bank statement is consistently held to be not books for purposes of section 68 of the Act.”

(Notably from impugned assessment and first appellate order there are no books maintained and produced by assessee before Ld. AO during assessment proceedings specially qua saving bank a/c in PNB much less qua cash deposits in stated bank account).

7.1 It is observed that grievance raised by assessee is in respect of addition made by Ld.AO under section 68 in respect of cash deposited in bank account of assessee.

8. Ld. AR submitted that Assessing Officer has invoked section 68, on cash deposits found in bank accounts. He submitted that, admittedly assessee is not maintaining any books of account and, therefore, any addition under section 68 is untenable in law as section is applicable only where credits are found in books of accounts maintained by assessee. He referred to definition of “books of account in section 2(12A) of the Act, which reads as under:

“section 2(12 A):

“books or books of account” includes ledgers, day-books, cash books, account books and other books whether kept in the written form or as printouts of Tata stored in a floppy, disk, tape or any other form of electromagnetic data storage device;

He also referred to following decisions of this Tribunal, in support of his argument:

S.No Particulars/Title Decision	& of	Bench etc. (Citation/Reference No./Order date)	Held (Gist in brief) Relevant Para
1. Babbal Bhatia		A Bench Delhi ITAT ITA 5430 & 5432/Del/2011 (08/06/2018)	Para 19 (Para 14 to 26)
2. Zaheer Abdulhamid		SMC Pune Bench (Before Ms. Sushma Chowla and Shri Anil	Para 13

Mulani	Chaturvedi) ITA 862/Pun/2017 (31.08.2018)	
3. Latif Ebrahim Patel	Mumbai A Bench ITA 7097/Mum/2013 (23.03.2018)	Para 7 & Para 8 (Mumbai ITAT decisions in 164 ITD 296 & 160 ITD 605 followed)
4. Shamsher Singh Gill	Delhi SMC Bench in ITA 2987/Del/2015 (28/02/2017)	Para 4 to 7
5. Danveer Singh	Delhi SMC Bench in ITA 4036/Del/2017 (14/12/2017)	Para 5
6. Om Prakash	Delhi E Bench in ITA 1325/Del/2011 (11/08/2016)	Para 5 to 8
7. Kamal Kumar Mishra	Lucknow ITAT 143 ITD 686	Para 7
8. Sunil Vaid	Delhi ITAT SMC Bench in ITA 2414/Del/2016 (30/12/2016)	Para 7

9. On contrary, Ld. Sr. DR referring to definition of “books, books of account” as defined under section 2(12A) of the Act, submitted that, it is not an inclusive definition in order to restrict meaning of what is referred to therein. Ld. Sr. DR submitted that bank accounts do fall under term ‘account books’ and ‘other books’, which are to be construed generally. Ld. Sr. DR further submitted that assessee has not been able to explain source of cash deposited in bank account and, therefore, Ld. AO was right in invoking provisions of section 68 of the Act.

10. We have heard both sides in light of records placed before us.

11. Admittedly, assessee has not maintained any books of accounts, and it is also an undisputed fact that cash has been deposited in saving bank account of assessee, which he explains to be sale proceeds received on sale of agricultural plot. Ld. AO applied provisions of section 68 of the Act to cash found deposited in bank account, since assessee could not explain source to satisfaction of Ld. AO, and by holding that, assessee

has not discharged identity, credibility and most importantly genuineness of transaction.

12. It has been vehemently canvassed by Ld.AR that passbook/bank statement obtained from a bank do not construe “books of account” of assessee, as defined under section 2(12A) of the Act. It is also been proposed by Ld.AR that section 68 of the Act is not applicable, when assessee does not maintain any books of accounts. He, thus, vehemently argued that, provisions of section 68 is applicable, only when, no explanation and/or explanation offered by assessee is not satisfactory, regarding any amount found credited in “books of account” of assessee.

13. Be that as it may, we have carefully perused provisions of section 68. This section starts with words, “*where any sum is found credited in the books of an assessee maintained for any previous year,.....*” . Therefore, section 68 can be applied only where, there are sum found credited in “books of account” maintained by assessee. No doubt passbook /bank statement, are maintained by a bank for its customers. Thus in our considered opinion, we agree with proposition advanced by Ld.AR of non applicability of section 68 in case of cash credit found in saving bank account.

14. It is further observed that Ld. AO applied section 68 and made additions in hands of assessee, as unexplained cash credits, to such amount, which has been found deposited by assessee in his saving bank account. To our mind in present facts of case section 69 should have been initiated by Ld.AO. It is unfortunate that Assessing Officers blindly apply provisions, which can be fatal to the interest of Revenue. However as a

Tribunal, we are not competent to make addition u/s 69A of the Act, by virtue of the decision of Hon'ble Allahabad High Court in case of Smt. Sarika Jain vs. CIT reported in 407 ITR 254. Hon'ble High Court observed as under.

“18. In view of the above, when the said income cannot be added u/s 68 of the Act and the Tribunal was not competent to make the said addition under section 69A of the Act, the entire order of the Tribunal stand vitiated in law.”

Respectfully following the above observation by Hon'ble Allahabad High Court, we allow additional ground raised by assessee, only because addition u/s 68 is not sustainable in present facts of case.

Accordingly the additional ground raised by assessee stands allowed.

16. As we have allowed additional ground, addition made by Ld.AO under section 68 stands deleted and, therefore, we do not find it necessary to decide other grounds raised as they become infructuous.

Accordingly the other grounds raised in the ground of appeal stands dismissed as infructuous.

In the result appeal filed by assessee stands allowed.

Order pronounced in the open court on 27/11/2018

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 27th November, 2018

*Kavita Arora

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
Draft dictated on	16.11.2018
Draft placed before author	19.11.2018
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on & Order uploaded on :	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	