

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 1931/Del/2016

AY: 2010-11

INDER SINGH, S/O SH. RAM SINGH, 94, GOYALA KHURD, DELHI (PAN: BCRPS3678G) BHHPK5632D	vs.	ITO, WARD 43(3), NEW DELHI
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(Appellant)

(Respondent)

Assessee by : Sh. Kapil Goel, Adv.

Revenue by : Sh. B.S. Rajpurohit, Sr. DR.

ORDER

PER H.S. SIDHU, JUDICIAL MEMBER

Present appeal has been preferred by assessee against Order dated 28/01/2016 passed by Ld. CIT (A)-15, for assessment year 2010-11 raising as many as 07 grounds. But only argued the legal ground no. 2 to 2.2 which are reproduced as under:-

“2. The ld. CIT(A) erred in upholding the addition of Rs. 93,80,000/- u/s. 68 of the Act on the ground that cash deposit in bank accounts are unexplained.

2.1 *The Ld. CIT(A) failed to appreciate the fact that the cash was deposited out of cash withdrawn from the bank accounts and advances received back from two persons to whom advance was given by the assessee in preceding year for purchase of agricultural land, who confirmed the return of advance to the assessee in response to notice u/s. 133(6) of the Act and subsequently in their statement recorded by the Ld. ITO u/s. 131 of the Act.*

2.2 *The Ld. CIT(A) failed to appreciate the fact that the assessee has income only from 'other sources' – bank interest and 'agriculture' and the assessee has no business; and therefore, the assessee is neither required by law nor is maintaining books of account and therefore, addition u/s. 68 of the Act is bad in law; and without prejudice the deposit in bank account cannot be added u/s. 68 of the Act.”*

2. The brief facts of the case are that assessee filed return of income on 31.03.2011 declaring an income of Rs. 6,55,454/- inclusive of agricultural income of Rs. 2,60,800/- after availing deduction under Chapter VIA amounting to Rs. 1,00,000/-. The case was selected for scrutiny through CASS and notice u/s

143(2) of the Income Tax Act, 1961 (in short "Act") was issued on 25.08.2011. None appeared in response to the said notice. Subsequently, notices u/s 143(2)/142(1) dated 29.02.2012, 03.10.2012, 06.12.2012 were also not complied with by assessee. Consequently, assessment was completed by the AO ex-parte u/s 144 of the Act by making additions of Rs. 15,00,000/-, Rs. 10,80,000/- and Rs. 68,00,000/- on account of unexplained cash deposits in the bank accounts of assessee maintained with Punjab and Sindh Bank, Punjab National Bank and HDFC Bank respectively. The deduction of Rs. 1,00,000/-, claimed by assessee under Section 80C was also disallowed in absence of any documentary evidence. Similarly, the agricultural income of Rs. 2,60,800/- was treated as undisclosed income of assessee and added to his income. Finally, the assessment was completed at income of Rs. 1,01,35,450/- against the returned income of Rs. 6,55,454/- vide order dated 31.3.2013 passed u/s. 144 of the Act. Against the said assessment, assessee appealed before the Ld.CIT(A), who vide his impugned order dated 28.1.2016 has partly allowed the appeal of the assessee. Aggrieved with the impugned order, the assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. counsel for the assessee has only argued the legal ground by stating that exactly the similar issue to the ground no. 2 to 2.2. in the present appeal has been recently adjudicated and decided by the ITAT, 'F' Bench vide order dated 27.11.2018 in ITA No. 2483/Del/2015 (AY 2011-12) in the case of Vijay Kumar Prop. V.K. Medical Hall vs. ITO. He draw our attention towards para no. 8 of the order wherein it was stated that AO has invoked the section 68 of the Act, on cash deposit found in bank accounts and admittedly assessee is not maintaining any books of account and therefore, any addition u/s. 68 is untenable in law as section is applicable only where credits are found in books of account maintained by assessee. He further stated that in the present case also the assessee has income from 'other sources' – bank interest and 'Agriculture'; and the assessee has no business; and therefore, the Assessee is neither required by law nor is maintaining books of accounts and therefore, addition u/s. 68 of the Act is bad in law; and without prejudice the deposit in bank account cannot be added u/s. 68 of the Act. Therefore, he submitted that the issue in dispute is squarely covered by the decision of the ITAT, 'F' Bench vide order dated 27.11.2018 in ITA No. 2483/Del/2015 (AY 2011-12) in the

case of Vijay Kumar Prop. V.K. Medical Hall vs. ITO9 (Supra). Further, in support of his contention he also filed the copy of various case laws in the shape of Paper Book containing pages 1 to 91 in which he has attached copy of decision of the ITAT, 'A' Bench decision dated 8.6.2018 in ITA No. 5430 - 5432/Del/2011 in the case of Babbal Bhatia; SMC Pune Bench decision in ITA No. 862/Pun/2017 dated 31.8.2018 in the case of Zaheer Abdulhamid Mulani; Mumbai 'A' Bench decision dated 23.3.2018 in ITA No. 7097/Mum/2013 in the case of Latif Ebrahim Patel; SMC Delhi Bench decision in ITA No. 2987/Del/2015 dated 28.2.2017 in the case of Shamsheer Singh Gill; SMC, Delhi Bench decision in ITA No. 4036/Del/2017 dated 14.12.2017 in the case of Danveer Singh; ITAT, 'E' Bench decision in the case of Om Prakash in ITA No. 1325/Del/2011 vide order dated 11.8.2016; ITAT, SMC Bench decision dated 30.12.2016 in the case of Sunil Vaid in ITA No. 2414/Del/2016; Hon'ble Punjab and Haryana High Court decision in ITA No. 122 of 1999 dated 22.10.2013 in Dulla Ram and ITAT, Lucknow Bench decision in the case of Kamal Kumar Mishra in 143 ITD 686.

4. On the contrary, Ld. DR relied upon the order passed by the revenue authorities.

5. We have heard both the parties and perused the records and the case laws cited by the Ld. counsel for the assessee. We find that in this case return of income was filed on 31.3.2011 declaring an income of Rs. 6,5,454/- inclusive of agricultural income of Rs. 2,60,800/- after availing deduction under Chapter VIA amounting to Rs. 1,00,000/-. The AO completed the assessment at Rs. 1,01,35,450/- against the returned income of Rs. 6,55,454/- and made the various additions. In appeal, Ld.CIT(A) has partly allowed the appeal of the assessee. We find that in this case also AO has invoked the Section 68 of the Act on cash deposits found in the bank accounts. 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. Therefore, in our considered opinion the legal ground in dispute is squarely covered by the decision of the ITAT, 'F' Bench vide order dated 27.11.2018 in ITA No. 2483/Del/2015 (AY 2011-12) in the case of Vijay Kumar Prop. V.K. Medical Hall vs. ITO wherein, the Tribunal has adjudicated the similar and identical issue to the issue in dispute by holding as under:-

“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 Mulani		SMC Pune Bench (Before Ms. Sushma Chowla and Shri Anil Chaturvedi) ITA 862/Pun/2017 (31.08.2018)	Para 13
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	Para 5

	4036/Del/2017 (14/12/2017)	
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.

6. Keeping in view of the facts and circumstances of the case and respectfully following the precedents, as aforesaid, the

addition u/s. 68 is not sustainable in present case, hence, we delete the same and allow the ground no. 2 to 2.2 argued by the Ld. Counsel for the assessee.

7. In the result, the Appeal of the Assessee stands allowed.

Order pronounced on 05/12/2018

Sd/-

Sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

(H.S. SIDHU)
JUDICIAL MEMBER

Dt. 05th December, 2018

SR BHATNAGAR

Copy forwarded to: -

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

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By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

