

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.220/Ind/2017
Assessment Year: 2013-14**

Shri Om Prakash Patidar (HUF), Station Road Rau, Indore (Appellant)	बनाम/ Vs.	ITO-2(4), Indore (Revenue)
P.A. No.AAAHO5903J		

Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, A.Rs
Respondent by	Shri Rajiv Jain, D.R.
Date of Hearing:	27.12.2018
Date of Pronouncement:	03.01.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against order of the CIT(A)-I, Indore dated 23.1.2017 pertaining to the

assessment year 2013-14. The assessee has raised following grounds of appeal:

1. *The Ld. CIT(A) has erred in confirming the addition of transfer expenses of Rs.2,00,000/- on sale of agricultural land.*
2. *The Ld. CIT(A) has erred in confirming the addition of cash credits amounting to Rs.17,51,000/-.*
3. *The appellant craves leave to add or amend any of the aforesaid grounds of appeal.*

2. The facts giving rise to the present appeal are that assessee filed return of income on 28.1.2014 declaring total income of Rs.6,98,467/- and an agricultural income of Rs.4,50,200/-. The case of the assessee was selected for scrutiny assessment. The assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed vide order dated 16.1.2016. The A.O. while framing the assessment made addition in respect of capital gain of Rs.75,35,438/-, income from other sources of Rs.23,90,602/- and unexplained credit in bank account of Rs.17,51,000/-. Hence, the A.O. after giving deduction under Chapter 16A assessed income at Rs.97,40,840/-.

The assessing officer also computed agricultural income at Rs.3,00,000/- against the agricultural income claimed at Rs.4,50,200/-.

3. Aggrieved by this action of the A.O., the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions partly allowed the appeal. While partly allowing the appeal, the Ld. CIT(A) confirmed disallowance of transfer expenses of Rs.2,00,000/- and the additions made in respect of the deposits made in the bank account of Rs.17,51,000/-. Rest of the additions were deleted by the Ld. CIT(A) for the assessee and the revenue had challenged the assessment order. Appeal of the revenue in ITA No.305/Ind/2017 dated 19.9.2018 was dismissed for low tax effect. The present appeal of the assessee remains to be adjudicated. Ground No.1 is against addition of transfer expenses of Rs.2,00,000/- on sale of agricultural

land. At the time of hearing, this ground was not pressed, hence, dismissed as not pressed.

4. Apropos to Ground No.2, Ld. Counsel for the assessee submitted that all the details have been filed. Ld. Counsel for the assessee further reiterated the submissions as made in the written synopsis. The submissions of the assessee are as under:

S.No.	Name	Amount	Remarks
1.	Shri Jagdish Patidar	3,50,000	1) Received by cheque. Bank pass book. PB 115. A.O. wrongly quoted bank account of Lalita at pg.15 of his order. 2) Confirmed in statement u/s 131(1) before Ld. A.O. pg.16 para (d) 3) Identity proof -Election ID PB 113 4) Confirmation PB 112(back) 5) Source of Income - Agriculture, land revenue records produced PB 113 6) Repaid on 19.1.2013. PB 115 7) Cash was deposited before issue of cheque to assessee. He was agriculturist and his income was in cash only. He would explain his source. CIT vs. Jai Kumar Bakliwal 366 ITR 217 (Raj.) Also Orissa Corpn P Ltd. 25 Taxman 80F (SC)

2	Smt. Lalita Patidar, w/o Jagdish Patidar	3,51,000	<ol style="list-style-type: none"> 1) Received by cheque. Bank pass book. PB 118. A.O. wrongly quoted bank account of Jagdish at pg.16 of his order. 2) Identity proof – Election ID PB 116 (back) 3) Confirmation PB 116. 4) Source of Income – Agriculture – Land revenue records produced PB 117 5) Repaid on 19.1.2013 PB 118 (back) 6) Cash was deposited before issue of cheque to assessee. He was agriculturist and his income was in cash only. He would explain his source. CIT Vs. Jai Kumar Bakliwal 366 ITR 217 (Raj.)
3	Shri Vishwas Patidar s/o Radheshyam Patidar	3,00,000	<ol style="list-style-type: none"> 1) Received by cheque, Bank pass book at pg.17 para (c) 2) Identity proof – Election ID PB 120 (back) 3) Confirmation PB 119 4) Source of Income – Agriculture, land revenue records produced PB 117 5) Repaid on 19.1.2013 PB 118 (back) 6) Cash was deposited before issue of cheque to assessee. He was agriculturist and his income was in cash only. He would explain his source. CIT Vs. Jai Kumar Bakliwal 366 ITR 217 (Raj.)
4.	Shri Radheyshyam Patidar	3,00,000	<ol style="list-style-type: none"> 1) Received by cheque. Bank pass book at pg.19 2) Confirmation PB 119 3) Source of income – Agriculture land revenue records produced PB 122-123

			<p>4) Repaid on 7.1.2013 AO pg.19</p> <p>5) Cash was deposited before issue of cheque to assessee. He was agriculturist and his income was in cash only. He would explain his source. Huge cash deposits before issue of cheque to assessee. He would explain his source. CIT Vs. Jai Kumar Bakliwal 366 ITR 217 (Raj.)</p>
5	Shri Prahlad Patidar	4,50,000	<p>1) Received by cheque. Bank pass book at pg.17 para (c)</p> <p>2) Identity proof – Election ID.</p> <p>3) Confirmation</p> <p>4) Source of Income – Agriculture, Land revenue records produced.</p> <p>5) Repaid on 19.1.2013</p> <p>6) Cash was deposited before issue of cheque to assessee. He was agriculturist and his income was in cash only. He would explain his source. Huge cash deposits before issue of cheque to assessee. He would explain his source. CIT Vs. Jai Kumar Bakliwal 366 ITR 217 (Raj.)</p>

4. Ld. D.R. opposed the submissions and supported the orders of the authorities below.

5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. Ld. CIT(A) confirmed this

addition. Ld. CIT(A) decided this issue by observing as under:

8.1 As seen from the assessment order the addition consists of following loans:-

S.No.	Name	Amount & Date
1.	Shri Jagdish Patidar	Rs.350000/- 12.9.2012
2.	Smt. Lalita Patidar	Rs.351000/- 12.9.2012
3.	Shri Vishwas Patidar	Rs.300000/- 12.9.2012
4.	Shri Radheshyam Patidar	Rs.300000/- 12.9.2012
5.	Shri Prahlad Patidar	Rs.450000/= 15.9.2012
	Total	Rs.1751000/-

Each of these loans is taken up hereunder:

1. Shri Jagdish Patidar:

As noted in the assessment order the identity of Shri Jagdish is not in doubt however the creditworthiness of Shri Jagdish is not established though he has confirmed having given the loan but the loan is stated to be out of agricultural income of Shri Jagdish. The A.O. has rightly noted that the land holding of Shri Jagdish is not adequate and independent to justify the cash deposited in his account just prior to the giving of loan to the appellant. The cash deposits are of the amount of Rs.49000/-, just below Rs.50000/-, and thus appear to be intentionally done with the aim of avoiding the quoting of PAN and subsequent scrutiny. It is also to be noted that there is no evidence placed on record that the deposits flow out of sale of agricultural produce and even if it is so curiously all sales are of Rs.49000/-. In the normal course the agricultural receipts would vary and if the entire amount was in hand with the depositor the same could have been deposited at one go. The bank account of the depositor produced does not establish that the deposit pattern was a regular feature in the account of Shri Jagdish Patidar is found to be not satisfactorily explained and hence the A.O. was justified in treating the same as income of the appellant.

2. Smt. Lalita Patidar:

Shri is the wife of Shri Jagdish Patidar and the facts are identical to those of Shri Jagdish Patidar. Her creditworthiness is not established as her agricultural land holding and income is not adequate to explain the cash deposits in her bank account. Therefore, A.O was justified in treating the said deposit as also not having been satisfactorily explained.

3 & 4 Shri Vishwas Patidar & Shri Radhyshyam Patidar:

Shri Vishwas Patidar & Shri Radhyshyam Patidar are son and father and are related to the appellant. As noted by the A.O. here also the loan is stated to be out of agricultural income however the agricultural land holding is not commensurate with cash deposit in the accounts which are again of Rs.49000/- or below that amount just prior to the loan given to the appellant. Shri Vishwas has no separate land in his name. Total land in the family in name of grand mother uncle etc. is only 16 Bighas and the details of the bank accounts in name of uncle and his family have not been given. In view of the above it is held that the loan from the above two creditors are also not satisfactorily explained.

5. Shri Prahlad Patidar:

As in the case of the above 4 depositors in this case also there are cash deposits in the bank account of the depositor of Rs.49000/- or below, just before giving the loan to the appellant. The deposits are not commensurate with the land holding which is a meagre 3 Bighas only and the depositor has not produced any other details of his family and agricultural income. It is otherwise also too much of a coincidence that all the depositors inspite of small land holdings had agricultural income of almost equivalent amount and deposited the same in their bank accounts in a sum of Rs.49000/- or below, at the same time. The coincidence is beyond human probabilities and the whole thing is engineered to facilitate the loans to the appellant. The genuineness of the loan transactions is therefore not established and none of the depositors are found to be credit worthy.

8.2 The appellant has argued that the confirmations have been filed and copies of bank statements have also been filed and as all loans are from agriculturist for a short period of time no adverse inference need be drawn. The appellant has also argued that the A.O. did not allow the appellant opportunity to cross examine the depositors. Such contention is devoid of merits as from the assessment order it is seen that the A.O. has not drawn any adverse inference based on the statements recorded. Mere filing of confirmations per se does not establish the transaction as genuine.

8.3 The appellant during the course of appellate proceedings has contended that the A.O. was not justified in adding the above loans under

section 68 of the Act as there was no credit in the books of the appellant as the appellant was not maintaining any books of accounts and on the basis of entries in the bank account no addition can be made u/s 68 of the Act. From the record it is seen that during the course of assessment proceedings the appellant has filed balance sheet, Trial balance, ledger accounts cash book and UCO bank savings a/c book. The last named account shows the receipt of money as loan from all the above cash creditors and the unsecured loans outstanding at the end of the year are seen in the balance sheet. In view of the above the contention that section 68 cannot be invoked as no books are maintained is found to be without merits. In this context it is relevant to note the observations of the Hon'ble jurisdictional High Court in the case of *VISP (P) Ltd. vs. Commissioner of Income Tax 265 ITR 202 MP* which are reproduced below.

Learned counsel, appearing for the assessee placing reliance on the decision of the Supreme Court reported in *Baladin Ram v. CIT (1969) 71 ITR 427* and the decisions of the Mumbai and Allahabad High Courts reported in *CIT v. Bhaichand H. Gandhi (1983) 141 ITR 67* and *Sundar Lal Jain v. CIT (1979) 117 ITR 316*, respectively, contended, that section 68 of the Act can be invoked only, when, the books of account of the assessee show the cash entry and not otherwise.

We are afraid, such a narrow and restricted interpretation of the provisions, contained in Section 68 was advanced by learned counsel for the appellant/assessee, cannot be accepted. If the liability shown in the said account which, is found to be bogus and in the absence of any plausible and reasonable explanation offered by the assessee, then, certainly, the amount can be added towards the income of assessee and brought to tax in the hands of the assessee.

The reliance placed on the decisions, in our considered opinion, do not apply to the facts and circumstances of the case and are distinguishable.”

8.4 In the instant case also as pointed out above the appellant has submitted the copies of balance sheet ledger accounts bank book cash book etc at the time of assessment and the receipt is duly reflected in these accounts and hence A.O. was justified in invoking the provisions of section 68 of the Act. The ITAT Bangalore in the case of *P.V. Ajay Narayan vs. Income Tax Officer (1997) 57 TTJ 159 (Bang)* has held as under:

“It is further contended by the learned counsel for the assessee that the addition cannot be made under section 68 because the assessee has not been maintaining regular books of account. It is contended that only in cases where regular books are maintained the provisions of section 68 would be applicable. But the learned Departmental Representative, on the other hand, submitted that misquoting of a section is not fatal to the case of the Revenue. For this proposition, he relied on the following case law:

ITR 529 (Bom.)

(ii) Steel containers Lt.d v. Commissioner (1978) 112 ITR 995 (Cal.) and

(iii) D.M. Neterwalla v. Commissioner (1980) 122 ITR 880 (Bom.)

The above decisions point out to one thing that the Tribunal has power to allow the Revenue to raise a ground for the first time before it. It is also held therein that the Tribunal can uphold disallowance under another section. In the light of the above decisions we hold that mentioning of a wrong section is not fatal to making an assessment under any other section.”

8.5 *Admittedly the appellant has received the amount in question and the amount is duly deposited in the bank account of the appellant and the appellant has failed to satisfactorily explain the source of the said deposits in his bank account and hence the investment in the bank deposit is not found to be satisfactorily explained and hence the addition can be confirmed u/s 69 of the Act. Considering all the facts in totality the addition is confirmed in appeal. This ground of the appellant is therefore dismissed.”*

6. From the finding of Ld. CIT(A), it is evident that the explanation of the assessee was not found satisfactory on the basis that before advancing money to the assessee, there were cash deposits in the account of the creditors. However, Ld. CIT(A) has admitted the factum of earning of agricultural income. Therefore, inference that the entire amount was not belonging to the creditors would be fallacious. We therefore, looking into the facts and material available on records, hereby delete 50% of the addition of

Rs.17,51,000/-. The ground of the assessee's appeal is partly allowed.

7. In the result, appeal of the assessee is partly allowed.

Order was pronounced in the open court on 03 .01.2019.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 03/01/2019
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order

Assistant Registrar, Indore