

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 255/(Asr)/2013
Assessment Year: 1997-98

Aman Trading Corporation, 6-Ranbir Market, Jammu [PAN: AAMFA 5704F] (Appellant)	vs.	Income Tax Officer, W-2(2), Jammu (Respondent)
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Appellant by : Sh. Inderjit Paul (Adv.)
Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 03.12.2018
Date of Pronouncement: 16.01.2019

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals), Jammu '(CITA)' for short) dated 19.03.2013, dismissing the assessee's appeal contesting its' assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 28.12.2007 for Assessment Year (A.Y.) 1997-98.

2. The issue arising in appeal is the sustainability of the assessment as made, i.e., in law and in the facts and circumstances of the case. The addition in assessment being solely on account of unexplained cash credit u/s. 68 (at Rs.23,56,500) and disallowance of interest thereon (Rs.1 lac), i.e., at a total of Rs.24.57 lacs, the matter is principally and essentially factual, i.e., whether the assessee, a partnership, has in the facts and circumstances of the case been able to

furnish a satisfactory explanation establishing the genuineness of the impugned credits; the disallowance of interest being consequential.

3. It would be necessary, to appreciate the facts of the case, recount the background facts of the case. Assessment in the first instance was framed u/s. 144, i.e., as a best judgment assessment, on 12.03.2000 (PB pgs. 78-79), making an addition u/s. 68 for Rs.2 lacs, besides another for Rs.1,988, being the interest allowed to partners (in view of section 184(2)), i.e., as against the returned income of Rs. nil. The addition had been made by regarding the deposits with the assessee, a firm in finance business, to that extent, as bogus, i.e., out of the total deposits of Rs.25,93,300 from public credited in its' accounts during the relevant year. The same, in view of the non-cooperation by the assessee, had been estimated by the Assessing Officer (AO) in an *ad hoc* manner. The first appellate authority, in appeal, opined that it was not understood as to how an addition could be made for Rs.2.0 lacs when the assessee had apparently failed to satisfy the necessary conditions of section 68 in respect of the entire amount of Rs.25.93 lacs. No distinguishing feature/s in respect of the deposit/s for Rs.2 lacs, for which addition was made, had been brought out by the AO. The assessee before him promising to cooperate in assessment, he, vide his order dated 22.03.2001, set aside the assessment with the direction that the position in respect of each and every deposit be examined with reference to the applicability (or otherwise) of section 68; the onus to prove the genuineness of the cash credits being on the assessee (PB pgs. 80-84). The matter was taken up again for assessment vide issue of notices u/ss. 143(2)/142(1) on 07.06.2001 and, further, the assessee required to produce five (5) creditors vide order-sheet entry dated 20.06.2001. However, despite several notices being issued from time to time, and opportunities allowed, none were availed/complied with, including the final opportunity per service through affixture.

Needless to add, neither the books of account nor the 5 creditors were produced, so that no cash credit was proved. The assessee, it was noted by the AO, could not furnish even the complete addresses of the depositors. The AO, accordingly, deemed the same as the assessee's income by way of unexplained credit/s u/s. 68, also disallowing interest thereon, computing the same at the rate of 15% p.a., i.e., at Rs.3,88,995 (Rs.25.933 lacs x 15%), besides disallowance of Rs.1988 claimed toward interest to partners, and assessed the assessee's income at Rs.29,84,283 vide order u/s. 144 dated 28.02.2002 (PB pgs.85-88). The same stood confirmed in appeal in the absence of any improvement in its' case by the assessee, which was so despite several opportunities being extended by the first appellate authority. In doing so, which was vide order dated 05.03.2004, the first appellate authority noted the law in the matter as well as the proceedings before the AO in the set aside proceedings, issuing a finding that the assessee had failed to prove the identity, capacity and genuineness (of the transactions) in respect of the entire fresh deposits (PB pgs. 89-93). The matter was in further appeal set aside by the Tribunal vide its order dated 14.07.2006 (PB pgs. 94-96), holding as under:

'7. We have heard both the parties and carefully considered the rival submissions, examined the facts, evidence and material placed on record. The evidence placed before us does show that the F.I.R. No. 56 u/s. 420 & 406 of the I.P.C. was registered against the assessee. The various records including the books of account were taken away by the Police Authorities. Thus, the assessee had a genuine difficulty in appearing before the AO and furnishing the information during the course of set aside assessment proceedings. The assessee has placed before us copies of two letters of Joint Action Committee (Jammu & Kashmir) Income Tax Bar Associations & C.As which shows that there was an agitation against the CIT(A) and, therefore, it was collectively decided by the Bar not to appear before the CIT(A). Such protest continued for a pretty long time. Therefore, the reason for not appearing before the CIT(A) at the relevant time also appears to be bonafide. *The ld. counsel gave assurance before the Bench that the assessee has now all the information available with him and it would be possible to produce such evidence and explain the case to the satisfaction of the AO.* In the light of these facts and circumstances of the case and in the interest of justice, we consider it appropriate to set aside the order of the CIT(A) and restore the matter to the file of the AO for

making fresh assessment after allowing reasonable opportunity to the assessee. We order accordingly. This ground in appeal is treated as allowed for statistical purposes.’ [emphasis, ours]

The matter, accordingly, came before the AO for the third time, who proceeded by issue of notice u/s. 142(1)/143(2) on 22.09.2006 (fixing the hearing for 13/10/2006), culminating in the impugned assessment on 28.12.2007, also witnessing a change in the incumbent. Copy of the FIR registered against the company, and the list of the depositors having filed complaint against it, were submitted by the assessee, who also raised a new plea, i.e., that the deposits raised during the year amounted to Rs.13.60 lacs, and not Rs.25.933 lacs, i.e., the figure that was till then regarded as of the fresh credits during the relevant previous year. The assessee was, upon this, required by the AO to corroborate its’ claim with documentary evidence and, besides furnish the following:

‘(a) Prepare a list of persons shown in FIR giving corresponding entry of the name of depositor shown in the list given to this department during earlier asstt. Proceedings and also give corresponding entry no. of the depositor as appearing in the cash book of the assessee.

(b) Prepare a list of person to whom repayments were made during the year under consideration with proof of repayments made.

(c) Prepare a list of depositors with complete postal addresses who have not filed FIR against the assessee stating your relation with such depositor.

(d) To produce books of accounts for verification.’

The assessee failing to provide the reconciliation, was once again required to furnish the information by the AO in the following format, as well as another list, on the same lines, of the depositors who had not filed the FIR, besides producing the depositors:

1	2	3	4
Name and address of the depositor	Sr. No. where his name is appearing the list of FIR	Sr.No. where his name appears in the list provided to	Page No. of cash book and ledger

		this office during the previous asstt. proceedings	
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The assessee provided information *qua* depositors having filed FIR, albeit excluding column 3 of the format, as well as furnished (on 17/12/2007) a list of 39 depositors who had not filed the FIRs. Further, five persons were produced, of whom only one claimed to have deposited the amount in his own name; the others admitting to have deposited the same in the name of some other person. Only one of them (5) was assessed to tax. Another set of two persons were, on request, produced on 24.12.2007. They were however not examined in the absence of any document proving their identity. The books of account, also being called for throughout, were not produced. The assessee claiming that the depositors who had filed FIRs against the company be treated as genuine, the same were examined by the AO to find that of the same, 85 in number, stated to have deposited Rs.8,44,500, only 15 had made deposits during the relevant previous year, at a total of Rs.1,65,300/-. *The list prepared by the assessee was found to contain different names corresponding to a particular serial number (in the FIR list), implying that the assessee had sought to thereby introduce names of depositors who had not filed any FIR against the company, i.e., in the list of those having filed FIR.* The assessee could not furnish any explanation to his gimmick discovered by the AO, which was construed by him as furnishing false information. Then, again, the list of the persons with FIR bore reference to the cash-book folios up to page 38, while the cash book submitted by the assessee contained only 16 pages, stating that it had received copy of the cash-book from the crime branch to that extent only. What, then, was the source of the incorporation of the cash book folios corresponding to the balance 22 pages? *How could, further, a complete list prepared from incomplete books?* The assessee's claim of fresh deposits during the current year

being at Rs.13.60 lacs, i.e., as against Rs.25.933 lacs being considered up till then, remained unsubstantiated. Even the claim of repayment of loans during the year at Rs.1.955 lacs was not evidenced by any material. The AO, accordingly, relying on the decisions in *Roshan De Hatti v. CIT* [1977] 107 ITR 938 (SC) and *Kalekhan Mohd. Hanif v. CIT* [1963] 50 ITR 1 (SC), brought the cash credits for the year to tax in the sum of Rs.23,56,500/- u/s. 68, i.e., allowing the assessee benefit of Rs.2,36,800/-, holding as under:

‘14. I, therefore, in absence of any verification provided by the assessee of his books of account or any other documents, take the total deposits raised during the year to **Rs. 25,93,300/-** which was given by the assessee during previous two asstt. proceedings. It has been observed from the list of depositors who have filed FIR against the company provided by the Crime Branch that there were only **22** depositors amounting to **Rs 1,86,800/-** who have made deposits in the company during the period **1-4-1996 to 31-3-1997** and have filed FIR against the company. In light of the decision of **Punjab and Haryana High Court in the case of CIT v Mathura Dass Laxmi arayan 223 ITR 343**, where the cash creditor turns hostile then the assessee can adduce or produce indirect evidence to establish the genuineness of cash creditors. The assessee has failed miserably to even provide any indirect evidence except that certain persons have filed FIRs against his company, but keeping in view the list of persons provided by the Crime branch. I give the benefit of doubt of these 22 depositors amounting to **Rs. 1,86,800/-**. Apart from this, the assessee produced some persons before the undersigned for verification. It was seen that except one or two persons none of the persons produced for verification were actual depositors. They all claimed to have deposited the amount in the name of some other person whom they claimed to be their relative. No reason was given as to why this amount was not deposited by them in their own name and deposited by them in the name of some other person. Still to be fair with the assessee and in light of natural justice, I am giving benefit of **Rs 50,000/-** to the assessee on this account. So the assessee is entitled to total benefit of **Rs 2,36,800/-** out of total deposits of **Rs 25,93,300/-**. Rest all the deposits raised by him during the year under consideration amounting to Rs.23,56,500/- are being treated as bogus and are being added to the income of the assessee as cash credits u/s. 68 of the Income tax Act, 1961.’

Another sum of Rs.1 lac was disallowed toward interest (out of the total claim of Rs.10.89 lacs) on the said deposits, i.e., in the absence of information on the date of receipt thereof during the year, so that it could not be presumed that the impugned amount outstood for the entire year, for the interest for the entire year to be applied thereto. In appeal; the assessee making submissions before him, the Id.

CIT(A) called for a remand report from the AO. The same, as well as the rejoinder thereto by the assessee, stands reproduced at pgs. 9 through 32 of the impugned order, whereupon the Id. CIT(A) confirmed the addition u/s. 68, holding as under:

6. Determination

6.1. Ground of Appeal No. 1 is general in nature, requires no adjudication and accordingly dismissed.

6.2. Ground of Appeal No. 2 relates to the addition of Rs 23,56,500/- on account of bogus depositors as cash credits u/s. 68 of the Act. The appellant has argued that the list of deposits raised during the year under consideration amounting to Rs 23,56,500/- provided by the appellant in earlier assessment proceedings was inadvertently supplied by their accountant and the actual deposits raised during the year under consideration are only Rs 13,60,000/-. Further the appellant has argued that some of the depositors have filed complaint against the appellant in the court of law that they have made deposits with the appellant and accordingly these deposits could not be treated as unexplained deposits.

I have gone through the submission of the appellant, findings of AO in the assessment order, submissions of the appellant, remand report and rejoinder to the remand report. It is observed that the appellant has not produced its books of account on the plea that the same have been impounded by the crime branch. *The appellant has even not produced the copies of impounded books of account* even after the officials of crime branch have confirmed that they are ready to provide the photocopies of impounded documents if requested by the appellant. The appellant has not provided any documentary evidence in support of its claim except a few pages of cash book that the earlier list of deposit amounting to Rs 23,56,500/- (Rs.25,93,300/-) is wrong and the fresh list of deposits of Rs 13,60,000/- is a valid one. The complete cash book was not produced and as such it would be unreasonable to accept that deposits are received in the pages of cash book produced by the appellant whereas the other part of the cash book does not contain any receipts on account of such alleged deposits. *The original receipts of deposits were not produced and random pages of cash book shall not be considered an authentic document rather it is a self serving document.* Therefore, this plea of the appellant could not be sustained and fresh list of depositors prepared by the appellant without any material on record to justify its validity cannot be accepted.

Further it was observed by the AO on page 15 of the assessment order that out of the list of depositors amounting to Rs 25,93,300/-, only 22 depositors amounting to Rs 1,86,800/- finds place in the list of depositors who have filed FIR against the appellant provided by the Crime Branch. Accordingly, the AO has given the benefit of Rs 1,86,800/- and made an addition of balance deposits amounting to Rs 23,56,500/-. Therefore the plea of the appellant that the court cases by the depositors justify that the depositors are explained is also unacceptable.

Further, it was observed by the AO on page 12 of the assessment order that on perusal of the lists prepared and furnished by the appellant with respect to the persons who have filed FIR, it is seen that he had mentioned cash book folio numbers on that list. As per those lists there were 38 pages of cash book involved whereas the assessee had filed only 16 pages of cash book which according to him, has been obtained from the crime branch. The appellant could not explain the source of incorporating the cash book folio numbers against the names of persons appearing in rest of the 22 pages. I am of the opinion that as the appellant was not providing the information and a record to verify the claims made by them, the AO was right in rejecting the said claims. The appellant has even failed to produce any documentary evidence during the appellate proceedings to justify its claims and therefore the same could not be accepted. Accordingly this ground of appeal of the appellant is dismissed.’

[emphasis, supplied]

Aggrieved, the assessee is in second appeal.

4.1 Before us, the Id. Authorized Representative (AR), the assessee’s counsel, Sh. Inderjit Paul, Advocate, would submit that the original assessment (on 12/03/2000) having been made by adding a sum of Rs.2.0 lacs, the AO could not, in the set aside proceedings, have travelled outside the same while making the assessment the second time on 28.02.2002. Toward this, the assessee has cited some decisions, viz., *Gemini Oils Pvt. Ltd. v. ITO* (in ITA No. 2563/Mum/2005); *CIT v. Mansa Ram & Sons* [1991] 190 ITR 453 (All); *CIT v. Hope Textile Ltd.* [1997] 225 ITR 993 (MP); *CIT v. Jauhari Lal Nagpal* [1998] 171 ITR 136 (MP), to the effect that where an appellate authority sets aside an assessment to the assessing authority, the latter is bound by the terms of the set aside. There is no dispute *qua* this proposition. The AO has in fact done precisely that, i.e., what he was directed to by the first appellate authority (vide order dated 22.03.2001/PB pgs.80-84), and has not traveled outside the ambit of the directions issued thereby, which he was bound to follow in letter and spirit, even if the Revenue challenges those directions in further appeal, which it has though not. The first appellate authority clearly required the AO to examine all the credits arising during the year. In fact, the AO had even in the first instance considered all such credits, stated to be at Rs.25.933 lacs (vide order dated 12.03.2000/PB pgs. 78-79), *qua* none of

which the assessee had satisfied the conditions of identity, capacity, or genuineness, though took a view that only a fraction of the same could possibly be not genuine, *and which he estimated at Rs.2 lacs*. It was this that was discountenanced by the first appellate authority, who found such *ad hoc* or summary adjudication as not in consonance with the law, so that only the specific credit (deposit) found unproved in terms of section 68, could be deemed as the assessee's income by way of unexplained credit. The first appellate authority, who though is not bound by the grounds of appeal before him (refer *Explanation 2* section 251), did not travel beyond the scope of the appeal before him; the issue arising being the validity of the assessment as framed. There is no question of the first appellate authority, or the AO, in consequence, traveling to a new source of income, as claimed before us. There was in fact no material before the AO to arrive at an *ad hoc* figure of Rs.2 lacs. The set aside was, as a reading of the order shows, only at the assessee's instance, who has now raised the 'grievance' in its respect. In fact, whatever be the merits of the said order, the same has attained finality and cannot be challenged in the instant proceedings. Rather, the same is not under challenge even now, though the plea raised seeks to interdict and impugn the same. The said plea is without merit.

4.2 Coming to the assessee's case on merits, we find that the assessee's principal ground is that the depositors having filed criminal complaints against the assessee company, as well as in the consumer court, what better proof could there be of the impugned deposits being genuine. That is, even if the parameters of identity or capacity could not be proved, which was even otherwise not practicable under the given conditions. We are in complete agreement. Reference in this context may be made to the decision in *Surinder Arjun v. CIT* (in ITA No. 67/Asr/2015 dated 16.03.2018) by this tribunal; in fact, by the very same constitution, wherein,

similarly, addition u/s. 68 was deleted on this very basis. The reason is that the rendering of a satisfactory explanation and, consequentially, its' appreciation, is essentially a matter of fact. The same cannot be *de hors* the facts and circumstances of the case. Where, therefore, the creditors had filed suits for recovery of their dues, the assessee's liability thereto, unless, of course, the Revenue brings some contrary material on record, stands indirectly proved. It is the genuineness of the credit, it may be appreciated, which is to be proved, i.e., as regards its nature and source; the parameters of identity and capacity being also essentially toward establishing its genuineness and, thus, subsumed therein. Where the credit is by way of a deposit by a member of the public, placed with the finance company, made in pursuance of a deposit scheme thereby, the very application, unless there is something to suspect the *bona fides* thereof, becomes an important piece of evidence. The depositors' personal details in such an application, viz., name, address, occupation, bank particulars, name and relationship with the co-applicant, nominee (and relation therewith), signature/s, etc., all of which could be verified, if only on a test check basis; the receipt issued by the depositee-company, etc., would go to prove the genuineness of the credit. *The same, however, and even as noted by the ld. CIT(A), is conspicuous by it's absence in the instant case.* Rather, the copy of the application form, duly endorsed by the company, as well as the receipt issued, duly stamped, on accepting the deposit, is a prime evidence with the company in establishing the deposit. *How would, in the absence thereof, a depositor, who has no control or access to the depositee's books of account, prove his locus standi, much less his deposit?* In fact, to the depositee-company itself, much less to a court of law or a law enforcing agency. Further, that these deposits are entirely in cash is also quite surprising. Though in small sums, ranging in the main from Rs.5,000/- to Rs.15,000/- each, it is yet indeed queer that none of the

hundreds (or perhaps even thousands) of depositors paid by cheque, which would also at once establish at least the identity of the depositor/s.

The question is: Why, in any case, the assessee-company does not have the basic record, i.e., the depositor's application/s; receipt/s issued, etc., which only would enable it to, on a claim being made on it by a so-called depositor, vet his claim and make payment thereto. There is no explanation or even reference to this or other corroborative evidence *qua* the acceptance of the deposit, at any stage of the proceedings? Why? Is it that the company did not maintain it - in which case what, one wonders, is the basis of its' accounts, or is it that the same was seized by the police? When did the said seizure take place? There is no reference thereto. We state so as there is no reference to the FIRs or seizure prior to the proceedings before the tribunal, which is in 2006, even as the proceedings had already witnessed two assessments and two orders by the first appellate authority, over a period of 4 ½ years, i.e., from October, 1999 to March, 2004. *What could be more indicting of the assessee's conduct?* No wonder the assessee could not furnish, despite being called for time and again, the addresses of the depositors. Further, even assuming that the said record was available and seized by the police, what prevented the assessee from seeking copies thereof from it. Time and again, in appellate proceedings, i.e., before the first appellate authority and the tribunal, it ensured cooperation were the proceedings to be set-aside. In fact, the plea before the tribunal was not the lack of record to establish the claims – which it claimed to be in fact possession of, but the reluctance of the bar members to appear before a particular Commissioner (Appeals). In fact, we observe no reason advanced before the tribunal for not appearing before the assessing authority. It, yet, nevertheless, considering that no proper representation before the assessing authority had taken place, and perhaps the fact that the first appellate authority had since no power to set aside the matter thereto, remitted the matter back to the file of the AO,

providing, thus, the assessee with yet another opportunity to establish its' case before the assessing authority. This is in July, 2006. Again, assuming that the assessee, for various reasons, was not able to pursue its' case in right earnest prior thereto, should only have availed this opportunity. Rather, it ought to have exhibited its' intent to now pursue the matter in right earnest before seeking the tribunal's indulgence, which, as it normally does, took the assessee at the word of its' counsel, Sh. R.C. Khanna, CA, when he assured it that it now has all the information available and would produce such evidence and explain the credits to the satisfaction of the AO (refer para 7/pg. 4 of the tribunal's order). The fact of the matter is that the assessee had no documents or materials, not even its' books of account, with it at the relevant time. Not even as much as an application to the police, seized of its' records, for a copy of the record had been made, inasmuch as there is neither anything on record to so suggest nor, in fact, any claim to that effect. Reference to the death of Shri Kamal Gupta, Advocate, its' earlier counsel, thus, is no more than an alibi. Any new counsel, would, before making a statement at bar, inspect the record to satisfy that the necessary record is available with the assessee-company or, in the very least, would be obtained, advising his client to make the necessary application/s and, in fact, inform the court accordingly, i.e., of the steps having been initiated. *What, then, is the material it claims to be in possession of before the tribunal?*

Be that as it may, the assessee-company, after obtaining a set aside to the AO for the second time in July, 2006, did not even at that late stage take appropriate steps, even as it was represented by counsels throughout. Why? This is to be seen with reference to and juxtaposed with our earlier observation as to the absence of any reference to the basic record evidencing the acceptance of the deposits. That is, a complete absence of any positive material with the assessee toward establishing the genuineness of the impugned credits, stated to be received

from the members of the public at large in pursuance to its deposit scheme/s. The assessee, accordingly, was unable to furnish the addresses of the depositors or other details when required by the AO in the set aside proceedings. The AO's file is inspected for gathering the relevant material as late as on 19.11.2007 and 28.11.2007. Application to the police (in the concerned department) is made for the copy of the details of the FIRs on 09.12.2007 (or whereabouts) and, as apparently required by it, through the AO, only on 10.12.2007. *The relief allowed by the Revenue is only on the basis of these details.* It is thus wholly incorrect to say or suggest that the evidence as to the filing of FIRs had not been regarded in assessee's favour. The depositor's addresses continue to be elusive, as also the assessee's basic record *qua* deposits from the public, which could be subject to verification, even if on a test check basis. The 'depositors' produced, which was as late as on 20.12.2007, denied having made deposits with the company in their names, i.e., save one. What value, then, their statements? How could they, in the absence of any evidence, claim to represent someone else? *Does it mean that the deposits are benami?* All of them were men of no means and inspire no confidence. The two 'depositors' produced on 24/12/2007 could not prove their identity for the AO to have examined them (refer paras 4-7/pgs. 9-11 of the assessment order). Further still, the assessee has, at no stage, either before the Id. CIT(A) or even before us, rebutted the AO's charge, made with specific reference to the assessee's claim as made before him, of leading false information.

The assessee has raised a plea that the actual amount of deposits raised during the year is at Rs.13.60 lacs, and had been wrongly taken, since inception, at Rs. 25.933 lacs. The difference is substantial. True, the initial figure had also been supplied by the assessee and, in any case, not disputed at any stage. That, though, should not come in the way of substituting it with the right figure, i.e., where the same is actually incorrect, to whatever extent. The basis of the figure is the

assessee's books of account. How could, we wonder, the correct figure be ascertained in the absence of the assessee's cash-book for the entire year; the deposits being admittedly received in cash. *The same, as also the books of account, were not produced at any stage.* How, then, one wonders, rather, the figure of Rs.13.60 lacs, claimed as the correct figure, been arrived at, i.e., without the complete books of account? The assessee states of having repaid Rs. 1.955 lacs during the year, and on that basis, reconciling the figure of the unsecured deposits outstanding as on 31/03/1996 and 31/03/1997, being at Rs.69.35 lacs and Rs.57.70 lacs respectively. This is, again, quizzical, as the figure of repayment (during the year) could again only be determined with reference to the books of account for the year, which were not produced. Rather, their production would at once resolve the matter, and there would be no need to resort to any reconciliation. *How could, then, the assessee's claim be accepted?* Rather, the very lodging of the claim suggests the assessee to have the complete books of account, even as stated by the AO; the assessee, thus, in his view, having withheld the same in part. Not only the assessee gives the total amount raised during the year, but also its break-up in terms of the persons having filed, and not filed, the FIRs, which gives credence to the AO's doubt in the matter. Why, then, should it not produce the same? There is no explanation at any stage, including before us. The assessee states of its' record being released only vide release order dated 29/02/2008 (PB pages 104-105). *That is, subsequent to the assessment, justifying the non-production of the books of account on that basis.* The same, in fact, raises more questions, impinging on the assessee's conduct as well, than it answers. On what basis, given the non-availability of the books of account prior to 29.02.2008 being admitted, then, does the assessee raise the plea of the deposits accepted during the year being in fact at Rs.13.60 lacs? Why, again, did the assessee not insist on the copy of the complete books of account, or at least the cash-book and ledger, and be satisfied with a part

of the cash-book, being required in statutory proceedings? *Why did it not, in any case, post 29/02/2008, seek admission of the complete books of accounts, or other material it wishes to rely upon in the appellate proceedings, before the Id. CIT(A)?* Rather, it ought to have made out a case on that basis, both *qua* the furnishing of satisfactory explanation, as well as the quantum of the deposits. No such claim/s or case stands made out before him, or even before us. What value, then, the said release order, i.e., with reference to the instant proceedings?

The AO, whose order stands confirmed by the Id. CIT(A), has proceeded on the list of depositors who had filed FIRs, as obtained from the crime branch. Per the said list, only Rs.1,86,800/- (from 22 persons) was received by the assessee during the year. Another Rs.50,000/- was added by him toward persons who may not have filed FIRs, allowing thus a relief for Rs.2.368 lacs. The same has not been disputed by the assessee, who has not produced any other material in support of its' case, i.e., having a direct bearing on the said computation or otherwise for or toward establishing the genuineness of the credits during the year. There is no such material on record. In fact, a list of 148 names is on record (at assessee's PB pages 98-103), for an aggregate of Rs.13,78,700/-. We say 'names', instead of 'persons', as several names repeat themselves. The same stands perused to find that depositors having subscribed during the year, i.e., who had filed criminal complaints, are at Rs.1.96 lacs, which matches with the figure adopted by the AO. Why, as per the list provided by the assessee, containing 138 names, only 85 persons, for deposits amounting to Rs.8.445 lacs, only 15 persons with deposits aggregating to Rs.1,65,300/- had made deposits during the relevant period (refer para 7/pgs. 10-11 of the assessment order). As afore-noted, no other material toward proving the impugned credits stands adduced. We say so as apparently the depositors had also filed complaints in the consumer court (refer page 6 of the assessment order), so that data thereon, again, could be validly pressed by the

assessee. The same, it is to be noted, has been agreed to by the Revenue in principle, so that the issue is the extent to which the assessee has been able to furnish any material, even if indirect, in establishing the genuineness of the credits. The absence of any direct material has already been noted by us.

5. In view of the foregoing, even as we confirm the assessment in principle, i.e., having regard to the facts and circumstances of the case, and the material on record, discussed in detail; the assessee's conduct lacking *bona fides*, much less proving the impugned credits, we yet consider it proper that the assessee be allowed a final opportunity of raising a claim, duly substantiated and authenticated, in respect of the depositors who had, similarly, filed complaints with the consumer court. Without doubt, the assessee cannot be allowed a double benefit *qua* a particular deposit, i.e., where the depositor had filed a criminal complaint as well as with the consumer court, so that a comparison would have to be made. The appeal is accordingly restored to the file of the first appellate authority for the purpose, who shall adjudicate on this aspect by issuing definite findings of fact, upon due verification, and after hearing the parties before him. The proceedings being already long delayed, the Id. CIT(A) shall endeavor to complete the proceedings before him in a time bound manner, preferably within three months of the receipt of this order. Needless to add, non-cooperation on the part of the assessee – who has already been allowed abundant opportunity to present its' case, shall be to his own detriment and at his own peril. We decide accordingly.

6. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on January 16, 2019

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Date: 16.01.2019

/GP/Sr Ps.

Copy of the order forwarded to:

- (1) The Appellant: Aman Trading Corporation, 6-Ranbir Market, Jammu
- (2) The Respondent: Income Tax Officer, W-2(2), Jammu
- (3) The CIT(Appeals), Jammu
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy

By Order