

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 121/Ahd/2017

(निर्धारण वर्ष / Assessment Year: 2008-09)

<b>Dhaval Rameshchandra Shah</b> 8-A Regency Park, Nr. Mithakhali Gam, Mithakhali, Ahmedabad- 380006	<b>बनाम/</b> Vs.	<b>ITO</b> Ward-5(1)(3), 6 <sup>th</sup> Floor, Nature View Building, Nr. HK House, Ashram Road, Ahmedabad- 380009
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.:</b> ANJ PS4 371 G		
(अपीलार्थी/ <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी ओर से/ <b>Appellant by</b> :	Shri Parin Shah, AR
प्रत्यर्थीकीओरसे / <b>Respondent by</b> :	Shri T. Sankar, Sr. DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	08/07/2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	04/09/2019

**आदेश/ORDER**

**PER AMARJIT SINGH - AM:**

The appeal filed by the Assessee for A.Y. 2008-09, arise from order of the CIT(A)-5, Ahmedabad dated 17.10.2016, in proceedings under section 144 r.w.s. 147 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has mainly raised two grounds of appeal against the decision of Ld. CIT(A) in confirming the assessment proceedings u/s. 144 r.w.s. 147 of the Act and the other ground in confirming the addition of Rs. 10,84,100/- made u/s. 68 of the Act by the AO.

3. The fact in brief is that the assessee has filed return of income on 19.09.2008 showing total income of Rs. 3,41,908/-. The return was processed u/s. 143(1) of the Act. Subsequently, it was noticed that assessee had deposited cash to the amount of Rs. 10,84,100/- during the period 01.04.2007 to 31.03.2008 in his Savings Bank Account No. 1010117950 maintained with Kalupur Commercial Co-operative Bank Ashram Road, Ahmedabad. The AO has also noticed that the assessee had not shown any information related to such transaction in his return of income filed on 19.09.2008. The case of the assessee was reopened u/s. 147 of the Act by issuing of notice u/s. 148 of the Act on 03.03.2014. In response to the notice u/s. 148 the assessee has neither filed any return of income nor raised any objection against the reopening of the assessment. The assessee has also not made compliance to the notices issued u/s. 142(1) of the Act by the AO till 27.01.2014. The Authorise Representative of the assessee attended on 10.03.2015 and 12.03.2015 and furnished written submission before the AO. The AO has verified the same and placed on record. Since the assessee has not filed the complete information and return of income in response to the notice issued u/s. 148 of the Act therefore the AO has finalised the assessment u/s. 144 of the Act. On verification of the information filed by the AR of the assessee, the AO has noticed that assessee has obtained cash loan aggregating to Rs. 11,31,000/- from 58 individuals to the amount of Rs. 19,500/- per individual on different dates. The assessee has only filed combined declaration stating that 58 persons have advanced Rs. 19,500/- each to the assessee without charging any interest and the same has been repaid on 24.01.2014. The assessee has not filed any supporting evidences to prove the creditworthiness and genuineness of the transaction, except the Xerox copy of a common affidavit of 58 persons stating that each person has advanced Rs. 19,500/- in cash to the assessee during the F.Y. 2007-08 and Xerox copies of Aadhar Card, Election ID card, Driving Licenses of the cash creditors. The AO has stated that barring a common affidavit of 58 persons filed at the fag end of the time barring period the assessee has not filed any evidence to prove the capacity and creditworthiness of the creditors. The AO observed that mere furnishing of a

Xerox copy of common affidavit in respect of 58 cash creditors would not by its prove that the cash credits have been actually obtained from such person and they had creditworthiness to lend this amount. Consequently, the amount of Rs. 10,84,100/- found introduced/deposited in the bank account in cash was added to the total income of the assessee as unexplained deposit u/s. 68 of the Act.

4. Aggrieved assessee has filed before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal of the assessee.

5. We heard the rival contention and perused the material on record. During the course of assessment proceedings the AO has noticed that assessee had deposited cash aggregating to Rs. 10,84,100/- during the financial year relevant to the assessment year under consideration. Since the assessee had not shown the relevant transaction in the return of income therefore the AO has initiated proceedings u/s. 147 of the Act by issuing of notice u/s. 148 of the Act.

In spite of giving number of opportunity the assessee has failed to make full compliance before in the assessment proceedings. The AR of the assessee has submitted only partial information before the AO which was considered and placed on the record. However, on account of not furnishing complete information and not making compliance to the notices issued the AO has completed assessment u/s. 144 r.w.s. 147 of the Act. Considering the above facts and circumstances we do not find any force in the ground of appeal of the assessee against confirming the assessment proceeding u/s. 144 r.w.s. 147 of the Act by the Ld. CIT(A) and the same is dismissed.

Regarding other grounds of appeal 2 to 3 relating to confirming the addition of Rs. 14,84,100/- made u/s. 68 of the Act, it is noticed that assessee has not proved the capacity and creditworthiness of the depositors from whom the assessee has claimed to have received the deposit in cash to the amount of Rs. 10,84,100/-. The assessee has only furnished copies of declaration filed by the 58 persons on

common affidavit stating that each person has advanced Rs. 19,500/- in cash to the assessee. The assessee has only filed Xerox copy of Aadhar Card, Election Card, and Driving Licenses of such cash depositor and failed to furnish relevant supporting document to establish the creditworthiness of the creditors and genuineness of the transaction. Looking to the facts of the case of the assessee we consider that merely furnishing of a Xerox copy of common affidavit in respect of 58 cash creditors would not by itself prove that the cash credit have been actually obtained from such person and they had creditworthiness to lend this amount. We observe that AO has rightly considered on the following rationale that assessee has failed to prove the genuineness of the cash deposit found in his bank account:-

*“(i) While preparing the list of such cash creditors, the assessee has taken care to keep the amounts below Rs. 20,000/- so as not attract the provisions of section 269SS/269T.*

*(ii) The assessee has not furnished any evidences to prove that the so called cash creditors had the capacity to advance loans of Rs. 19,500/- to the assessee for a long period of 8 years without charging any interest. The assessee has not furnished details of bank accounts, source of income, PAN and income tax returns of these parties.*

*(iii) There is no explanation or evidence to show that these persons are, in any way, related or connected with the assessee.*

*(iv) All the loans were allegedly repaid after 8 years on the same day i.e. 24.01.2015 after initiation of proceedings u/s. 148 of the Act. The claim of repayment is also not supported by evidences. The assessee has furnished a Xerox of bank passbook wherein some deposit/credits and withdrawals are reflected. However, it is not evident from copy of one page of passbook whether this account belongs to assessee as there is no mention of name of the account holder in the given page.”*

It is clearly demonstrated from the facts as cited above in this order that during the course of assessment proceedings the assessee has furnished incomplete information in respect of his claim of obtaining cash loan of Rs. 10,84,100/- obtained from 58 persons. In spite of giving sufficient opportunity the assessee has failed to satisfy the creditworthiness of the creditors and genuineness of the transactions. We also consider that the Hon'ble jurisdictional High Court in the case of Pavankumar M. Sanghvi vs. ITO vide 404 ITR 601 (Gujarat) has upheld

the order of the ITAT Ahmedabad for sustaining the addition u/s 68 on account of the assessee's inability to prove the genuineness of the credit transactions.

The Ld. Counsel has referred the judicial pronouncement in the case of Rajesh Babubhai Damania vs. ITO 169 CTR 346 (Gujarat). However, it is noticed that facts of the aforesaid case referred by the Ld. Counsel are distinguishable from the case of the assessee. In the referred case the assessee had repeatedly produced creditors before the AO, filed confirmation with proper name and address of the concerned parties as well as proved repayment by account payee cheques. On the similar basis other cases referred by the Ld. Counsel i.e. 117 taxman 25 (Ahd) 80 Taxmann.com 272 are also distinguishable from the facts of the case of the assessee. The Ld. Counsel has also referred alternative judicial cases i.e. 100 taxmann.com 325 that any sum found credited in bank pass book statement cannot be treated as an unexplained cash credit.

The Ld. DR has referred the decision of Special Bench of Delhi ITAT in the case of Manoj Agarwal (2008) 113 ITD 377 (Delhi)(SB) wherein it is held that non-maintenance of books of account is not a material factor and wrong mentioning of section is not fatal. We have also considered the case of Arunkumar J. Machhala vs. CIT of Hon'ble Bombay High Court wherein the addition u/s. 68 was sustained after rejecting the contention of the assessee that he had not maintained books of account. We have also considered the decision of Sudhir Kumar (HUF) vs. CIT 224 taxman 178 of Hon'ble Punjab and Haryana High Court wherein it is held that when during the assessment proceedings AO noticed that assessee had deposited huge amount of cash in his book account, the addition of the said amount in the income of the assessee by invoking the provision of Sec. 68 of the Income Tax Act is justified.

In the light of the above facts and findings we do not find any substance in the plea of the assessee and consider that it was the bounden duty of the assessee to

explain the nature and source of cash deposits found in his bank account as elaborated above.

In the light of the above facts and findings we consider that assessee has failed to explain the cash deposit made in his bank account with relevant supporting evidences to prove the genuineness and creditworthiness of his claim that impugned cash loan was received from 58 different persons. Considering above we do not find any infirmity in the decision of Ld. CIT(A) in sustaining the addition made by the AO by treating the aforesaid cash deposit as unexplained 68 of the Act. Therefore, appeal of the assessee is dismissed.

6. In the result, the appeal of the assessee is dismissed.

**This Order pronounced in Open Court on 04/09/2019**

Sd/-  
**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Ahmedabad: Dated 04/09/2019

TANMAY

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3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।