

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

ITA No. 423/Coch/2019
Assessment Year: 2013-14

Sudheesh Kumar K. 121/1, K.S. Nivas, Amman Kovil Street, Mullackal, Alappuzha-688 011 [PAN:ACHPN 6325Q]	Vs.	The Income Tax Officer, Ward-4, Alappuzha
(Assessee -Appellant)		(Revenue-Respondent)

Assessee by	Shri R. Krishnan, CA
Revenue by	Shri Mritunjaya Sharma, Sr. DR

Date of hearing	14/01/2020
Date of pronouncement	14/01/2020

ORDER

Per CHANDRA POOJARI, AM:

This appeal by the assessee is directed against the order of the CIT(A), Kottayam dated 12/03/2019 and pertains to the assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:

1. The learned Commissioner of Income Tax (Appeals) erred in sustaining the addition of Rs, 4,32,000/- u/s 68 of the Income Tax Act.

2. The learned officers ought to have accepted the fact that the Assessing Officer had taken a statement from the appellant's wife, wherein she had admitted that cash belonging to her had been deposited in the bank account of the appellant.

3) The learned officers below ought to have accepted the statement of the appellant that there were clerical mistakes in the books of accounts of the appellant's wife and that having regard to the sworn statement of the appellant, the money belonged to the appellant's wife and therefore was not unexplained.

4) The learned Assessing Officer erred in applying the provisions of Section 68 of the Income Tax Act, where the section talks about sums credited in the books of accounts. There is lack of application by the Assessing Officer.

Appellant prays that the addition of Rs. 4,32,000/- be deleted.

3. The facts of the case are that the assessee is a dealer in mobile phone coupons by the name "A2A Communications" and filed his return of income on 24/07/2014 admitting a total income of Rs.1,90,740/-. The assessee was asked to produce copy of the Bank account as per the information collected from AIR. The assessee produced copy of the bank account for the F.Y 2012-13 with Axis Bank in account No.354010100036971. On going through the bank statement it was noticed that assessee made cash deposit of Rs-57,46,800/- on various dates during the financial year. He was asked to explain the source of the above cash deposits of Rs.57.46 Lakhs made during the year. According to the assessee, cash deposits in the bank account were cash given by the assessee's wife Smt.Sindhu Gopalakrishnan. The assessee's wife Smt.Sindhu Gopalakrishnan is doing a business of packed food products by the name Adith Traders. She has been distributing "Brahmins" brand of food products in and around Alappuzha. She is not maintaining any current account with the bank for her business. She is depositing all her cash transactions in the savings bank account of the assessee.

3.1 The assessee was asked to produce book of accounts of his business as well as books of accounts of Adith Traders managed by his wife. The assessee produced books of accounts of his business as well as books of accounts of Adith Traders managed by his wife. A sworn statement was taken from the wife of the assessee clarifying the fact that she was not maintaining any current account with any bank for her business purpose. Whatever cash she received in her business was given to the assessee to be deposited in the savings account with Axis Bank and it was accounted in her cash book.

3.2 On verification of cash transactions in the bank account and its corresponding debit in the cash book of the assessee as well as the cash book of the Adith Traders, following discrepancies were noted.

Date	Cash Deposit as per bank pass book	Cash received from Adith Traders as per Cash book	Difference	Explanation given by the assessee for the difference
24.08.2012	88,000	80,000	8,000	No explanation given
10.09.2012	58,000	50,000	8,000	-do-
22.10.2012	2,37,000	2,28,000	9,000	-do-
19.11.2012	30,000	No entry	30,000	-do-
23.11.2012	2,30,000	23,000	2,17,000	-do-
31.01.2013	1,60,000	No entry	1,60,000	-do-
		Total	4,32,000	

3.3 On perusal of the bank account and cash book there was a total difference of Rs 4,32,000/- and the assessee was asked to explain the reason. The assessee failed to explain the difference in cash deposits in the bank account with his cash book and also unable to prove the source of deposits for the above difference. Therefore, the Assessing Officer made an addition of Rs.4,32,000/- to the Total Income as unexplained cash credit u/s 68 of the I.T. Act 1961 in the bank account of the assessee.

4. On appeal, the CIT(A) confirmed the addition made by the Assessing Officer u/s. 68 of the Act by observing that during the appellate proceedings also the assessee had not produced any evidence to prove the source of the cash deposits.

5. Against this, the assessee is in appeal before us. The Ld. AR drew our attention to the English translation of sworn statement recorded from Smt. Sindhu Gopalakrishnan, on 11/03/2016 at the Income Tax Office, Alappuzha which reads as follows:

Oath Administered

I hereby swore in the name of God. I solemnly affirm that what I shall state shall be truth and nothing but the truth. I can read, write and understand Malayalam. I have been made to understand that if I speak anything other than the truth, I shall be liable for prosecution under the Indian Penal Code.

1. Introduce your self.

Ans: I am Sindhu Gopalakrishnan, wife of Mr. Sudheeshkumar. I have completed predegree course. Now I am running a business named Adith Traders.

Q2. What is the nature of business of Adith Traders?

Ans: Adit Traders distributes Brahmins branded packed food products in Alappuzha.

Q3. Do you file your income tax returns? If yes please specify the years for which returns had been filed.

Ans: Yes, I have filed income return for the assessment years 2014-15 and 2015-16.

Q4. Have you filed Vat Returns and paid Sales Tax?

Ans: Yes, I have filed VAT Returns and paid sales tax.

Q5. Whether your books of accounts are updated?

Ans: Yes, I keep my books of accounts updated.

Q8. Do you have a separate bank account for your business purpose? If yes specify the account number.

Ans: No, I don't have a separate bank account for the business. All the business transactions are routed through my husband Mr. Sudheeshkumar's bank account.

Q7. Whether the cash received by the Adit traders are deposited in the bank account of Mr. Sudheeshkumar?

Ans. Yes. All the cash transactions carried out me_ are routed though the bank account of Mr. Sudheeshkummar.

I hereby declare that all the above mentioned information are true and correct to the best of my knowledge and belief. I also confirm that the statement is given voluntarily without any force for coercion. I have gone through the above statement.

5.1 The Ld. DR relied on the order of the lower authorities.

6. We have heard the rival submissions and perused the record. On going through the copy of the bank account for the F.Y 2012-13 with Axis Bank, the Assessing Officer noticed that assessee made cash deposit of Rs.5746800 on various dates during the financial year. He was asked to explain the source of the

above cash deposits of Rs.57.46 Lakhs made during the year. According to the assessee, cash deposits in the bank account were cash given by the assessee's wife Smt.Sindhu Gopalakrishnan. The assessee's wife Smt.Sindhu Gopalakrishnan is doing a business of packed food products by the name Adith Traders. She has been distributing "Brahmins" brand of food products in and around Alappuzha. She is not maintaining any current account with the bank for her business. She was depositing all her cash transactions in the savings bank account of the assessee. The Assessing Officer found certain discrepancies as mentioned above. The entries are found in the Bank account of the assessee as deposited by him. In our opinion, when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of the debtor and creditor and not of trustee and beneficiary. Applying this principle, the bank statements supplied by the Bank to its constituent is only a copy of the constituent's account in the books maintained by the bank. It is not as if the Bank statements are maintained by the Bank as the agent of the constituent, nor can it be said that the pass book is maintained by the Bank under the instructions of the constituent. Therefore, the Bank statements supplied by the Bank to the assessee in the present case could not be regarded as a book of the assessee, nor a book maintained by the assessee or under his instructions. As such, addition under s. 68 of the amount entered only in the Bank statements was not justified. This view of ours is fortified by the judgment of the Bombay High Court in the case of CIT vs. Bhaichand H. Gandhi 141 ITR 67 (Mum.).

6.1 In view of the above, we are of the opinion that the addition made u/s. 68 of the Act cannot be sustained in this case. Hence, this ground of appeal of the assessee is allowed.

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

Order pronounced in the open court on 14th January, 2020

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 14th January, 2020

GJ

Copy to:

1. Sudheesh Kumar K. 121/1, K.S. Nivas, Amman Kovil Street, Mullackal, Alappuzha-688 011
2. The Income Tax Officer, Ward-4, Alappuzha.
3. The Commissioner of Income-tax(Appeals), Kottayam.
- 4 The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin

