

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI SANJAY ARORA, ACCOUNTANT MEMBER**

ITA No.166/JAB/2018
Assessment Year: 2005-06

Shailesh Jaiswal, Jaiswal Dhaba, Kuthla Thana, Pureni, Katni (M.P.) [PAN: ADTPJ 3555H]	vs.	Income Tax Officer, Ward-Katni, (M.P.)
(Appellant)		(Respondent)

Appellant by	Shri Dheeraj Ghai, CA
Respondent by	Shri I.B. Khandel, Senior DR
Date of hearing	13/12/2019
Date of pronouncement	20/01/2020

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax Appeals)-1, Jabalpur ('CIT(A)' for short) dated 23.5.2018, partly allowing the assessee's appeal contesting his assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for Assessment Year (A.Y.) 2005-06 vide order dated 19/12/2007.

2. The assessee-individual, a liquor contractor, is also in truck plying and transport commission business. For liquor business, the income was estimated by the Assessing Officer (AO), in view of non-substantiation by the assessee of several expenses, at 5% of the turnover of Rs. 29.35 lacs, i.e., Rs. 1,46,756, as against the disclosed profit of Rs. 50,750. The income of the transportation commission was assessed at Rs.25,000 (on a gross receipt of Rs. 63,417), against a disclosed income

of Rs.15,250. Further, the assessee's saving bank account revealed cash deposits of Rs.3 lacs on 10/4/2004, which were explained by him to be short-term cash deposits in small sums (of Rs.15000-20,000 each) from friends and relatives, seventeen in number, for an aggregate of Rs. 2.79 lacs, with the balance being from the cash available with the assessee as per his cash-book. The same were reflected as cash credits in the books of account of his liquor business, prior to the date of deposit in the bank. And in the view of the same being not satisfactorily explained by the assessee, came to be added u/s.68 by the AO, assessing the total income at Rs. 5,16,300, as against the returned income of Rs. 1,08,700. The assessee being partly successful in first appeal, is in second appeal, raising issues which we shall take up in seriatim.

3.1 The first issue is *qua* Rs. 3 lacs brought to tax u/s. 68. The same has been for want of proving the capacity and genuineness of the credits, toward which the assessee had furnished confirmations from the creditors, stated to friends and relatives, who, or any of them, were not produced in person despite being called for by the AO. There was, further, nothing to exhibit the assessee visiting them, stationed at different parts of the State of the Uttar Pradesh, for collecting cash from them, or of them visiting the assessee at Katni for the purpose. Nothing had been brought on record to substantiate the creditworthiness as well, i.e., in terms of bank account; sale of agricultural produce; salary certificate or other proof of income; the creditors being stated to be agriculturists or salaried persons. The AO, under the circumstances, regarded even the confirmation letters as merely accommodative. The assessee did not improve his case in first appeal, which was accordingly dismissed. This is the second round before the Tribunal; it, in the first instance, restoring the matter back to the file of the Id. CIT(A). The additional evidence now brought, viz. khasra khatauni; job certificates, etc. was not considered in the absence of the assessee making out any case for admission of additional evidence/s, there being in fact even no application toward the same.

3.2 The first thing that therefore the assessee ought to have canvassed is the non-admission of the additional evidence; his case being *sans* any material, except the confirmatory letters, found accommodative in the absence of any corroborative material toward establishing the credits, i.e., toward proving the capacity of the alleged creditors or the genuineness of the impugned credits. No ground on even plea toward the same stands raised during hearing. Why, even the order by the Tribunal restoring the matter back is not placed on record for us to have the benefit of its' observations. The question as to why did the 'friends' and 'relatives' not transfer funds, which is over long distances, through the bank, rather than delivering cash, which besides being risky also entails cost – not shown as incurred, has not been addressed, much less satisfactorily explained. This is as the same, even as observed by the AO, impinges directly on the genuineness of the credits. Both the capacity (of the creditors), and the genuineness of the cash credits, is unproved, and cannot be said to have been satisfactorily explained, validating the application of section 68 in terms of trite law, toward which we may cite some case law:

A. Govinda Rajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC)

Sreelekha Banerjee & Othrs. v. CIT [1963] 49 ITR 112 (SC)

Kalekhan Mohammed Hanif v. CIT [1963] 50 ITR 1(SC)

CIT v. Durga Prasad More [1971] 82 ITR 540 (SC)

CIT v. Biju Patnaik [1986] 160 ITR 674 (SC)

Sumati Dayal v. CIT [1995] 214 ITR 801 (SC)

CIT v. P. Mohanakala & Ors. [2007] 291 ITR 278 (SC)

The addition, however, is to be restricted to Rs. 2,79,000, i.e., the aggregate amount of the cash credits. The balance cash deposited (i.e., Rs. 21,000), is sourced from the assessee's cash book *qua* which the Revenue has not made any observation entitling it to draw an adverse inference. We decide accordingly, and assessee gets part relief.

4. The second ground of appeal is toward rejection of the assessee's accounts, and estimation of the liquor business income at Rs.1,46,756, i.e., as against the disclosed profit of Rs.51, 450. No improvement in his case has been made by the

assessee at any stage, including before us. In fact, no specific plea was raised in this respect during hearing. The estimate at 5% of the admitted turnover, on which the assessee has admittedly earned a gross profit of nearly 21%, i.e., Rs. 6,15,840, considering that the assessee could not properly substantiate in the main, three expenses, viz. Davish expenses (Rs. 2.65 lacs); Ahata expenses (Rs. 0.65 lacs); and Conveyance expenses (Rs.0.49 lacs), i.e., for an aggregate of Rs. 3.09 lacs, is, under the circumstances, reasonable; the net increase in the disclosed income being at Rs.0.97 lacs only. We, accordingly, do not find any reason to interfere. We decide accordingly.

5. The transport commission stands estimated at Rs.25,000 (i.e., at nearly 40%) as against the disclosed income of Rs. 15,250, on the gross receipt of Rs.63,417. The same is in view of the non-substantiation of the telephone and electricity expenses, claimed at Rs. 21,670. The Id. CIT(A) has already allowed relief for Rs. 5,000, reducing the addition to Rs. 4,750. The estimate is, under the circumstances, reasonable, particularly considering that there is no reason why the details and vouchers for electricity or telephone expenses could not be furnished or otherwise explained. No ground for any interference is accordingly made out, nor in fact was canvassed during hearing. We decide accordingly.

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

Order pronounced on January 20, 2020

Sd/-
(Bhavnes Saini)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Dated: 20/01/2020

Copy of the order forwarded to:

1. The Appellant: Shailesh Jaiswal, Jaiswal Dhaba, Kuthla Thana, Pureni, Katni (M.P.)
2. The Respondent: Income Tax Officer, Ward-Katni, (M.P.)
3. The CIT concerned
4. The CIT(A)-1, Jabalpur
5. The Sr. D.R., I.T.A.T.