

आयकर अपील अाधिकरण, अहमदाबाद ढायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 1421/AHD/2017

अाधरण वष/Asstt. Year: 2011-2012

Shaunak Shailesh Shah, 9, Neelkanth Bunglow, Prahladnagar, Satellite, Ahmedabad. PAN: AHBPS7909L	Vs.	I.T.O., Ward-15(4), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Tushar Hemani, with Shri P.B. Parmar A.Rs
Revenue by :	Shri L.P. Jain, Sr.D.R

सुनवाई का तारख/Date of Hearing : 08/01/2020

घोषणा का तारख /Date of Pronouncement: 20/01/2020

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-7, Ahmedabad dated 28/03/2017 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.24/03/2014 relevant to the Assessment Year 2011-2012.

The assessee has raised the following grounds of appeal.

1. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in making an addition of Rs.1,63,22,223/- u/s.68 of the Act in respect of amount credited to the bank account of the appellat.*
2. *The learned CIT(A) has erred both in law and on the facts of the case in not appreciating that the assessment order was passed without granting proper and sufficient opportunity to place on record the necessary details as called for and that the AO has shown undue haste in framing the assessment which ought to have been quashed for gross violation of the principles of natural justice.*
3. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
4. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s.234A/B/C of the Act.*
5. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271(l)(c) of the Act.*
6. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271(l)(b) of the Act.*

The appellat craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

2. The 1st issue raised by the assessee is that the Ld. CIT-A erred in confirming the addition for the sum of Rs. 1,63,22,223.00 made by the AO u/s 68 of the Income Tax Act.

3. The facts in brief are that the assessee is an Individual. The assessee in the year under consideration derived his income from salary. The assessee during the year had deposited the cash to the tune of Rs. 1,11,26,300.00 and cheques for the sum of Rs. 51,95,923.00 in his saving bank account no. 00910400008674 maintained with IDBI Bank, C.G. road branch, Ahmedabad. The assessee during the year also issued cheques to the various parties on different dates. The case of the assessee was selected under scrutiny based on AIR information on account of cash deposited in his bank account.

3.1 However, the assessee neither made any reply to the statutory notice issued under section 142(1) of the Act nor appeared before the AO in response to the notice issued under section 131 of the Act. The AO further collected the details of the parties to whom the assessee issued cheques from the bank by issuing notice under section 133(6) of the Act. After that the AO issued notice under section 133(6) of the Act to some of the parties to whom the assessee issued the cheques, but no compliance.

3.2 The AO also noted that the assessee has furnished his return of income by declaring salary income of Rs. 1,58,000.00 only which indicates that the assessee was not engaged in any business activity. Thus it cannot be said that the transactions shown in the bank were business transactions.

In view of the above, the AO was of the view that the amount credited in the bank account either in cash or cheque remained unexplained. The AO accordingly added the sum of Rs. 1,63,22,223.00 to the total of income of the assessee under section 68 of the Act.

Aggrieved assessee preferred an appeal to the Ld. CIT-A.

4. The assessee before the Ld. CIT-A submits that the cash amounting to Rs. 1,11,01,300.00 was deposited out of the cash received from various person during the year under consideration. The assessee in support his contention, in pursuance to the rule 46A of the Income Tax Rules, files the following documents:

Following evidences are now being placed before your Honors as additional evidences substantiating cash deposit in the bank account.

<i>Sr.No.</i>	<i>Particulars</i>	<i>Pgs. of compilation of additional evidences</i>
<i>1.</i>	<i>Details of cash received from various person</i>	<i>1-2</i>
<i>2.</i>	<i>Copy of confirmations received from whom cash been received, its English translation 7/12 extracts & other evidences.</i>	<i>3-93</i>
<i>3.</i>	<i>Copy of cash book</i>	<i>94-100</i>

4.1 The assessee regarding the deposits made through cheques for the sum of Rs. 52,20,923.00 submitted that the transactions were carried out through the banking channel, therefore the question does not arise for making the addition under section 68 of the Act.

4.2 The assessee also submitted that he has fulfilled all the conditions/requirement of section 68 of the Act by furnishing the details of name of the lender, address and copies of confirmation from whom the cash was received. The assessee also claims that the advances provided by the parties are agriculturist. As such they provided advances either from their agricultural income or saving. The assessee in support of his contention files the copies of 7/12 extract and also submitted that some of the loan providers have sold the agricultural lands.

4.3 However the Ld. CIT-A observed that the copies of confirmation were unsigned and also the addresses of the loan providers were not appearing therein. The assessee had not filed copies of the PAN for any of the lender from whom he received loan either in the form of cash or through cheque.

4.4 The Ld. CIT-A also noted that the creditworthiness of the parties from whom the assessee received cash cannot be established based on 7/12 extract as it does not reflect the credibility of the lenders viz a viz the quantum of income.

4.5 Accordingly, the Ld. CIT-A was of the view that the assessee has not discharged his onus to establish the Identity, genuineness of the transactions and creditworthiness of the lenders. Thus the Ld. CIT-A in view of the above upheld the order of the AO.

Being aggrieved by the order of the Ld. CIT-A, the assessee is in appeal before us.

5. The Ld. AR before us filed a paper book running from pages 1 to 157 and submitted that the assessee has filed the confirmation along with the 7/12 extracts of the parties. But the finding of the Id. CIT-A is contrary to the details filed by the assessee. The AO has not verified the loan creditors despite all the details were furnished.

6. On the other hand the Ld. DR submitted that the assessee furnished the confirmation of the loan taken by the assessee. The assessee also not co-operated during the remand proceedings. The Id. DR vehemently supported the order of the authorities below.

7. The Id. AR in his rejoinder submitted that the remand report of the AO was based on technical points without mentioning anything on merit. Therefore the matter needs to be set aside to the file of the AO for fresh adjudication. The Id. AR placed his reliance on the judgment of Hon'ble Apex court in the case of Tin Box Co. v/s CIT reported in 249 ITR 216.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The assessee in the year under consideration has deposited cash and cheques in his saving bank account amounting to Rs. 1,11,26,300.00 in cash and Rs. 51,95,923.00 respectively. The AO in the absence of sufficient documentary evidence treated both cash and cheques deposits as unexplained cash credit under section 68 of the Act. The action taken by the AO was subsequently confirmed by the learned CIT (A).

8.1 The provision of section 68 of the Act fastens the liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties. These liabilities on the assessee were imposed to justify the cash credit entries under section 68 of the Act by the Hon'ble Calcutta High Court in the case of CIT Vs. Precision finance (p) Ltd reported in 208 ITR 465 wherein it was held as under:

"It was for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. On the facts of this case, the Tribunal did not take into account all these ingredients which had to be satisfied by the assessee. Mere furnishing of the particulars was not enough. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, it was to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the creditors and their creditworthiness. Mere payment by account payee cheque was not sacrosanct nor could it make a non-genuine transaction genuine."

8.2 Coming to the present facts of the case whether the deposit of cash and cheques represent the unexplained cash credit as envisaged under the provisions of section 68 of the Act. For the better understanding of the case, we are adjudicating the component of cash deposit and cheque deposit separately and independently.

8.3 Regarding the cheque deposits, we note that the assessee has accepted cheques from various parties. However, we find that the assessee has furnished only copy of the account of such parties maintained by the assessee in his books of accounts. Such copy of the account was signed by the assessee only. As such there were no counter signatures of the parties who have advanced loan to the assessee. Thus, it is inferred that the assessee has not discharged his obligations imposed under the provisions of section 68 of the Act. It is the settled law, the onus lies on the assessee to furnish the details of the parties such as identity, genuineness of the transactions and creditworthiness but the assessee failed to do so. However, we note that the genuineness of the transaction cannot be doubted as the transaction was carried out through the banking channel. In this regard, we find support and guidance from the judgment of Hon'ble High court of Bombay in the case of CIT Vs. Green Infra Ltd reported in 78 taxmann.com 340 wherein it was held as under:

'So far as the genuineness of the transaction of share subscriber is concerned, it concludes as the entire transaction is recorded in the books of account and reflected in the financial statements of the assessee since the subscription was done through the banking channels as evidenced by bank statements which were examined by the Tribunal. With regard to the capacity of the subscribers the impugned order records a finding that 98 per cent of the shares is held by IDFC Private Equity Fund-II which is a Fund Manager of IDFC Ltd. Moreover, the contributions in IDFC Private Equity Fund-II are all by public sector undertakings.

8.4 However, the genuineness of the transaction is not sufficient enough to absolve the assessee from furnishing other documentary evidence such as identity, creditworthiness and confirmation of the transactions. As such, the confirmation of the transaction is essential to ascertain the fact that the amount received by the assessee represents his loan liability.

8.5 We are also conscious to the fact that the AO during the assessment proceedings has collected the details of the parties to whom the assessee has issued cheques. The AO further had issued notices to them under section 133(6) of the Act for the verification of the transactions. Thus, an argument was raised by the Id. AR that the AO could have collected the details of the parties from whom the assessee has received cheques. But the AO has not done so. However, we are of the view that the inaction of the AO for not collecting the details of the parties from whom the assessee has received cheque does not absolve the assessee from furnishing the details of the parties as discussed above. As such, the liability under section 68 of the Act is upon the assessee to justify the source of deposits in the manner described aforesaid.

In view of the above, we hold that the assessee failed to discharge his onus under the provisions of section 68 of the Act so far as the cheque deposits in his bank account are concern.

8.6 Regarding the deposits of cash, we note that the assessee has furnished the list of parties from whom he has accepted the cash in the year under consideration amounting to Rs. 1,11,26,300.00. The assessee also filed the

confirmation from the parties along with the copies of 7/12 extract depicting the agricultural land held by such parties. The details are enclosed on pages 3 to 93 of the paper book. However, on perusal of the details furnished by the assessee we note certain defects as detailed under:

- i. There was no identity of the party except the form 7/12 which was in vernacular language. However, there was the confirmation filed from the parties which were in vernacular and translated English copy. But the confirmation from the party does not establish the identity.
- ii. There was no document evidencing the creditworthiness of the parties except the information in tabular form about the source of fund in the hands of the parties who provided loan to the assessee. As such, the source of fund was not substantiated based on documentary evidence.
- iii. There was no address furnished by the assessee about such parties who provided loan to the assessee.
- iv. There was no PAN furnished about such parties by the assessee who provided loan to the assessee.

In view of the above, we hold that the assessee failed to discharge his onus imposed under the provisions of section 68 of the Act.

8.7 We also note that the Hon'ble Apex court in the case of Tin Box Co. v/s CIT reported in 249 ITR 216 has held that the matter needs to be set aside to the file of the AO if the assessee has filed additional evidences before the appellate authorities. However, we note that the Ld. CIT (A) has called for the remand report from the AO two times on the details furnished by the assessee before him. Subsequently, the Ld. CIT (A) evaluated the additional documents filed before him by the assessee and arrived at the conclusion that these documents were not sufficient enough to discharge the assessee from the onus imposed under section

68 of the Act. Thus it is not the case that the AO was not afforded the opportunities for his comments on the additional documents filed by the assessee. Accordingly, we are of the view that there is no violation of the principles laid down by the Hon'ble Apex court in the case of Tin Box Company v/s CIT (***Supra***).

8.8 In view of the above, we hold that the assessee failed to discharge his onus cast upon him under the provisions of section 68 of the Act. Accordingly, we do not find any reason to interfere in the order of the authorities below. Hence the ground of appeal of the assessee is dismissed.

9. In the result, the appeal of the assessee is **dismissed**.

Order pronounced in the Court on 20/01/2020 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated ^(True Copy) 20/01/2020
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