

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'F': NEW DELHI**

(Through Video Conferencing)

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA Nos.1789 to 1795 /DEL/2017
[Assessment Years: 2006-07 TO 2012-13]**

Radhe Shyam Bansal, 202, IInd Floor, E-371, Nirman Vihar, Delhi-110092	ACIT, Central Circle-14, New Delhi
PAN-AAGPB1737M	
Assessee	Revenue

Assessee by	Sh. Mayank Patwari, CA
Revenue by	Smt. Sushma Singh CIT-DR

Date of Hearing	29.07.2021
Date of Pronouncement	03.09.2021

ORDER

PER R.K. PANDA, AM,

The above seven appeals filed by the assessee are directed against the separate orders dated 21.12.2021 of the learned CIT(A)-30, New Delhi, relating to Assessment Years 2006-07 to 2012-13 respectively. Since, identical grounds have been taken by the assessee in all these appeals, therefore, these were heard together and are being disposed of by this common order.

ITA No.1789/Del/2017 (AY 2006-07)

2. Facts of the case, in brief, are that the assessee is an individual. A search and seizure action u/s 132 of the Income

Tax Act, 1961 (in short 'the Act') was conducted on the assessee on 11.04.2011. In response to notice u/s 153A of the Act issued on 28.03.2013, the assessee filed the return of income on 19.12.2013 declaring total income of Rs.1,41,930/-. The AO issued statutory notice u/s 143(2) of the Act and also a questionnaire along with notice u/s 142(1) of the Act. During the course of assessment proceedings, the AO noted that the assessee was introducer in opening of bank accounts in the case of about 30 parties. On perusal of the bank statement of these parties, he noted that there are various cash deposits in these accounts and the amount credited in these bank accounts are rotated either in the accounts of the companies controlled by the assessee such as Bansal Infinlease (P) Ltd. and Bansal Inhold Ltd. or the cheques have been issued to different parties. He therefore, asked the assessee to explain as to why the deposits in these bank accounts should not be treated as income of the assessee in the year of deposits. He also asked the assessee to explain the various entries in the diaries found during the course of search by giving details such as names of the persons to whom it pertains, the date of transaction, amount of transaction, etc. He also asked the assessee to explain the various transaction and the details of loans and gifts taken by

the assessee. Since, there was no compliance, a summon u/s 131 of the Act was issued to the assessee on 30.01.2014 for personal attendance on 03.02.2014.

3. However, there was no proper compliance to the various questions raised by the AO. The AO, therefore made addition of Rs.1,68,42,943/- u/s 68 of the Act by observing as under:-

“The assessee did not produce books of account despite specific requirement in this regard which suggests that no books of account is maintained by the assessee. Also no statement of affairs was furnished. In spite of sufficient opportunity granted to assessee the required details & particulars were not furnished. In these circumstances it can reasonably be deduced that the assessee utilized these account as shell accounts. The assessee has failed to discharge the onus cast upon it under the provisions of section 68 of the Income Tax Act. Since, there are credits appearing in the bank accounts of the assessee, which the assessee has failed to explain and has also failed in establishing the genuineness of the sum credited, the credits appearing in the accounts of the assessee, during the financial year 2005-06 relevant assessment year 2006-07, to the tune of Rs.1,68,42,943/- is treated as income of the assessee under the provisions of section 68 of the Income Tax Act as unexplained cash credits and added accordingly.”

4. Similarly, the AO noted that the assessee has received gift of Rs.24,000/- during the year in cash. He, therefore, asked the assessee to substantiate the same by giving the name of the donor, the occasion warranting for giving of such gift and also to produce the person giving the so called gift to discharge the onus. Since, the assessee failed to produce the person and substantiate the details as asked by him, the AO added the

amount of Rs.24,000/- taken by the assessee as gift during the year by invoking the provisions of section 68 of the Act. Thus, the AO determined the total income of the assessee at Rs.1,70,08,873/- as against the returned income of Rs.1,47,930/-.

5. Similar additions have been made by the AO for the following assessment years which are as under:-

Sl. No.	ITA Nos.	Assessment Years	Returned income	Assessed income
1	1790/Del/2017	2007-08	1,64,893	2,54,39,689
2	1791/Del/2017	2008-09	2,19,972	3,34,31,637
3	1792/Del/2017	2009-10	3,47,823	3,03,89,704
4	1793/Del/2017	2010-11	3,91,191	105,61,05,072
5	1794/Del/2017	2011-12	6,03,819	83,35,88,812
6	1795/Del/2017	2012-13	5,46,480	49,77,40,380

6. In appeal, the learned CIT(A) in the ex-parte order passed by him sustained both the additions made by the AO.

7. So far as the addition of Rs.1,68,42,930/- is concerned, the learned CIT(A) sustained the addition made by the AO by observing as under:-

“From the above, it is clear that the appellant/AR failed to substantiate the objections raised through various grounds filed in this appeal, since:

- In case of the appellant, it is clear that at the time of search, the documents were found, which were seized and inventorised as Annexure A-I to A-II, which contain the information relating to different bank accounts of different persons, in whose case appellant is the introducer. These bank accounts are operated by the appellant. Accordingly, it is clear that the Annexure A-I to A-II, are incriminating document, since income from the alleged transactions in these bank accounts, is not taken into account by the appellant.
- It is also, established by the A.O. in the assessment proceedings that these alleged bank accounts, are being operated and used by the appellant, for providing accommodation entries and therefore, it is clear that income reflected in these accounts, belong to appellant only.
- The objection of the appellant that enquiries initiated through notices u/s 131 / 133(6) of the Act, issued by the A.O. were not taken to the logical conclusion. This objection of the appellant, is not substantiated, since same is nowhere mentioned by the A.O. in the assessment order, except the summons issued to the assessee on 09.12.2013 and 13.12.2013 for furnishing bank statements. In these facts, objections of the appellant are not correct.
- The objection of the appellant that the material collected at the back of the assessee, was not confronted, is also not substantiated, in absence of any evidence/ material bought on record. On perusal of the assessment record and proceedings reproduced at page 6 of this order, it is clear that several opportunities were allowed, in respect of seized material and final show cause was also given, in these facts, this objection of the appellant is not correct,
- The objection of the appellant that he is engaged in the business of accommodation entries and therefore, A.O. should have considered only such income arising from accommodation entries and not the entire amount of accommodation entries. This objection of the appellant is not substantiated, since appellant failed to explain the source of deposits in the alleged bank accounts, inspite of repeated opportunities. Further, it is also clear that appellant failed to disclose any such income in the return of income filed in response to notice u/s 153 A of the Act.
- The alternate objection taken by the appellant without prejudice to the above, that once A.O. has considered these accounts as benami, therefore, peak of these transactions reflected in the bank accounts, should have been

considered by the A.O. while making addition u/s 68 of the Act. This objection of the appellant is not substantiated, since no such claim was made in the assessment proceedings and also for considering the peak of the transactions, the appellant has to demonstrate beyond doubt that same money has been routed from one account to another account, which was not done. In these facts, this objection of the appellant is not correct.

From the discussion of the A.O. in the assessment order, in respect of seized material, statement of the assessee recorded u/s 132(4) of the Act, it is clear that the appellant failed to discharge the onus u/s 68 of the Act, for the unexplained cash deposits in these alleged bank accounts, operated and used by the appellant, in the assessment proceedings as well as in the appellate proceedings, inspite of several opportunities allowed by the A.O., as well as in the appellate proceedings. Accordingly, it is clear that the appellant failed to substantiate the objections raised through various grounds of appeal.

In view of the above, I am of the considered opinion that the appellant failed to discharge the onus cast upon u/s 68 of the Act, not only in the assessment proceedings, but also in the appellate proceedings. In these facts and circumstances, I do not find any infirmity in the findings of the A.O. and therefore, addition u/s 68 of the Act, of Rs. 1,68,42,943/-, is confirmed.”

8. So far as the addition of Rs.24,000/- on account of gift received is concerned, the learned CIT(A) sustained the addition by observing as under:-

“9.3 I have carefully considered assessment order, grounds of appeal and assessment record. The objections raised by the appellant through grounds of appeal are discussed as under:-

(i) In the assessment proceedings, it has been stated by the A.O. that the assessee has received gifts from various persons, amounting to Rs. 24,000/-, during the F.Y. 2005-06, relating to A.Y. 2006-07. In the assessment proceedings, the assessee has merely filed some papers for justifying the creditworthiness and genuineness of alleged gifts. In the assessment proceedings, the A.O. required the assessee vide office letter dated 24.02.2014, to produce the donors on 28.02.2014 and 03.3.2014, in order to prove identity, creditworthiness and genuineness of the transaction. In the

assessment order the content of the above letter dated 24.02.2014, has also been reproduced.

(ii) In the assessment proceedings, it has been stated by the A.O. that the assessee was specifically asked to produce these alleged donors, on specific date and time. However, assessee failed to produce any of the donors at the given dates.

In view of the above, the A.O. was of the view that assessee has grossly failed to discharge the burden of proof cast upon him and therefore, the genuineness of the alleged gift, remained unexplained. In these facts, the A.O. made the addition u/s 68 of the Act of Rs. 24,000/-, as unexplained cash credits received in cash, as on 31.3.2006.

(iii) In the appellate proceedings, the appellant was given adequate opportunities to represent the case, after filing of appeal on 30.4.2014. The same has been given at page 4 and 5 of this order.

From the above, it is clear that the appellant/AR failed to substantiate the objections raised through this ground, filed in this appeal. From the discussion of the A.O. in the assessment order, it is clear that the appellant failed to discharge the onus u/s 68 of the Act, for the unexplained cash credits, in respect of alleged gift received, in the assessment proceedings, as well as in the appellate proceedings, inspite of several opportunities allowed by the A.O., as well as in the appellate proceedings. Accordingly, it is clear that the appellant failed to substantiate the objection raised through this ground of appeal.

In view of the above, I am of the considered opinion that the appellant failed to discharge the onus cast upon u/s 68 of the Act, not only in the assessment proceedings, but also in the appellate proceedings. In these facts and circumstances, I do not find any infirmity in the findings of the A.O. and therefore, addition u/s 68 of the Act, of Rs. 24,000/-, on account of alleged gifts, is confirmed.”

9. Aggrieved with such order of the learned CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*

2. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in passing the order without giving assessee a proper and adequate opportunity of being heard in clear violation of principle of natural justice.*
3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A and order passed by the learned Assessing Officer (AO) under Section 153A/ 143(3) is without jurisdiction.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the learned AO under Section 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the additions made under Section 153A are bad in law in the absence of any incriminating material belonging to the assessee being found during the course of the search.*
6. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.1,68,42,943/- made by the AO on account of deposits in various bank accounts.*
7. *(i) That the learned CIT(A) has erred in confirming the finding of the AO that the bank accounts of various persons stated in the assessment order belong to the assessee.*

(ii) That the learned CIT(A) has erred in ignoring the fact that the transactions recorded in such bank accounts clearly demonstrate that the amount pertains to the persons in whose names the accounts stand.

(iii) That the learned CIT(A) has erred in ignoring the provisions of Section 68 of the Act whereby an unexplained credit is to be added as income of the person in whose account the amount is found to be credited.
8. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the AO has erred in making the addition without taking the enquiry initiated by him by issue of notices to a logical end.*

9. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition which was made using the material / statement collected / recorded at the back of the assessee without giving him an opportunity to rebut/ cross examine the same.*
10. *Without prejudice to the above and in the alternative, the learned CIT(A) has erred in rejecting the contention of the assessee that the assessee being engaged in the business of accommodation entry provider, as such the income arising only from such accommodation entry can be considered to be the income of the assessee.*
11. (i) *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming addition of Rs.24,000/- made by the AO on account of gifts received by the assessee.*

(ii) *That the addition has been confirmed despite the assessee bringing explanation and evidences on record to prove the identity and creditworthiness of the donor as well as genuineness of the gift received.*

10. The learned counsel for the assessee strongly challenged the ex-parte order of the learned CIT(A) in confirming the various additions made by the AO. He submitted that in all these assessment years, the AO made high pitch assessment by making huge additions on account of clerical error. Referring to various pages of the paper book, he submitted that the credits in the bank accounts of the clients of the assessee have been added to the income of the assessee despite no incriminating material was found during the course of search. Referring to various bank accounts, he submitted that there is double addition of the bank deposits i.e. in the hands of the assessee as well as in the hands of two companies i.e. Bansal Infinlease (P) Ltd. and

Bansal Inhold Ltd. Relying on various decisions, he submitted that the AO has incorrectly invoked the provisions of section 68 of the Act and made addition despite the fact that no credit appears in the books of the assessee but in the books of different other persons. Further, the credits were added to the total income of the assessee in spite of commission earned by the assessee, he being a moderator or facilitator of accommodation entries. Referring to the statement of the assessee recorded during the course of search u/s 132(4) of the I.T. Act, 1961, he submitted that the assessee has categorically stated in his statement that he is moderator and facilitator of accommodation entries. The learned counsel for the assessee relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla, reported in 380 ITR 573 (Del.) and submitted that in case of search assessments, addition has to be confined to seize material found during the course of search. He submitted that in the instant case, the additions made by the AO are not based on any incriminating material found during the course of search and, therefore, such addition made by the AO and upheld by the learned CIT(A) is not in accordance with law. He submitted that although the assessee could not appear before the learned CIT(A) for which the ex-parte order has been passed,

however, it is not a case of non-compliance but the assessee was seeking adjournment from time to time. He submitted that in the interest of justice, the assessee should be given one more opportunity to substantiate his case as the earlier counsel was misleading the assessee and was unable to represent the case properly before the lower authorities. He accordingly submitted that the matter should be restored back to the file of the AO for denovo assessment.

11. The learned DR on the other hand, strongly objected to the arguments advanced by the learned counsel for the assessee. She submitted that the assessee was non-cooperative during the course of assessment proceedings as well as appellate proceedings. Therefore, the matter should not be remanded back to the file of the AO but may be remanded back to the file of learned CIT(A). Relying on various decisions, she submitted that the assessee could not discharge the onus cast on him by proving the identity and creditworthiness of the loan creditors/donors and genuineness of the transactions including the gift transaction. Therefore, the addition made by the AO and sustained by the learned CIT(A) should be upheld. In her

alternate contention, she submitted that the matter may be remanded to the file of the AO.

12. The learned counsel for the assessee in his rejoinder submitted that since the credits in the bank account of the clients of the assessee are added and certain additions have been made twice in the hands of the assessee as well as in the hands of various companies and other persons, therefore, even if the matter is restored to the file of the learned CIT(A), he has to call for a remand report from the Assessing Officer. He submitted that in the interest of justice and to save time, the matter should be restored to the file of the Assessing Officer so that proper verification can be made by him of the seized documents.

13. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.1,68,42,943/- u/s 68 of the Act, since, the assessee could not explain the various credits appearing in the bank accounts of the assessee and could not establish the genuineness of the

said transactions. Similarly, he also made addition of Rs.24,000/- being gift received by the assessee in cash, since the assessee could not produce the donor nor justify the occasion and the genuineness of such gift. We find the learned CIT(A) in the ex-parte order passed by him has sustained both the addition, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned counsel for the assessee that since the learned CIT(A) has passed the ex-parte order and since the credits in the bank accounts of the clients of the assessee have been added to the total income of the assessee despite no incriminating material was found during the course of search and since there is double addition of the same credits in the hands of the assessee as well as in the hands of two other companies in spite of the assessee being a moderator/facilitator of accommodation entries, therefore, in the interest of justice, the matter shall be restored to the file of the Assessing Officer for denovo assessment.

14. We find some force in the above arguments of the learned counsel for the assessee. Admittedly, the learned CIT(A) has passed the ex-parte order due to non-appearance of the assessee despite number of opportunities granted by him but

the assessee was seeking adjournment from time to time. It is to be noted that during the course of assessment proceedings also the assessee had not filed the requisite details to the satisfaction of the Assessing Officer for which huge additions have been made. However, it is seen that various additions have been made by the Assessing Officer which amounts to double addition of the same amount i.e. in the hands of the assessee as well as in the hands of two companies and other relatives. The submission of the assessee during the course of search in his statement recorded u/s 132(4) of the Act that he was a moderator or facilitator of accommodation entries and that only commission income should be considered as his income also has not been considered by the lower authorities. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate his case and decide the issue as per facts and law. The AO while deciding the issue shall also keep in mind the decision of the Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla (supra). The assessee is also hereby directed to appear before the Assessing Officer and substantiate his case failing which the Assessing Officer is at liberty to pass

appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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15. Identical grounds have been raised in all these appeals. Since we have already restored this issue to the file of the Assessing Officer for afresh adjudication, therefore, following similar reasoning, we restore these appeals also to the file of the Assessing Officer for afresh adjudication in the light of our above direction.

16. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order was pronounced in the open court on 03/09/2021.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Delhi; Dated: 03/09/2021.

Shekhar, Sr. P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

**[R.K.PANDA]
ACCOUNTANT MEMBER**

Asst. Registrar,
ITAT, New Delhi