

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस.सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.518/Viz/2018
(निर्धारण वर्ष/Assessment Year:2009-10)**

Sri A.Srinivasa Rao
D.No.48-13-20/1, F.No.SF2
Sri Krishna Sai Residency
Janaki Rama Street
Visakhapatnam
[PAN :ADHPA2185Q]

Vs. Income Tax Officer
Ward-1(4)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri C.Subrahmanyam, AR
प्रत्यर्थी की ओर से / Respondent by : Shri B.Rama Krishna, DR

सुनवाई की तारीख / Date of Hearing : 13.09.2021
घोषणा की तारीख/Date of Pronouncement : 23.09.2021

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam in ITA No.689/2011-12/ITO-W-1(4), Vsp/2017-18 dated 24.08.2018 for the Assessment Year (A.Y.) 2009-10 .

2. In this case, the assessee filed six grounds originally as follows :
1. *That under the facts and circumstances of the case the orders passed u/s. 143(3) of the I.T.Act are against the facts of the case and provisions of law.*
 2. *The learned Commissioner of Income Tax Appeals (in short CIT(A))is not correct, both on facts and as well as in law, in sustaining the addition of Rs.12,23,000/- under the guise of unexplained cash deposits u/s.68 of the IT.Act.*
 3. *The Id. CIT(A) while confirming the addition of Rs.12,23,000/-, pertaining to alleged unexplained cash deposits and bank, brushed aside the submissions made by assessee and the sources available thereto in a casual and summary manner.*
 4. *The learned CIT(A) ought to have known that the very invoking of section 68 of the I.T.Act is not correct since the section 68 cannot be invoked for deposits made in the bank account.*
 5. *The learned CIT(A)erred in confirming the addition made by AO to the tune of Rs.1,75,000/- as unexplained cash credit, pertaining to investment in firm towards capital, though it was explained that the same was made out of available cash.*
 6. *For these and other reasons that are to be urged at the time of hearing of the case, it is the prayer of the assessee that the orders passed u/s.143(3)of the I.T.Act are against the provisions of law, facts of the case, therefore, the same are to be quashed in the interest of justice.*

2.1. During the pendency of appeal proceedings the assessee raised the additional ground as follows :

1. *The Assessing Officer committed error in invoking the provisions of section 68 of the I.T.Act while making the addition pertaining to alleged unexplained cash deposits in bank account in as much as sec.68 has limited scope and applies to cases relating to unexplained cash credits recorded in the books of accounts.*

The Ld.AR during the appeal hearing submitted that the additional ground raised by the assessee is a legal ground which does not require any factual verification or reference therefore, argued that as held by the Hon'ble Apex court in the case of NTPC Vs. CIT 229 ITR 383 (SC) requested for admission of additional ground for adjudication.

3. We have heard both the parties. Since the additional ground raised by the assessee is a legal ground, the same is admitted. Since the additional ground goes to the root of the assessment, we, first take up the additional ground raised by the assessee which is related to the validity of additions made u/s 68 in respect of bank deposits.

4. In the instant case, the assessee filed the return of income declaring total income of Rs.1,45,510/- on 31.03.2010 and taken up the case for scrutiny under CASS. During the course of assessment proceedings, the AO found that the assessee made cash deposit of Rs.12,23,000/-. When the assessee was asked to explain the source of deposits, the assessee explained that the source of cash deposits were withdrawals made from M/s Meghana Marketing, in which he was a partner. The AO, not being satisfied with the explanation of the assessee held that the source of cash deposits were not substantiated, hence made the addition u/s 68 of the Act.

5. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition after going through the source and the deposits in detail.

6. Against which the assessee is in appeal before the Tribunal. During the appeal hearing the Ld.AR argued that cash deposits were made in the bank account and the AO is legally not correct in making the addition u/s 68 since no credit was made in books of accounts. Therefore requested to set aside the order of the Ld.CIT(A) allow the appeal of the assessee.

7. Per contra the Ld.DR supported the orders of the lower authorities.

8. We have heard both the parties and perused the material placed on record. In the instant case, there is no dispute that the cash deposits were made in the bank account and there were no cash credits in the books of accounts. The AO did not bring any material to show that the assessee has brought cash credits in the books of accounts for which the source was not explained. As per section 68, cash credits made in the books of accounts for which the assessee could not explain the source to the satisfaction of the AO, required to be brought to tax u/s 68 of the Act. In the instant case, the deposits were made in the bank account. As per the settled issue, the bank deposits required to be made addition u/s 69 but not u/s 68 of the

Act. The bank passbook or bank statement does not amount to the books of accounts of the assessee. This view is supported by the number of decisions. The coordinate bench of ITAT Delhi 'A' in the case of Babbal Bhatia in ITA Nos.5430 & 5432/Del/2011 dated 08.06.2018 held that the bank is different from books of accounts of the assessee and credit in the bank account of the assessee cannot be construed as credit in the books of accounts of the assessee. For the sake of clarity and convenience, we extract relevant part of the order of the Tribunal in para No.16 to 19 which reads as under :

16. The coordinate Bench in the case of Om Prakash Sharma 2256/DEL/2009 has held as under:

"9. Coming to the merits of the case, undisputedly, the addition of 913000 was based only on some entries in the bank account of the assessee. The assessee was found not to have maintained any books of account. Now, as correctly observed by the CIT(A), the passbook/bank statement supplied by the bank to the assessee does not amount to a book of account of the assessee. It being only a copy of customers' account in the books maintained by the bank, a bank does not act as an agent of its customer. It also cannot be said that banker maintains a passbook under the instructions of the account holder. The provisions of section 68 of the Act are, therefore, not attracted where the assessee does not maintain books of account. The CIT(A), in this regard, has rightly placed reliance on 'CIT vs. Bhaichand H. Gandhi', 141 ITR 67(Bom.), 'Sampat Automobile vs. ITO, 96 TTJ(D)368, 'Ms. Mayawati vs. DCIT', 113 TTJ 178(Del.) and 'Sheraton Apparels vs. ACIT', 256 I.T.R. 20(Bom). It is correct that since no books of account are maintained in the ordinary course of the business of the assessee, In the absence of any corroborative evidence to support action u/s 68 of the Act, no such addition is tenable."

17. In the case of Baladin Ram VS. CIT [1969] 7 ITR 427, the Hon'ble Supreme Court has held as under:

"4. In *Baladin Ram v. CIT* [1969] 71 ITR 427, it has been held by the Supreme Court that it is now well settled that the only possible way in which income from an undisclosed source can be assessed or reassessed is to make the assessment on the basis that the previous year for such an income would be the ordinary financial year. Even under the provisions embodied in s. 68 of the said Act, it is only when any amount is found credited in the books of the amount so credited may be charged to tax as the income of that previous year, if the assessee offers no explanation or the explanation offered by him is not satisfactory.

5. As the Tribunal has pointed out, it is fairly well settled that when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary. Applying this principle, the pass book 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 pass book is 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. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified in the conclusions at which it arrived"

18. The Hon'ble Jurisdictional High Court of Delhi in the case of *CIT Vs. Ms. Mayawati* reported in 338 ITR 563 [DEL] has held as under:

"As the ITAT has come to the conclusion that Section 68 has no applicability to the facts of the present case as the assessee is not maintaining any books of accounts. If that be so Section 68 does not apply in this case for the simple mason cheque received from Mr. Pankaj Jain has been deposited in her bank account in this regard The ITAT was of the opinion that balance sheet/statement of the affairs cannot be equated to books of account because a pass book of the bank cannot be treated as a book of account of the assessee because this is proved by the banker, which is given to its customer and is only a copy of the customer's account in the books maintained by the bank. The bank does not act as an agent of the customer nor can it be said that the banker maintains the pass book under instructions of the customer (assessee) the relationship between the banker and customer is one of the debtor and creditor only. Therefore, a cash credit appearing in assessee's pass book relevant to a particular previous year, in a case where the assessee does not maintain books of account, does not attract the provisions of Section 68.

19. All the aforementioned decisions reveal that an addition u/s 68 of the Act can only be made where any sum is credited in the books of the assessee maintained for any previous year. Thus, the very sine qua non for making of an addition u/s 68 of the Act presupposes a credit of the amount in the books of the assessee. We are not being oblivious of the settled position of law that the statutory provision has to be strictly construed and interpreted as per its plain literal interpretation and no word howsoever meaningful it may so appear can be allowed to be read into a statutory provision in the garb of giving effect to the underlying intent of the legislature. The scope and gamut of the aforesaid statutory provision is to be construed by according a plain meaning to the language used in section 68. We are of the considered view that a credit in the bank account of an assessee cannot be construed as a 'credit' in the books of the assessee for the very reason that the bank account of an assessee cannot be held to be 'books' of the assessee. The account of the assessee in the books of the bank is different from the books of the assessee."

8.1 This Tribunal in the case of Asha Sanghavi Vs. ITO in ITA No.33/Viz/2019 has taken similar view and held that cash deposits made in the bank account cannot be brought to tax u/s 68 of the Act. For the sake of clarity and convenience, we extract para No.10, 10.1 which reads as under :

"10. We have heard both the parties and perused the material placed on record. In the instant case, the AO made the addition of Rs.1,22,29,000/- representing cash deposits made in the bank account u/s 68 of the Act. Section 68 allows the AO to make addition for the sums credited in the books of accounts maintained by the assessee for which the assessee fails to offer satisfactory explanation with regard to source. In the instant case, the assessee is maintaining the books of accounts but did not make any entry in the books of accounts. The amounts were deposited in the bank accounts, but not made relevant entry. Hence, the Ld.AR argued that since the assessee did not make any entry in the books of accounts, the AO is not permitted to make the addition u/s 68. The issue with regard to deposits made in the bank account, whether to be brought to tax u/s 68 or not was considered by the coordinate bench of ITAT Mumbai in Mehul V.Vyas Vs. Income Tax Officer (supra) and held that the amounts found credited in the bank pass book or bank statement cannot be considered to be books maintained by the assessee in any previous year as understood for the purpose of section 68 of the Act. For the sake of clarity and convenience, we extract para No.8 of the cited order which reads as under :

"5. We have heard the Id. Authorized representatives of both the parties,

perused the orders of the lower authorities as well as the material produced before us. We will first deal with the objection raised by the Id. A.R as regards the addition of Rs.10,53,000/- which was made by the A.O under Section 68 of the 'Act', in respect of the cash deposit in the bank account of the assessee We find substantial force in the contention of the Id. A.R that an addition under Section 68 can only be made where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee either offers no explanation about the nature and source as regards the same, or the explanation offered by him in the opinion of the assessing officer is not found to be satisfactory. That before adverting further, we herein reproduce the relevant extract of the aforesaid statutory provision, viz. Section 68, which reads as under: -

"Cash Credits.

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.....

That a bare perusal of the aforesaid deeming section therein reveals that an addition under the said statutory provision can only be made where any sum is found credited in the books of an assessee maintained for any previous year. Thus, the very sine qua non for making of an addition under Section 68 presupposes a credit of the aforesaid amount in the 'books of an assessee' maintained for the previous year. We not being oblivious of the settled position of law that a statutory provision has to be strictly construed and interpreted as per its plain literal interpretation, and no word howsoever meaningful it may so appear can be allowed to be read into a statutory provision in the garb of giving effect to the underlying intent of the legislature, thus confining ourselves within the realm of our jurisdiction, therein construe the scope and gamut of the aforesaid statutory provision by according a plain meaning to the language used in Sec. 68. We are of the considered view that a credit in the 'bank account' of an assessee cannot be construed as a credit in the 'books of the assessee', for the very reason that the bank account cannot be held to be the 'books' of the assessee. Though it remains as a matter of fact that the 'bank account' of an assessee is the account of the assessee with the bank, or in other words the account of the assessee in the books of the bank, but the same in no way can be held to be the 'books' of the assessee. We have given a thoughtful consideration to the scope and gamut of the aforesaid statutory provision, viz. Sec. 68, and are of the considered

view that an addition made in respect of a cash deposit in the 'bank account' of an assessee, in the absence of the same round credited in the 'books of the assessee' maintained for the previous year, cannot be brought to tax by invoking the provisions of Section 68. That our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Bhaichand N. Gandhi (1983) 141 ITR 67 (Bombay) wherein the Hon'ble High Court has held as under: -

"As the Tribunal has pointed out, it is fairly well settled that when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary. Applying this principle, the pass book 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 pass book is 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. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified Inthe conclusions at which it arrived."

We find that the aforesaid view of the Hon'ble jurisdictional High Court had thereafter been followed by a 'SMC of the ITAT Mumbai bench in the case of Smt. Manshi Mahendra Pitkar Vs. ITO 1(2), Thane (2016) 73 taxmann.com 68 (Mumbai Trib.) wherein it was held as under: -

I have carefully considered the rival submissions. In the present case the addition has been made by the income tax authorities by treating the cash deposits in the bank account as an unexplained cash credit within the meaning of sect/on 68 of the Act The legal point raised by the assessee is to the effect that the bank Pass book is not an account book maintained by the assessee so as to fail within the ambit of section 68 of the Act. Under section 68 of the Act, it is only when an amount is found credited in the account books of the assessee for any previous year that the deeming provisions of section 68 of the Act would apply in the circumstances mentioned therein. Notably, section 68 of the Act would come into play only in a situation "Where any sum is found credited in the books of an assessee ". The Hon'ble Bombay High Court in the case of Shri Bhaichand Gandhi (supra) has approved the proposition that a bank Pass Book maintained by the bank cannot be regarded as a book of the assessee for the purposes of section 68 of the Act. Factually speaking, in the present case, assessee is not maintaining any books of account

and section 68 of the Act has been invoked by the Assessing Officer only on the basis of the bank Pass Book. The invoking of section 68 of the Act has to fail because as per the judgment of the Hon'ble Bombay High Court in the case of Shri Bhaichand N. Gandhi (supra), the bank Pass Book or bank statement cannot be construed to be a book maintained by the assessee for any previous year as understood for the purposes of section 68 of the Act. Therefore, on this account itself the impugned addition deserves to be deleted. I hold so"

We further find that a similar view had also been arrived at in a 'third member' decision of the Tribunal in the case of Smt. Madhu Raitani Vs. ACIT (2011) 10 .taxmann.com 205 (Gauhati) (TM), as well as by a coordinate bench of the Tribunal in the case of ITO, Barabanki Vs, Carnal Kumar Mishra (2013) 33 taxamann.com 610 (Lucknow Trib.) Thus in the backdrop of the aforesaid facts of the case read in light of the settled position of law, we are of the considered view that the addition made by the A.O in respect of the cash deposit of Rs.10,53000/- (supra) in the bank account of the assessee by invoking Section 68 has to fail for the very reason that as per the judgment of the Hon'ble Bombay High Court in the case of Shri Bhaichand N. Gandhi (supra), a bank pass book or bank statement cannot be considered to be a 'book' maintained by the assessee for any previous year, as understood for the purpose of Section 68 of the Act. Therefore, on this count itself the impugned addition Rs.10,53,000/- deserves to be deleted.

10.1. While delivering the decision, the Coordinate Bench relied on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Bhaichand N.Gandhi (supra). Similar view was taken by the coordinate Bench of ITAT, Delhi in the case of SmtBabbal Bhatia in TS-306-ITAT-2018.

In the instant case, though the assessee has maintained the books of accounts, the cash deposits made in the bank account were not found credited in the books of accounts. The entire transactions were made outside the books of accounts. In the absence of any finding with regard to cash deposits recorded in the books of accounts of the assessee, the addition made by the AO u/s 68 in respect of cash deposits made in the bank account are unsustainable. During the appeal hearing, the Ld.DR did not bring any other decision to support the revenue's contention that the cash deposits made in the bank account to be brought into the purview of section 68 of the Act. The case law relied upon by the Ld.DR in the case of Sachdeva (supra) though related to sale of jewellery and the failure of the assessee to prove the genuineness of sale, it was not related to the addition u/s 68. The case law relied upon by the Ld.DR is distinguishable and does not help the

Revenue's case. Since the facts are identical to the decision of Mehul V.Vyas (supra), respectfully following the view taken by the coordinate bench of ITAT, Mumbai, we hold that the addition made by the AO u/s 68 in respect of cash deposits made in the bank account is unsustainable, accordingly, we set aside the order of the Ld.CIT(A) and delete the addition made by the AO. Accordingly, the appeal of the assessee is allowed."

In the instant case, there is no dispute that the deposits were made in the bank account and there were no entries in the books of accounts. The deposits made in Bank account are not permissible to tax u/s 68 of the Act. Therefore, respectfully following the view taken by this Tribunal in the cases cited supra and the decision of ITAT, Delhi, we hold that the addition made by the AO u/s 68 in respect of cash deposits made in the bank are unsustainable, accordingly deleted. Appeal of the assessee is allowed.

9. Since, we have decided the appeal of the assessee on legal ground, holding that the additions are unsustainable u/s 68, we consider it is not necessary to adjudicate the grounds raised by the assessee on merits.

10. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 23rd September, 2021.

Sd/- (एन के चौधरी) (N.K.CHOUDHRY)	Sd/- (डि.एस.सुन्दर सिंह) (D.S.SUNDER SINGH)
न्यायिक सदस्य/ JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER
Dated : 23 .09.2021	
L.Rama, SPS	

ITA No.518/Viz/2018, A.Y.2009-10
A.Srinivasa Rao, Visakhapatnam

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee - Sri A.Srinivasa Rao, D.No.48-13-20/1, F.No.SF2
Sri Krishna Sai Residency, Janaki Rama Street, Visakhapatnam
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(4), Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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Sr. Private Secretary
ITAT, Visakhapatnam