

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

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.3887/Del/2019
Assessment Year: 2010-11

Shri Sandeep Kumar, S/o Ishwar Singh, Village Bohar, near Athgama Bhawan, Rohtak (Hr.) PIN: 124021	Vs.	ITO, Ward-03, Rohtak
PAN :AGIPK5304P		
(Appellant)		(Respondent)

Appellant by	Shri Apoorva Bhardwaj, CA
Respondent by	Shri Om Parkash, Sr. DR

Date of hearing	08.06.2022
Date of pronouncement	31.08.2022

ORDER

This is an appeal by the assessee against order dated 30.11.2017 of learned Commissioner of Income-Tax (Appeals)-2, Gurgaon pertaining to assessment year 2010-11.

2. The dispute in the present appeal is confined to addition of an amount of Rs.25,20,550 as unexplained cash credit under Section 68 of the Income-Tax Act, 1961.

3. Briefly, the facts are that the assessee is a resident individual and stated to be deriving income from salary. For the assessment year under dispute, assessee filed his return of income on 13.04.2010 declaring income of Rs.2,49,247. Assessee's case was selected for scrutiny. In course of assessment proceedings, the Assessing Officer noticed that during the relevant year, assessee had deposited cash aggregating to Rs.25,20,250 in two saving bank accounts held with Kotak Mohindra Bank, Rohtak and Central Bank of India, Rohtak. Noticing this, the Assessing Officer called upon the assessee to explain the source of cash deposits as well as the purpose for which the withdrawals were made from the bank accounts. In response to the query made, the assessee furnished his reply explaining the source of the cash deposits. It was submitted by assessee that the cash deposits were made out of advances received from various individuals. After considering the submission of assessee, the Assessing Officer called upon the assessee to produce the persons from whom money was received and also to prove their creditworthiness and genuineness of the transaction. As observed by the Assessing Officer, assessee not only failed to produce the concerned parties but did not file any

evidence to prove the identity, creditworthiness of the persons advancing money as well as the genuineness of the transaction. Alleging that the assessee failed to explain the source of cash deposits in the bank accounts, the Assessing Officer added back the amount to the income of the assessee by invoking the provisions of section 68 of the Act. Though, the assessee contested the aforesaid addition before learned Commissioner (Appeals), however, he was unsuccessful.

4. Before me, learned counsel appearing for the assessee submitted that before the departmental authorities, assessee had furnished various documentary evidences to explain the source of the cash deposits which were not at all considered by them. He submitted, though, from the stage of assessment proceedings itself assessee has consistently taken the same stand to explain the source of cash deposits and has furnished documentary evidences to support the source of cash deposits, however, departmental authorities have failed to consider the evidences in proper perspective. He submitted, assessee has received an amount of Rs.10,00,000 towards his share in sale of ancestral land which was deposited in savings bank account held with Central Bank of India. As regards, the deposits of

Rs.15,05,250 in Kotak Mohindra Bank, he submitted, the amount was received from various persons for payments, to Paras Finance Co. He submitted, affidavits of the persons advancing money to the assessee were furnished before the departmental authorities. Thus, he submitted, on the face of such corroborative evidences, which were not found to be false, the addition could not have been made. Without prejudice, he submitted, no addition under section 68 of the Act could have been made on the basis of savings bank account statement as, it cannot be considered to be books of accounts maintained by the assessee. Therefore, the conditions of section 68 of the Act are not fulfilled. In support of such contentions, he relied upon the following decisions:

- CIT vs. Mayawati [2011] 338 ITR 563 (Delhi High Court);
- Baladin ram vs. CIT [1969] 71 ITR 427 (Supreme Court);
- CIT vs. Bhaichand N. Gandhi [1983] 141 67 [Bombay High Court];
- Sh. Om Prakash vs. ITO, ITA No.1325/Del/2011, Date of decision: 11.08.2016 (Delhi – Trib.);
- Amitabh Bansal vs ITO [2019] 175 ITD 401 (Delhi – Trib.).

5. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals). Further, he submitted, assessee's contention that no addition under Section 68 of the Act can be made, basis bank statement, is unacceptable in view of the decision of coordinate Bench in case of Shri Janak Goel vs. DCIT – ITA Nos. 937 & 938/Del/2012 dated 13.05.2019.

6. I have considered rival submissions in the light of decisions relied upon and perused the material available on record.

7. Undisputedly, in the year under consideration, assessee had made cash deposits of Rs.25,20,000 in two savings bank accounts. On an analysis of the bank statements, it is observed that assessee has deposited cash of Rs. 10,00,000 in the account held with Central Bank of India at one go on 20.12.2019. It is the case of the assessee that the amount represented assessee's share in consideration received on sale of ancestral land. On a perusal of the conveyance deed, a copy of which is placed in the paper book, it is observed that the said deed was executed on 06.01.2010. Therefore, assessee's claim that an amount of Rs.10,00,000 was received towards sale consideration of the land prior

to execution of conveyance deed and deposited in bank account on 30.12.2019, to some extent is believable. Hence, benefit of doubt can be given to the assessee. This is so, because, the Assessing Officer neither in course of assessment proceedings nor during remand has been able to dislodge assessee's claim by making any inquiry. Therefore, I am of the view, cash deposits of Rs.10,00,000 in the account maintained with Central Bank of India stands explained.

8. As regards, the balance amount of Rs.15,20,000 deposited in the account maintained with Kotak Mohindra Bank, Rohtak, on an analysis of the bank statement, it is evident that assessee has deposited cash on various occasions during the year under consideration. In fact, the details of such cash deposits are depicted in the assessment order. It has been explained by assessee before the departmental authorities that cash was received from various persons for making payment to Paras Finance Co. Though, in course of assessment proceedings assessee could only furnish the name of the persons from whom the amounts were received, however, in course of proceedings before the first appellate authority, assessee had furnished certain additional evidences, being affidavits of the persons from whom the money was

received. Though, in the remand report, the Assessing Officer accepts that the persons filing affidavits have confirmed that they have advanced money to assessee, however, he has not accepted their version by simply stating that assessee is making a concocted story. It is trite law, affidavits carry some evidentiary value. Therefore, before rejecting the affidavits as false, the Assessing Officer must make reasonable enquiry with the persons filing affidavits. This has not been done by the Assessing Officer in the present case. Further, on an analysis of the bank statement, it is observed that the assessee has not only made cash deposits but has also made cash withdrawals on various dates. In fact, the Assessing Officer also accepted the aforesaid factual position. However, he didn't make addition on peak basis on the plea that period of circulation of cash cannot be ascertained. This, in my view, is unacceptable. When the bank statement was available before the Assessing Officer, he cannot again take the plea that the period of circulation of money is not ascertained. Thus, on an overall consideration of facts and material on record, I am of the view that, even, the addition of Rs.15,20,000 representing cash deposits in account with Kotak Mohindra Bank, Rohtak is

unsustainable. Since, I have decided the issue on merits by deleting the addition made by the Assessing Officer, I do not intend to dwell upon the issue whether the provisions of section 68 of the Act are applicable to cash deposits made in the bank accounts.

9. In view of the aforesaid, the addition made by the Assessing Officer stands deleted. Grounds are allowed.

10. In the result, the appeal is allowed.

Order pronounced in the open court on 31st August, 2022.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 31stAugust, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	23.08.2022
2.	Date on which the draft of order is placed before the Dictating Member:	24.08.2022
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	26.08.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	29.08.2022
6.	Date on which the final order received after having been signed/pronounced by the Members:	31.08.2022
7.	Date on which the final order is uploaded on the website of ITAT:	31.08.2022
8.	Date on which the file goes to the Bench Clerk	31.08.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	