

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

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.1835/Del/2021
Assessment Year: 2013-14

Yogender, Saurav Rohatgi & Associates, G-2/7, Ganga Triveni Apartments, Sector- 9, Rohini, Delhi-1100 85	Vs.	Income-Tax Officer, Ward-42(4), New Delhi.
PAN :AIIPY4308 B		
(Appellant)		(Respondent)

Appellant by	Shri Saurav Rohtagi, CA
Respondent by	Shri Om Parkash, Sr. DR

Date of hearing	02.08.2022
Date of pronouncement	31.10.2022

ORDER

This is an appeal by the assessee against order dated 26.08.2020 of learned Commissioner of Income-Tax (Appeals)-38, Delhi for the assessment year 2013-14.

2. The dispute in the present appeal is confined to addition of Rs.10,00,000 as unexplained cash credit under Section 68 of the Income-Tax Act, 1961.

3. Briefly, the facts are, the assessee is a resident individual. For the assessment year under dispute, assessee filed his return of income on 04.08.2013 declaring total income of Rs.1,64,300. In addition, assessee offered agricultural income of Rs.6,08,000.

4. In course of assessment proceedings, while verifying bank statement of the assessee, the assessing officer noticed that in the year under consideration, the assessee had deposited an amount of Rs.10,00,000 in his bank account. Alleging that the assessee failed to offer any explanation regarding the source and nature of the deposit, the assessing officer added back the amount under Section 68 of the Act. Though, the assessee contested the addition by filing an appeal before the learned Commissioner (Appeals), however, the addition was sustained.

5. I have considered rival submissions and perused the material available on record.

6. It is evident, the assessing officer treated the deposit of Rs.10,00,000 made in the bank account as unexplained cash credit for the reason that the assessee was unable to explain the source and nature of such deposits. However, in course of proceedings before

learned first appellate authority, the assessee furnished his explanation explaining the source and nature of the deposits. It was submitted by the assessee, the amount was received from Shri Joginder Singh through account payee cheque. To establish such fact the assessee furnished a confirmation, bank statement, aadhar card of the concerned person. As it appears, based on the submissions made and evidences furnished, learned Commissioner (Appeals) directed the assessing officer to examine assessee's claim and furnish a report. In the second remand report dated 15.05.2019, the assessing officer, while verifying the evidences furnished by the assessee has observed that the summons issued to Shri Joginder Singh from whom the assessee stated to have received the money, though, was served but did not comply. Thus, for this reasons alone, he suggested that the addition made should be sustained. However, it is evident on record that the assessee has furnished aadhar card, bank statement and confirmation of Shri Joginder Singh from whom the assessee claimed to have received the amount of Rs.10,00,000. On perusal of the confirmation, a copy of which is placed at page 14 of the paper book, it is observed that the concerned person has admitted of having

advanced loan of Rs.10,00,000 to the assessee through account payee cheque. Further, on perusal of bank statement of the lender, a copy of which is placed at page 16 of the paper book, it appears that prior to issuance of cheque of Rs.10,00,000 to the assessee, there are regular deposits in the bank account. As could be seen, on 17.12.2012 an amount of Rs.24,00,000 was deposited to the bank account by cash. Similarly, on 12.12.2018, an amount of Rs.10,00,000 was deposited by cash in the bank account. Thus, prior to the issue of cheque to the assessee, the lender had sufficient fund available with him. From the aforesaid evidences available on record, the following facts emerge, firstly, the identity of the creditor has been established, secondly, the transaction has been made through banking channel by way of account payee cheque and thirdly, the lender has funds available with him to advance the amount. As could be seen, only because the lender did not comply with the summons issued under Section 131 of the Act, the addition has been made. Non-compliance with the summons issued under Section 131 of the Act can be for various reasons. However, that cannot be the solely criteria to treat the loan received as unexplained cash credit under Section 68 of the Act. Unfortunately,

learned first appellate authority has decided the issue in a very cryptic manner without independent application of mind. When the transaction has been carried out through banking channel by way of account payee cheque, it is not understood how there can be an issue regarding the genuineness of the transaction. Nothing prevented the departmental authorities to exercise the statutory powers vested in them to get to the root of the matter, irrespective of the fact that the lender did not comply with the summons issued under Section 131 of the Act. Thus, in my considered opinion when the assessee has discharged his initial onus to prove the source and nature of deposits made in the bank account, the burden shifts to the department to prove the contrary, which, in my view, the department has failed to discharge.

7. In view of the aforesaid, I delete the addition of Rs.10,00,000.
8. In the result, the appeal is allowed.

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

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 31st October, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi