

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

I.T.A No.1605/DEL/2018
Assessment Year 2014-15

Shri Atul Modi, 22, Lower Ground Floor, Siri Fort Road, New Delhi.	v.	ACIT, Circle-29(1), New Delhi.
TAN/PAN: AMDPM1864F		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Kanv Bali, Sr.DR		
Date of hearing:	04	01	2023
Date of pronouncement:	04	01	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-X, New Delhi ['CIT(A)' in short] dated 28.08.2017 arising from the assessment order dated 19.12.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

2. As per the grounds of appeal, the assessee has challenged the addition of Rs.56 lakh on account of unexplained cash credit under Section 68 of the Act.

3. Briefly stated, the assessee is an individual and has derived income from diverse sources. The return filed by the

assessee at Rs.19,83,815/- was subjected to scrutiny assessment. In the course of scrutiny assessment, the Assessing Officer observed that assessee has made cash deposits of Rs.40 lakh on 31.08.2013 and Rs.16 lakh on 07.06.2013 respectively in a savings bank account maintained with Oriental Bank of Commerce. It was claimed by the assessee that the aforesaid cash was received from one Shri Sukhbir Singh and Shri Devender Singh towards advance against sale of property. The assessee however failed to produce the purported lenders for examination. It was also observed that the assessee has neither provided the identity of the persons lending cash advance nor the creditworthiness and genuineness of transactions were proved. The Assessing Officer finally observed that onus of proof under Section 68 lay upon the assessee which does not been discharged at all. Consequently, an addition of Rs.56 lakh was made to the returned income.

4. Before the CIT(A), the assessee contended that the amount was received by the assessee as advance against his property which were also refunded in cash during the year due to cancellation of the proposed deal. The copy of receipt of cash and cancellation receipt were provided to the CIT(A) and also reproduced in the appellate order. The assessee contended before the CIT(A) that the Assessing Officer has made addition under Section 68 merely on the ground that these parties were not produced before the Assessing Officer. However, the Assessing Officer has not considered the documents furnished so as to explain nature of transactions. The CIT(A) took note of the submissions made on behalf of the assessee as reproduced in

paragraph 3.1 of the first appellate order. The CIT(A) however did not find any merit in the contentions. The CIT(A) on analysis of factual matrix did not embrace the plea of assessee. The CIT(A) noted that copy of the purported receipt and cancellation thereof are not authentic and verifiable and are merely self-serving document. The CIT(A) essentially noted that the onus lay upon the assessee to prove the impugned cash transactions by cogent and proper evidence and the facts are exclusively within the knowledge of the assessee. The CIT(A) concluded that assessee has failed to discharge the onus under Section 68 of the Act towards identity, creditworthiness as well as the genuineness of the transaction. The CIT(A) thus confirmed the action of the Assessing Officer. The relevant operative paragraph of the order of the CIT(A) is reproduced hereunder:

“3.1 I have carefully considered the written submissions of Ld. AR and the assessment order passed by the Assessing Officer. The issue under consideration is addition of Rs.56,00,000/- made by the AO as per the provisions of sections 68 of the Act. During the course of assessment proceedings, AO vide show cause dated 05.12.2016 required the assessee to explain as to why the cash deposit of Rs.40,00,000/- on 31.08.2013 and Rs. 16,00,000/- on 07.06.2013 in the savings bank account number 05622011004928 with Oriental Bank of Commerce be not treated as unexplained credit. Considering the provisions of section 68 of the Act, it was held by the AO that assessee failed to prove identity of the creditors, their capacity and the genuineness of the transactions. As per show cause issued, mentioned above, AO desired the assessee to produce Sh. Sukhbir Singh and Sh. Devender Singh who claimed to have advanced Rs. 16,00,000/- and Rs.40,00,000/- respectively but despite the opportunity provided to produce them, assessee failed to comply with the directions of the Assessing Officer. Accordingly, AO treated the amount of above cash deposits unexplained and made the addition of Rs.56,00,000/- u/s. 68 of the Act.

3.1.1 As per the submissions of Ld. AR, appellant received the above amount of Rs.56,00,000/- as advance against his property which were later refunded back to the persons who advanced the

same since the deal of purchase/sale of property could not materialize. To substantiate his claim, Ld, AR has provided copies of receipt/agreement entered into with S/Sh. Sukhbir Singh, S/o Sh. Rambir Chaudhary, R/o Village - Shakarpuri, Tehsil - Firozpur Jhirka, District - Mewat (Nuh), Haryana and Devender Singh, S/o late Satender Singh, R/o Village - Sohna, Tehsil - Sohna, District - Gurgaon, Haryana. On the basis of above documents, it is being claimed that the amounts of advance received in cash were duly accounted for in the regular books of account and the same were deposited in the bank account, as mentioned above. Since the transaction in question could not materialize, the amount received as advance/earnest money towards sale of agriculture land was refunded back for which copy of cancellation receipt/agreement has also been necessary evidences of receipt of advances and their refunds were well before the Assessing Officer but he did not make any effort to verify the same by making necessary enquiries from the above named persons as per the provisions of the Act, though the option was available with him as provided.

3.1.2 On the basis of above documents, it is being claimed by the Ld. AR that necessary evidences of receipt of advances and their refunds were well before the Assessing Officer but he did not make any effort to verify the same by making necessary enquiries from the above named persons as per the provisions of the Act, though the option was available with him as per the powers conferred upon him u/s.133(6) of the Act. It is further been claimed that on the basis of details/documents provided, the appellant has discharged his onus as far as the provisions of section 68 is concerned and the addition made by the AO has been termed as made on surmises and conjectures. It is further been requested that the addition needs to be quashed.

3.1.3 I have carefully considered the various facts and the copies of documents provided by the Ld. AR to substantiate his claim to have received advance/earnest money from Sh. Sukhbir Singh and Sh. Devender Singh totaling to a sum of Rs.56,00,000/- (Rs. 16,00,000/- + Rs.40,00,000/-). On perusal of copies of purported receipt/agreement and cancellation receipt/agreement, it is noticed that the above documents are not found to be authentic and verifiable as these documents are not found to be registered. They are in the nature of self-serving documents used by the appellant. To adjudicate further, it would be pertinent to discuss the provisions of section 68 of the Act, provided as under:

"68. 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."

3.1.4 A bare reading of Section 68 of the Act suggests that there has to be credit of amounts in the books maintained by an assessee, such credit has to be a sum during the previous year and if the assessee offers no explanation about the nature and source of such credit or the explanation offered is not satisfactory, then the sums so credited can be treated as income of the assessee for that previous year. The expression “no explanation is offered” or “the explanation offered is not satisfactory” puts an onus on the assessee to offer a lucid, reasonable and acceptable explanation before the AO and there upon the AO should form an opinion accepting or rejecting the explanation based upon appreciation of facts/materials and other circumstances.

3.1.5 In the case of *CIT vs P.Mohanahala* (2007) 291 ITR 278 (SC), the ingredients of Section 68 have been explained as under:

- (a) There has to be credit of amounts in the books maintained by an assessee.
- (b) Such credit has to be a sum during the previous year.
- (c) The assessee offers no explanation about the nature and source of such credit.
- (d) The explanation offer is not satisfactory

Then the sums so credited can be treated as income of the assessee for that previous year. The issue of burden of proof has been laid out by the verdict of hon'ble Apex court. In the case *Kale Khan Mohammad Hanif vs. CIT* (SC) 50 ITR1, it was decided that onus of proving the source of a sum of money found to have been received by an assessee is on him. When the nature and source of a receipt, whether it be of money or other property cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source.

3.1.6 Hon'ble SC in the case of *Sreelekha Banerjee vs CIT* (1963) 49 ITR 112,117 examining the burden of proof u/s. 68 has held that, when a credit entry appears in the assessee's books of account in an accounting year, the assessee has a legal obligation to explain the nature and source of such credit. In the same judgement, the Hon'ble court has held that, the very words “an undisclosed source” show that the disclosure must come from the assessee and not from the department. Hon'ble Kerala HC in the case of *M.A. Unneeri Kutty vs CIT* (1992) 198 ITR 147,150 (Kerala) examining ingredients of assessee's onus has held that, it is necessary for the assessee to proof prima facie the transaction which results in a credit in his books of account. Such proof includes, proof of the identity of creditors, capacity of such creditors to advance the money and lastly, the genuineness of the transaction. These things must be proved prima facie by the assessee and only after the

assessee has adduced evidence to establish prima facie the aforesaid, the onus shifts on the department. Merely establishing the identity of the creditor is not enough.

3.1.7 Hon'ble SC examining the issue of explanation by the assessee as a part of his onus u/s 68 of the Act in the case of Sumati Dayal reported as 214 ITR 801 has held as under.

“It is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within an exemption provided by the Act lies upon the assessee. (see Parimisetti Seetharamamma (1965) 57ITR 532 at page 536). But in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year, the same be charged to Income Tax as the income of the assessee of that previous year, if the explanation offered by the assessee about the nature and source therefore is, in the opinion of the AO, not satisfactory. In such case, there is, prima facie, evidence against the assessee, viz the receipt of money, and if he fails to rebut it the said evidence being unrebutted, can be used against him by holding that it was receipt of an income nature.”

3.1.8 Further, in this connection, it is pertinent to mention that section 68 is a statutory recognition of what was previously established by judicial decisions under the 1922 Act to the effect that where certain sums of money were claimed by the assessee to have been credited, it was for the assessee to prove by cogent and proper evidence that there were genuine as the facts are exclusively within assessee's knowledge [Sikri & Co. P. Ltd. vs. CIT (1977) 106 ITR 682, 688 (Cal.), CIT vs. Kulwant Kaur (1980) 121 ITR 914 (Del.), CIT vs. Sahibganj Electric Cables P. Ltd. (1978) 115 ITR 408, 414 (Cal.)]. Further, in Nanak Chandra Laxman Das vs. CIT (1983) 40 ITR 151, 155 (All.), it was held that, section 68 gives a statutory recognition to the principle that cash credits which are not satisfactorily explained may be assessed as income.

3.1.9 On the basis of above discussion considering the ratio of various judicial announcements, it can be concluded that it is necessary for the appellant to prove prima facie the transactions which results in credit in his books of accounts. Such proof includes proof of the identity of the creditors, the capacity of such creditors to advance money and lastly the genuineness of the transactions. These things must be proved prima facie by the appellant and only after the assessee has adduced evidence to establish prima facie the aforesaid, the onus shifts on the Department. Merely establishing the identity of the creditor is not enough as held in [Shankar Industries vs. CIT (1978) 114 ITR 689 (Cal.), C. Kant & Co. vs. CIT (1980) 126 ITR 63 (Cal.), Prakash Textile Agency vs. CIT (1980) 121 ITR 890 (Cal.) Oriental Wire Industries Pvt. Ltd. vs. CIT (1981)

131 ITR 688 (Cal.), CIT vs. United Commercial and Industrial Co. Pvt. Ltd. (1991) 187 ITR 596, 599 (Cal.). Further, in Bharati Pvt. Ltd. vs. CIT (1978) 111 ITR 951 (Cal.), CIT vs. WJ Walker & Co. (1979) 117 ITR 690, 694 (Cal.) CIT vs. United Commercial & Industrial Co. Pvt. Ltd. (1991) 187 ITR 596, 599 (Cal.) it was held that mere filing of confirmatory letters does not discharge the onus that lies on the assessee. Mere furnishing of the particulars is not enough. Mere payment by a/c payee cheques is not sacrosanct nor can it make a non-genuine transaction genuine [CIT vs. Precision Pvt. Ltd. (1994) 208 ITR 465, 470, 471 (Cal.), Cf. Nizam Wool Agency vs. CIT (1992) 193 ITR 318, 320 (All.).

3.1.10 In view of the above discussion and ratio of judicial pronouncements, it is held that assessee has failed to substantiate its claim with regard to the onus to be discharged by it to explain the identity of the creditors/ investors their creditworthiness and genuineness of the transactions as provided in Section 68 of the Act with regard to the claim of receiving advance / earnest money in connection with sale/purchase of agricultural land. It is a fact that apart from shifting the onus on the Assessing Officer to make enquiries, the appellant has miserably failed to discharge his onus as per the provisions of the Act despite being given ample opportunities not only during the assessment stage but even during the appellate stage. Mere filing of computer generated/typed copies of documents without their registration with the competent authority is having no evidentiary value and the genuineness of the claim of transaction mentioned therein cannot be verified unless they are supported with other corroborative evidence. Hence, I am of the considered view that no interference is called for to the above addition of Rs.56,00,000/- made by the AO which is upheld and the ground taken by the appellant is dismissed.

4. Ground Nos. 2 & 3 are general in nature and do not call for any specific adjudication.”

5. Aggrieved by the denial of relief by the CIT(A), the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, none appeared for the assessee. It is noticed that multiple opportunities were given to the assessee in the past and the adjournment was liberally granted as and when demanded. It is thus gauged that the continued non attendance is deliberate and willful disobedience. Having regard to the lackadaisical approach of the assessee, the

matter is proceeded *ex-parte*.

7. We have heard the submissions on behalf of the Revenue and also perused the assessment order and the first appellate order. No separate paper book is available on record.

8. On perusal of the facts and circumstances emerging from the case records, we do not find any mitigating circumstances existing in the case to dislodge the action of Revenue Authorities. The assessee has made large cash deposits and on being inquired has failed to explain the nature and source of such cash deposits. The assessee has neither produced the so called lenders nor provided any authentic evidence to support its claim of cash receipts from parties against sale of property and cancellation thereof. To our mind, the CIT(A) has rightly observed that the onus in the instant case has not been discharged at all. No evidence has been filed before the Tribunal at all in rebuttal. Under such circumstances, we are constraint to endorse the view taken by the CIT(A). Hence, we decline to interfere.

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

Order pronounced in the open Court on 04/01/2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

DATED: /01/2023

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER