

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No. 129/Bang/2024
Assessment Year: 2017-18

Mrs. Kalavathi Arumugam, 482, 1 <sup>st</sup> Stage, 6 <sup>th</sup> Phase, WOC Road, Bangalore – 560 010.  <b>PAN – BVMPA 1394 R</b>	Vs.	The Income Tax Officer, Ward – 2(2)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri A Ravish Rao, CA
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel

Date of hearing	:	29.05.2024
Date of Pronouncement	:	29.07.2024

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER :**

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 30/11/2023 in DIN No. ITBA/NFAC/S/250/2023-24/1058347668(1) for the assessment year 2017-18.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the addition of Rs. 26,79,000/- treating the same as unexplained money u/s 68 of the Act.

3. The necessary facts are that the assessee in the present case is an individual and working in the garment factory. The assessee in the

year under consideration deposited a sum of Rs. 26,79,000/- only in cash in the bank. The source of cash deposit was explained by the assessee as detailed below:

PAN NUMBER	NAME OF THE PARTY	RELATION	AMOUNT
BPEPV9S7IE	VINOD V	SON	Rs.6,00,000/-
BARPV7550E	ARUN V	SON	Rs.5,00,000/-
CZAPR9853H	RUKMINI M	SISTER LAW	In Rs.4,00,000/-
ADGPV7333M	UMAVATHIM	SISTER LAW	In Rs.5,00,000/-
ARSPA4999B	KRISHNA	BROTHER	Rs.5,00,000/-
	TOTAL		25,00,000/-
	OWN SAVINGS		Rs.1,79,000/-
	TOTAL DEPOSIT	CASH FY 2016-17	Rs.26,79,000

4. The assessee has also submitted the complete address along with confirmation of the parties from whom the loan was taken. However, the AO disagreed with the contention of the assessee on the reasoning that the loan parties do not have sufficient credit worthiness to advance money to the assessee. Therefore, the AO treated the cash deposit as unexplained money u/s 69 of the Act and added the same to the total income of the assessee.

5. On appeal, the Id. CIT(A) confirmed the addition made by the AO and dismissed the appeal filed by the assessee.
6. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.
7. The Id. AR before us filed written submission running from pages 1 to 5, which was supported by the sale deed, bank statement of the parties. It was contended by the Id. AR that all the necessary details along with the confirmation were filed during the assessment proceedings to justify the source of cash deposits in the bank. But the AO, without pointing out any infirmity in the documents as well as without doing cross verification from the loan parties has treated the amount of cash deposits as unexplained investment, which is contrary to the provisions law. As such, the assessee has discharged the onus imposed us/ 68 of the Act by furnishing the details of the identify and the confirmation of the parties, which was not doubted by the authorities below. As such, the onus was shifted upon to the revenue to disprove the contention of the assessee based on cogent materials. Accordingly, it was prayed by the Id. AR that the addition made by the AO and subsequently confirmed by the Id. CIT(A) deserves to be deleted.
8. On the other hand, the Id. DR vehemently supported the order of the authorities below.
9. We have heard the rival contentions of both the parties and perused the materials available on record. The assessee in the year under dispute has made deposits in cash of Rs. 26,79,000/- only. The source of cash was justified by the assessee stating that it was received from the relatives discussed above. The assessee established the source of loan credit as required under the provision of section 68 of the

Act, provided the name, address, and PAN confirmation letter and bank statement of the parties. However, the AO doubted the genuineness of loan and creditworthiness of the parties for reason that the parties were not filing the returns of income and there was meagre balance in their bank accounts. However, we note that the AO did conduct inquiries before rejecting the primary documentary evidence provided by the assessee. The AO in the present case without making an inquiry or bringing any contrary material held that the assessee has deposited own unexplained cash in her bank account. The Hon'ble Supreme Court in the case of CIT vs. P. Mohanakala reported in 291 ITR 278 while dealing with scope of provision of the section 68 of the Act held that "*the opinion of the AO that the explanation furnished by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion.*" In other words, once the assessee submits primary evidence regarding source of cash, the onus shifts on the AO to consider the material provided and make independent inquiry to find out genuineness of the evidence or bring material contrary to the facts explained by the assessee. The AO cannot reject the primary evidence furnished by the assessee without appreciating the facts available on record or without bringing contrary material to from the belief that primary documents or explanation furnished by the assessee are not satisfactory.

9.1 In the present case the assessee has provided all the necessary documentary evidence justifying the source of cash deposited in the bank. However, the AO merely based on surmises and conjecture held that the assessee has routed own unaccounted cash in the guise of

unsecured loan which is not justified. Therefore, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Hence the ground of appeal filed by the assessee is hereby allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in court on 29<sup>th</sup> day of July, 2024

Sd/-

**(SUNDARARAJAN K)**  
Judicial Member

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore  
Dated, 29<sup>th</sup> July, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore