

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM

श्री के नरसिम्हाचारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRIK NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./ I.T.A. 296/Viz/2024
(निर्धारणवर्ष/ Assessment Year : 2013-14)

Sandhi Raja Sekhar, Bhimavaram. PAN: AXRPS2387J (अपीलार्थी/ Appellant) अपीलार्थी की ओर से/ Assessee by प्रत्यार्थी की ओर से/ Revenue by	Vs.	Income Tax Officer, Ward-1, Bhimavaram. (प्रत्यर्थी/ Respondent) Sri GVN Hari, AR Dr. Aparna Villuri, Sr. AR
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सुनवाई की तारीख/ Date of Hearing	:	10/02/2025
घोषणा की तारीख/Date of Pronouncement	:	07/03/2025

ORDER

PERS. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("Ld. CIT(A)") vide DIN & Order No. ITBA/NFAC/250/2024-25/1065498566(1), dated 10/06/2024 for the AY 2013-14 arising out of the order passed U/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 ("the Act").

2. Brief facts of the case are that the assessee is an individual deriving income from purchase and sale of prawn and fish business has not filed his return of income for the AY 2013-14. Accordingly, notice U/s. 148 of the Act dated 30/06/2016 was issued to the assessee and served on 6/7/2016. In response to the notice U/s. 148 of the Act, the assessee filed his return of income on 20/06/2017 admitting a total income at Rs.1,97,680/-. Subsequently, the case was selected for scrutiny under manual category and a notice U/s. 142(1) of the Act dated 09/01/2017 was issued to the assessee and served on 02/02/2017. Based on the information available with the Department, it was noticed that the assessee has made cash deposits to the tune of Rs.82,88,000/- and also made time deposits of Rs. 18,50,000/-. In response to the notice, no information has been filed and hence, another letter was issued on 11/05/2017. The assessee failed to respond to that notice and therefore a final opportunity along with summons U/s. 131 of the Act were issued on 06/06/2017 requiring the assessee to appear on 13/06/2017. In response, the assessee's Representative appeared and sought time for furnishing the return of income which was allowed upto 20/06/2017. On 20/06/2017 the assessee's Representative has

furnished a letter along with the return of income filed electronically for the AY 2013-14 and also the computation of total income, Form No.16, form 26AS and a copy of a bank account from Andhra Bank, Bhimavaram before the Ld. AO. On a perusal of the submissions made by the assessee and the material available before him, the Ld. AO noticed that the assessee was initially stating that the cash deposits arose out of the sale of land and later submitted that he was carrying on the business of sale of prawn and fish and derives commission income which was deposited into the bank account. The Ld. AO further observed that as an agent how can the assessee deposit cash to the tune of Rs. 43,48,803/-. Therefore, the Ld. AO rejected the contention of the assessee and proceeded to add cash credits in the bank account U/s. 68 of the Act as unexplained cash credits amounting to Rs. 53,50,000/-. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee contested that an amount of Rs. 8 lakhs is self-transfer from the assessee's same account held with Axis Bank. He therefore pleaded before the Ld. AO that the addition made for Rs. 53,50,000/- is not correct and shall be restricted only to

45,50,000/- [Rs. 53,50,000 – Rs. 8,00,000]. Further, the assessee reiterated the submissions made before the Ld. AO with respect to the cash deposits made by the assessee into the bank account. However, the Ld. CIT(A) did not accept the submissions made by the assessee thereby dismissing the appeal of the assessee. On being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT(A) is not justified in sustaining the addition of Rs. 53,50,000/- made by the assessing officer towards unexplained cash credits U/s. 68 of the Act.*
3. *Any other grounds may be urged at the time of hearing.”*

3. Grounds No. 1 & 3 are general in nature and therefore they need no adjudication.

4. Ground No.2 is with respect to sustaining the addition of Rs. 53,50,000/- as unexplained cash credit U/s. 68 of the Act. The Ld. AR submitted that the assessee has admitted that he has not maintained books of accounts and hence, the addition made U/s. 68 of the Act is unsustainable. Section 68 of the Act prescribes deposits into bank accounts which are unexplained by

the assessee and in the absence of not maintaining any books of account which was also acknowledged by the Ld. AO cannot make addition U/s. 68 of the Act. On this issue, the Ld. AR submitted that he has relied on various case laws as detailed in the paper book and was also placed before the Ld. CIT(A) for consideration. He therefore pleaded that the addition made by the Ld. AO U/s.68 of the Act is bad in law and prayed for deletion of the addition.

5. Per contra, the Ld. Departmental Representative relied on the orders of the Ld. Revenue Authorities.

6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an admitted fact that the Ld. AO has acknowledged the fact that the assessee did not maintain any books of fact and neither produced any bills or vouchers for the purchase of packing material and Ice. Further, the Ld. AO also has also accepted the income from salary declared by the assessee and does not raise any doubts on the salary income but has observed that the assessee has scooped himself to such level to state that the cash deposits are raised due to sale of land and

later contradicts his own statement that it has arisen out of the commission income received. From the submissions made by the Ld. AR, the only contention of the assessee is that the addition cannot be made U/s. 68 of the Act in the absence of maintenance of books of account. Section 68 of the Act is reproduced below for reference:

“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 :

*.....
.....”*

7. From a plain reading of section 68 of the Act, it is clear that the addition can be made U/s. 68 of the Act in cases where any sum is found credited in the books of account maintained by the assessee, where the assessee offers no explanation about the nature and source of such credits in the books of account or such explanation is not in the opinion of the Assessing Officer being satisfactorily explained. In the instant case, the addition has been made U/s. 68 of the Act even though it was acknowledged by the Ld. AO that the assessee has not maintained books of account. The coordinate Bench of the Tribunal at Guwahati, a similar view has been arrived by the

Third Member in the case of Smt. Madhu Raitani vs. ACIT (2011) 10 taxmann.com 205 (Guwahati) (TM) and also a similar view has been held by the coordinate Bench of the Tribunal in the case of ITO, Barabank vs. Carnal Kumar Mishra (2013) 33 taxmann.com 610 (Lucknow Trib.). It is a settled decision of law that the addition made by the Ld. AO in respect of the cash deposits by invoking the provisions of section 68 of the Act fails for the simple reason that the bank statements or bank pass books cannot be considered as books maintained by the assessee for any previous year and therefore, the addition made by the Ld. AO U/s. 68 of the Act is bad in law and deserves to be deleted. Thus, we allow Ground No.2 raised by the assessee.

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

Pronounced in the open Court on 07th March, 2025

Sd/-
(श्रीकेनरसिम्हाचारी)
(K NARASIMHA CHARY)
न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-
(एस बालाकृष्णन)
(S.BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 07/03/2025
OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Sandhi Raja Sekhar, D.No. 1-42, Vijaya Nivas, China Amiram Post, Bhimavaram, Andhra Pradesh – 534204.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, O/o. ITO, JP Road, Siva Rao Pet, Bhimavaram, Andhra Pradesh-534201.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam