

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 2868/Mum/2014
(Assessment Year: 2007-08)

Shri Udayraj N. Pal
25B, New Kant Wadi
Perry Cross Road
Bandra (W), Mumbai 400050

Income Tax Officer-19(3)(4)
304, Piramal Chambers
Vs. Parel, Mumbai 400012

PAN - ALQPP2215D

Appellant

Respondent

Appellant by: Shri None
Respondent by: Shri S. Senthil Kumaran

Date of Hearing: 30.05.2016
Date of Pronouncement: 03.06.2016

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the order of the CIT(A)-18, Mumbai dated 27.11.2013 for A.Y. 2007-08.

2. The facts of the case, briefly, are as under: -

2.1 The assessee filed his return of income for A.Y. 2007-08 on 31.08.2007 declaring income of ₹1,47,858/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and the case was taken up for scrutiny. The assessment was completed under section 143(3) of the Act vide order dated 04.11.2009 wherein the income of the assessee was determined at ₹16,62,810/- in view of the following additions: -

- | | |
|--|--------------|
| (i) Unexplained cash credits u/s. 68 on account
on account of deposits in banks | ₹14,31,647/- |
| (ii) Unexplained cash credits claimed to be gifts | ₹ 83,000/- |

2.2 Aggrieved by the order of assessment dated 04.11.2009 for A.Y. 2007-08, the assessee preferred an appeal before the CIT(A)-18, Mumbai.

The learned CIT(A) disposed off the appeal vide the impugned order dated 27.11.2013 allowing the assessee partial relief; by deleting the addition of unexplained cash credit of ₹83,000/- shown as gift, but upheld the addition of ₹14,31,647/- on account of unexplained cash credits under section 68 of the act on account of deposits in the assessee's bank accounts.

3. Aggrieved by the order of the CIT(A)-18, Mumbai dated 27.11.2013 for A.Y. 2007-08, the assessee has preferred this appeal raising the following grounds: -

- “1) On the facts and in the circumstances of the case the learned CIT(A) erred in law as well on facts by confirming the addition of Rs. 14,31,647/- for unexplained Cash Credit for deposits made by your appellant in the bank account for the year.*
- 2) The Learned CIT (A) was highly unjustified in not considering the re- deposit of withdrawals from the bank account amounting to Rs.7,55,269/- which is included in the total addition of Rs.14,31,642/- as unexplained Cash Credit u/s 68.*
- 3) The Learned CIT (A) was highly unjustified in not considering the confirmations and documentary evidence submitted by your appellant to prove that against the receipt of payment pay orders were issued which is not covered u/s 68 amounting to Rs.6,10,000/- (Rs. 2,00,000/- Gafar Khan, Rs.1,40,000/- Sheru Khan, Rs.2,70,000/ Sagar Patel).*
- 4) The Learned CIT(A) was highly unjustified in treating Rs.3,12,000/- (this includes Rs.83,000/- as Gift from father) as unexplained Cash Credit. Your appellant received the payment out of sale of room for Rs.4,25,000/- by the father and the relevant documents were also provided in the Paper book.”*

4. The hearing in this case was fixed on at least five occasions, but neither anyone appeared on behalf of the assessee at those hearings, nor was any letter seeking adjournment filed on the assessee's behalf. On the day the Bench did not function, the next date of hearing was displayed through the notice board. Notices despatched by the Registry by RPAD on two occasions were returned unserved. Even on 30.05.2016, when the case was called for hearing, none was present for the assessee, but the learned D.R. was present and ready to argue the case on behalf of Revenue. In these circumstances, we are of the view that the assessee is not serious

about pursuing this appeal and therefore proceed to dispose off the same with the help of the learned D.R. for Revenue and the material on record.

5.1 In the grounds raised (supra), the issues raised by the assessee pertain to the addition of ₹14,31,647/- under section 68 of the Act in respect of unexplained cash credits/deposits in the assessee's bank account during the relevant period. It is contended by the assessee that in the impugned order the learned CIT(A) was not justified in considering the re-deposit of withdrawals from the bank account amounting to ₹7,55,269/- which is included in the total amount of ₹14,31,647/- held to be unexplained cash credits under section 68 of the Act. It was further contended that the learned CIT(A) erred in not considering the confirmations and documentary evidence submitted by the assessee to prove that against the receipt of payments, pay orders amounting to ₹6,10,000/- were issued (comprising of ₹2,00,000/- of Gafar Khan, Rs.1,40,000/- Sheru Khan and Rs.2,70,000/- Sagar Patel). It was also contended that the learned CIT(A) was not justified in treating ₹3,12,000/- as unexplained cash credit, which was the payment the assessee received on account of sale of room for ₹4,25,000/- by his father and for which relevant document was filed.

5.2.1 The learned D.R. vehemently supported the finding in the orders of the authorities below. According to the learned D.R., in the course of assessment proceedings the Assessing Officer (AO) noticed that the assessee had made cash deposits in his bank accounts in Abhuday Co-op Bank and SBI amounting to ₹13,58,850/- and deposits by cheque amounting to ₹7,16,492/- (viz. total deposits ₹20,75,342/-) and required the explanation of the assessee as to the source of these deposits. From the explanation put forth by the assessee, the AO noticed that as per the cash book, the assessee claimed cash loans were received from Shri Gaffar Khan (₹2,00,000/-), Shri Sagar Patel (₹2,70,000/-), Shri Sheru Khan (₹1,40,000/-) and cash loan plus gift of ₹3,12,000/- from Shri Niharo Pal, but observed that no material evidence was brought on record to establish the identity of the parties, their creditworthiness and the genuineness of

the transactions. After factually analysing the material on record in detail, the AO held that the credits to the extent of ₹14,31,647/- remained unexplained and brought the same to tax in the assessee's hands under section 68 of the Act.

5.2.2 The learned D.R. submitted that on appeal, the assessee put forth submissions and filed certain documents which were admitted by the learned CIT(A) and he called for a remand report thereon from the AO. As per the learned D.R., on receipt of the AO's remand report dated 05.08.2013, a copy of which was given to the assessee, the learned CIT(A) observed that in response to notices issued under section 133(6) of the Act by the AO, one creditor, Sagar Patel, refused to receive the notices; two others, Shri Gaffar Khan and Shri Niharo Pal even after receiving the notice never responded and in respect of Shri Sheru Khan, the assessee was unable to furnish any details about him or his whereabouts. The learned D.R. contended that in these factual circumstances, the learned CIT(A) placing reliance on certain judicial precedents in this regard held that since the assessee had failed to bring on record material evidence and produce the aforesaid four parties for examination before the AO, the assessee had failed to establish/prove the identity of the parties, their creditworthiness and the genuineness of these transactions and hence rightly upheld the addition of ₹14,31,642/- made under section 68 of the Act. It is contended that all the arguments in the grounds raised (supra) have been considered by the authorities below and the assessee has merely raised the grounds without bringing on record material evidence to controvert the findings of the authorities below and therefore it was pleaded that the impugned order of the learned CIT(A) be upheld and the assessee's appeal dismissed.

5.3.1 We have heard the learned D.R. for Revenue in the matter and perused and carefully considered the material on record. The learned CIT(A) has considered and adjudicated the matter of the addition of unexplained cash credits in the assessee's bank with Abhuday Co-op Bank and SBI amounting to ₹14,31,642/- under section 68 of the Act in the impugned order as under at paras 2.1 to 2.3 thereof: -

"The A.O. has observed that the assessee has shown cash deposits in Abhyuday Coop. Bank and SBI totaling to Rs. 13,58,850/- and deposited by cheque of Rs. 7,16,492/-. The total deposit in these two bank accounts were to the tune of Rs. 20,75,342/-. The assessee has shown business receipts of Rs. 6,14,293/- and income from other sources are shown at Rs. 27,000/- and bank interest at Rs. 2,402/-. The A.O. has called for the source of these deposits in the bank accounts. In response to the show- cause notice, the AR has submitted that the deposits were made out of the cash book and bank book maintained for the year. The A.O. has observed that in the cash book, the assessee has shown cash loans received from three persons i.e. Shri Gaffar Khan (Rs. 2,00,000/-), Shri Sagar Patel (Rs. 2,70,000/-) and Shri Sheru Khan (Rs. 1,40,000/-) and a cash loan as well as gift from Shri Niharu Pal (Rs. 3,12,000/-). But no other details to prove the identity, creditworthiness and genuineness of transaction was submitted. Further, the A.O. has analysed the debit and credit entries shown in the bank account and discussed at page 2 & 3 of the assessment order in great detail. After discussing the factual position of debit & credit entries, the A.O. has held that the amount of credit in the bank accounts of the assessee amounting to Rs. 14,31,647/- is remained unexplained, therefore, it was treated as unexplained cash credit u/s 68 of the I.T. Act.

2.2. Before me, the appellant has submitted as under:-

It was also contended before the assessing officer that there are various deposit and withdrawals of cash from the Bank account and statement of cash withdrawal and deposit was also placed on the records of the assessing officer. The AO in his remand report dated 13.8.2013 has stated this fact in Para 5.1 and has stated that Rs. 7,55,269/- being the amount deposited periodically from Cash in Hand out of the cash withdrawn from bank. The details of such cash balance was placed before the AO as well as in the Paper Book filed before your honour and is appearing at page No.9 to 14. As the AO has verified and stated the facts that actually this amount of Rs. 7,55,269/- is nothing but deposit and withdrawal from the bank account and therefore, he has not commented anything further after verification. A copy of the submission before AO dated 17.9.2012 is enclosed for your ready reference. Since this amount is out of cash balance it cannot be treated as Cash Credit and accordingly should be deleted. As regards the balance amount of Cash Credit of Rs. 8,82,000/- as detailed below for which the AO has found certain defects requires the modus operandi of the business of the assessee. Which is explained blow:-

Sl. No.	Name	Amount
1	Gafar Khan	2,00,000/-
2	Sheru Khan	1,40,000/-
3	Sagar Patel	2,70,000/-
4	Niharu Pal	3,12,000/-
TOTAL amount		8,82,000/-

The assessee is a small dealer in second hand car and he takes deliver of the car in pool account with his friends. As his other friends are not mainlining any Bank account, the appellant use to issue pay orders as and when any car owner who is willing to take the payment by account payee

Pay Order in the name of the customer and use to debit the same in the name of the friend to whom he use to deliver the Pay Order and once the car was sold the payment was received back from the sale of car and they were booking the profits. Generally the purchase and sale took place either on the same day or within few days and thereby the account debited by my client got squared up and the balance use to become NIL and at the end of the year there was no credit balance or debit balance in the name of any of the friends. Hence, it can be said that in real sense that there was any cash credit as my client use to debit first and then he use to get the payment. In fact my client was rotating the same fund from time to time for all the transactions which was treated as Cash Credit by the learned Assessing Officer. My client use to give Pay Order and then he use to receive the payment in cash either on the same day or after few days and it is not the reverse case. If cash is taken first and then repaid then it is to be treated as Cash Credit. It was not the case of first depositing the cash in the I bank and then issuing the Pay Order. There was sufficient balance in the bank account and then Pay orders were issued in the name of the parties. Moreover, my client is not required to maintain any books of account and his case falls under the provisions of Section 44AD which was not done and instead it was treated as Cash Credit and addition was made accordingly.

Seeing the nature of business no addition should have been made as Cash Credit as the provisions of Section 68 does not attract as my client has not accepted any deposit rather he has first given the money and then he has collected the same. This fact can also be verified from the statement of account which is enclosed herewith for your ready reference. In support of the claim one photo copies of the Pay Orders is enclosed herewith for verification of the facts. From the photo copy of the Pay order it can be seen that the Pay Order bearing No. 851710 dated 14.3.2007 for Rs. 1,70,000/- was issued in the name of Madhuri S. Zode whereas your appellant debited the same in the name of Sagar Patel as the Car was sold by Sagar Patel. In this manner all other pay orders were issued against purchase of Second Hand cars but debited to the persons who sold the car and finally on resale the account was squared up

2.3. I have considered the submissions of the appellant, order of the A.O. and facts of the case carefully, it is noticed that during the assessment proceedings, the appellant has not filed documentary evidences to prove the source of cash credit in the bank accounts, thus, the A.O. has treated the amount of Rs. 14,31,647/- as unexplained cash credit. During the appellate proceedings, the AR of the appellant has submitted further documents to prove the genuineness of these deposits. My predecessor has admitted the new, evidences and called for remand report of the A.O. The A.O. vide letter dated 05.08.2013 has submitted the remand report, the gist of which is reproduced as under:-

"The assessee submitted that cash deposited in the bank account of the assessee are loans taken from the following persons:-

- (1) Shri Gaffar Khan - Ps. .2 lakhs*
- (2) Shri Sagar Pate! - Ps. 2.70 lakhs*
- (3) Shri Sheru Khan - Ps. 1 lakh*
- (4) Shri Niharo Pal - Ps. 3.12 lakhs (Father of the assessee)*

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For the balance amount the assessee submitted that these are amount deposited periodically from cash in hand out of cash withdrawn from bank amounting to Rs.7,55,269/-.

To verify the contents of the assessee and also to ascertain the genuineness of the transaction and creditworthiness of the above persons notice u/s 133(6) dated 19.06.2013 was issued to the following persons at the address provided by the assessee:-

- (a) Shri Niharo Pal, 25-B, New Kant Wadi, Shanti Nagar, Off Perry Cross Road, Bandra (West), Mumbai 400 050.
- (b) Shri Gaffar Khan, Flat No. 102, Yashodha Apartment, Sonawani Chawl, bandra (West), Mumbai 400 050.
- (c) Shri Sagar Patel, J. V. Sahara Building, D-7, Flat NO. 102, Juchandra Nayagaon (East), Thane Dist., Maharashtra.

In all the above cases, the matter was fixed for compliance on 04.07.2013. However, there was no compliance from any one till date. The notice sent to Shri Sagar Patel returned back by the postal authorities remark that 'Refused'. The other two persons namely; Shri Niharo Pal and Shri Gaffar Khan neither attended on the appointment date nor filed any written reply to the aforesaid notice u/s 133(6). With regard to the loan transaction of Shri Sheru Khan is concerned the assessee vide his submissions dated 17.09.2012 stated that the business is very dull at present therefore, Shri Sheru Khan has already left India and accordingly the assessee could not furnish any details about him. Since the present address has not been provided during the remand proceedings, therefore, no enquiry could be carried out about the transaction of Rs. 1 lakh from Sheru Khan. In the light of the above factual position the undersigned could not verify neither the genuineness of the transaction nor the creditworthiness of the lender of the loan shown by the assessee."

Copy of this remand report was also given to the assessee. In response to this, the appellant has submitted its reply which is reproduced as above.

From the perusal of the submissions and remand report, it is observed that the A.O. has examined the documents submitted by the appellant during the remand proceedings and to further verify the genuineness of these documents, notices u/s 133(6) were issued to the above said four parties. In response to the notice u/s 133(6), one creditor Shri Sagar Patel from whom the loan of Rs. 2.7 lakhs was shown as refused to receive notice u/s 133(6). The other two persons namely; Shri Niharo Pal and Shri Gaffar Khan who have received the notice, neither attended. nor submitted any reply before the A.O. Regarding the 4th person Shri Sheru Khan, the assessee has submitted that he has already left India, therefore, no detail can be submitted. The A.O. has confronted this position to the assessee but it has failed to produce the parties before the A.O. for examination to prove the genuineness of the transaction. Since as per the provisions of Sec. 68, the onus is always on the assessee to submit complete evidences to prove the identity, creditworthiness and genuineness of the transaction. But in the present case, the assessee has failed to submit

documentary evidences and produce the parties for examination before the A.O. during the assessment proceedings as well as during the remand proceedings, thus, it has failed to discharge its onus. To strengthen the view of the A.O., reliance is placed on the following decisions:-

- (a) *Roshan Di Hat Vs. CIT 107 ITR 938 (SC)*
- (b) *CIT Vs. Devi Prasad Vishwanath Prasad 72 ITR 194 (SC)*
- (c) *CIT Vs. M.Ganapathi Mudaliar 53 ITR 623 (SC)*
- (d) *A. Govindarajulu Mudaliar Vs. CIT 34 ITR 807 (SC)*
- (e) *CIT Vs. Durga Prasad More 72 ITR 807 (SC)*
- (f) *Sumati Dayal Vs. CIT 214 ITR 801 (SC)*

Keeping in view the above facts, & circumstances, it is held that the assessee has failed to submit documentary evidences and produce the parties before the A.O. for examination because there was non-compliance to the notice u/s 133(6), therefore, it is held that the assessee has failed to prove the identity, creditworthiness and genuineness of the transaction, hence the addition made u/s 68 of the I.T. Act amounting to Rs. 14,31,647/- is confirmed and grounds of appeal are dismissed.”

5.3.2 From a careful consideration of the grounds raised by the assessee, the averments of the learned D.R. for Revenue at paras 5.2.1 and 5.2.2 of this order (supra) and the orders of the learned CIT(A) (supra) it is seen that the fact of the assessee's cash deposits, etc. in his bank account with Abhudya Co-op Bank and SBI was noticed by the AO. It is seen that on being required by the AO to explain these deposits in the bank account, the assessee was unable to substantiate the explanations he put forth and in the process failed to establish the identity and creditworthiness of the creditors who purportedly advanced these amounts to him and the genuineness of the transactions, resulting in the AO holding that cash credits to the extent of ₹14,31,647/- to be unexplained in terms of the provisions of section 68 of the Act and bringing them to tax in his hands. On appeal, in remand proceedings also, it is seen that the assessee was once again unable to prove the basic requirements under section 68 of the Act, i.e. the identity of the parties he claimed to have received the amounts from, their creditworthiness and the genuineness of the transactions, resulting in the learned CIT(A) upholding the addition of ₹14,31,647/- made by the AO under section 68 of the Act. Before us also, we find that

the assessee, except for raising the grounds of appeal (supra), has failed to bring on record any material evidence to establish the genuineness of the aforesaid cash credits in the bank account. In this factual matrix of the case, we are of the considered view that no interference is called for from us in the impugned order of the learned CIT(A) and therefore uphold the same. Consequently, the grounds at S.Nos. 1 to 4 raised by the assessee are dismissed.

5. In the result, the assessee's appeal for A.Y. 2007-08 is dismissed.

Order pronounced in the open court on 3rd June, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 3rd June, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -18, Mumbai*
4. *The CIT - 19, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.