

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHE 'F', NEW DELHI**

**Before Sh. H. S. Sidhu, Judicial Member
And
Sh. N. S. Saini, Accountant Member**

ITA No. 1808/Del/2016 : Asstt. Year : 2010-11

Jitendra Kumar Yadav, S/o Phool Chand Yadav, 401, Mahavirjee Complex, Rishabh Vihar, Delhi-110092	Vs	ACIT, Circle-35(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAHPY8780E		

**Assessee by : Sh. Anil Kumar Jain, CA
Revenue by : Sh. Surender Pal, Sr. DR**

Date of Hearing: 27.03.2019	Date of Pronouncement: 10.04.2019
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ORDER

Per N. S. Saini, Accountant Member:

This is an appeal filed by the assessee against the order of CIT(A)-XIX, New Delhi dated 06.01.2015.

2. The assessee has raised following grounds of appeal:

"(1) Id. CIT(Appeals) has unfairly upheld the double taxation of Rs. 19,00,000/- which was cash deposit into bank whereas in the original computation of Income assessee included the income of Rs. 19,00,000 as Cash Credit into bank.

(2) Id. CIT(Appeals) has unfairly upheld the addition of Rs. 19,00,000/- (against the duly declared agriculture Income of Rs. 20,00,000/-) treated them as Undisclosed Income u/s 68 of the Act in the impugned order u/s 143(3) whereas only Rs. 1,00,000/- has been allowed as agricultural income.

The Appellant/Assessee prays for grant of permission to Add/Insert/Alter/ Modify/Rectify any part of the above

grounds of appeal at any time either before or during the course of hearing of this appeal."

3. In ground no. 1 of the appeal, the grievance of the assessee is that the Commissioner of Income Tax (Appeals) erred in confirming addition of Rs.19,00,000/- on account of cash deposit in bank account.

4. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. The assessee in the return of income filed on 29.07.2010 has shown gross total income at Rs.56,17,881/- which comprised of salary income of Rs.6,00,000/-, business income declared u/s 44AD of the Act of Rs.5,93,385/- and income from other sources of Rs.44,24,496/-.

5. The income from other sources was as under:

<i>"Interest Bank SB Account</i>	<i>24496</i>
<i>Cash Credits in Bank</i>	<i>1900000</i>
<i>Other Income</i>	<i>2500000</i>
<i>Total</i>	<i>4424496"</i>

6. During the course of assessment proceedings, the assessee furnished a revised computation before the Assessing Officer wherein he declared income from other sources as under:

<i>"Interest Bank SB Account</i>	<i>24496</i>
<i>Other Income</i>	<i>2500000</i>
<i>Total</i>	<i>2524496"</i>

7. The assessee claimed before the Assessing Officer that deposit of Rs.19,00,000/- in the bank was included in the income of Rs.25,00,000/- declared under the head income from other sources and other income. However, due to mistake in the return of income Rs.19,00,000/- was again separately declared as income. In other words, income of

Rs.19,00,000/- was offered for tax twice due to mistake in the return of income.

8. However, the Assessing Officer has not accepted the above contention of the assessee and not reduced Rs.19,00,000/- on the ground that the assessee has not filed revised return of income.

9. On appeal, the Commissioner of Income Tax (Appeals) confirmed the action of the Assessing Officer for the same reason.

10. The Authorized Representative of the assessee reiterated the submissions made before the lower authorities and relied upon the decision of Hon'ble Delhi High Court in the case of CIT Vs Sam Global Securities Ltd. 360 ITR 682 (Del.)

11. On the other hand, the Id. Departmental Representative supported the orders of the lower authorities

12. We find that under the scheme of the Income Tax Act, a person assessable on his total income computed as per the provisions of the Act. The Assessing Office is duty bound to compute income as per the provisions of the Act after taking into consideration all the facts available before him. It is opined also by the CBDT that while making assessment, the Assessing Officer should not take advantage of the ignorance or mistake of the assessee.

13. In the instant case, the assessee has claimed that amount of Rs.19,00,000/- was mistakenly declared as income twice, once separately shown as income and again by including the same in other income of Rs.25,00,000/-. However, the details of other income of Rs.25,00,000/- was not furnished before us and the same was also not examined by the

lower authorities. The Hon'ble Delhi High Court in the case of Sam Global Securities Ltd. (supra) has held as under:

" 8. A decision in the case of Goetze (India) Ltd. (supra) was distinguished in Jai Parabolic Springs Ltd. (supra) in the following words (page 46 of 302 ITR):-

"In Goetze (India) Ltd. v. CIT [2006] 284 ITR 323 (SC), wherein deduction claimed by way of a letter before the Assessing Officer, was disallowed on the ground that there was no provision under the Act to make amendment in the return without filing a revised return. Appeal to the Supreme Court, as the decision was upheld by the Tribunal and the High Court, was dismissed making clear that the decision was limited to the power of the assessing authority to entertain claim for deduction otherwise than by a revised return, and did not impinge on the power of the Tribunal."

14. In view of the above, in our considered opinion, it shall be in the interest of the justice to restore this matter back to the file of the Assessing Officer for re-adjudication after proper verification.

15. Needless to mention that the Assessing Officer shall allow reasonable opportunity of hearing to the assessee before re-adjudicating the issue as per law. Hence, this ground of appeal of the assessee is treated as allowed for statistical purposes.

16. In ground no. 2 of the appeal, the grievance of the assessee is that the Commissioner of Income Tax (Appeals) erred in confirming addition of Rs.19,00,000/- against the declared agriculture income of Rs.20,00,000/- by treating it as undisclosed income u/s 68 of the Act.

17. We have heard the rival submissions and perused the orders of the lower authorities and material available on record. In the instant case, the assessee claimed agriculture income at Rs.20,00,000/-. The Assessing Officer being not satisfied with the claim of the assessee added

Rs.20,00,000/- to the income of the assessee by invoking provisions of Section 68 of the Act. The Assessing Officer has held as under:

"3.4 Thus in the absence of any substantial agricultural land belonging to the assessee, any bills/details for purchase of agricultural inputs & sale of agricultural produce, the alleged receipts of Rs.20,00,000/- are not accepted as agricultural income of the assessee and are added to the total income of the assessee u/s 68 of the I.T. Act. Penalty proceedings u/s 271(1)(c) are initiated separately for filing inaccurate particulars of income to this extent."

18. On appeal, the Commissioner of Income Tax (Appeals) confirmed the above action of the Assessing Officer but restricted the amount of addition to Rs.19,00,000/-.

19. Before us, the assessee raised a technical ground and submitted that as the assessee was not maintaining any books of account, the addition made u/s 68 of the Act is bad in law as the pre-condition for invoking Section 68 of the Act is a credit must be found of that amount in the books of account of the assessee. The assessee relied upon the decision of the Hon'ble Bombay High Court in the case of CIT Vs Bhaichand H. Gandhi 141 ITR 67 and the decision of the Delhi Bench of the Tribunal in the case of Nitin Agarwal (HUF), Kailash Prasad Agarwal (HUF) and Manish Agarwal (HUF) Vs ITO in ITA Nos. 7309, 7310 & 7443/Del/2018, order dated 11.01.2019.

20. On the other hand, the Departmental Representative supported the orders of the lower authorities. However, the Departmental Representative could not controvert the submission of the assessee that no books of account was maintained by the assessee for the year under consideration.

21. In view of the above, undisputed facts, we find the issue is covered by the decision of the Delhi Bench of the Tribunal in the case of Nitin

Agarwal (HUF), Kailash Prasad Agarwal (HUF) and Manish Agarwal (HUF) (supra) wherein it has been held as under:

"We find that in this case also AO has invoked the Section 68 of the Act on cash deposits found in the bank accounts. It is correct that since no books of account are maintained in the ordinary course of business of the assessee, no such addition u/s 68 of the Act is tenable. Therefore, in my 7 considered opinion the ground in dispute is squarely covered by the decision of the ITAT, Delhi 'B' Bench order dated 05.12.2018 in ITA No. 1931/Del/2016 (AY 2010-11) in the case of Inder Singh vs. ITO, Ward 43(3), New Delhi wherein, the Tribunal has adjudicated the similar and identical issue to the issue in dispute by holding as under:-

"5. We have heard both the parties and perused the records and the case laws cited by the Ld. counsel for the assessee. We find that in this case return of income was filed on 31.3.2011 declaring an income of Rs. 6,5,454/- inclusive of agricultural income of Rs. 2,60,800/- after availing deduction under Chapter VIA amounting to Rs. 1,00,000/-. The AO completed the assessment at Rs. 1,01,35,450/- against the returned income of Rs. 6,55,454/- and made the various additions. In appeal Ld.CIT(A) has partly allowed the appeal of the assessee. We find that in this case also AO has invoked the Section 68 of the Act on cash deposits found in the bank accounts. It is correct that since no books of account are maintained in the ordinary course of business of the assessee, no such addition u/s 68 of the Act is tenable. Therefore, in our considered opinion the legal ground in dispute is squarely covered by the decision of the ITAT, 'F' Bench vide order dated 27.11.2018 in ITA No. 2483/Del/2015 (AY 2011-12) in the case of Vijay Kumar Prop. V.K. Medical Hall vs. ITO wherein, the Tribunal has adjudicated the similar and identical issue to the issue in dispute by holding as under:-

"8. Ld. AR submitted that Assessing Officer has invoked section 68, on cash deposits found in bank accounts. He submitted that, admittedly assessee is not maintaining any books of account and, therefore, any addition under section 68 is untenable in law as section is applicable only where credits are found in books of accounts maintained by assessee. He referred to definition of "books of account in

section 2(12A) of the Act, which reads as under: "section 2(12 A): "books or books of account" includes ledgers, day-books, cash books, account books and other books whether kept in the written form or as printouts of Tata stored 9 in a floppy, disk, tape or any other form of electromagnetic data storage device; He also referred to following decisions of this Tribunal, in support of his argument:

S.No & Particulars/Title of Decision Bench etc. (Citation/Reference No./Order date) Held (Gist in brief) Relevant Para

1. *Babbal Bhatia A Bench Delhi ITAT ITA 5430 & 5432/Del/2011 (08/06/2018) Para 19 (Para 14 to 26)*

2. *Zaheer Abdulhamid Mulani SMC Pune Bench (Before Ms. Sushma Chowla and Shri Anil Chaturvedi) ITA 862/Pun/2017 (31.08.2018) Para 13*

3. *Latif Ebrahim Patel Mumbai A Bench ITA 7097/Mum/2013 (23.03.2018)Para 7 & Para 8 (Mumbai ITAT decisions in 164 ITD 296 & 160 ITD 605 followed)*

4. *Shamsher Singh Gill Delhi SMC Bench in ITA 2987/Del/2015 (28/02/2017) Para 4 to 7*

5. *Danveer Singh Delhi SMC Bench in ITA 4036/Del/2017 (14/12/2017) Para 5 10*

6. *Om Prakash Delhi E Bench in ITA 1325/Del/2011 (11/08/2016) Para 5 to 8*

7. *Kamal Kumar Mishra Lucknow ITAT 143 ITD 686 Para 7*

8. *Sunil Vaid Delhi ITAT SMC Bench in ITA 2414/Del/2016 (30/12/2016)Para 7*

9. *On contrary, Ld. Sr. DR referring to definition of "books, books of account" as defined under section 2(12A) of the Act, submitted that, it is not an inclusive definition in order to restrict meaning of what is referred to therein. Ld. Sr. DR submitted that bank accounts do fall under term 'account books' and 'other books', which are to be construed generally. Ld. Sr. DR further submitted that assessee has not been able to explain source of cash deposited in bank*

account and, therefore, Ld. AO was right in invoking provisions of section 68 of the Act.

10. We have heard both sides in light of records placed before us.

11. Admittedly, assessee has not maintained any books of accounts, and it is also an undisputed fact that cash has been deposited in saving bank account of assessee, which he explains to be sale proceeds received on sale of agricultural plot. Ld. AO applied provisions of section 68 of the Act to cash found deposited in bank account, since assessee could not explain source to satisfaction of Ld. AO, and by holding that, assessee has not discharged identity, credibility and most importantly genuineness of transaction.

12. It has been vehemently canvassed by Ld.AR that passbook/bank statement obtained from a bank do not construe "books of account" of assessee, as defined under section 2(12A) of the Act. It is also been proposed by Ld.AR that section 68 of the Act is not applicable, when assessee does not maintain any books of accounts. He, thus, vehemently argued that, provisions of section 68 is applicable, only when, no explanation and/or explanation offered by assessee is not satisfactory, regarding any 12 amount found credited in "books of account" of assessee.

13. Be that as it may, we have carefully perused provisions of section 68. This section starts with words, "where any sum is found credited in the books of an assessee maintained for any previous year,.....".

Therefore, section 68 can be applied only where, there are sum found credited in "books of account" maintained by assessee. No doubt passbook /bank statement, are maintained by a bank for its customers. Thus in our considered opinion, we agree with proposition advanced by Ld.AR of non applicability of section 68 in case of cash credit found in saving bank account.

14. It is further observed that Ld. AO applied section 68 and made additions in hands of assessee, as unexplained cash credits, to such amount, which has been found deposited by assessee in his saving bank account. To our mind in present

facts of case section 69 should have been initiated by Ld.AO. It is unfortunate that Assessing 13 Officers blindly apply provisions, which can be fatal to the interest of Revenue. However as a Tribunal, we are not competent to make addition u/s 69A of the Act, by virtue of the decision of Hon'ble Allahabad High Court in case of Smt. Sarika Jain vs. CIT reported in 407 ITR 254. Hon'ble High Court observed as under.

"18. In view of the above, when the said income cannot be added u/s 68 of the Act and the Tribunal was not competent to make the said addition under section 69A of the Act, the entire order of the Tribunal stand vitiated in law."

Respectfully following the above observation by Hon'ble Allahabad High Court, we allow additional ground raised by assessee, only because addition u/s 68 is not sustainable in present facts of case. Accordingly the additional ground raised by assessee stands allowed.

16. As we have allowed additional ground, addition made by Ld.AO under section 68 stands 14 deleted and, therefore, we do not find it necessary to decide other grounds raised as they become infructuous.

Accordingly the other grounds raised in the ground of appeal stands dismissed as infructuous. In the result appeal filed by assessee stands allowed.

6. Keeping in view of the facts and circumstances of the case and respectfully following the precedents, as aforesaid, the addition u/s. 68 is not sustainable in present case, hence, we delete the same and allow the ground no. 2 to 2.2 argued by the Ld. Counsel for the assessee.

7. In the result, the Appeal of the Assessee stands allowed."

7. Keeping in view of the facts and circumstances of the case and respectfully following the precedents, as aforesaid, the addition u/s. 68 is not sustainable in present case, hence, I delete the same and allow the only ground no. 8 argued by the Ld. Counsel for the assessee. In the result, the Appeal of the Assessee stands allowed."

22. We, therefore, following the above decision of the Co-ordinate Bench hold that addition of Rs.19,00,000/- made in the instant case by invoking provisions of Section 68 of the Act is unsustainable as the assessee was not maintainable any books of account during the year under consideration. Therefore, the addition of Rs.19,00,000/- is hereby deleted. Thus, the ground of appeal of the assessee is allowed.

23. In the result, the appeal of the assessee is partly allowed for statistical purposes.

(Order Pronounced in the Open Court on 10/04/2019).

Sd/-

(H. S. Sidhu)
Judicial Member

Dated:10/04/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(N. S. Saini)
Accountant Member

ASSISTANT REGISTRAR