

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.33/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2011-12)**

Smt.Asha Sanghavi
D.No.7-22-12
Nandepu Heights
T.Nagar
Rajamahendravaram
[PAN : AWFPS2816R]

Vs. Income Tax Officer
Ward-2
Rajamahendravaram

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Shri D.Manoj Kumar, DR

सुनवाई की तारीख / Date of Hearing : 06.11.2019
घोषणा की तारीख/Date of Pronouncement : 15.11.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Rajamahendravaram in I.T.A.No. 10671/2014-15 dated 09.11.2018 for the Assessment Year (A.Y.) 2011-12.

2. In the appeal, the assessee has raised seven grounds in total. Ground No.1 and 7 are general in nature which does not require specific adjudication.

3. Ground No.2 is related to the validity of issue of notice u/s 143(2) of the Income Tax Act, 1961 (in short 'Act'). During the appeal hearing, the Ld.AR did not press this ground, therefore, ground No.2 is dismissed as not pressed.

4. Ground No.3, 4 and 5 are related to the addition of Rs.1,22,29,000/- made by the AO u/s 68, treating the cash deposits made in bank accounts of the assessee as unexplained income.

5. Brief facts of the case are that the assessee, an individual, deriving income from house property, interest, commission and other sources has filed her return of income for the A.Y. 2011-12 declaring total income of Rs.3,10,000/- on 19.07.2011. The case was taken up for scrutiny and notice u/s 143(2) was issued to the assessee. During the course of assessment proceedings, the Assessing Officer (AO) found that the assessee has traded in Metals & Energy in Multi Commodity Exchange of India Limited through 'Steel City Commodities Private Limited', Visakhapatnam which resulted in a loss of Rs.55,767/-. The AO further noticed that during

the previous year relevant to the A.Y.2011-12 (for the period from 06.08.2010 to 31.03.2011), the assessee has invested the amount of Rs.1,29,09,000/- through the ICICI Bank, Oriental Bank of Commerce, Federal Bank, Barclays bank as per the details given below :

(a)	ICICI Bank	Rs.56,50,000
(b)	Oriental Bank of Commerce	Rs.26,00,000
(c)	Federal Bank	Rs.37,80,000
(d)	Barclays	Rs.8,79,000

6.1. The AO asked the assessee to explain the source of monies deposited in the bank accounts and the assessee filed the reply explaining the sources as under :

"In this connection, it may be submitted that the sources for the above cash deposits in the above banks to pay commodity / security trading losses are :

- 1) *Gift received of Rs.6,80,000/- and 500 grams of gold valuing Rs.8,00,000/- on 01.04.2011 from Varun Sanghavi, he is the son of the assessee.*
 - a) *The sources of cash being savings out of tuition & interest income and a statement of accounts have been enclosed here.*
 - b) *The source of gold ornaments being inherited gold from Mr.Vagtvarmal Sanghavi (Grnad Father) on March 18, 2008.*
 - c) *Varun Sanghavi was not liable for filing income tax as the income levels as per the Income Tax Act, 1961 were below basic exemption till F.Y.2010.*
 - d) *Varun Sanghavi was not liable to file wealth tax returns as the net wealth as per Wealth Tax Act, 1957 remained below the chargeability levels.*
 - e) *I am hereby enclosing a copy of unregistered gift deed.*
- 2) *6,250 gms gold ornaments received on 25.04.2010 from inheritance from Mrs Sumathi Sanghavi, Mother-in-Law of the assessee.*
 - a) *Mrs Sumathi Sanghavi died on 09.03.2010 and as per her oral will, it got the possession of the gold ornaments on 24th April 2010.*
 - b) *Mrs. Sumathi Sanghavi inherited the gold from her lineal ascendants.*
- 3) *I have sold away my total gold ornaments of 6,750 grams for Rs.1,22,29,000/- (The average price of sales being 1,811.7 per gram)*

4) I have furnished the sources of cash in the below table :

<i>Sources</i>	<i>Amount</i>	<i>Application</i>	<i>Amount</i>
<i>Cash gift from Varun Sanghavi</i>	<i>6,80,000</i>	<i>Cash deposits in pay commodity losses</i>	<i>1,29,09,000</i>
<i>Sale of Gold</i>	<i>1,22,29,000</i>		
<i>Total</i>	<i>1,29,09,000</i>	<i>Total</i>	<i>1,29,09,000</i>

6.2. The AO on receipt of reply from the assessee requested to furnish the evidence for sale of gold and cash gift along with documentary evidences. In response to which the assessee filed letter dated 19.03.2014 enclosing sale bills on white paper slips with the initials of the buyers without even furnishing the names and addresses of the buyers. In spite of giving opportunities, the assessee failed to furnish the evidences for receipt of gifts and for sale of gold. Therefore, the AO treated the entire amount of Rs.1,29,09,000/- deposited in the bank account as unexplained cash credit and accordingly made the addition u/s 68 of the Act.

7. Against the order of the AO, the assessee went on appeal before the CIT(A) and furnished the additional evidence in the form of confirmation letters from 18 creditors, who stated to have purchased the gold. The Ld.CIT(A) admitted the additional evidence and called for the remand report from the AO. On receipt of the letter from the Ld.CIT(A), the AO directed the assessee to produce the 18 persons from whom the

confirmations were obtained by the assessee along with their income tax returns and the bank statements. But the assessee failed to produce the buyers of the gold, therefore, the AO disbelieved the claim of the assessee with regard to sale of gold and accordingly submitted the remand report requesting the CIT(A) to confirm the addition. On the basis of the remand report and the observations made by the AO for non production of the evidence for sale of gold, the Ld.CIT(A) confirmed the addition made by the AO u/s 68 of the Act. Against which the assessee filed appeal before this Tribunal.

8. During the appeal hearing, the Ld.AR argued that the assessee has made the cash deposits in the bank accounts and not made any credit entries in the books of accounts, therefore, the AO ought not to have made the addition u/s 68, hence, argued that any amount found credited in the bank passbook cannot be treated as unexplained cash credit u/s 68. The assessee relied on the decision of ITAT Mumbai Tribunal , 'B' Bench in the case of Mehul V. Vyas Vs. Income Tax Officer, in (2017) 164 TTD 0296 (Mumbai) wherein the Bombay Tribunal placing reliance on the decision of CIT Vs. Bhaichand N.Gandhi (1983) 141 ITR 67 (Bombay) has held that the addition made in respect of bank deposits u/s 68 is unsustainable.

8.1. The second proposition made by the Ld.AR is that, in the instant case, the assessee had filed confirmation letters before the Ld.CIT(A) from the buyers of the gold with a clear address and PAN, thus, established the identity and the genuineness of the transaction and discharged the burden of the assessee. The AO has directed the assessee to produce the persons, which is beyond the limitation of the assessee. Having furnished the confirmation letters with a clear address and PAN, the Ld.AR argued that it is for the department to conduct enquiries and to disprove the claim of the assessee to make the addition. Though the entire material was placed before the AO, the AO did not make any enquiries and brought any evidence to controvert the submission of the assessee thus argued that no addition is warranted u/s 68 of the Act. Accordingly requested to set aside the order of the Ld.CIT(A) and allow the appeal of the assessee.

8.2. The third proposition made by the Ld.AR is that the assessee has invested the entire sums credited in the bank account for the purpose of trading the commodities through Multi Commodity Exchange of India Limited through Steel City Commodities Private Ltd., and had incurred the loss of Rs.1,29,69,131/-. The assessee also submitted the date wise proof and the copies of the statements of Steel City Commodities. Therefore, argued that even if it is presumed that the deposits made in the bank

account required to be treated as unexplained cash credits, the same required to be set off against the loss incurred by the assessee, thus, the income results into Nil income. Therefore, argued that in any case, there is no justification for making the addition of Rs.1,22,29,000/- to the returned income. Hence, requested to set aside the order of the Ld.CIT(A) and delete the addition made by the AO.

9. On the other hand, the Ld.DR argued that the assessee has not declared the transactions of Multi Commodities Stock Exchange Ltd. for trading done in respect of Metals and Energy in the return of income. Therefore, argued that there is no case for set off of unexplained income in respect of cash credits against the loss stated to have been incurred by the assessee.

9.1. In respect of the contention of the Ld.AR with regard to addition made u/s 68 of the Act, the Ld.DR submitted that the assessee has made cash deposits in the bank accounts for which the assessee could not explain the sources. Before the AO, the assessee submitted single line confirmation letters without furnishing any details such as address of the buyers. Though the Ld.CIT(A) admitted the additional evidence of confirmation letters, in the remand proceedings, the assessee failed to produce the

buyers of the gold though opportunity was given to the assessee. Therefore, argued that the assessee failed to prove the genuineness of the sale of gold or inheritance of gold, therefore, argued that the AO has rightly made addition u/s 68 on account of deposits made in the bank accounts and no interference is called for in the order of the Ld.CIT(A).

9.2 The Ld.DR further submitted that the assessee claimed to have sold the gold of 6,750 grams worth Rs.1,22,29,000/-. The assessee is not a wealth tax assessee, therefore, it proves that the assessee did not own the gold of 6,750 grams, hence, the question of sale of gold does not arise. The Ld.DR relied on the decision of 45 taxman.com 224 Sachdeva Vs. ITO, Ward-1(1), Faridabad and Punjab & Haryana High Court. In the circumstances, the addition made by the AO u/s 68 required to be upheld.

10. We have heard both the parties and perused the material placed on record. In the instant case, the AO made the addition of Rs.1,22,29,000/- representing cash deposits made in the bank account u/s 68 of the Act. Section 68 allows the AO to make addition for the sums credited in the books of accounts maintained by the assessee for which the assessee fails to offer satisfactory explanation with regard to source. In the instant case, the assessee is maintaining the books of accounts but did not make any

entry in the books of accounts. The amounts were deposited in the bank accounts, but not made relevant entry. Hence, the Ld.AR argued that since the assessee did not make any entry in the books of accounts, the AO is not permitted to make the addition u/s 68. The issue with regard to deposits made in the bank account, whether to be brought to tax u/s 68 or not was considered by the coordinate bench of ITAT Mumbai in Mehul V.Vyas Vs. Income Tax Officer (supra) and held that the amounts found credited in the bank pass book or bank statement cannot be considered to be books maintained by the assessee in any previous year as understood for the purpose of section 68 of the Act. For the sake of clarity and convenience, we extract para No.8 of the cited order which reads as under :

"5. We have heard the Id. Authorized representatives of both the parties, perused the orders of the lower authorities as well as the material produced before us. We will first deal with the objection raised by the Id. A.R as regards the addition of Rs.10,53,000/- which was made by the A.O under Section 68 of the 'Act', in respect of the cash deposit in the bank account of the assessee We find substantial force in the contention of the Id. A.R that an addition under Section 68 can only be made where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee either offers no explanation about the nature and source as regards the same, or the explanation offered by him in the opinion of the assessing officer is not found to be satisfactory. That before adverting further, we herein reproduce the relevant extract of the aforesaid statutory provision, viz. Section 68, which reads as under: -

"Cash Credits.

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.....

That a bare perusal of the aforesaid deeming section therein reveals that an addition under the said statutory provision can only be made where any sum is

found credited in the books of an assessee maintained for any previous year. Thus, the very sine qua non for making of an addition under Section 68 presupposes a credit of the aforesaid amount in the 'books of an assessee' maintained for the previous year. We not being oblivious of the settled position of law that a statutory provision has to be strictly construed and interpreted as per its plain literal interpretation, and no word howsoever meaningful it may so appear can be allowed to be read into a statutory provision in the garb of giving effect to the underlying intent of the legislature, thus confining ourselves within the realm of our jurisdiction, therein construe the scope and gamut of the aforesaid statutory provision by according a plain meaning to the language used in Sec. 68. We are of the considered view that a credit in the 'bank account' of an assessee cannot be construed as a credit in the 'books of the assessee', for the very reason that the bank account cannot be held to be the 'books' of the assessee. Though it remains as a matter of fact that the 'bank account' of an assessee is the account of the assessee with the bank, or in other words the account of the assessee in the books of the bank, but the same in no way can be held to be the 'books' of the assessee. We have given a thoughtful consideration to the scope and gamut of the aforesaid statutory provision, viz. Sec. 68, and are of the considered view that an addition made in respect of a cash deposit in the 'bank account' of an assessee, in the absence of the same round credited in the 'books of the assessee' maintained for the previous year, cannot be brought to tax by invoking the provisions of Section 68. That our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Bhaichand N. Gandhi (1983) 141 ITR 67 (Bombay) wherein the Hon'ble High Court has held as under: -

"As the Tribunal has pointed out, it is fairly well settled that when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary. Applying this principle, the pass book supplied by the bank to its constituent is only a copy of the constituent's account In the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent, nor can it be said that the pass book is maintained by the bank under the instructions of the constituent. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified In the conclusions at which it arrived."

We find that the aforesaid view of the Hon'ble jurisdictional High Court had thereafter been followed by a 'SMC of the ITAT Mumbai bench in the case of Smt. Manshi Mahendra Pitkar Vs. ITO 1(2), Thane (2016) 73 taxmann.com 68 (Mumbai Trib.) wherein it was held as under: -

I have carefully considered the rival submissions. In the present case the addition has been made by the income tax authorities by treating the cash deposits in the bank account as an unexplained cash credit within the meaning of sect/on 68 of the Act The legal point raised by the assessee is to the effect that the bank Pass book is not an account book maintained by the assessee so as to fail within the ambit of section 68 of the Act. Under section 68 of the Act, it is only when an amount is found credited in the account books of the assessee for any previous year that the deeming provisions of section 68 of the Act would apply in the circumstances mentioned therein. Notably,

section 68 of the Act would come into play only in a situation "Where any sum is found credited in the books of an assessee ". The Hon'ble Bombay High Court in the case of Shri Bhaichand Gandhi (supra) has approved the proposition that a bank Pass Book maintained by the bank cannot be regarded as a book of the assessee for the purposes of section 68 of the Act. Factually speaking, in the present case, assessee is not maintaining any books of account and section 68 of the Act has been invoked by the Assessing Officer only on the basis of the bank Pass Book. The invoking of section 68 of the Act has to fail because as per the judgment of the Hon'ble Bombay High Court in the case of Shri Bhaichand N. Gandhi (supra), the bank Pass Book or bank statement cannot be construed to be a book maintained by the assessee for any previous year as understood for the purposes of section 68 of the Act. Therefore, on this account itself the impugned addition deserves to be deleted. I hold so"

We further find that a similar view had also been arrived at in a 'third member' decision of the Tribunal in the case of Smt. Madhu Raitani Vs. ACIT (2011) 10 .taxmann.com 205 (Gauhati) (TM), as well as by a coordinate bench of the Tribunal in the case of ITO, Barabanki Vs, Carnal Kumar Mishra (2013) 33taxmann.com. 610 (Lucknow Trib.) Thus in the backdrop of the aforesaid facts of the case read in light of the settled position of law, we are of the considered view that the addition made by the A.O in respect of the cash deposit of Rs.10,53,000/- (supra) in the bank account of the assessee by invoking Section 68 has to fail for the very reason that as per the judgment of the Hon'ble Bombay High Court in the case of Shri Bhaichand N. Gandhi (supra), a bank pass book or bank statement cannot be considered to be a 'book' maintained by the assessee for any previous year, as understood for the purpose of Section 68 of the Act. Therefore, on this count itself the impugned addition Rs.10,53,000/- deserves to be deleted.

10.1. While delivering the decision, the Coordinate Bench relied on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Bhaichand N.Gandhi (supra). Similar view was taken by the coordinate Bench of ITAT, Delhi in the case of Smt Babbal Bhatia in TS-306-ITAT-2018.

In the instant case, though the assessee has maintained the books of accounts, the cash deposits made in the bank account were not found credited in the books of accounts. The entire transactions were made outside the books of accounts. In the absence of any finding with regard to

cash deposits recorded in the books of accounts of the assessee, the addition made by the AO u/s 68 in respect of cash deposits made in the bank account are unsustainable. During the appeal hearing, the Ld.DR did not bring any other decision to support the revenue's contention that the cash deposits made in the bank account to be brought into the purview of section 68 of the Act. The case law relied upon by the Ld.DR in the case of Sachdeva (supra) though related to sale of jewellery and the failure of the assessee to prove the genuineness of sale, it was not related to the addition u/s 68. The case law relied upon by the Ld.DR is distinguishable and does not help the Revenue's case. Since the facts are identical to the decision of Mehul V.Vyas (supra), respectfully following the view taken by the coordinate bench of ITAT, Mumbai, we hold that the addition made by the AO u/s 68 in respect of cash deposits made in the bank account is unsustainable, accordingly, we set aside the order of the Ld.CIT(A) and delete the addition made by the AO. Accordingly, the appeal of the assessee is allowed.

10.2. Since we have allowed the appeal of the assessee on the ground that the cash deposits made in the bank account are not permissible to make the addition u/s 68, other alternate grounds and propositions made by the assessee are not considered for adjudication.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 15th November, 2019

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 15.11.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee - Smt.Asha Sanghavi, D.No.7-22-12, Nandepu Heights, T.Nagar, Rajamahendravaram
2. राजस्व/The Revenue - Income Tax Officer, Ward-2, Rajamahendravaram
3. The Principal Commissioner of Income Tax, Rajamahendravaram
4. The Commissioner of Income Tax (Appeals), Rajamahendravaram
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary
 ITAT, Visakhapatnam