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**AFR**

**Reserved**

**Court No.- 35**

**Case :- INCOME TAX APPEAL No.-14 of 2019**

**Appellant :- Shri Sajid Khan**

**Respondent :- Principal Commissioner Of Income Tax And 2 Ors**

**Counsel for Appellant :- Krishna Dev Vyas, Anurag Vajpeyi, Sandeep Singh**

**Counsel for Respondent :- C.S.C., Gaurav Mahajan**

**CONNECTED WITH**

**Case :- INCOME TAX APPEAL No. - 10 of 2019**

**Appellant :- Aashiq Khan**

**Respondent :- Principal Commissioner Of Income Tax And 2 Ors**

**Counsel for Appellant :- Krishna Dev Vyas, Anurag Vajpeyi, Sandeep Singh**

**Counsel for Respondent :- S.S.C., Gaurav Mahajan**

**AND**

**Case :- INCOME TAX APPEAL No. - 11 of 2019**

**Appellant :- Akram Khan**

**Respondent :- Principal Commissioner Of Income Tax And 2 Ors**

**Counsel for Appellant :- Krishna Dev Vyas, Anurag Vajpeyi, Sandeep Singh**

**Counsel for Respondent :- S.S.C., Gaurav Mahajan**

**AND**

**Case :- INCOME TAX APPEAL No. - 12 of 2019**

**Appellant :- Smt. Rukhsana Begum**

**Respondent :- Principal Commissioner Of Income Tax And 2 Ors**

**Counsel for Appellant :- Krishna Dev Vyas**

**Counsel for Respondent :- S.S.C., Gaurav Mahajan**

**AND**

**Case :- INCOME TAX APPEAL No. - 13 of 2019**

**Appellant :- Saleem Khan**

**Respondent :- Principal Commissioner Of Income Tax And 2 Ors**

**Counsel for Appellant :- Krishna Dev Vyas, Anurag Vajpeyi, Sandeep Singh**

**Counsel for Respondent :- S.S.C., Gaurav Mahajan**

**AND**

**Case :- INCOME TAX APPEAL No. - 15 of 2019**

**Appellant :- Akbar Khan**

**Respondent :- Principal Commissioner Of Income Tax And 2 Ors**

**Counsel for Appellant :- Krishna Dev Vyas, Anurag Vajpeyi, Sandeep Singh**

**Counsel for Respondent :- S.S.C., Gaurav Mahajan**

**AND**

**Case :-** INCOME TAX APPEAL No. - 16 of 2019

**Appellant :-** Aakil Khan

**Respondent :-** Principal Commissioner Of Income Tax And 2 Ors

**Counsel for Appellant :-** Krishna Dev Vyas

**Counsel for Respondent :-** S.S.C.,Gaurav Mahajan

**Hon'ble Bharati Sapru,J.**

**Hon'ble Vivek Varma,J.**

**(Delivered by Vivek Varma, J.)**

1. The batch of appeals under Section 260-A of the Income Tax, Act, 1961 (hereinafter referred to as "the Act") arises out of order of the Income Tax Appellate Tribunal, New Delhi dated 12.07.2017 (hereinafter referred to as "the Tribunal") by which the Tribunal had decided seven appeals being I.T.A. Nos. 1623/Del/2017, 1624/Del/2017 1625/Del/2017, 1626/Del/2017, 1627/Del/2017, 1628/Del/2017, 1629/Del/2017, 1630/Del/2017 1631/Del/2017 in respect of assessment year 2005-06.

2. The dispute in all these appeals essentially relates to the addition made by the Assessing Officer. Since in all these appeals the facts and issue involved are common, therefore, all the appeals are heard together and are being disposed of by a common order as it is admitted by the parties that the decision on the questions referred below, would necessarily govern the other appeals. The appeal in the case of Sajid Khan, being Income Tax Appeal No. 14 of 2019 is taken as the leading appeal.

3. The appeal was admitted on the following substantial questions of law:

(a) Whether on a proper construction of law, the learned Income Tax Appellate Tribunal did not commit error of law in dismissing the appeal of the assessee/appellant, by holding that the creditworthiness of the creditors, advancing loan to the assessee was not established, ignoring vital fact that the said creditors were also blood relatives and family members of the assessee and the transaction was undertaken through banking channel ?

(b) Whether the loan received by a person from his mother, brother or other blood relatives in absence of any cogent evidence to the contrary and merely on conjectures be doubted citing the creditworthiness or genuineness of the transaction as suspicious, particularly when the whereabouts are not disputed ?

(c) Whether in any circumstances once the identity of the creditors is established beyond doubt any addition is sustainable under Section 68 in relation to loan in the hands of the appellant ?

(d) Whether the impugned order of the ITAT is highly cryptic and non speaking in nature and hence unsustainable in law; cases of different assesses involving different facts have been adjudicated in one stroke or brush ?

(e) Whether on the facts and circumstances of the case, the Tribunal was justified in holding the decision in the case of Suman Gupta Vs ITO, applicable to the assessee's case ?

(f) Whether the conclusion drawn by the Tribunal was based on conjecture, surmises or suspicion or on a failure to consider relevant evidence on the record ?

4. The appellant/assessee is assessed in the status of an individual and derives income from job work. An AIR information was received from the higher authorities that appellant along with seven other persons (who are also appellants here in connected appeals referred above) purchased a property -Kast Khata No. 106, Khet No. 152 measuring 1.385 hectares in Village Imliya, Pargana Baran, District Bulandshahr for a consideration of Rs. 23,78,500/- (including the cost of conveyance etc).

5. On perusal of the sale deed, the Assessing officer noticed that the property purchased was residential and the share of each person comes to Rs. 2,97,312/-.

6. The proceedings under Section 147 of the Act were initiated by issuance of notice under Section 148 of the Act dated 20.10.2009. In pursuance of this notice, the assessee filed his return of income on 17.11.2009 declaring income of Rs.40,000/- from job work.

7. The A.O. issued notice under Section 143 (2) and 142 (1) of the Act dated 18.11.2009 to the assessee along with a questionnaire, on the date fixed assessee sought adjournment. Another notice was issued but neither adjournment was sought nor any reply was filed. Thereafter, the A.O. issued notice under Section 144 of the Act dated 07.12.2009 categorically stating that in case no compliance is made then investment of Rs. 2,97,312/- (being 1/8 share) made by the assessee in purchase of residential property will be treated as unexplained investment and assessment will be completed under Section 144 of the Act. Since no compliance was made as such the A.O. proceeded to make the assessment under Section 144/147 of the Act vide assessment order dated 23.12.2009 and assessed the income of the assessee at Rs.3,57,312/- after coming to the conclusion that the assessee has not been able to produce the person from whom loan of Rs. 2,00,000/- was disclosed/claimed to have been taken nor any document in support of the credit worthiness of the said person from whom loan was taken had been filed.

8. Aggrieved by the said order assessee challenged the addition before the CIT (A). The appeal was dismissed considering it to be time barred vide order dated 19.10.2012. Thereafter, assessee preferred appeal before the Tribunal which was decided vide order dated 16.8.2013 setting aside the order of the CIT(A) with a direction to re-decide the appeal afresh after giving adequate opportunity of hearing to the assessee and the assessing officer. Thereupon, the CIT(A) called for the remand report from the Assessment Officer on the issue of addition, which was filed on 3.2.2016 and after considering the remand report as well as the submission of assessee, the CIT (A), Ghaziabad, dismissed the appeal of the assessee vide order dated 22.11.2016 confirming the addition made by the

Assessment Officer on the ground that the assessee has not been able to prove the genuineness of the transaction and creditworthiness of the creditor.

9. Being aggrieved, the assessee carried the matter to the Tribunal. The Tribunal vide order dated 12.7.2017 dismissed the appeal filed by the assessee and confirmed the orders passed by the authorities below.

10. Hence the present appeal.

11. Heard Sri Anurag Vajpeyi, learned counsel for the appellant and Sri Gaurav Mahajan, learned counsel for the department.

12. It is contended by learned counsel for the appellants that the conclusions drawn by the authorities below including the Tribunal were based on surmises, conjectures and suspicion which cannot be equated to that of findings based on evidence. It is also contended that even if the explanation offered by the assessee is not acceptable, the amounts credited cannot be treated as an income in the hands of the assessee and that the assessee cannot be compelled to prove the source of the creditor. It is further submitted that the additions made as unexplained investment as income from other sources in the hands of the assessee by the assessing officer is without application of mind and having no distant connection with the material on record.

13. The learned counsel for the Department refuted the above contentions and contended that the concurrent findings of fact about the lack of proof of genuineness of the transaction and creditworthiness of the creditor of the assessee by the assessing officer, by the CIT (Appeals) and then by the Tribunal, are based on appreciation of evidence and cannot be said to be perverse warranting interference under Section 260-A of the Act. The

learned counsel for the department relied upon the Judgement of this Court in the case of **Smt Suman Gupta Vs CIT, in Income-tax appeal No. 680/2012 dated 07.08.2012.**

14. We have considered the rival submissions of learned counsel for the parties and have gone through the record.

15. Record would disclose that some amount is stated to have been given to the assessee as loan by Smt Rihana Begum. Just before advancing that amount to the assessee some cash deposits were made by that creditor in her account. However, creditworthiness of that person was not known. Therefore, the A.O. required the assessee to produce the creditor and establish the genuineness of the transaction and creditworthiness of the creditor. However, despite providing various opportunities, the assessee failed to substantiate the transaction. Infact, the burden was not discharged by the assessee. Thereafter, the A.O. made the additions.

16. Learned Tribunal while dismissing the appeals filed by the assessee and confirming the orders of the authorities below came to the following conclusion:-

*“After considering the rival contentions, I am not inclined to interfere with the orders of the authorities below in making the additions. It is an admitted fact that assessee made investment in property alongwith other co-owners. Assessee claimed that he had received Rs. 2 Lakhs from Smt Rihana Begum but she was not produced for examination before the A.O. The copy of the Bank Account of Smt Rihana Begum showed that there are cash deposits prior to giving loan to the assessee. The creditworthiness of Smt Rihana Begum was thus not proved. In the absence of examination of Smt Rihana Begum her creditworthiness and genuineness of the transaction could not be examined.”*

.....

*“Considering the facts of the case, in the light of the above decisions, it is clear that creditor has deposited cash in her bank account before giving loan to the assessee. Therefore, her creditworthiness and genuineness of the transaction is not proved. Further, the creditor is not produced before the AO for examination. Therefore, the conditions of section 68 have not been*

*satisfied by the assessee. Thus, the assessee has not been able to substantiate the genuineness of the source of investment in the said property at any stage. Therefore, no interference is called for in the orders of the authorities below. Similarly, no arguments have been made with regard to house hold expenditure before the learned CIT(A) and no details have been given before the AO. Therefore, in the absence of any explanation of assessee the addition on household experiential is confirmed. In principle, I confirm the addition..... ”*

17. From the findings recorded by the Tribunal, we find that the learned Tribunal had also noted in its order that the CIT (A) on perusal of the copy of the bank account of Smt Rihana returned a finding that the person extending loan had deposited cash in her bank account. A sum of Rs; 1.5 Lacs, Rs. 2 Lacs and Rs. 1.5 Lacs had been deposited in the Bank account in cash during the financial year 2004-05 prior to giving loan to the appellant. The appellant neither before the assessment proceedings nor during the appellate proceedings had been able to substantiate the genuineness of the loan or the creditworthiness of the alleged creditor.

18. In the instant case, the source of amount said to have been received by the assessee had not been explained nor the assessee had furnished any evidence in support of his claim. When it was questioned by the AO to produce Smt Rehana from whom Rs. 2 Lacs is said to have been taken as loan and also the details of the family members and house hold expenses on the prescribed format, the assessee could not furnish any concrete evidence in this regard. For substantiating the transaction, it is imperative on the part of the assessee that details regarding identity and creditworthiness of the creditor and genuineness of the transactions are to be established. But, in the instant case neither creditworthiness of the creditor nor genuineness of the transactions has been proved.

19. The Hon'ble Supreme Court in the case of **Sumati Dayal**

**vs. CIT reported in (1995) 214 ITR 801 (SC)** has held as follows:

4. It is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. [See : Parimiseti Seetharamamma (supra) at p. 536]. But, in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such a case there is, prima facie, evidence against the assessee, viz., the receipt of money, and if he fails to rebut, the said evidence being unrebutted, can be used against him by holding that it was a receipt of an income nature. While considering the explanation of the assessee the Department cannot, however, act unreasonably. [See : Sreelekha Banerjee (supra) at p. 120].

20. The Hon'ble Supreme Court in the case of **CIT vs. P. Mohankala reported in (2007) 291 ITR 278 (SC)** has held as follows:

*15. The question is what is the true nature and scope of Section 68 of the Act? When and in what circumstances Section 68 of the Act would come into play? That a bare reading of Section 68 suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be of a sum during the previous year; and the assessee offers no explanation about the nature and source of such credit found in the books; or the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory, it is only then the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The expression "the assessee offers no explanation" means where the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. It is true the opinion of the Assessing Officer for not accepting the explanation offered 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.*

21. Recently, the principle of law laid down in the above two judgments of the Apex Court have been reiterated and followed in the case of ***Principle CIT vs. NRA Iron and Steel Pvt. Ltd. Reported in (2019) 412 ITR 161 (SC)*** and held as follows:

*“On the facts of the present case, clearly the Assessee Company-Respondent failed to discharge the onus required under Section 68 of the Act, the Assessing Officer was justified in adding back the amounts to the Assessee's income.”*

22. In the case in hand, though the stated transaction of alleged loan is through bank but the assessee was not able to explain or substantiate the source; creditworthiness of the creditor and the genuineness of the transactions before the Assessing Officer and before the CIT(A) and Tribunal. Therefore, considering the entirety of facts, circumstances and material on record, we find that the assessee had miserably failed to substantiate its claim of having either received the amount of the said transaction in loan. Therefore, in our view, the authorities below are fully justified in making/confirming the addition.

23. It is also not in dispute that cash deposits were made in the bank account of the creditor just before advancing the loan to the assessee and no explanation was forthcoming before the authorities below and even during the course of arguments before the Tribunal. Therefore, in view of the concurrent findings of fact recorded by the Assessing Officer, the CIT(A) and the Tribunal that the assessee was unable to satisfactorily explain the source of investment in the said property at any stage, no error could be pointed out in the impugned orders which may warrant interference by this Court.

24. The law is well settled that the onus of proving the source of a sum of money found to have been received by the assessee is on him and if he disputes the liability for tax, it is for him to show that the receipt is not income or it is exempted from tax. In the absence of such proof, the revenue is entitled to treat it as taxable income.

25. In **Vijaya Kumar Talwar Vs. Commissioner of Income Tax, Delhi, [2011] 1 SCC 673**, the Supreme Court considered the scope of interference with the orders of the I.T.A.T. under Section 260-A of the Act and held as under:

*"23. A finding of fact may give rise to a substantial question of law, inter alia, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread. (See **Madan Lal Vs Gopi, (1980) 4 S.C.C. 255**), **Narendra Gopal Vidyarthi Vs Rajat Vidyarthi, (2009) 3 S.C.C. 287**, **Commr of Customs Vs Vijay Dasharath Patel, (2007) 4 S.C.C. 118**, **Metroark Ltd Vs CCE, (2004) 12 S.C.C. 105** and **W.B. Electricity Regulatory Commission v. CESC Ltd. (2002) 8 S.C.C. (715)**.*

*24. Examined on the touchstone of the aforementioned legal principles, we are of the opinion that in the instant case the High Court has correctly concluded that no substantial question of law arises from the order of the Tribunal. All the authorities below, in particular the Tribunal, have observed in unison that the assessee did not produce any evidence to rebut the presumption drawn against him under Section 68 of the Act, by producing the parties in whose name the amounts in question had been credited by the assessee in his books of account. In the absence of any cogent evidence, a bald explanation furnished by the assessee about the source of the credits in question viz. realisation from the debtors of the erstwhile firm, in the opinion of the assessing officer, was not satisfactory. It is well settled that in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income tax as the income of the assessee of that previous year, if the explanation offered by the*

*assessee about the nature and source thereof is, in the opinion of the assessing officer, not satisfactory. (See Sumati Dayal Vs CIT (1995 Supp (2) SCC 453), SCC p. 456, para 4 and CIT Vs P. Mohanakala (2007) 6 S.C.C. 21)."*

26. In view of above, no illegality or perversity could be pointed out by learned counsel for the assessee in the findings recorded by the Tribunal which may warrant interference by this Court and, therefore, no question of law much less any substantial question of law arises for consideration in this appeal.

27. All the appeals fail and are therefore dismissed. No costs.

28. Copy of this order be placed in all the connected Income Tax Appeals.

**Dated: 13.08.2019**

Ravindra Kumar Singh

**(Vivek Varma, J.) (Bharati Sapru, J.)**