

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

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.452/Viz/2019
(निर्धारण वर्ष/Assessment Year:2011-12)**

Dirisala Bala Murali
D.No.15-8-12/2
Shavukarpet
Palakol, West Godavari Dist.
[PAN : ASFPD4074J]

Vs. Income Tax Officer
Ward-I
Palakol

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR
: Smt.Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

: 15.07.2020

घोषणा की तारीख/Date of Pronouncement

: 29.07.2020

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 ITA Nos.10090 & 10094/2017-18 dated 29.03.2019 for the Assessment Year (A.Y.)2011-12.

2. The assessee filed the return of income declaring total income of Rs.1,48,500/- on 28.12.2012. The return was processed u/s 143(1) of the Income Tax Act, 1961 (in short 'Act') and subsequently on receipt of information from Investigation Wing with regard to deposits made in the bank account of the assessee in ICICI Bank, Palakol on 03.04.2010, the Assessing Officer (AO) has reopened the assessment and issued notice u/s 148 on 24.10.2016. In response to the notice issued u/s 143(2), the assessee filed letter on 27.10.2016 stating that the return of income already filed for the A.Y. 2011-12 may be treated as return in response to the notice u/s 148. Subsequently, the AO issued the notice u/s 143(2) and called for the explanation of the assessee as to why the sum of Rs.40,00,500/- deposited in ICICI bank account on 03.04.2010 should not be considered as unexplained cash credit and brought to tax.

3. In response to the notice, the assessee filed explanation stating that the said sum was deposited by Jindath Jewellers in his account and the same amount was withdrawn by them on the same day and thus explained that the amount was not belonged to him but belonged to Jindath Jewellers therefore, requested to drop the proceedings u/s 148 and not to make any addition in his assessment.

4. Not being impressed with the explanation of the assessee, the AO made the addition of Rs.40,00,500/- u/s 68 of the Act.
5. Against the order of the AO, the assessee went on appeal before the CIT(A) and challenged the order of the AO on merits as well as on technical grounds stating that the notice issued u/s 148 is bad in law. The Ld.CIT(A) confirmed the addition and also upheld the validity of issue of notice u/s 148.
6. Against which the assessee filed the appeal before us. During the appeal proceedings, the assessee filed additional ground vide petition dated 22.06.2020 stating that the AO made the addition u/s 68 instead of u/s 69, and hence submitted that the addition made by the AO is unsustainable and accordingly requested to admit the additional ground.
7. We have heard both the parties and after hearing both the parties, we admit the additional ground raised by the assessee. The additional ground raised by the assessee reads as under :

“On the facts and in the circumstance of the case, whether the assessing officer is justified in making addition of Rs.40,00,500 u/s 68 of the Income Tax Act, 1961 towards alleged unexplained deposit in the bank account in as much as a bank account is not a book of account maintained by the appellant?”

8. We have heard the arguments of the Ld.AR as well as the DR and gone through the additional ground raised by the assessee. In the instant case, the deposit was made in the bank account, but not in the regular books of accounts maintained by the assessee. As per the provisions of section 68, the amount found credited in the books of accounts for which the assessee failed to offer explanation to the satisfaction of the AO required to be brought to tax u/s 68, whereas in the instant case, the said sum was not credited in the books of accounts, but the amount was found credited in the bank account of the assessee. The correct course of action for taxing the sums paid into the bank account is to tax u/s 69 of the Act. Neither the AO nor the Ld.CIT(A) has made addition u/s 69. On identical facts in the case of Smt.Asha Sanghavi in I.T.A. No.33/Viz/2019, this Tribunal held that the cash deposits or deposits made in bank account required to be brought to tax u/s 69 and not u/s 68 of the Act. For the sake of clarity and convenience, we extract para No.10 to 10.1 which reads as under :

"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) 33 taxamann.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.10,53000/- (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."

Since the facts are identical, we hold that the AO is not permitted to make the addition u/s 68 of the Act in respect of the deposits made in the bank account. Accordingly, we set aside the order of the Ld.CIT(A) and delete the addition made by the AO.

9. Since we have decided the issue on additional ground raised by the assessee and deleted the addition, we consider it is not necessary to adjudicate the other grounds raised by the assessee in this appeal. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 29th July, 2020.

Sd/- (वी.दुर्गा राव) (V. DURGA RAO)	Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER
दिनांक /Dated :29.07.2020	
L.Rama, SPS	

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

1. निर्धारिती/ The Assessee–Dirisala Bala Murali, D.No.15-8-12/2, Shavukarpet, Palakol, West Godavari Dist.
2. राजस्व/The Revenue –Income Tax Officer, Ward-I, Palakol
3. The Pr.Commissioner of Income Tax, Rajamahendravaram
4. The Commissioner of Income Tax (Appeals),Rajamahendravaram
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam