

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH “B”, LUCKNOW**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI J SUDHAKAR REDDY, ACCOUNTANT MEMBER**

ITA No.398/LKW/2012
Assessment Year:2009-10

Income Tax Officer Barabanki (Appellant)	v.	Shri. Kamal Kumar Mishra Thathahari, Haidergarh Barabanki PAN:ATQPM8950P (Respondent)
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C.O. No.69/LKW/2012
[Arising out of ITA No.398/LKW/2012]
Assessment Year:2009-10

Shri. Kamal Kumar Mishra Thathahari, Haidergarh Barabanki PAN:ATQPM8950P (Applicant)	v.	Income Tax Officer Barabanki (Respondent)
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Department by: Smt. Ranu Biswas, D.R.
Assessee by: S/Shri. M. P. Mishra & Shailendra Mishra, Advocates

Date of hearing: 21.03.13
Date of pronouncement: 25.04.13

ORDER

PER SUNIL KUMAR YADAV:

This appeal is preferred by the Revenue against the order of the
Id. CIT(A) on various grounds, which are as under:-

1. The CIT (A) has erred in law and on facts in deleting the addition made by Assessing Officer of Rs.5,78,900/- u/s 68 of the Income Tax Act 1961. He failed in appreciate the fact that the assessee failed to prove the identity of the creditors and the genuineness of the transactions. In doing so the CTT(A) has overlooked the decisions of Manak Chandra Laxman Das vs CIT 140 ITR 151 (Allid.).
2. The CIT(A) has erred in law and on facts in deleting the addition made by Assessing Officer of Rs.7,89,333/- u/s 68 of the Income Tax Act, 1961. He failed to appreciate the fact that the assessee failed to file any evidence of the source of income of the alleged lenders. Mere confirmation letters or affidavits from the lenders do not save to prove the genuineness of the transaction. In doing so the CIT(A) has overlooked the decisions of Nanak Chandra Laxman Das vs CIT 140 ITR 151 (Allid.).
3. The CIT(A) has erred in law and on facts in deleting the addition made by Assessing Officer of Rs.5,80,500/- u/s 68 of the Income Tax Act, 1961. He failed to appreciate the fact that the assessee failed to produce any evidence to prove the identity and creditworthiness of the lender or the genuineness of the transaction. In doing so he failed to apply the decisions of Nanak Chandra Laxman Das vs CIT 140 ITR 15 I (Allid.).
4. The CIT(A) has erred in law and on facts in deleting an amount of Rs.2,80,000/- out of addition of Rs.5,60,000/- made by Assessing Officer u/s 68 of the Income Tax Act, 1961. He failed to appreciate the fact that the assessee's explanation that this was the STRIDHAN received by his wife at the time of her marriage almost 25 years ago was unreasonable and was not supported by any evidence.

5. The CIT(A) has erred in law and on facts in deleting the addition made by Assessing Officer of Rs.1,32,600/- u/s 68 of the Income Tax Act, 1961. He failed in appreciate the fact that the assessee failed to provide any evidence of the so called opening capital available with him.

6. The CIT(A) has erred in law and on facts in deleting the addition made by Assessing Officer of Rs.87,000/- u/s 68 of the Income Tax Act, 1961. He failed let appreciate the fact that the assessee had disclosed Rs.40,000/- only as agriculture income and not Rs.1,27,000/-. Moreover the assessee has not given any explanation regarding the source of making expenses on agriculture amounting to Rs.87,000/-

2. The assessee has filed cross objection challenging the additions of ₹2.80 lakhs in respect of Stridhan of his wife and ₹78,895 on the basis of presumption, sustained by the Id. CIT(A).

3. During the course of hearing, the Id. counsel for the assessee has opted not to press the cross objection filed by the assessee, to which the Revenue has no objection. Accordingly, the cross objection filed by the assessee is dismissed being not pressed.

4. Now we are left with Revenue's appeal, through which the order of the Id. CIT(A) is assailed on deletion of additions made under section 68 of the Income-tax Act, 1961 (hereinafter called in short "the Act").

5. At the outset, the Id. counsel for the assessee invited our attention to the fact that the assessee is an Advocate by profession and he has not maintained any books of account for the previous year relevant to the assessment year under consideration. Whatever deposits are noticed by the Assessing Officer, these were from the bank passbooks on different

dates. The Assessing Officer has invoked the provisions of section 68 of the Act for making additions of all the deposits in the bank at different dates after treating them to be unexplained cash credit. The Id. counsel for the assessee further contended that the provisions of section 68 of the Act can only be invoked 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 Income-tax Officer, satisfactory. In that eventuality, the said sum so credited may be charged to income-tax as the income of the assessee of that previous year. Since various deposits on different dates in the bank are not found to have been credited in the books of the assessee, provisions of section 68 of the Act cannot be invoked for making addition of the same to the income of the assessee for that impugned previous year. In support of his contention, the Id. counsel for the assessee has placed reliance upon the judgment of the Hon'ble Gauhati High Court in the case of Anand Ram Ratiani vs. CIT [1997] 223 ITR 544 (Gau.) and the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Bhaichand N. Gandhi [1982] 11 Taxman 59 (Bom.), in which it has been categorically held that passbook supplied by the bank to the assessee could not be regarded as a book of the assessee. The expression "books" used in section 68 of the Act means the books have to be books of the assessee himself, not of any other assessee. The Id. counsel for the assessee further contended on merit also that the deposits found recorded in the bank account of the assessee were duly explained before the Revenue Authorities and having convinced with the explanations, the Id. CIT(A) deleted the addition.

6. Finding force in the arguments of the Id. counsel for the assessee in the light of the aforesaid judgments, the legal position with regard to the invocation of the provisions of section 68 of the Act on the entries found

/recorded in the bank passbook was confronted to the Id. D.R. and his comments were sought. Except relying upon the orders of the Assessing Officer, the Id. D.R. could not produce any judicial pronouncements in support of his contention that the provisions of section 68 of the Act can also be invoked on the credit entries found recorded in the bank account. Since this argument goes to the root of the case, we felt it necessary to adjudicate the same at the threshold. For reference, we extract the provisions of section 68 of the Act as under:-

“68. 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.”

7. The aforesaid provisions of section 68 of the Act can only be invoked 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 Income-tax Officer, satisfactory. In that eventuality, the said sum so credited may be charged to income-tax as the income of the assessee of that previous year. Meaning thereby maintenance of books of the assessee, in which credit entry so found, is a condition precedent for invoking the provisions of section 68 of the Act. Now the question arises whether the passbook issued by the bank with regard to the accounts of the assessee can be termed to be the books of the assessee for the purpose of section 68 of the Act. This issue was examined by the Hon'ble Bombay High Court in the case of CIT vs. Bhaichand N. Gandhi (supra) and while answering the question i.e. whether

on the facts and circumstances of the case, the Tribunal was justified in holding that cash credit for the previous year shown in the assessee's bank passbook issued to him by the bank, but not shown in the cash book maintained by him for that year does not fall within the ambit of section 68 of the Act and as such the sum so credited is not chargeable to income tax as the income of the assessee of that previous year, their Lordships of the Hon'ble Bombay High Court categorically held that passbook supplied by the bank to the assessee could not be regarded as book of the assessee, that is, a book maintained by the assessee or under his instruction. The relevant observations of the Hon'ble Bombay High Court are extracted hereunder:-

"In Baladin Ram v. CIT [1969] 71 ITR 427, it has been held by the Supreme Court that it is now well settled that the only possible way in which income from an undisclosed source can be assessed or reassessed is to make the assessment on the basis that the previous year for such an income would be the ordinary financial year. Even under the provisions embodied in s.68 of the said Act it is only when any amount is found credited in the books of the assessee for any previous year that the section will apply and the amount so credited may be charged to tax as the income of that previous year, if the assessee offers no explanation or the explanation offered by him is not satisfactory.

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."

8. In the case of Anand Ram Ratiani vs. CIT (supra), the Hon'ble Gauhati High Court has also held that perusal of section 68 of the Act shows that in relation to expression "books", the emphasis is on the word "assessee" meaning thereby that such books have to be the books of the assessee himself and not of any other assessee. In that case, the books of account of the partnership firm were not treated as those of the individual partner and accordingly the additions made in the hands of the individual partners on the basis of the books of the partnership firm was deleted.

9. In the instant case, it is an undisputed fact that the assessee has not maintained any books of account and whatever credit entries are found by the Assessing Officer, it was from the bank accounts of the assessee in which deposits were made at different point of time. Even the passbook issued by the bank cannot be termed to be the book of the assessee as per the judgment of the Hon'ble Bombay High Court CIT vs. Bhaichand N. Gandhi (supra). Therefore, provisions of section 68 of the Act cannot be invoked on various deposits/credits found recorded in the bank account of the assessee in the absence of books of the assessee maintained for that previous year.

10. The Id. CIT(A) has adjudicated the issue in the light of the aforesaid judgment and has held that provisions of section 68 of the Act cannot be invoked. Besides, he has also examined the additions made by the Assessing Officer through grounds No.1 to 6 on merit also and has noted that in each and every case the assessee has furnished plausible and reasonable explanations with respect to the deposits found recorded in the bank passbook of the assessee and on merit also the Id. CIT(A) did not find any justification in the additions made by the Assessing Officer. Though we are of the view that provisions of section 68 of the Act cannot be invoked on the deposits made in the bank account of the assessee, yet we have examined the veracity of the additions made by the Assessing Officer on certain deposits by invoking the provisions of section 68 of the Act and we find that before the Id. CIT(A) the assessee has furnished reasonable and plausible explanations along with confirmation with regard to the different deposits. Since the Id. CIT(A) has adjudicated the issue on merit also in the light of the explanations and confirmations placed before him, in a proper perspective and we find no infirmity therein, we confirm the same. Accordingly, finding no merit in the Revenue's appeal, we dismiss the same.

11. In the result, appeal of the Revenue and Cross Objection of the assessee are dismissed.

Order pronounced in the open court on 25.4.2013.

Sd/-
[J SUDHAKAR REDDY]
ACCOUNTANT MEMBER

Sd/-
[SUNIL KUMAR YADAV]
JUDICIAL MEMBER

DATED:25.4.2013

JJ:1004

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar