

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No.-5044/Del/2011 (A.Y 2000-01)
I.T.A .No.-5045/Del/2011 (A.Y 2001-02)
I.T.A .No.-5046/Del/2011 (A.Y 2002-03)
I.T.A .No.-5047/Del/2011 (A.Y 2003-04)**

Kapoor Singh 89-90, M. C. Colony Ch. Dadri Bhiwani AWZPS5433L (APPELLANT)	vs	ACIT Income Tax Office City Centre, Huda Park Bhiwani (RESPONDENT)
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Appellant by	Sh. N. K. Jain, Adv
Respondent by	Ms. Sulekha Verma, CIT DR

Date of Hearing	07.09.2015
Date of Pronouncement	15.09.2015

ORDER

PER SUCHITRA KAMBLE, JM

These appeals are filed by the assessee against the common order dated 29/8/2011 passed by Ld. CIT(A) Rohtak for Assessment Year (AY) 2000-2001, 2002-2003, 2003-2004 and 2004-2005.

2. The grounds of appeal for A.Y. 2000-01 are as follows:

1. *That the Ld. CIT(A) in the facts & circumstances of the case in law is confirming the addition of Rs.10,15,200 as peak deposit on 3.1.2000 as per entries in the pass book seized from residence of the appellant pertaining to A/c No. 16860 of Shri Sube Singh treating it as be-nami A/c of the appellant without there being any material for so treating.*

2. *That the Ld. CIT(A) has erred in law in upholding the action of charging the interest u/s 234A, 234B, 234C.*

The grounds of appeal for A.Y. 2002-03 are as follows:

1. *That the Ld. CIT(A) in the facts & circumstances of the case has erred in law is confirming the addition of Rs.10,40,265/- as peak deposit on 6/3/2002 as per entries in the pass book seized from residence of the appellant pertaining to A/c No. 16860 of Shri Sube Singh treating it as be-nami A/c of the appellant without there being any material for so treating.*

2. *That the Ld. CIT(A) has erred in law in upholding the action of charging the interest u/s 234A, 234B, 234C.*

The grounds of appeal for A.Y. 2003-04 are as follows:

1. *That the Ld. CIT(A) has erred in law in confirming the addition of Rs.297000/- on the basis of some figures recorded*

without any narration on a paper found in the course of search without any material to treat it as income.

2. *That the Ld. CIT(A) has erred in law in upholding the action of charging the interest u/s 234A, 234B, 234C.*

The grounds of appeal for A.Y. 2004-05 are as follows:

1. *That the Ld. CIT(A) has erred in law in confirming the addition of Rs.118000/- on the basis of some figures recorded without any narration on a paper found in the course of search without any material to treat it as income.*

2. *That the Ld. CIT(A) has erred in law in upholding the action of charging the interest u/s 234A, 234B, 234C.*

3. The assessee was employed as Supervisor in irrigation department. There was search and seizure operation conducted on 4/3/2005 at the residential premises of the assessee. The Assessments relevant to the search period i.e. A.Y. 1999-2000 to 2005-2006 were completed by Assessing Officer (AO) under Section 153A/143(3) of the Income Tax Act, 1961 vide order dated 9.12.2006. The CIT(A) dismissed the appeals of the assessee for non-prosecution on 22.08.2008 which were restored by the ITAT, Delhi Benches vide order dated 31.07.2009. The CIT(A) vide order dated 16.03.2010 disposed of the said appeals by granting certain reliefs. Against the said order, the assessee approached ITAT, Delhi and the ITAT restored the appeals to CIT(A) for re-adjudication vide order dated 25.06.2010. The CIT(A) dismissed the appeals vide

order dated 29.08.2011 of the assessee. The assessee filed appeal against the said order dated 29.08.2011. On 12.01.2012 the matter was dismissed and the same was recalled vide order dated 05.03.2012. Hence this appeal.

4. The factual matrix of the case is that during the search and seizure conducted on 04.03.2005 at the residence of the assessee, Passbook of Shri Sube Singh (A/c No. 16860) was found. Statement of the assessee was recorded during the search. The assessee has one bank account in OBC, Ch. Dadri pertaining to his salary deposits. The assessee at the time of search stated that neither he nor his family members have any connection with the said bank account No. 16860. The assessee also stated that he or his sons has never taken any gift or loan from the said Mr. Sube Singh. The assessee was confronted during the search that there were withdrawals in his and his sons' names from the said account but he stated that he could not explain the same and only his advocate will be able to tell about it. After looking up to the evidence on record and the statement of the assessee, the Assessing Officer added Rs. 10,15,200/- for A.Y. 2000-2001 and Rs. 10,40,265/- for A.Y. 2002-2003 in respect of deposits in Shri Sube Singh's Account as well as Rs. 2,97,000/- for A.Y. 2003-2004 and Rs. 1,18,000/- in respect of amounts mentioned in code .

5. The stand of the assessee before the CIT(A) was that the funds in the bank account belong to Shri. Sube Singh from which the assessee and his two sons have taken some amounts as loan for investment in properties which were subsequently repaid to Sh. Sube Singh on demand by disposing the properties so acquired.

6. As relates to Ground No. 1 of the assessee's appeal for A.Y. 2000-2001 and A.Y. 2002-2003, the assessee is aggrieved by the finding of the CIT(A) more specifically mentioned in Para 5.6 and 5.7. The CIT(A) held that the assessee could not produce evidence regarding the repayment of alleged loans to Shri Sube Singh. The statement of Shri Sube Singh taken after the search proceedings stated that he knew Shri Kapoor Singh i.e. the assessee and his sons but no gift or loan has ever been made by him to them. The CIT(A) further held that the bank account of Shri Sube Singh contains huge cash deposits withdrawals, more particularly for the A.Y 2000-01 is Rs.10,15,200 on 31/1/2000 and that for A.Y 2002-03 Rs.20,55,465 on 6/3/2004 in the name of Kapoor Singh. The stand of the assessee was that the funds in the bank account belong to Shri Sube Singh from which the assessee and his two sons have taken some amounts as loan for investment in properties which were subsequently repaid to Shri Sube Singh on demand by disposing the property so acquired. The details of cheques issued to the assessee and his two sons from the bank account of Shri Sube

Singh was furnished by assessee before CIT(A) as well as the investment made there from which are reproduced hereunder:-

“ Sh. Kapoor Singh

09.03.2000	Rs. 15000/-
29.01.2004	<u>Rs. 200000/-</u>
	215000/-

Sh. Vikash S/o Sh. Kapoor Singh

01.09.2003	Rs.200000/-
13.10.2003	<u>Rs.600000/-</u>
	800000/-

Sh. Rajeev S/o Sh. Kapoor Singh

17.09.2001	Rs. 20000/-
15.01.2002	Rs. 260000/-
12.09.2002	Rs. 200000/-
10.11.2003	Rs. 900000/-
25.11.2003	<u>Rs. 50000/-</u>
	1430000/-

Vikash & Rajeev purchased land by investing money received from Shri Sube Singh for purchase of land

04.09.2003	Rs. 179000/-
13.10.2003	Rs. 782250/-
11.01.2003	Rs. 304000/-
	<u>Rs. 4235000/-</u>
	16,88,750/-

7. The CIT(A) held that the assessee could not produce any evidence regarding the repayment of alleged loans to Shri Sube Singh. The contention of the assessee that the funds belonged to Shri Sube Singh was rejected by the CIT(A). During the assessment proceedings the assessee changed the version that he and his sons have taken loans from Shri Sube Singh.

8. The AR submitted that the assessee has clearly stated that there was no gift given by Shri Sube Singh to him. The pass book which was found in his residence was kept by Shri Sube Singh. The assessee admitted that he knows Shri Sube Singh and for particular land transaction he has taken certain money along with his sons who were also assessed separately but was not taxed. The assessee further stated that he has never operated Shri Sube Singh account at any point of time. For the said purpose he has made the reliance on the bank information point no. 3 that all the withdrawals and cheques were signed by the account holder/photo copy of account statement attached. In Shri Sube Singh's letter dated 26/12/2007 it was mentioned that the amount deposited in bank was his personal amount. There was assessment order in case of Shri Sube Singh which was dropped because the same was time barred. The AR further submitted that there was no record before the Assessing Officer that the account belongs to the assessee and therefore, the amount shown in that account cannot be held as income of the assessee. There are only two withdrawals in the name of the assessee one is on 9/3/2000 which amounts to 15,000/- and the second one is on 29/1/2004 amounting to Rs. 2,00,000/-. The rest withdrawals are in the name of assessee's sons. There is no specific information given by the bank as relates to who has made the deposits in the said account from time to time (Answer to Question No. 2 of the Bank letter produced at the time of hearing). The AR further submitted that Shri Sube Singh was very

old person and was living far away from Bank as well as assessee's residence, therefore kept the Pass Book with the assessee. The AR submitted that there is nothing shown in the bank information that the amount pertains to the assessee and thus the cause of action should have been taken against Shri Sube Singh and not against assessee. The cheques were withdrawn by the said Shri Sube Singh and not by the assessee. The assessing officer should have been vigilant to start assessment proceedings against Shri Sube Singh and not that of the assessee. Section 132(4A) is not applicable in assessee's case as no supportive information was found by the Assessing Officer. The Revenue should have looked upon the bank account identity at that particular stage. The material not confronted to assessee, cannot be used against assessee in respect of the bank account. The AR also submitted compilation of the Judgments on the issue that Bank Pass Book when not maintained by the assessee or under his instruction, such pass book cannot be regarded as books of the assessee. (CIT vs. Bhai Chand H Gandhi, Bombay (1983) 141 ITR 67). The second case referred was on the issue of peak credit in the bank account cannot be treated as undisclosed income of the assessee (CIT vs. Ranjeet Kumar Sethia (2005) 198 CTR 550 (Raj.)). The third case law submitted was ACIT vs. Ashok Kumar Chhugani (2006) 104 TTJ (Jod.) 134 wherein it was stated that deposit in the bank account of the assessee's relative could not be treated as undisclosed income of the assessee merely because pass book of those accounts were found in the assessee's bed room. The fourth

case law was on the issue of bank account standing in the name of a third party cannot be treated as assessee's account merely because similarity is noticed in the signature of the assessee and that of the said person. (Dr. G.G. Dhir vs. ACIT (2010) 129 TTJ 1 (Agra))

9. The DR relied upon the Assessment Order and the order passed by the CIT(A). The DR submitted that the Assessment order and the CIT(A)'s order are just and proper. The DR also relied upon the Bank information given at the time of the hearing before the ITAT wherein it was stated that account statement shows that most of the payments were made/take by Kapoor Singh and his sons. The DR further submitted that there were deposits in bank account which were withdrawn in the name of assessee and his two sons. The assessee has not revealed at any stage that these are loans taken by him for purchase of land. In fact this version came during the assessment proceedings. The submissions of the assessee were taken into consideration in Para 5.5 of CIT(A). As relates to the loan on 8/12/2006 there was no explanation given by the assessee. The DR further submitted that there is no confirmation of repayment of the alleged loan by the assessee and there is no evidence put up by the assessee in that respect. Therefore, the amount was rightly added by the Assessing Officer in the income of the assessee.

10. We have gone through the records and proceedings as well as heard the submissions made by both the sides. It is pertinent to note that the bank pass book was found in the custody of assessee. The assessee at no point of time stated that he has not received the amounts from Shri Sube Singh. It can be seen from the entries in the bank account that Shri Sube Singh has issued various cheques to the assessee as well to the assessee's sons and this fact has not been denied by the assessee at any stage. Only the version of his explanation changed during the search and during the assessment proceedings. The assessee could not establish that the loan was repaid at particular time from any records. The assessee though has given details of his salary, the same also indicates that there are certain amounts in the accounts of assessee which were found exorbitant. In fact the statements recorded during the search was also not sufficient to prove that the assessee has not received any amount from the said Shri Sube Singh. The proceedings against Shri Sube Singh was time barred and though the assessee's sons were assessed separately, there was no addition made in their income. The fact that the pass book was found in the custody of the assessee and from the above discussion it can be found that the bank a/c of Sh. Sube Singh was operated by assessee and on regular basis as Shri Sube Singh was not staying nearby either to the Bank or to the residence of the assessee which shows that the assessee was operating the Bank Account of Shri Sube Singh and the amounts were received by the assessee and his sons on regular basis for dealing in purchase and sale of properties. The assessee

has also failed to give any evidence as to which properties he purchased and which properties were sold and also about repayment of loan to Shri Sube Singh. The assessee has not disputed the bank pass book of Shri Sube Singh which was found at his residence during search and seizure operation, neither has he challenged/controverted the AO's finding to the statement of the Bank Manager given in writing that most of the payments have been made/taken by Shri Kapoor Singh and his sons. The assessee has also not disputed the AO's noting that the account was closed on 5/3/2005 that is immediately after the search on 4/3/2005. This shows that the account was fully operated by the assessee. The copy of the details of the said bank account from 18/11/1999 to 13/07/2004 has been submitted before the AO. However from the assessment records it can be perused that the Bank Account of Shri Sube Singh was operated right from 4/4/1978. Since 1978 to November 1999 the amount were meager and in regular intervals indicating that they pertain to the pension received by him from Army. During the assessment proceedings enquiries were made from the bank and it was found that the introduction to the said account had been made by Smt. Prem Kumari wife of the assessee and the withdrawals and the deposits have been made by Shri Kapoor Singh and his sons Vikas and Rajiv from time to time. The Bank Manager has given in writing that accounts statement shows that most of the payments have been made to Shri Kapoor Singh and his sons. Thus Section 132 (4A) of the Act is very much attracted in the present case as the pass book was in the custody of

the assessee and not that of in the custody of assessee's sons. Thus, it is clearly established that the account of Shri Sube Singh was operated by the assessee and not by assessee's sons. Therefore, the Assessing Officer has rightly added the said amounts in the hands of the assessee and the CIT(A) has also confirm it with proper reasoning in respect of the Assessment Year 2000-2001 and 2002-2003.

11. The compilation of the Judgments submitted by the assessee will not be applicable in the present case as the factual aspects in those cases and in the present case are different. In case of Bhai Chand H Gandhi (supra) the issue was when the bank pass book was not maintained by the assessee or under his instruction, such pass book cannot be regarded as books of the assessee. But in the present case the Bank Pass Book was found in the custody of the assessee and the facts narrated hereinabove and before the AO as well as CIT(A) reveals that the Bank Account of Shri Sube Singh was operated by the assessee. Thus, this case law will not be applicable. As regards the case of Ranjeet Kumar Sethia (Supra) is concerned the issue of the peak credit in the bank account will also not come into picture as the said amount was not disclosed by the assessee and the assessee could not prove that the amount was received as loan and repaid thereafter by him. As relates to case of Ashok Kumar Chhugani (supra), the same does not reveals whether the bank account of the relative was operated by the assessee or

not, but in present case the same is established and hence this case law will also not apply.

13. In result, this ground No. 1 of appeals for A.Y. 2000-2001 and 2002-2003 is dismissed.

14. Coming to the Ground No. 1 for the A. Y. 2003-2004 and 2004-2005, the factual matrix is that during the search, a paper was found which contained some figures as under:-

1. 70 dated 29.01.2003
2. 71 dated 07.02.2003
3. 50 dated 20.02.2003
4. 50 dated 15.03.2003

2-41

1. 50 dated 20.06.2003
2. 50 dated 25.06.2003
3. 55965 56 dated 26.03.2003
4. 18000 dated 07.07.2003

1-74

The assessee stated before the ADIT (Inv) that these entries pertain to some “Kanyadan” given by him. The AO held that the figure 55965 has been crossed and 56 written indicating that the figure is in code and stands for thousands and the same is clear from figures 2-41 and 1-74. Even the figure 18,000/- has been written as such. Thus the AO assessed the same as assessee’s income during the relevant year.

15. The CIT(A) held that there is no reason for not accepting the interpretation of the AO as the assessee has not bothered to explain the source of these amounts or as to what transactions are represented by these amounts written in codes. The CIT(A) further held that it clearly established that the appellant has no explanation for the same. It is a piece of evidence found and seized during search that the appellant has made noting of its undisclosed income on this paper. Thus CIT(A) allowed the additions made by the AO.

16. The AR submitted that the paper found during the search was not supplied to assessee and the same is dumb document and does not show any specific reasons that the entries are of assessee’s dealings and it does not give any particular mark that the same belong to assessee. There was no statement given before the Assessing Officer and there was no question asked by the Assessing Officer in this respect. So authenticity of the said documents were not fortified by the Assessing Officer at any stage. The assessee relied on the judgment of ITAT, Mumbai Bench in case

of Malabar Oil Marketing Co. vs. Assistant Commissioner of Income Tax (2004) 91 TTJ (Mumbai) 348 wherein it was held that it is well settled law that vague noting on loose paper found in the course of search proceedings contained some entries showing no business connection and having no heading whether the amount were receipts or payments or in lakhs or in thousands, making of addition in the hands of the assessee not justified.

17. The DR submitted that these papers at any stage were not denied by the assessee. There was no explanation about the name which was mentioned in the said paper from both the DR as well as AR. The DR further stated that these are not Kanyadan receipts. As relates to the papers found, the assessee has come up with the version of paying the said amount as Kanyadan. The DR further stated that these entries are in thousands. The Assessing Officer more specifically in para 13 of the Assessment Order stated that the assessee at no point of time denied the said document and has never contested that the said entry is not that of any amount or any payment received to him and his sons and given by him to any other party.

18. We have perused the records and proceedings as well as the submissions made by both the sides. The assessee stated before the Investigation Officer that these entries pertain to some "Kanyadan"

given by him. But during the statement at the time of search the assessee clearly stated that the expenses incurred for the marriage of his daughter was Rs. 1.25 lakhs (page no. 17 of the Paper Book filed by AR). As relates to the case law cited by the AR that of Malabar Oil Marketing Co., the same is relevant as in the said case, it was held that mere notings on the loose paper without any corroborative evidence, cannot be assessed as “income” in the hands of the assessee. It further held that there being no material on record to suggest that the assessee has received any amount apart from the amounts received by it per account payee cheques. The Assessing Officer as well as the CIT(A) has not given any reasons or justification as to how the figures mentioned in the loose paper pertains to denomination of thousand. Thus, no case for addition on this account is made out by the Revenue.

19. In result, this Ground No. 1 for the A.Y. 2003-2004 and 2004-2005 is allowed.

20. The second ground of appeals for A.Y. 2000-2001, 2002-2003, 2003-2004 and 2004-2005 pertains to action of charging the interest u/s 234A, 234B, 234C of the Act. The AO in Assessment Order has clearly stated that the charging of interest will be done if applicable. Therefore, this ground does not survive as per the findings give in respect of the main ground hereinabove.

21. In result, ground No. 2 of the appeals for A.Y. 2000-2001, 2002-2003, 2003-2004 and 2004-2005 is dismissed.

22. In result, appeals of the assessee are disposed of.

The order is pronounced in the open court on 15th of September 2015.

Sd/-

**(S.V. MEHROTRA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 15 /09/2015

R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date	
1.	Draft dictated on	07.09.2015	PS
2.	Draft placed before author	08.09.2015	PS
3.	Draft proposed & placed before the second member	08.09.2015	JM/AM

4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	14.09.2015	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	15.09.2015	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		