2024:CGHC:35770-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

TAXC No. 179 of 2024

Shri Dinesh Singh Chouhan, H.No.43, Housing Board Colony, Bacheli, District Dantewada – 494 553, PAN: ALAPC2853L

... Appellant

Versus

The Income Tax Officer, Ward Jagdalpur

... Respondent

For Appellant	**:**	Mr. Siddharth Dubey, Advocate.
For Respondent	**:**	Mr. Amit Chaudhari, Advocate, on advance copy.

Division Bench: -
Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Amitendra Kishore Prasad, JJ.

Order on Board
(12/09/2024)

Sanjay K. Agrawal, J.

1. Heard on admission and formulation of substantial question of law in this appeal preferred under Section 260A of the Income Tax Act, 1961 (for short, ‘the IT Act’).

2. The appellant herein / assessee was served with a notice under Section 148 of the IT Act by registered post and thereafter, his case was selected for scrutiny and notice under Section 142(1) of the IT

Act was also served to him fixing the date of hearing as 12-6-2015 which he did not respond leading to extending of last opportunity by again issuing notice under Section 142(1) of the IT Act by Registered Post with Acknowledgment Due and finally, on 16-6-2016, since the appellant did not comply with the above stated notices, a memo was issued to him to show cause why assessment be not completed ex parte under Section 144 of the IT Act as per the information and documents available on record which was served to him, but it also remained unanswered and again it was not responded by the appellant / assessee. Finding no way, the Assessing Officer called information under Section 133(6) of the IT Act from the Manager, State Bank of India, Branch: Bacheli in response to which the Bank had submitted copy of the statement of the bank account of the assessee on 20-6-2016 and on verification of the said bank account, it was revealed that the assessee had made cash deposits of ₹ 11,44,070/- in his Savings Bank Account No.30524245488 maintained by him in the said branch and in that case, onus was lying with the assessee to substantiate his case with evidence regarding source of income for making cash deposits in the said bank account. Since the assessee failed to participate in the assessment proceedings and furnished no explanation and also failed to explain the source of above cash deposit, the assessment was completed ex parte under Section 144 of the IT Act and ₹

11,44,070/- was treated as the assessee's undisclosed and unexplained income and it was added to the total income of the assessee under Section 68 read with Section 69A of the IT Act by its order dated 21-9-2016.

3. Feeling aggrieved against the order of the Assessing Officer dated 21-9-2016, the appellant / assessee preferred an appeal under Section 246A of the IT Act before the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi whereupon the appellant herein / assessee was issued notice on his registered e-mail address to submit written submission, but the appellant despite of four notices issued under Section 250 of the IT Act on 30-12-2020, 7-5-2021, 10-8-2022 & 14-10-2023 chose not to file written submission and ultimately, the appellate authority i.e. the CIT (Appeals), NFAC, by order dated 23-10-2023 dismissed the appeal upholding the order of the Assessing Officer holding that the appellant herein / assessee has failed to substantiate his claim and did not furnish documentary evidence / written submission explaining the nature and source of the cash deposits of ₹ 11.44 lacs in his bank account, and further held that the documents filed by him to support his explanation do not inspire confidence.

4. Questioning legality, validity and correctness of the order dated 23-10-2023, the appellant herein preferred appeal before the Income

Tax Appellate Tribunal and during the pendency of appeal, the appellant / assessee preferred two applications for admission of additional evidence under Rule 29 read with Rule 18(4) of the Income Tax (Appellate Tribunal) Rules, 1963 which were allowed by the ITAT and documents were admitted on record and considered by the Appellate Tribunal i.e. ITAT. The ITAT by its impugned order, dismissed the appeal holding that the assessee has failed to substantiate its plea based on documentary evidence the nature and source of the cash deposits made by him in his bank account and the documents filed by him to support his explanation in shape of additional documents do not inspire any confidence and accordingly, affirmed the order passed by the CIT (Appeals), NFAC affirming the order of the Assessing Officer leading to filing of this appeal under Section 260A of the IT Act.

5. Mr. Siddharth Dubey, learned counsel appearing for the appellant / assessee, would submit that the findings of the Assessing Officer, CIT (Appeals) and ITAT are perverse and all the authorities have erred in upholding addition under Section 68 read with Section 69A of the IT Act in absence of books of account being maintained by the appellant herein / assessee specifically when there was no statutory obligation on the appellant / assessee to maintain books of account as per Section 44AA of the IT Act and further erred in upholding addition under Section 68 read with Section 69A to the

appellant's/assessee's income for the Assessment Year 2012-13 as the parameters to make addition under the aforesaid provisions are different / as the condition(s) to attract addition under the aforesaid provisions are different. As such, substantial question of law arises for consideration in this appeal.

6. We have heard learned counsel for the appellant on the question of admission of this tax case and considered his submissions made herein-above carefully and minutely as well.

7. A careful perusal of the record would show that an amount of ₹ 11,44,070/- in the savings bank account maintained by the appellant herein / assessee was found deposited by the appellant to which the Assessing Officer issued number of notices seeking his explanation as regards the nature and source of the cash deposits, but before the Assessing Officer, the appellant did not chose to appear and remained ex parte upon which ex parte order dated 21-9-2016 under Section 144 of the IT Act was passed and ₹ 11,44,070/- was treated as the assessee's undisclosed/unexplained income and added to the total income of the assessee under Section 68 read with Section 69A of the IT Act. On appeal preferred by the appellant before the CIT (Appeals), NFAC under Section 246A of the IT Act, the appellant again did not support his plea to support his points raised in the appeal and 4-6 notices were issued to him on his registered e-mail

address to file written submission on the E-Filing Portal, but the appellant did not file any reply. The appellate authority i.e. the NFAC held that the appellant did not furnish any documentary evidences and written submission in spite of various notices issued to him during the appellate proceeding and has failed to explain the nature and source of ₹ 11,44,070/- which was deposited in his account. The ITAT after admitting the additional documents, yet, did not find any force in the submission of the appellant and dismissed the appeal. However, at this stage, Section 68 of the IT Act deserves to be noticed. It states 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:
>
> Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless—
>
> (a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and
>
> (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:
>
> *** *** ***"

8. A careful perusal of the aforesaid provision would show that where any sum is found credited in the books of an assessee maintained for any previous year, same may be charged to income-tax as the income of the assessee of that previous year, and if the explanation offered by the assessee about the nature and source of sums found credited in the books is not satisfactory, in such cases, there is, prima facie, evidence against the assessee, viz., the receipt of money, and then the burden is on the assessee to rebut the same, and if he fails to rebut, it can be held against the assessee that it was a receipt of an income nature.

9. In the matter of **Commissioner of Income Tax v. P. Mohanakala**[1], their Lordships of the Supreme Court considered the nature and scope of Section 68 of the IT Act and laid down when and in what circumstances Section 68 of the IT Act would come into play by observing as under: -

> "**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 assessees; such credit has to be of a sum during the previous year; and the assessees offer no explanation about the nature and source of such credit found in the books; or the explanation offered by the assessees 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 assessees of that previous year. The expression "the assessee offers no

1 AIR 2007 SC 2116

> explanation" means where the assessees offer no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessees. It is true the opinion of the Assessing Officer for not accepting the explanation offered by the assessees 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."

10. Similarly, Section 69A of the IT Act provides for unexplained money, etc. and it states as under: -

> "**69A. Unexplained money, etc.**—Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

11. The Supreme Court in the matter of **Chuharmal S/o Takarmal Mohnani v. Commissioner of Income Tax, M.P., Bhopal**[2] dealing with Section 69A of the IT Act has held that in order to find out whether the assessee is the owner of any money or valuable article for the purposes of Section 69-A of the Income Tax Act, 1961, the principle of common law jurisprudence embodied in Section 110 of the Evidence Act can be applied. It follows from well-settled

2 (1988) 3 SCC 588

principle of law that normally, unless contrary is established, title always follows possession. The expression 'income' as used in Section 69-A of the Income Tax Act, has wide meaning which meant anything which came in or resulted in gain.

12. Further, the principle of law laid down in **Chuharmal** (supra) was followed by the Supreme Court with approval in the matter of **Commissioner of Income Tax, Salem v. K. Chinnathamban**[3] and it has been held that where a deposit stands in the name of a third person and where that person is related to the assessee then in such a case the proper course would be to call upon the person in whose books the deposit appears or the person in whose name the deposit stands should be called upon to explain such deposit and further held that the onus of proving the source of deposit primarily rested on the persons in whose names the deposit appeared in various banks, and observed as under: -

> **"7.** Where a deposit stands in the name of a third person and where that person is related to the assessee then in such a case the proper course would be to call upon the person in whose books the deposit appears or the person in whose name the deposit stands should be called upon to explain such deposit. In the present case, there is no evidence recording registration of the firm. In the present case, books of accounts are not properly maintained. In the present case, there is no explanation regarding the source of investment. In the present case, the evidence of K. Palanisamy, indicates that even the partners of the firm were fictitious. In the above

3 (2007) 7 SCC 390

> circumstances, the Tribunal had erred in directing linking up of the deposits with the accounts of M/s V.V. Enterprises. In fact, the directions given by the Tribunal to the AO for such linking up was not even capable of compliance. The onus of proving the source of deposit primarily rested on the persons in whose names the deposit appeared in various banks. In the circumstances, the Department was right in making individual assessments in the hands of the respondent assessee K. Chinnathamban. Similarly, the Department was right in making the individual assessments in the names of other respondent assessees, who are parties to connected civil appeals herein."

13. Finally, in the matter of **Vijay Kumar Talwar v. Commissioner of Income Tax, Delhi**[4], the Supreme Court held that 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, and observed in paragraph 21 as under: -

> "21. 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 v. Mst. Gopi & Anr.[5]; Narendra Gopal Vidyarthi v. Rajat Vidyarthi[6]; Commissioner of Customs (Preventive) v. Vijay Dasharath Patel[7]; Metroark

4 2011 AIR SCW 2158
5 (1980) 4 SCC 255 : (AIR 1980 SC 1754)
6 (2009) 3 SCC 287 : (2009 AIR SCW 1756)
7 (2007) 4 SCC 118 : (2007 AIR SCW 1694)

> Ltd. v. Commissioner of Central Excise, Calcutta[8]; West Bengal Electricity Regulatory Commission v. CESC Ltd.[9])"

Further, in **Vijay Kumar Talwar** (supra), where the lower authorities as also the High Court have concurrently found that the assessee did not produce any evidence to rebut the presumption drawn against him under Section 68 of the IT Act, in the absence of any cogent evidence and finding the explanation furnished by the assessee not satisfactory, their Lordships of the Supreme Court held that the concurrent finding of the lower authorities would not give rise to a substantial question of law, and observed as under: -

> "22. Examined on the touch-stone of the afore-noted 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 v. Commissioner of

8 (2004) 12 SCC 505 : (AIR 2004 SC 3142 : 2004 AIR SCW 2304)
9 (2002) 8 SCC 715 : (AIR 2002 SC 3588 : 2002 AIR SCW 4212)

> Income Tax, Bangalore[10] and Commissioner of Income Tax v. P. Mohanakala[1]). We are of the opinion that on a conspectus of the factual scenario, noted above, the conclusion of the Tribunal to the effect that the assessee has failed to prove the source of the cash credits cannot be said to be perverse, giving rise to a substantial question of law. The Tribunal being a final fact-finding authority, in the absence of demonstrated perversity in its finding, interference therewith by this Court is not warranted."

14. Reverting to the facts of the present case in the light of the aforesaid principles of law laid down by their Lordships of the Supreme Court in the aforementioned decisions, it is quite vivid that in the instant case, despite number of notices having been issued by the Assessing Officer to explain and to furnish the nature and source of the cash deposits of ₹ 11,44,070/- in the bank account of the appellant herein / assessee, the appellant chose not to appear and did not furnish any explanation either before the Assessing Officer or before the appellate authority i.e. the CIT (Appeals), NFAC, however, the appellant has furnished some explanation in shape of additional documents holding that it is the amount of M/s. Shriram Transport Finance Company Limited stating that the amount of ₹ 11,44,070/- was collected by him (appellant/assessee) as a recovery agent from its borrowers who were located in naxal affected areas and deposited in his account. However, this explanation, for the reasons mentioned in the shape of affidavit, has not been found to be the reasonable explanation and the ITAT has rightly come to the

10 1995 Supp (2) SCC 453 : (AIR 1995 SC 2109 : 1995 AIR SCW 3231)

conclusion that the assessee has failed to substantiate the nature and source of the cash deposits in his bank account.

15. In that view of the matter, in our considered opinion, the Assessing Officer; the CIT (Appeals), NFAC; and the ITAT, all, have concurrently and correctly concluded that the assessee did not produce any evidence to rebut the presumption drawn under Section 68 read with Section 69A of the IT Act and in light of the decision of the Supreme Court in **Vijay Kumar Talwar** (supra), we are of the considered opinion that the finding of the ITAT is the correct finding of fact based on record and the appellant has failed to demonstrate any substantial question of law in this appeal and as such, no substantial question of law arises from the order of the ITAT requiring formulation for consideration.

16. Accordingly, this appeal stands dismissed at the admission stage itself without notice to the other side.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Amitendra Kishore Prasad)
JUDGE

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