

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C': NEW DELHI**

**BEFORE SH. I.C. SUDHIR, JUDICIAL MEMBER  
AND  
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 5500/Del/2013  
Assessment Year: 2009-10

Sh. Hitendra Pal Singh, C/o- Vinod Rawat, C.A., Vishal Tower, District Centre, Janakpuri, New Delhi. (PAN: AKAPS3100R)	Vs.	Income Tax Officer, Ward 37(1), New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. P.C. Yadav, Advocate
Respondent by	Sh. T. Vasanthan, Sr. DR

Date of hearing	19.01.2016
Date of pronouncement	24.02.2016

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal of the assessee is directed against the order dated 22.08.2013 of the Commissioner of Income Tax (Appeals)-XXVIII, New Delhi, raising the following grounds of appeal:

- 1. That the learned Commissioner of Income Tax(Appeals) has erred in law and on facts in holding that the A.O. was justified in rejecting the explanation offered by the assessee and treating the income as income from undisclosed sources u/s 68 of the Income Tax Act, 1961.*
- 2. That the learned Commissioner of Income Tax (Appeals) has erred in law in sustaining the addition of Rs. 14,44,575/- on the basis of credit entries in the bank statement.*
- 3. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in holding that the claim of the appellant is an afterthought.*

4. *That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of cotemporary jurisprudence.*
5. *That the appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the appeal.*

2. The facts in brief are that the assessee filed return of income on 21.10.2009 declaring income of Rs. 3,72,330/-. The assessee, a Chartered Accountant by profession, derived income under the head profit and gains of business and Income from other sources. The case was selected for scrutiny under Computerized Assisted Selection for Scrutiny (CASS) and notice under section 143(2) of the Act was issued and served within the stipulated time. The Assessing Officer observed that as per the annual information report (AIR) there was cash deposit of Rs. 14,44,575/- in saving bank account maintained by the assessee with Axis Bank, Adarsh Gram Branch, Rishikesh, Uttarakhand. It was explained by the assessee that a sum of Rs. 2,44,575/- was deposited out of his own sources and balance money was belonging to Sh. Ved Mata Gayatri Trust, Haridwar which was deposited temporarily for utilizing towards various land purchases for the trust. The explanation was not accepted by the Assessing Officer and he added entire sum of Rs. 14,44,575/- as unexplained cash credit under Section 68 of the Act. Aggrieved, the assessee filed an appeal before the learned Commissioner of Income Tax(Appeals). Before the learned Commissioner of Income Tax(Appeals), the assessee explained that the cash was held by him as imprest account in fiduciary capacity on account of Sh. Vedmata Gayatri Trust, Haridwar, however, the learned Commissioner of Income Tax(Appeals) also did not accept the claim of the assessee and held the entire

sum of Rs. 14,44,575/- as unexplained cash credit. Aggrieved, the assessee is before us.

3. In grounds 1 to 3 of the assessee, the sole issue involved is, the addition of unexplained cash credit of Rs. 14,44,575/-. Learned Authorized Representative of the assessee submitted paper book containing 78 pages. The learned Authorized Representative further submitted that the trust was maintaining the imprest account of the assessee in its books of account and duly recorded all those transactions held with the assessee. He referred to page no. 18 of the paper book showing the imprest money given to the assessee by the trust from 13<sup>th</sup> June, 2008 to 19<sup>th</sup> June, 2008. The ld AR also referred to receipts issued by the trust in respect of the imprest money advanced to the assessee, which are placed from page 65 to 68 of the paper book. The learned Authorized Representative further submitted that the assessee vide letter dated 16.12.2011 requested the Assessing Officer to issue summon under Section 131 to the Trust for conducting further inquiries if required, however, the Assessing Officer made the addition without conducting any inquiry from the trust. The learned Authorized Representative further referring to the balance sheet of the trust at page 21 of the paper book submitted that enough cash in hand was available in the books of trust on 31.03.2008. Learned Authorized Representative also referred to the confirmation of the trust filed at page no. 15 of the paper book, where the trust has admitted of giving advances to the tune of Rs. 15,15,000/- to the assessee for entering into various land purchases. The learned Authorized

Representative further relied on the judgment of the Apex Court in the case of Commissioner of Income Tax Vs. Orissa Corporation Pvt. Ltd. [1986] 159 ITR 78 (SC), wherein, it is held that if the assessee discharged his burden and could not issue summons to the creditors, then no adverse inference can be drawn against the assessee. He further submitted that in the absence of invoking power under Section 131 and summoning the witnesses, the Assessing Officer cannot conclude unilaterally hold the deposits as unexplained.

4. On the other hand, the learned Sr. Departmental Representative, relying on the order of the lower authorities, submitted that no such amount was shown as outstanding in the balance sheet of the trust.

5. We have heard the rival submissions and perused the material on record including the paper book of the assessee. As regard to the deposit of Rs. 14,55,575/-, the assessee explained that Rs. 2,44,575/- was deposited out of his income during the year or from withdrawals from the bank account. The assessee has declared income of Rs. 3,72,330/- during the year which is sufficient to explain the deposit of Rs. 2,44,575/-. As regards to balance of Rs. 12 crores, the assessee explained receipt of the same from Sh. Vedmata Gayatri Trust, Haridwar on following dates:

<b>Dates</b>	<b>Amount</b>
13.06.2008	Rs. 2,50,000/-
16.06.2008	Rs. 3,50,000/-
17.06.2008	Rs. 3,50,000/-
18.06.2008	<u>Rs. 2,50,000/-</u>
	<u>Rs. 12,00,000/-</u>

5.1 Before the learned Commissioner of Income Tax(Appeals), the assessee submitted copy of the imprest account maintained in the books of the trust, wherein money advanced to the assessee by the trust for the purpose of purchasing land has been shown. The said imprest account has also been submitted at page no. 29 of the paper book and in the said imprest account advances are appearing as under:

<b>Dates</b>	<b>Amount</b>
13.06.2008	Rs. 2,50,000/-
15.06.2008	Rs. 3,50,000/-
17.06.2008	Rs. 3,50,000/-
19.06.2008	<u>Rs. 2,50,000/-</u>
	<u>Rs. 12,00,000/-</u>

5.2 From above, we find that advance has been given by the trust to the assessee on or before the date of deposit in bank account. The assessee has also filed receipt corresponding to these advances from pages 65 to 68 of the paper book. The trust has also confirmed the above advances which has been field at page no. 15 of the paper book. On verification of the balance-sheet of the trust which is filed at page 21 f the paper book, we find that the trust has advanced money to its -Karyakartaø (i.e. volunteers) including the assessee, for different purposes of the trust, thus the name of the assessee was appearing as debtor in the books of account of the trust and, therefore, the contention of learned Sr. Departmental Representative that it was not appearing as debtor in the books of account of the trust is not correct. The assessee submitted all the documents in support of identity, creditworthiness and genuineness of the transaction. However, the Assessing Officer merely made addition without any evidence in

support of his claim. Once the assessee filed all the documents, the burden of proof shifted on the Revenue and if the Revenue was unable to carry out inquiry even after request of the assessee to summon the creditors, the Assessing Officer failed to discharge his burden of proof and unable to establish that the credit of the deposit of Rs. 14,55,575/- in the bank account was from undisclosed sources. The Honøble Apex Court in the case of CIT Vs Orissa Corporation (supra) has held as under:

*13. In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under s. 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.*

5.3 In view of the above, we reverse the findings of the Commissioner of Income Tax(Appeals) on the issue in dispute and hold that no adverse inference can be drawn against the assessee. Accordingly, we allow these grounds of the assessee.

6. The rest of the grounds are general in nature, and we are not required to adjudicate upon on those grounds.

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

The decision is pronounced in the open court on 24<sup>th</sup> February, 2016.

Sd/-

**(I.C. SUDHIR)**

**JUDICIAL MEMBER**

Dated: 24<sup>th</sup> February, 2016.

RK/-

Copy forwarded to:

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

Sd/-

**(O.P. KANT)**

**ACCOUNTANT MEMBER**

Asst. Registrar, ITAT, New Delhi