

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL No. 363 of 2015

Shri. Arunkumar J. Muchhala

.... Appellant

Versus

The Commissioner of Income-Tax - 8

.... Respondent

...

Mr. D. C. Jain for the Appellant.

Mr. N. C. Mohanty for the Respondent.

**CORAM : S. C. DHARMADHIKARI &
SMT. VIBHA KANKANWADI, J. J.**

DATE ON WHICH THE JUDGMENT IS RESERVED: 14.08.2017

DATE ON WHICH THE JUDGMENT IS PRONOUNCED: 24.08.2017

JUDGMENT (PER: SMT. VIBHA KANKANWADI, J)

1. This appeal challenges an order of the Income Tax Appellate Tribunal dated 30-07-2014.

2. Shri. D. C. Jain, appearing for appellate has submitted that the questions of law at page No. 20 & 21 of the paper-book are substantial questions of law deserving admission of this appeal.

3. The factual matrix leading to the appeal, as noted by Assessing Officer are that appellant had filed return for the Assessment Year 1996-97 on 27-12-1996 declaring total income at Rs.6,00,570/-.

The return was processed u/s. 143 (1) (a) of the Income Tax Act, 1961 (for short I. T. Act), the case was taken up for scrutiny. The assessee had got income from rent, share of profit from R. F., Salary and income from other sources. Assessee had also returned the income of his minor children amounting to Rs.3,15,459/-. Notice u/s. 143 (2) of the I. T. Act was issued on 8-07-1998 fixing the date of hearing on 28-07-1998. Nobody appeared on behalf of assessee. A notice u/s. 274 (1) (b) of the I. T. Act was therefore, issued for said default fixing hearing on 7-8-1998 and another notice dated 30-07-1998 u/s. 142 (1), fixing the hearing on 07-08-1998 was issued. Appellant was called upon to furnish information. Again, nobody attended the hearing, however, a letter dated 06-08-1998, addressed by M/s. D. C. Jain, Advocates was received by the office on 12-08-1998. It was mentioned by the Advocate that his client would require 15 days to comply with details. Said Advocate attended the hearing on adjourned date and again sought time for the preparation. Nobody attended the next adjourned date i. e. 10-09-1998. Once again, notice u/s. 271 (1) (b) r/w. 274 of I. T. Act was issued and next date of hearing was informed. Some details were filed on 24-09-1998. However, the details in respect of points Nos. (I), (ii) and (ix) to (xix) of notice u/s. 142 (1) dated 30-07-1998 were not filed. Learned Advocate was asked to file proof of NRI gift received. There was no compliance of the same on 07-10-1998, but thereafter a letter was

received on 23-10-1998, stating that details are under preparation. Again there was no compliance on 06-11-1998 and therefore, notice was issued. Advocate attended the date of hearing on 19-11-1998. He was requested to give details as under :

I) Details of N. R. I. Gift alongwith nature of relationship with donee i.e. the assessee.

(ii) Details in respect of the following remaining items in the notice u/s. 142 (1) dated 30-07-1998; item Nos. (i), (ii), (ix) to (xix),

(iii) Letter of Authority

Thereafter, also on some occasions, the matter was not attended and then when notices were issued, the assessee took time on the point of preparation. Further information was called from the Assessee through Advocate on 21-01-1999. However, same response was received from the Assessee. It was submitted on behalf of assessee on 11-03-1999, that the loan and interest statement was under preparation and copy of the account of 8 parties from whom loans were taken with confirmations were under preparation. Further opportunity was not given by the Assessing Officer, taking into consideration the response and attitude of the appellant.

4. The facts emerged further were that the assessee had received NIR gift of Rs.33.82,224/- by way of India Development Bonds from one Shri. Ashok Dhirajlal Parikh, who was friend of the assessee.

Further, the assessee had taken loan from Shri. Ajay Shah to the tune of Rs.18,00,000/-, M/s. Pooja Corporation Rs. 9,00,000/-, Shri. Ashok Mehta Rs. 21,00,000/-, Saibaba International Rs.2,40,000/-, Shri. Ashok Shah Rs. 3,00,000/-, Suraj Maticland (P) Ltd. Rs. 10,00,000/-, Muchhala Magicland Rs.6,06,000/-, Arunkumar & Associates Rs.2,60,000/-, Continental Corporation Rs.3,00,000/-, M/s. Muchhal Magicland Pvt. Ltd. Rs.1,00,000/-, Shri. Chandulal C. Patel Rs.3,00,000/-. The Assessing Officer had come to the conclusion that since no confirmations have been given in respect of these amounts, they will have to be treated as unexplained cash credits and therefore the said amounts were added to the total income of the assessee. After the calculation the total gross income of the assessee was held at Rs.1,26,88,794/-.

5. The Appellant preferred appeal to the Commissioner of Income-Tax (Appeals), bearing No. CIT (A)XIX/IT/ROT-46/99-00 and challenged the said decision of the Assessing Officer. Appeal came to be partly allowed on 29-11-2010. It was found that explanation has been given in respect of some of the loan amounts and therefore, the said entries came to be deleted. Other entries were considered and no relief was given in respect of those remaining amounts.

6. Being aggrieved by the said order, Petitioner preferred further appeal to the Income-Tax Appellate Tribunal bearing No. ITA

No.1341/Mum/2011. The said appeal came to be dismissed on 30-07-2014. Present appeal challenges the said order.

7. It has been vehemently argued on behalf of appellant that Books of accounts have not been maintained by the Petitioner and therefore Sec. 68 of I. T. Act will not be applicable. Though it is a fact that certain amounts were taken by the Petitioner from those persons, yet, when entries of the same have not been taken in the books of accounts, they can not be added to the income of the Appellant for the assessment of tax. These entries have been found by the Assessing Officer on the basis of Bank Statement. No other document was considered by him, before issuing order. Reliance has been placed on the decision in **Baladin Ram v/s. Commissioner of Income-Tax, U. P.** reported in **1969 (71) ITR 427**; wherein it has been held that, “Even under the provisions embodied in Section 68 of Income-Tax Act, 1961, 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”. Similar ratio has been laid down in **Commissioner of Income-Tax, Poona v/s. Bhaichand H. Gandhi** reported in **1983 (141) ITR 67**, **Anand Ram Raitani v/s. Commissioner of Income-Tax** reported in **1997 (223) ITR 544**,

Commissioner of Income-Tax v/s. Smt. Usha Jain reported in **1990 (182) ITR 487**.

8. It has been further submitted that Sec. 68 of Income-Tax Act is a charging section and it is also a deeming provision. Learned Counsel appearing for appellant relied on the decision in **Commissioner of Income-Tax v/s. Taj Borewells** reported in **2007 (291) ITR 232**; wherein it has been observed that, “ Unless the following circumstances exist, the Revenue cannot rely on Section 68 of the Act : (a) Credit in the books of an assessee maintained for the year, (b) the assessee offers no explanation or if the assessee offers an explanation the Assessing Officer is of the opinion that it is not satisfactory, and the sum so credited is chargeable to tax as “income from other sources”. The assessee alone has to offer an explanation. If the assessee makes an explanation, it is for the Assessing Officer to accept it or reject it”.

9. It has been further submitted on behalf of appellant that the authorities below have failed to take into consideration the documents produced by the Appellant. The loan amounts were received by cheques and some of them were in respect of booking of the flats. The booking could not be materialized and therefore, cheques were returned and there was no credit at the end of the year. The amount ought not to have been held to be liable to be added in the income of the Petitioner.

10. Per contra, it has been submitted on behalf of Revenue that

the orders passed by the said Authorities are correct. Many opportunities were given to the Appellant to produce relevant document/ documents in order to substantiate and prove his version. Appellant had failed to give the further details of the persons from whom the loan was allegedly taken. It was the bounden duty of the assessee to explain the nature and source of cash deposits. It has been therefore, rightly held that assessee can not take any advantage of the transaction as he had not kept any books of accounts. Reliance has been placed on the decision in **Sudhir Kumar Sharma (HUF) v/s. Commissioner of Income-Tax – III, Ludhiana** reported in [2014] 224 **Taxmann** 178. It has been held that, “When during the assessment proceedings, Assessment Officer noticed that assessee had deposited huge amount of cash in his bank account; the addition of the said amount in the income of the assessee by invoking the provisions of Sec. 68 of Income Tax Act is justified. The onus is on the assessee to explain nature and source of said cash deposits”. A Special Leave Petition was preferred challenging the above judgment; however, Supreme Court has dismissed the same and it has been reported in [2016] 69 **taxmann.com** 219 (SC).

11. The facts as emerged before the Assessing Officer appears to be not in dispute. The Appellant has not denied that he has received the said loan amount / cash deposits from those persons whose list has

been given in the order of Assessing Officer. He has revealed those names from the Bank account of the Appellant. Now, Appellant intends to say that he has not maintained books of accounts and therefore, those amounts can not be considered. When Appellant is doing business, then it was incumbent on him to maintain proper books and/ or books of account. It may be in any form. Therefore, if he had not maintained it, then he can not be allowed to take advantage of his own wrong. Burden lies on him to show from where he has received the amount and what is its nature. Unless this fact is explained he can not claim or have deduction of the said amount from the income tax. Sec. 68 of I. T. Act provides that where the assessee offers no explanation about the nature and source of the credits in the books of account, all the amounts so credited or where the explanation offered by the assessee is not satisfactory in relation to the same then such credits may be charged to tax as income of the assessee for that particular previous year. It is to be noted here in this case that huge amounts have been credited in the account of the Appellant and he has not explained the nature of the same. The source of the said amount has been discovered by the Assessing Officer from Bank Pass Book. It is to be noted that when the source and nature has been held to have been explained, the said amount has been deleted by the appellate forums. Now the dispute has remained in respect of amount of Rs.9,00,000/- from M/s. Pooja

Corporation, Rs.7,00,000/- from M/s. Pooja Enterprises, Rs.24,00,000/- from Shri. Ashok Mehta, Rs.18,00,000/- from Mr. Ajay Shah. No document was produced in respect of these transactions nor the amounts have been confirmed from those persons, who are shown to have lent them. The authorities below have therefore, rightly held that nature of the transaction has not been properly shown by the Appellant.

12. The ratio of the authorities relied by the learned Counsel appearing for Appellant is not applicable here. In those cases, either the entries were confirmed by the parties in whose name they were standing or books of accounts were showing the cash credits from undisclosed source. Here in this case, at no earlier point of time, a firm stand was taken by the Appellant that he has not maintained books of account. Whenever a direction was given to produce the same in any form, it was replied by the Appellant that he wants time to prepare. Many opportunities were given by the Assessing Officer for the production of relevant documents including books of account in the form of ledger, balance sheet, etc. However, such documents were never produced. Non-production of the document is different from not maintaining the Books of Account. The Appellant has raised the said point of “books of accounts not maintained” for the first time before this Court. The facts in the case of **Sudhir Kumar Sharma** (supra) are almost similar and therefore, the observations are binding.

13. When even after giving opportunities, The Appellant had failed to produce relevant documents and explain the nature and source of the amount received by him as narrated above; the order of the Assessment officer and the appellate authorities in respect of those amounts is justified. We do not find any substantial question of law raised by the Appellant in this appeal and therefore, we proceed to pass following order.

ORDER

1. Appeal is hereby dismissed.
2. No order as to costs.

(Vibha Kankanwadi. J.)

(S. C. Dharmadhikari. J.)