

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.974/Ahd/2023
Assessment Year: 2016-17**

Bhavanji Jugaji Thakor, 104, Anvaya Tower, Near Torrent Power Substation, Vejalpur, Ahmedabad – 380 051. [PAN – AKEPT 0862 H]	Vs.	Income Tax Officer, Ward – 3(3)(1), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Mahesh Chhajed, AR	
Revenue by	Shri J.L. Bhatia, Sr. DR	
Date of Hearing	04.06.2024	
Date of Pronouncement	08.08.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Assessee against order dated 27.09.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal :-

- “1. The order passed by the Ld. CIT(A) is against law, equity and justice.
2. The Ld. CIT(A) has erred in law and on facts in upholding validity of jurisdiction of the Ld. A.O. without any order passed under Section 127 of the Act.
3. The Ld. CIT(A) has erred in law and facts in making addition of Rs.34,30,000/- as unexplained cash credit under Section 68 of the Act.”

3. The return of income was filed by the assessee on 28.12.2016 declaring total income of Rs.1,80,270/-. The same was processed under Section 143(1) of the Income Tax Act, 1961 and the case was selected for limited scrutiny in respect of the following reasons:-

1. *Whether value of consideration for computation of capital gains has been correctly shown in the return of income.*
2. *Whether cash deposits have been made from disclosed sources.*
3. *Whether capital gain/loss on sale of property has been correctly shown in the return of income.*

3.1 Accordingly, notice under Section 143(2) of the Act was issued on 18.09.2017 which was served upon the assessee. Notice under Section 142(1) of the Act was issued alongwith questionnaire on 26.07.2018, 10.10.2018 and 14.11.2018. As per the information mentioned in the individual transaction statement, the assessee has purchased immovable property dated 28.09.2015 amounting to Rs.49,50,000/-, sold immovable property on 17.02.2016 at Rs.1,80,00,000/- (Vejalpur) and deposited cash in Bank of Baroda amounting to Rs.34,30,000/- on 31.03.2016. Since there was no response from the assessee, the Assessing Officer proceeded and made addition of Rs.49,50,000/- thereby treating the same as unexplained investment under Section 68 of the Act, made addition of Rs.34,30,000/- in respect of unexplained cash credit under Section 68 and made addition of Rs.1,80,00,000/- as Short Term Capital Gain (STCG). Thus, the Assessing Officer assessed the income at Rs.2,65,60,270/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that there is a delay of five days in filing the present appeal for which the assessee has given explanation. The reason for delay appears to be genuine and hence the delay is condoned.

5.1 The Ld. AR submitted that the CIT(A) erred in law and facts in making addition of Rs.34,30,000/- as unexplained cash credit under Section 68 of the Act. the Ld. AR submitted that it is well settled position that existence of books and accounts

maintained by the assessee is a condition precedent for the addition under Section 68 of the Act. In assessee's case, no such books of accounts have been maintained and hence there is no legal scope to invoke the provisions of Section 68 of the Act. The Ld. AR relied upon the following decisions:-

1. *CIT vs. Bhaichand H. Gandhi (1983) 141 ITR 0067*
2. *CIT vs. Ms. Mayawati (2011) 338 ITR 563 (Del)*
3. *Smt. Madhu Raitani vs. ACIT (2011) 45 SOT 231 (Gauhati)*
4. *Mehul V. Vyas vs. ITO (2017) 80 taxmann.com 311 (Mumbai -Tribunal)*
5. *Babbal Bhatia vs. ITO (ITA No.5430 & 5432/Del/2011)*
6. *Narendra Chandubhai vs. ITO (ITA No.103/Ahd/2019)*

5.2 The Ld. AR further submitted that Section 68 of the Act comes into picture where any sum is found credited in the books of the 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.

6. The Ld. DR submitted that Section 68 of the Act is rightly invoked as the cash deposit amounting to Rs.34,30,000/- was very much recorded in the bank statement of the assessee and no explanation for the same was given by the assessee. The Ld. DR further submitted that the bank account with Bank of Baroda is assessee's Savings Bank account and, therefore, the assessee should have given explanation either before the Assessing Officer or before the CIT(A). The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. The contention of the Ld. AR that Section 68 cannot be invoked when the assessee has not prepared books of account but in the present facts of the assessee's case, the provision regarding unexplained cash credit has been invoked after verifying and taking cognisance of the cash deposits and the savings account of the assessee with Bank of Baroda. Thus, the transaction was very well recorded in the bank statement and, per se, the bank statement which is savings account of the assessee has to be treated as books of the assessee as the assessee is an individual and is not

filing books of account in the common parlance that of the Company's books of account. Thus, the contention of the assessee that Section 68 of the Act cannot be invoked does not sustain. As regards to the component of cash deposits of Rs.34,30,000/-, the assessee before the CIT(A) has categorically mentioned that the sale receipt of property sold was received in cheques and he has explained these receipts correctly for which the CIT(A) has accepted the assessee's contention. The component of cash deposit cannot be correlated with the sale receipts of the property as the cash component is related to the assessee's savings account for which the assessee has given explanation are out of cash deposits made by the assessee out of his known source of income and the same was duly submitted as the assessee is having source of income from house property, income from other sources and income from agricultural activity. Since the said aspects should have been taken into consideration and should have been verified by the Assessing Officer, therefore, on merit, this aspect requires to be remanded back to the file of the Assessing Officer for proper adjudication and verification as per Income Tax provisions. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

8. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on this 8th August, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 8th August, 2024

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad