

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Tax Appeal No. 01 of 2020**

Rajmeet Singh	....	Appellant
Versus		
Income Tax Officer, Ward-2(3), Ranchi	...	Respondent
With		

**Tax Appeal No. 02 of 2020**

Harmeet Singh	...	Appellant
Versus		
Income Tax Officer, Ward-2(3), Ranchi	...	Respondent

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**CORAM: Hon'ble Mr. Justice Rongon Mukhopadhyay  
Hon'ble Mr. Justice Deepak Roshan**

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For the Appellant : Mr. Biren Poddar, Sr. Advocate  
M/s. Mahendra Kr. Chowdhary, Rakhi Sharma, Advs.  
[ in both cases]

For the Respondent : Mr. Ratnesh Nandan Sahay, Sr. Standing Counsel

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**16/06.02.2024**

***Per Deepak Roshan, J***

Since both these appeals arise out of common order passed by the Income Tax Appellate Tribunal, Ranchi Bench, Ranchi (hereinafter to be referred as 'the Tribunal') in I.T.A No. 189/RAN/2018 (Sri Rajmeet Singh Vs. ITO, Ward-2(3), Ranchi) and I.T.A No. 190/RAN/2018 (Harmeet Singh Vs. ITO, Ward-2(3), Ranchi; whereby the appeal preferred by the respective appellants have been dismissed by the common order dated 27.08.2019.

2. The brief facts in the case of Rajmeet Singh is that he derives income from commission and miscellaneous job and filed his return of income on 21.03.2015 declaring total income of Rs. 1,98,690/-. Similarly, the assessee, Harmeet Singh derives income from running a restaurant and filed his return of income on 21.03.2015 disclosing total income at Rs. 1,98,640/- .

The case of both the assesseees were selected for scrutiny and statutory notices were issued during the course of assessment proceeding. In the case of Harmeet Singh; the assessee filed copy of deed, profit and loss account, capital account, balance-sheet and computation of income for the Assessment Year 2012-13 and 2013-14. The assessee also produced copy of bank account. The Assessing Officer observed in the case of Harmeet Singh that the assessee has deposited cash on different dates in the Corporation Bank totaling to Rs. 19 Lakhs.

3. The case of Harmeet Singh as it would appear from the impugned orders that Harmeet Singh had submitted that 1/5<sup>th</sup> share of the total cost of land was appearing in the balance-sheet of the assessee for the Assessment Year 2013-14. It was the case of the assessee that the amount appearing in the Bank Account was

received from Builder M/s. Singh Estate and Singh Construction as advance signing amount for purchase of land and the total amount received by the assessee, Harmeet Singh was as under:

- (i) Sardar Pratap Singh and Mrs. Ajit Kaur- Rs. 36 Lakhs
- (ii) Harmmeet Singh - Rs. 33 Lakhs and
- (iii) Rajmeet Singh - Rs. 32 Lakhs.

It was also submitted by the assessee that agreement with M/s. Singh Estate and Singh Construction was substituted with the development agreement of Raj Construction on 25.06.2014, wherein it is mentioned that the said partnership firm will enter into a separate agreement with the owner for the schedule of refund and other terms.

From the Assessment Order, it appears that the Assessing Officer noticed that in the Corporation Bank the receipt from the Builder M/s. Singh Estate and Singh Construction is only to the tune of Rs. 14 Lakhs but not 33 Lakhs as claimed by the assessee. The assessee was also unable to explain the balance of Rs. 19 Lakhs and accordingly the Assessing Officer had made an addition of Rs. 19 Lakhs under Section 68 of the Income Tax Act, 1961 (hereinafter to be referred as the Act) to the total income of the assessee, Harmeet Singh.

4. In the case of Rajmeet Singh, the Assessing Officer verified the copy of I.T. Return, sale deed, Bank Account and other details filed during the course of assessment and the Assessing Officer concluded after verifying the records that the appellant was not able to satisfactorily explain entries of Rs. 10 Lakhs and Rs. 6,50,000/- respectively and accordingly added a sum of Rs. 16,50,000 to the total income of assessee on account of cash credit under Section 68 of the Act.

The Assessing Officer has categorically mentioned that the assessee, Rajmeet Singh could not explain the cash deposit of Rs. 10 Lakhs and Rs. 6,50,000/- to the satisfaction of the Assessing Officer and accordingly added the same.

5. Being aggrieved by the respective assessment orders dated 18.03.2016 and 30.03.2016 respectively; both the assesses filed their respective appeal before the Commissioner of Income Tax (Appeal) {hereinafter to be referred as CIT(A)}. The CIT(A) after verifying all the records of the case and after hearing both the parties has sustained the assessment order in the case of Rajmeet Singh by holding that *“with regard to the cash deposits made in the Bank Account the appellant, during the course of appellate proceeding stated that he had raised cash loans from friends and relatives. The appellant stated that the land in question was a disputed land, for which suit proceedings were going on for the last 30-40 years*

*with B.I.T. Vide resolution offered the land to the assessee and three other co-owners. The appellant along with the co-owners entered into an agreement with Singh Estate Builders, who paid Rs. 52 Lakhs. The balance amount of Rs. 48 Lakhs was raised in cash by the assessee and the co-owners”.*

The learned CIT has further held that the assessee neither at the time of assessment proceeding nor at the appellate proceeding was able to identify the source of cash deposits in the Bank Account and he could not establish the source of balance cash. He further held that though the assessee claims that the cash of Rs. 48 Lakhs was arranged by friends and relatives, but no identity/creditworthiness/genuineness was proved by the assessee and thus the and sustained the assessment order.

6. In the case of Harmeet Singh, the learned CIT has held in a similar manner that is to say, that the source of cash deposit in the Bank Account was not satisfactorily explained by the assessee, Harmeet Singh. He further noted that though it was claimed that the cash was arranged from friends and relatives, no identity/creditworthiness/genuineness was proved. In other words, learned CIT has categorically held that both the assesseees were not able to prove the source of cash in the Bank Account.

7. Being aggrieved by the order passed by the CIT(A), both the assesseees filed appeal before the learned ITAT who vide common order dated 27.08.2019 sustained the addition made by the AO and dismissed the respective appeals and thus the present appeals were filed before this Court under section 260A of the ACT.

8. Both these appeals were admitted by this Court and the following questions of law were framed:-

**T.A. No. 01 of 2020**

*“Whether under the facts and circumstances and in law the learned Tribunal is justified in confirming the addition of about Rs. 16,50,000/- being the amount found credited in the Bank Passbook/Bank Statement of the Bank in the name of appellant as unexplained the cash credit of the appellant under Section 68 of Income Tax Act, 1961.”*

**T.A. No. 02 of 2020**

*“Whether under the facts and circumstances and in law the learned Tribunal has justified in confirming the addition of Rs. 19,00,000/- have been the amount the found credited in the Bank Passbook/Bank Statement of the Bank in the name of appellant as unexplained the credit of the appellant under Section 68 of Income Tax Act, 1961.”*

9. Mr. Biren Poddar, learned Senior counsel assisted by Mr. Mahendra Choudhary representing the appellants in both these appeals submitted that Section 68 has no application to the facts of the present case as the assessee in both the cases is not maintaining any books of account; as such Section 68 does not apply in the case for the simple reason that balance-sheet and statement of affair cannot be equated to the Books of Account.

Learned senior counsel further submits that perusal of Section 68 would show that in relation to the expression books, the emphasis is on the word “*any amount found credited in the books of the assessee*”. He contended that such books have to be the books of the assessee himself and not of any other person. He lastly submits that since passbook does not constitute books of account; as such addition under Section 68 of the Act cannot sustain, inasmuch as, Section 68 itself says that where any sum is found credited in the books of an assessee maintained for any previous year and in both these cases, since there is no books of account and only on the basis of pass book, the addition made by Assessing Officer and confirmed by the CIT Appeals and learned Tribunal is not sustainable in the eye of law.

He further relied upon a judgment passed in the case of *CIT –Vs. Bhaichand H. Gandhi (1983) 141 ITR 67 Bombay*, wherein it has been held that the pass book supplied by the Bank to the assessee is not to be considered as books of account of the assessee. He further relied upon the judgment passed in the case of *Anand Ram Raitani Vs. CIT (1997) 223 ITR 544 (Gau)* and submits that it has been held by the Gauhati High Court that the addition made on the basis of Books of Account of the Firm cannot be added in the case of individual partner. He also relied upon the judgment passed in the case of *Commissioner of Income Tax-10, Mumbai Vs Manisha M. Sah reported in 2016 SCC Online Bom. 6479* and submits that the Bombay High Court has held in this case that the entries in the Bank Passbook cannot be considered as entries in the books of the assessee, so as to involve Section 68 of the Act.

10. Learned counsel for the Revenue supported the impugned order and submits that no error has been committed by the Tax Authorities and/.or by the learned Tribunal.

11. Having heard learned counsel for the parties and after going through the documents available on record it is profitable to extract relevant part the order passed by the learned Tribunal. Para-10 of the impugned order is quoted hereunder:

*“10. After hearing both the sides and perusing the entire materials available on record, we observe from the order of the lower authorities that the assessee was unable to substantiate with credible evidence regarding cash deposit in the Corporation Bank on different dates. The issue has been examined in detail by the Assessing Officer and the Assessing Officer has also issued shown cause notice to the assessee regarding balance cash deposit of Rs.19 lakhs in the case of Harmeet Singh and Rs.16,50,000/- in case of Rajmeet Singh, but both the assessee could not substantiate with credible source. Coming to the contention of ld. AR of the assessee that the addition made u/s.68 of the Act on the basis of bank account is not sustainable, we notice from the order of the Assessing Officer that, the assessee has submitted his balance sheet, profit and loss account, bank account and computation of income before the Assessing Officer. It is undisputed fact that without maintaining books of account the balance sheet, trading profit and loss account cannot be prepared. The books of accounts has been defined in Section 2(12A) of the Act, which reads as under :-*

*"2 (12A) "books or books of account" includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device;"*

*Assessee-Rajmeet Singh derives income from commission and miscellaneous jobs and assessee-Harmeet Singh derives income from running a restaurant. Financial statements have been prepared in both the cases, which were produced before the AO. In this way, the arguments advanced by the ld. AR of the assessee that the addition u/s 68 of the Act was made only on the basis of bank account is not tenable in the law because Section 2(12A) of the Act has duly defined the books of accounts. The bank accounts are maintained by the bank on behalf of the customers for transactions. Therefore, it is also a part of accounts. Similarly, the assessee also maintains his bank account in his ledger for transactions made with the bank and bank also maintenance in bank vice-versa. In the facts of the present case, books of accounts maintained by both the assessee is part of their financial statements which have been prepared in both the cases of the assessee. In the peculiar facts and circumstances of the case, the case laws relied on by the ld AR of the assessee are not applicable in the present case in hand Accordingly, we uphold the findings recorded by both the authorities below with regard to addition made u/s 68 of the Act and dismiss this ground of appeal raised by both the assesseees in their respective appeals.*

**12.** Thus, we see that learned Tribunal has taken note from the order of the Assessing Officer in the case of Harmeet Singh that the assessee has submitted his balance-sheet, profit and loss account, Bank account and computation of income before the Assessing Officer. Similarly, the assessee, Rajmeet Singh has submitted the copy of I.T. Return, sale deed, Bank Account and other details and held that without maintaining books of account, the balance-sheet/trading profit and loss account cannot be prepared.

The learned Tribunal has further held that the bank accounts are maintained by the Bank on behalf of the Customer for transaction and the assessee also maintains his Bank Account in his ledger for transaction made with the Bank and Bank also maintains in Bank and visa versa. Learned Tribunal has further held that in the facts of the case book of account maintained by both the assessee is part of their financial statements which have

been prepared in both the cases of the assessee and observing as above rejected the claim of the petitioner that only for the reason that pass book cannot be treated as books of account and the addition made under Section 68 is not sustainable.

**13.** It is true that pass book itself cannot be treated as books of accounts, but in the instant case as appears from the order that the assessee has submitted balance-sheet, profit and loss account, computation of income etc. and certainly the assessee also maintained his own books of account in his ledger; as such the findings given by learned Tribunal that in the peculiar facts and circumstances the claim of the assessee is not sustainable, prima facie, is acceptable to this Court.

At this stage, it is also pertinent to mention here that it is not a case where the assessee has proved the source of income or identity/creditworthiness/genuineness of transaction and before us they have taken only one ground that since the pass book cannot be treated as books of account; as such the addition made by the Assessing Officer under section 68 of the Act is not sustainable is not sustainable.

**14.** At this stage, it is also relevant to opine that only for not mentioning the correct provision in the assessment order, an amount which may be an income under the provisions of the Act cannot be allowed to go untaxed. Admittedly, in the Income Tax Act under Section 69 of the Act there is a provision of undisclosed investment and certainly an amount deposited in the Bank will come under the purview of investment.

Otherwise also no prejudice has been caused to the petitioner as learned counsel for petitioner failed to show any prejudice even when a wrong provision has been mentioned in the assessment order. Further it is a settled legal principle that if a source of power can be traced, the mere mentioning of wrong section/provision will not invalidate the order.

**15.** Even assuming the contention of the petitioner that passbook cannot be treated as part of Books of Accounts to be true; admittedly, the source of income in the case of both the assesses has not been proved; inasmuch as, both the assesses have failed to prove the identity/creditworthiness/genuineness of the creditors, who have given cash loan as claimed by them . Further, the assessee has submitted the balance-sheet, profit and loss account, Bank account and computation of income and other details before the Assessing Officer. Thus, definitely those amounts have escaped the taxation and as stated hereinabove only for not mentioning the correct provision in the assessment order an amount

which may be an income under any of the provisions of the Act; cannot be allowed to go untaxed.

Thus, in the peculiar facts and circumstance of the case, we are of the considered view that no error has been committed by the Tax Authorities and/or the learned Tribunal in adding the amount not disclosed to the total income of the respective Assessee. For the reasons stated herein above, the judgments cited by learned senior counsel for the appellants has no bearing in the facts and circumstance of these cases.

**16.** Before parting it is necessary to observe that usually the matter would have been remitted to the A.O for mentioning of the correct provision and proceed in accordance with law; but admittedly, in the instant matter, the source of income in the case of both the assesses has not been proved; inasmuch as, both the assesses have failed to prove the identity/creditworthiness/genuineness of the creditors, who have given cash loan as claimed by them, thus we are of the view that remitting the cases to the A.O will be a futile exercise.

**17.** Having regard to the aforesaid discussions, both these appeals are dismissed and the questions of law are decided in favour of the Revenue.

Consequently, the common impugned order dated 27.08.2019, passed by the Income Tax Appellate Tribunal, Ranchi Bench, Ranchi in I.T.A No. 189/RAN/2018 [Sri Rajmeet Singh Vs. ITO, Ward-2(3), Ranchi] and I.T.A No. 190/RAN/2018 [Harmeet Singh Vs. ITO, Ward-2(3), Ranchi]; is hereby, sustained.

**18.** As a result, both these appeals stands disposed of. Pending I.A., if any, also stands closed.

**(Rongon Mukhopadhyay, J.)**

**(Deepak Roshan, J.)**