**(2012) 02 CHH CK 0076**

**In the Chhattisgarh High Court**

**Case No :** Income Tax A. No 19 of 2004

Commissioner Income Tax Bilaspur APPELLANT

Vs

Shri Abdul Aziz RESPONDENT

**Date of Decision :** 14-02-2012

**Acts Referred:**
Income Tax Act, 1963 — Section 143(3), 147, 260A, 263, 68

**Citation :** (2012) 251 CTR 58 : (2012) 207 TAXMAN 62

**Hon'ble Judges :** Satish K. Agnihotri, J;R.S. Sharma, J

**Bench :** Full Bench

**Final Decision :** Dismissed

# Judgement

1. The instant appeal filed u/s 260-A of the Income Tax Act, 1963 (for short "I.T. Act") arises from the order dated 06.10.2003, passed by the Income Tax Appellate Tribunal (for short "I.T. A.T.") in I.T.A. No. 419/JAB/90 (Assessment Year 1990-91). The appeal was admitted on 26.07.2011, the following question of law :

(i) Whether on the facts and in the circumstances of the case, learned Income Tax Appellate Tribunal was justified in holding that the original as well as set aside assessment order became invalid as per their earlier order dated 15.10.1999?

(ii) Whether on the facts and in the circumstances of the case, learned Income Tax Appellate Tribunal was justified in upholding CIT(A)''s order whereby the CIT(A) deleted the additions of Rs. 4,93,500/-made u/s. 68 in the Assessment Year 1990-91, when the creditors have no creditworthiness to advance the loans.

2. The brief facts, as projected by the appellant, are that the original assessment of the assessee was completed u/s 143(3)/147 of the I.T. Act on a total income of Rs. 2,36,130/- on 31.03.1995 with an addition of unexplained cash credit of Rs. 96,000/- u/s 68 of the I.T. Act. The Commissioner of Income Tax (for short "the CIT"), set aside the assessment order on 25.03.1997 in Revision No. F/

SRO/263/10/1996-97 with a direction to complete assessment order afresh.

3. The revenue preferred an appeal before the I.T.A.T. In the meantime, the Assessing Officer, passed a fresh assessment order on 30.03.1999 in compliance of the order dated 25.03.1997, passed by the CIT u/s 263 of the I.T. Act. The I.T.A.T. quashed the order dated 25.03.1997 passed by the CIT vide order dated 15.10.1999.

4. The revenue preferred an appeal before this Court against the order dated 15.10.1999, passed by the I.T.A.T. This Court vide order dated 08.07.2009, allowed the appeal holding that the impugned order dated 15.10.1999 of the Tribunal, setting aside the well reasoned order of the Commissioner, was not just and, as such, the order dated 15.10.1999 of the Tribunal was quashed and the order dated 25.03.1997 of the CIT was restored vide order dated 08.07.2009, passed in ITA No. 21 of 2000.

5. The Assistant Commissioner of Income Tax vide a fresh assessment order dated 30.03.1999 added a sum of Rs. 4,93,500/- under provisions of Section 68 of the I.T. Act as an additional income on the ground that 27 creditors had not proved credit worthiness and the credits remain unproved.

6. Thereagainst, an appeal was preferred before the Commissioner of Income Tax (Appeals) (for short "the CIT (A)"). The CIT (A) (II) set aside the order, vide order dated 25.8.1999.

7. The CIT (A) observed that all the creditors appeared before the Assessing Officer (for short "the A.O."), their statements were recorded on oath and all of them have affirmed the fact of giving the said loans to the assessee. They had also indicated their source and financial capacity for making the impugned deposits with the assessee. They further explained the details of repayment of the deposits or interest to them by the assessee. Their complete addresses were also disclosed to the Assessing Officer. It was further observed that the A.O. had sufficient time at his credit to verify the verifiable facts but then neither the deponents have been cross-examined nor was there any evidence brought on record to disprove the truth in the depositions made by them and, as such, the initial burden cast upon the assessee was discharged.

8. The CIT further held that the A.O. disbelieved the depositions made by the creditors and substituted his own personal presumptions to conclude that the creditors did not have adequate sources to make the said deposits. The A.O. without conducting local enquiries or collecting material evidence on record proved the statements of the creditors as false. The assessee and the creditors were confronted after a long lapse of 10 years. Thus, the assessee could not have been called upon to explain the origin and source of the sources. All the creditors were villagers and most of them were agriculturists and because they do not maintain bank a/cs., no adverse inference could be drawn against the assessee. The payment of interest had been accepted as genuine without accepting the receipt of loan. The CIT held that the assessee had satisfactorily

explained the cash credits appearing in the names of various persons, in his books of a/c., thus, he had discharged his burden of proving all the essential ingredients of Section 68 of the I.T. Act. Thus, additions made u/s 68 for Rs. 4,93,500/- was not sustainable in law and the same was accordingly deleted.

9. In further appeal before I.T.A.T. preferred by the revenue, the I.T.A.T. observed that the statements of 27 creditors were recorded on oath by the A.O., where creditors disclosed source of income and file confirmation and affidavits, therefore, the assessee has discharged the onus of proving the capacity of lender, transactions and source of income of lenders. The explanation and statement not found acceptable to the A.O. does not lead to the conclusion that there is undisclosed income in the hands of the assessee. The A.O. has also not brought on record the cogent reasons to falsify the statements and affidavits submitted before the A.O. The A.O. also not rejected the statements and affidavits on valid reasons. Therefore, it was concluded that the A.O. has not applied judicious mind while resorting to addition in passing the order as per direction of CIT u/s. 263 of the Act. The addition made by the A.O. deserves to be deleted.

10. So far as question No. 1 is concerned, the same does not arise for consideration as the order dated 15.10.1999, passed by the I.T.A.T. quashing the order dated 25.03.1997 passed by the CIT, was quashed by this Court on 08.07.2009 in I.T.A. No. 21/2000.

11. With regard to second question of law, Shri Shrivastava, learned counsel appearing for the appellant submits that the order passed by the I.T.A.T. confirming the order passed by the CIT(A) on the ground that the A.O. has not applied his mind is erroneous and perverse. The method of enquiry with regard to creditworthiness and genuineness of creditors found favour with this Court in the order dated 08.07.2009 passed in I.T.A. No. 21/2000. Thus, the finding of the I.T.A.T. is not sustainable in law u/s 68 of the I.T. Act. If the assessee fails to offer explanation about the nature and source thereof, the credit may not be taken as genuineness and the finding of the A.O. was wrongly set aside.

12. On the other hand, Shri Dewangan, learned counsel appearing for the assessee submits that CIT (A) had discussed the issue thoroughly and came to the conclusion that there was no reason for the A.O. to declare the statement of 27 creditors as unworthiness when the A.O. had examined all the creditors and recorded their statements, wherein, all the creditors have confirmed that they have independent source of income and have given loan to the assessee out of their income. The assessee had paid interest on most of these creditors, who had advanced loans to the assessee. The assessee has produced all the creditors for examination before the A.O. on 24.01.1999. The finding of A.O. was not just and proper in view of the observation made by the High Court of Madras in Hastimal (S) v. CIT 49 ITR (Mad). All the credits have been shown in the balance sheet, though the books of a/c. was not maintained.

 

13. Learned counsel appearing for the assessee in support of his submission relied on Commission of Income Tax v. Shiv Shakti Timbers, Commissioner of Income Tax v. P. Mohanakala, Santosh Hazari v. Purshottam Tiwari and Commissioner of Income Tax v. Smt. Anita Chouhan.

14. Reliance of the appellant on the decision of this Court rendered in M/s Mahesh Ispat Udyog v. The Commissioner of Income Tax, Raipur, is not relevant to the case on hand, as in that case the observation of the A.O. that the explanation offered by the assessee was not satisfactory, was affirmed by the CIT (A) as well as the I.T.A.T.

15. In Rajshree Synthetics (P) Ltd. v. Commissioner of Income Tax & Anr., relied on by the appellant, the High Court of Rajasthan, observed that the provisions of Section 68 empowers the A.O. to make enquiry specifically to be satisfied regarding the cash credit. The satisfaction must be derived from the relevant factors on the basis of proper enquiry.

16. In Shiv Shakti Timbers (supra), the High Court of Madhya Pradesh observed that provisions of Sections 68 & 69 of the I.T. Act make it clear where there were entries in the books of accounts, the case shall be covered u/s 68 and if there is no satisfactory explanation, then it will be deemed to be the income of the firm.

17. In P. Mohanakala (supra), the Supreme Court observed that if the findings recorded by the A.O., CIT (A) and the I.T.A.T. were based on the material on record, the High Court should not disturb the concurrent finding of facts.

18. In Santosh Hazari (supra), the Supreme Court observed that if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjecturers of surmises, the appellate Court/the authority is entitled to interfere with the finding of facts.

19. In the case on hand, the CIT (A) has examined all the statements and depositions made by the creditors including their source of income and it was found that the A.O. without having any material on record, contrary to the statements and affidavits filed by the creditors taken a stand that the creditors have failed to prove their creditworthiness and, as such, the transaction was not genuine. The A.O. has not made any other independent enquiry to disprove the creditworthiness of the creditors, as established by affidavits, statements of the creditors disclosing source of income. Thus, the finding of the CIT (A) that the observation of the A.O. with regard to dissatisfaction was on the basis of surmises and conjectures, is just and proper. The I.T.A.T. has affirmed the finding recorded by the CIT (A) and, as such, there is no occasion for this Court to interfere with the finding of facts, which is based on proper appraisal of evidence and on the basis of sufficient records.

20. In view of foregoing, we are of the considered opinion that the findings recorded by the CIT (A) and affirmed by the I.T.A.T. are based on proper appreciation of facts and are not perverse, being correlated with each and every

transaction. Thus, the issue is purely question of facts. No question of law, more so substantial questions of law, as aforestated, arise in the facts of the case.

21. As an upshot, the appeal, being bereft of merit, is liable to be and is hereby dismissed.

22. There shall be no order as to costs.