

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

AFR  
Reserved  
Court No.33

**Income Tax Appeal No.213 of 2007**

Commissioner of Income Tax, Gorakhpur  
and another ..... Appellants

Vs.

Abdul Haseeb, Prop. M.S. J.B. Silk ..... Respondent

With

**Income Tax Appeal No.214 of 2007**

Commissioner of Income Tax, Gorakhpur  
and another ..... Appellants

Vs.

Smt. Fatima Khatoon, Prop.  
M/s F.Z. Zariwala ..... Respondent

With

**Income Tax Appeal No.215 of 2007**

Commissioner of Income Tax, Gorakhpur  
and another ..... Appellants

Vs.

Saidullah, Prop.  
M/s Saidullah & Co. .... Respondent

With

**Income Tax Appeal No.210 of 2007**

Commissioner of Income Tax, Gorakhpur  
and another ..... Appellants

Vs.

Sri Sohrat Ali, Prop.  
M/s Soharat Fabrics, Azamgarh ..... Respondent

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Hon'ble Tarun Agarwala, J.  
Hon'ble Dr. Satish Chandra, J.

(Per: Tarun Agarwala, J.)

(Delivered on 5th September, 2014)

The assessee is engaged in the business of Banarasi sarees on commission basis. For the assessment year 1999-00, the assessee filed a return declaring income of Rs.2,20,920/- along with audited profit and loss account, capital account and balance sheet. In this case, a survey under Section 133 of the Income Tax Act, 1961 (hereinafter referred to as the Act) was conducted at the

business premises of the assessee. While the case was being processed under Section 143(1)(a) of the Act, the case was selected for scrutiny. The books of accounts that was produced were impounded under Section 141(3) of the Act.

It transpires that in the survey, certain loose papers were found and since the same was not produced during the course of assessment proceedings, the books of accounts was rejected and a turnover of Rs.2,50,00,000/- was estimated by applying a percentage of commission of 1.75%. The Assessing Officer on perusal of the balance sheet noticed that the assessee had shown a liability for supply of sarees at Rs.1,32,39,095/-. On this basis, the assessee was directed to produce the weavers for examination on oath. It transpires that nine weavers were produced in the case of the sister concern M/s Saidullah and company in which it was stated that sarees to the Fatima group including the assessee was sold and that these weavers further submitted that since the transactions was more than three years old they could not give the exact outstanding amount but maintained that liabilities were outstanding against the assessee. The Assessing Officer contended that since the liabilities in the balance sheet remained unexplained and was unreliable but since the assessee had sold some of the sarees of the weavers to different customers, the outstanding liabilities was reduced and a sum of Rs.33,81,167/- was added in the income of the assessee as unexplained credit in the balance sheet towards weaver's liability under Section 68 of the Income Tax Act.

The appellant, being aggrieved, filed an appeal, which was allowed. The appellate authority held that the Income Tax Officer committed an error in rejecting the books of accounts without even looking into them only on the ground that some loose papers were found in the course of survey, which could not be produced as it had been set on fire by the rioters due to Shia-Sunni riots. The appellate authority found that the books of accounts could not be rejected in such a cavalier fashion. With regard to the unexplained liability the appellate authority found that the reasons given by the Commissioner of Income Tax in its order under Section 264 of the Act passed in the case of the assessee and his brothers for the assessment year 1998-99, the addition under Section 68 of the Act was liable to be deleted. The appellate authority found that no addition could be made only because the weaver could not remember the exact amount that was to be paid by the assessee to them.

The department, being aggrieved, filed a second appeal before the Tribunal, which was partly allowed. The Tribunal held that the books of accounts were liable to be rejected under Section 145 of the Act but since the book results were better than the earlier years and there was no material on record to show that the assessee had earned more profit than what was shown in the assessment year in question, the Tribunal was not inclined to disturb the book results. The Tribunal also concluded that with regard to the unexplained liabilities the case of the assessee was similar to the case of Mohd. Akhlaq and, consequently, the unexplained liabilities were required to be deleted and that no addition under Section 68 of the Act could be made.

The department, being aggrieved by the order of the Tribunal, has filed the present appeal under Section 260A of the Act.

We have heard Sri Dhahanjay Awasthi, the learned counsel for the appellant and Sri Krishna Agarwal, the learned counsel for the respondent.

The learned counsel for the appellant submitted that the following question of law arises for consideration, namely:

*"Whether on the facts and circumstances of the case, the ITAT is justified in upholding the order of the CIT (A) in deleting the addition of Rs.39,55,224/- made by the Assessing Officer on account of unexplained liabilities?"*

Having heard the learned counsel for the parties at some length, we find that similar issue was raised in the assessment year 1998-99 and a detailed order has been passed by the Commissioner of Income Tax under Section 264 of the Act deleting the unexplained liabilities under Section 68 of the Act. The order under Section 264 of the Act was passed in the case of the assessee as well as in the case of his elder brother Sri Saidullah. The said orders have become final as nothing has been brought on record to indicate that the department had preferred any further appeal. Consequently, we are of the opinion that since the factual controversy was the same, the Tribunal considered the said

decisions as well as in the case of Mohd. Akhlaq, which was also similar in nature and came to the conclusion that since the facts being similar the assessee was entitled for the same relief.

Nothing has been indicated by the learned counsel that the case of the assessee in the present assessment year is different to the case of the appellant and his brother Saidullah in the previous assessment year 1999-00 nor anything has been brought on record to indicate that the findings of the Tribunal that the case of the assessee was not similar to the case of Sri Mohd. Akhlaq. We are of the opinion that the order of the Tribunal does not require any interference.

Before parting, it was submitted by the learned counsel for the assessee that an entry of liability cannot be added under Section 68 of the Act. We find that the unexplained liabilities was added by the Assessing Officer under Section 68 of the Act, which has now been deleted by the Tribunal. The provision of Section 68 is extracted hereunder:

**"Cash credits.**

*68. Where any sum is found credited in the books of an 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."*

The learned counsel for the appellant submitted that an entry of liability in the balance sheet can also be added in the income of the assessee under Section 68 of the Act. In support of his submission, the learned counsel has placed reliance in Smt. Rekha Krishna Raj Vs. Income Tax Officer, Ward-I, Hospet, (2013) 33 Taxmann.com 64 wherein the Karnataka High Court held that the essence of the word "cash credit" under the heading of Section 68 does not mean that credit should be cash credit. The Court held that it may be a cash credit or it may be a credit representing the value of the supplies made by the suppliers on credit. The essential requirement is, that credit should be shown in the account that would satisfy the requirement of Section 68 of the Act. Once the credit so mentioned in the section was found to be not supported by any acceptable evidence than the sum so credited would be charged to income tax as the income of the assessee. The learned counsel consequently, contended that Section 68 of the Act not only includes cash credit but may also include a credit representing the value of the supplies made by the suppliers on credit and, consequently, the unexplained liability could be added to the income of the assessee, if no satisfactory explanation was given.

In Sundar Lal Jain Vs. Commissioner of Income Tax, Lucknow 117 ITR 316 a Division Bench of this Court held that the books maintained by a firm should show cash credit entry and the firm's explanation should be found unsatisfactory only then Section 68 would entitle the Income Tax Officer to include the amount of entry in the income of the assessee's firm.

In Commissioner of Income Tax Vs. P. Mohankala, 2007 (291) ITR 298 the Supreme Court explained the nature and the scope of Section 68 of the Act, namely:-

*"The question is what is the true nature and scope of section 68 of the Act ? When and in what circumstances would section 68 of the Act come into play ? A bare reading of section 68 suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be of a sum during the previous year; and the assessee offers no explanation about the nature and source of such credit found in the books; or the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory, it is only then the sum so credited may be charged to income tax as the income of the assessee of that previous year. The expression "the assessee offers no explanation" means where the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. It is true the opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion."*

In Sumati Dayal Vs. Commissioner of Income Tax, 214 ITR 801 the Supreme Court held:-

*"..... But, in view of section 68 of the Act, where any sum is found credited in the books of the*

*assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such a case there is, prima facie, evidence against the assessee, viz., the receipt of money, and if he fails to rebut it is the said evidence being unrebutted, can be used against him by holding that it was a receipt of an income nature. While considering the explanation of the assessee the Department cannot, however, act unreasonably."*

From the aforesaid decision, it is clear that Section 68 of the Act suggests that there has to be a credit of an amount in the books maintained by an assessee and such credit would be charged to income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof. The expression "any sum is found credited in the books of the assessee" means all entries on the credit side as well as on the debit side in the books of account. The word "credited" in relation to "any sum" does not mean an entry only on the credit side but would also include any entry on the debit side as well. The word "credited" means an entry of a sum in the books of account.

Consequently, for the reasons stated aforesaid, we do not find any substantial question of law arising in this appeal. The deletion made by the Tribunal does not require any interference. In the result, all the appeals are dismissed.

Date:5.9.2014

Bhaskar

(Dr. Satish Chandra, J.) (Tarun Agarwala, J.)