

**IN THE INCOME TAX APPELLATE TRIBUNAL, ALLAHABAD BENCH, ALLAHABAD
(THROUGH VIRTUAL COURT)**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 32/ALLD/2020
Assessment Year: 2015-16

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| Mr. Malay Prasad of Income Tax, Circle-2 Allahabad-211001, U.P. 205, Ganesh Castle, Gur Mandi Allahabad-211003,U.P. PAN: AOQPP4749B (Appellant) | v. The Assistant Commissioner Smt. Namita S. Pandey,CIT- DR |
| None | |
| Appellant by: 24. 02. 2021 | |
| Respondent by: 10.03. 2021 | |
| Date of hearing: | |
| Date of pronouncement: | |

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No. 32/Alld/2020, is directed against appellate order dated 19.12.2019 in Appeal No. CIT(A), Allahabad/10226/2017-18 passed by learned Commissioner of Income Tax (Appeals,)Allahabad(hereinafter called "theCIT(A)"),for assessment year(ay)2015-16, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 23.12.2017 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3)of the Income-tax Act, 1961 (hereinafter called "the Act") for ay: 2015-16.We have heard learned CIT-DR through video conferencing mode through virtual court, while none appeared for assessee.

2. The grounds of appeals raised by assessee in memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad (hereinafter called “ the tribunal”) reads as under :

“1.That in any view of the matter , the order passed under Section 143(3) dated 23.12.2017 is bad both on the facts and in law and his action as confirmed by the CIT(A) by passing an ex-parte decision without providing an opportunity to the assessee is highly unjustified within facts and circumstances of the case.

2. That in any view of the matter, both the lower authorities failed to provide an opportunity to the assessee before passing order and also failed to consider the fact, evidence , replies etc. , hence the order of the lower authorities are liable to be cancelled.

3. That in any view of the matter, the assessee claimed the loss of Rs. 2,58,66,234.00 from trading activity of shares and in support of loss books of accounts were produced required explanations and details were furnished in compliance to their notices but the O failed to consider the loss figure while computing the income.

4. That in any view of the matter , the lower authorities failed to set off the declared loss against the addition under section 68 made by the AO and confirmed by CIT(A) , the loss claimed is liable to be set off against the addition under section 68 but both the authorities kept silent and as a result, the assessee is debarred from justice.

5. That in any view of the matter, addition of Rs. 3,22,68,500.00 made by without the provision of section 68 by AO and his action as confirmed by CIT(A) is not correct, the addition under section 68 is liable to be deleted when the parties are genuine and the assessee fulfilled the required condition under section 68 of the Act.

6. That in any view of the matter , charge of penal interest under section 234A , 234B and 234C of the Act is highly unjustified.

7 .That in any view of the matter, the assessee reserves its right for any fresh ground , addition , alter , delete before hearing of the appeal. And a reasonable opportunity of being heard should be given before taking any coercive action against the assessee.

It is therefore respectfully prayed that the assessment order may kindly be revised accordingly and relief be allowed.”

3. The brief facts of the case are that the assessee e-filed his return of income with department declaring total income of Rs. Nil and current year loss of Rs.

2,66,78,299/- on 29.03.2017. The case of the assessee was selected by Revenue for limited scrutiny by CASS, for the following reasons:

- a) Whether sundry creditors are genuine.
- b) Whether the investment and income relating to commodity transactions are duly disclosed.
- c) Whether the investment and income relating to securities (derivative) transactions are duly disclosed.
- d) Whether deduction claimed on account of interest expenses is admissible.

3.2 Statutory notices u/s 143(3) and 142(1) of the 1961 Act were issued by AO from time to time to assessee, which as per Revenue were duly served on assessee. The AO in view of limited scrutiny asked assessee to furnish details as to sundry creditors, commodity, derivative transactions and interest expenses claimed by assessee. The assessee submitted part replies but did not furnished complete replies as sought by AO despite notices issued by AO requesting to furnish complete details. The assessee is a legal professional and has also earned income from on-line trading in futures and options as well other sources. The assessee has shown loss on share trading and other business of Rs.2,85,66,234 and in ITR , the assessee claimed Rs. 2,66,78,299/- as current year loss to be carried forward.

3.3 The AO during the course of assessment proceedings observed from the Balance Sheet and ledger accounts submitted by the assessee that the assessee has shown following sundry creditors:-

| S.No. | Creditors Name from Balance Sheet | Closing Balance(Rs.) as shown in Balance Sheet | Fresh Credit in F.Y. 2014- 15 noted from ledger |
|-------|--------------------------------------|---|--|
| 1. | Anuj Sonkar | 2,07,30,500 | 2,55,48,500 |
| 2. | Chhatoo Prasad | 22,00,000 | 22,00,000 |

| | | | |
|----|-------------------|-----------|-----------|
| 3. | Krishna Mohan | 13,00,000 | 13,00,000 |
| 4, | Siddharth Agrawal | 68,11,500 | 68,11,500 |

3.4The AO asked the assessee to discharge its initial burden of proof regarding identity and credit worthiness of the creditors and genuineness of transactions. The assessee submitted confirmations of Shri Chhatoo Prasad and Shri Krishna Mohan but did not submit confirmation of Shri Anuj Sonkar and Shri Siddharth Agrawal. The assessee did not submit copies of ITR of any of the aforesaid creditors. The assessee did not submitted bank statements or any other original records regarding financial transactions with the above mentioned creditors. The assessee did not produce any of the aforesaid parties for examination by the AO. The assessee also did not explain the details of the purposes of transactions. The assessee instead of discharging its primary onus as is cast u/s 68 of the 1961 , requested AO to summon above parties for necessary verification. The AO on the request of assessee summoned Shri Anuj Sonkar by issuing summons u/s 131(1) of the 1961 Act. The said Shri Anuj Sonkar appeared before the AO and denied having any financial transactions with the assessee. The AO also recorded his statement in which he categorically denied to have any financial transactions with the assessee. The said statement of Shri Anuj Sonkar is reproduced by AO in his assessment order. The copy of said statement of Shri Anuj Sonkar was supplied by AO to the assessee for rebuttal and show cause notice was issued by AO to assessee to explain as to why additions be not made by invoking provisions of Section 68 of the 1961 Act. The assessee submitted in rebuttal that said Shri Anuj Sonkar has purposefully denied the financial transactions with the assessee, but no record/evidences as per AO was produced by assessee to substantiate his stand. The assessee also did not ask for cross examination of said Shri Anuj Sonkar. The AO from the bank statements of the assessee maintained with ICICI Bank (account numbers 628201540419 and 30901515693) and also from ledger account

of Shri Anuj Sonkar observed that there were cash deposits in the aforesaid bank accounts to the tune of Rs. 2,51,49,500/- , which were claimed to have been deposited by creditor namely Shri Anuj Sonkar on various dates. The details are reproduced by AO in its assessment order.

3.5 Similarly, the AO observed from ledger account of Shri Siddharth Agarwal along with assessee's bank accounts with ICICI that there was cash deposited in the aforesaid bank accounts to the tune of Rs. 67,20,000/- , which were claimed to have been deposited by creditor namely Shri Siddharth Agarwal on various dates. The details are reproduced by AO in its assessment order.

3.6 The AO also observed that so far as creditor Shri Chhatoo Prasad Gupta and Shri Krishna Mohan is concerned the payments were all received by assessee via bank NEFT/RTGS and confirmations from these two creditors were filed by the assessee. The AO accepted these two creditors and no additions to the income of the assessee was made by AO to that effect, while framing assessment u/s 143(3) of the 1961 Act.

3.7 The AO held that the two creditors namely Shri Anuj Sonkar and Mr. Siddharth Agarwal are bogus . The AO observed that Mr. Anuj Sonkar has himself denied to have any financial transactions with the assessee. So far as Mr. Siddharth Agarwal is concerned, the AO observed that the assessee has not filed any confirmation and ITR of Shri Siddharth Agarwal and the AO held that this creditor is bogus and the money is assessee's own money which is wrongly represented as trade payable. The AO made additions of sum of Rs. 3,22,68,500/- (Shri Anuj Sonkar Rs. 2,55,48,500/- and Shri Siddharth Agarwal Rs. 67,20,000/-) u/s 68 read with Section 115BBE of the 1961 Act, vide assessment order dated 23.12.2017 passed u/s 143(3) of the 1961 Act.

4. Aggrieved by assessment framed by the AO u/s 143(3) of the 1961 Act, the assessee filed first appeal with Id. CIT(A). The assessee did not appear before learned CIT(A) despite several notices for hearing issued by Id. CIT(A). It is recorded in the appellate order dated 19.12.2019 passed by Id. CIT(A) that as many as six notices were issued and served to assessee by Id. CIT(A) for hearing, dated 28.01.2019, 24.07.2019, 22.08.2019, 25.09.2019, 29.10.2019 and 11.12.2019, fixing date of hearing for 12.02.2019, 08.08.2019, 03.09.2019, 03.10.2019, 05.11.2019 and 17.12.2019, but the assessee did not appear before Id. CIT(A). Since, the assessee completely failed to comply with the notices for hearing issued by Id. CIT(A) and did not entered appearance, the Id. CIT(A) was pleased to dismiss appeal filed by the assessee, vide appellate order dated 19.12.2019, by holding as under:-

“Decision:

Notices dated 28.01.2019, 24.07.2019, 22.08.2019, 25.09.2019, 29.10.2019 and 11.12.2019 fixing the date for compliance on 12.02.2019, 08.08.2019, 03.09.2019, 03.10.2019, 05.11.2019 and 17.12.2019 were issued through official Income Tax Business Application (ITBA network)/ speed post. These notices were served on the e-mail address/ speed post submitted by the applicant while filing the appeal. No written submission or any paper books has been filed in support of any of the grounds of appeal in this office. It appears that assessee is not interested in pursuing his own appeal. The case is being decided in absence of any submission or attendance by the assessee or his/her A.R, On each of these days when the case was fixed for hearing, it is seen that the assessee has remained absent, despite the fact that notice for the specific dates of hearing have consistently been sent to the address provided by the assessee in its memo of appeals. In these circumstances, it can be safely presumed that the assessee has nothing to submit any material in support of grounds of appeal.

The only addition made by AO is u/s 68 of Rs. 3,22,68,500/- on account of cash receipts from two persons - Shri Anuj Sonkar in whose name appellant deposited cash of Rs.2,55,48,500/- and

another person Shri Siddharth Agrawal in whose names appellant deposited cash of Rs,67,20,000/-in his ICICI bank accounts No-628201540419 & 30901515693.

Appellant has not discharged the initial burden of proof u/s 68 of IT Act and no material has been placed on records regarding these two persons to prove creditworthiness and genuineness of these cash deposits recorded in his books of accounts. Appellant has admittedly not filed any confirmations, did not submit any ITR or bank-statements of both these persons. Hence it is a fact that the appellant did not explain the nature and source of these cash transactions either before AO or during appellate proceedings. AO examined Shri Anuj Sonkar on oath on the request of the appellant who appeared and stated on oath that he did not deposit any cash in appellant's bank account. He categorically denied the 'trade payables' as shown in his name in assessee's balance sheet AO on 20-12-2017 gave a copy of the statement of Anuj Sonkar to appellant as an opportunity to give his explanation who did not request for any cross-examination. Appellant only submission is that these persons themselves deposited cash into his bank accounts. But appellant has failed to substantiate his claims. He failed to produce the confirmations of parties and parties themselves, rather Sh. Anuj Sonkar has categorically denied any financial transactions ever done with appellant. No confirmations and ITR of Sri Siddharth Agrawal are submitted before AO. It is also clear that there is no violation of Principle of Natural justice done by AO. In view of above facts AO correctly held these transactions as bogus as the nature and source of such cash deposits were not explained satisfactory in the opinion of AO, Hence assessment order is confirmed These grounds are dismissed.

Ground nos. 8 to 10 are general in nature, hence not adjudicated upon.

Appeal is dismissed”

5. Again Aggrieved, the assessee has filed second appeal with tribunal. The appeal was received by post by Registry on 12.02.2020. Defect memo was issued by Registry to the assessee asking to supply certified copy of appellate order passed by Id. CIT(A). The assessee did not comply with the defect memo issued by Registry and certified copy of Id. CIT(A) appellate order was not supplied to the tribunal. The department has supplied certified copy of Id. CIT(A) order which is placed in file. The notice dated 08.01.2021 was issued by Registry of the tribunal to the assessee fixing date for

hearing on 20.01.2021 . The assessee did not appear before the Bench when the appeal was called for hearing through virtual mode on 20.01.2021 .The Bench on 20.01.2021 directed Registry to issue notice to the assessee through RPAD and also by email and the next date of hearing was fixed before the Bench on 24.02.2021. The Registry sent notices by RPAD on 21.01.2021 vide number RU008672957IN and email was also sent by Registry on 20.01.2021 at 5.55PM. The notice sent by RPAD was received back by tribunal from postal authorities with the remark 'Refused'. Thus, the assessee has refused to receive postal envelop containing notice for hearing, dated 20.01.2021 , while the said notice dated 20.01.2021 was also sent through email on 20.01.2021 at 5.55 PM by Registry at registered email id of the assessee viz. malayprasad2004@rediffmail.com , which email was not returned back and thus was duly served to the assessee. When this appeal came up for hearing before the Bench on 24.02.2021, the assessee did not entered appearance before the Bench. We have heard ld. CIT-DR through videoconferencing mode through virtual court and now proceed to adjudicate this appeal. The ld. CIT-DR drew attention of the Bench to grounds of appeal raised by the assessee, assessment order passed by AO and appellate order passed by ld. CIT(A). The ld. CIT-DR drew our attention to provisions of Section 115BBE AND Section 68 of the 1961 Act. Our attention was also drawn to provisions of Sub-section (2) of Section 115BBE of the 1961 Act. The ld. CIT-DR prayed that keeping in view entire facts and circumstances of the case, the additions made to the income of the assessee to the tune of Rs.3,22,68,500/- be upheld.

6. We have considered contentions of ld. CIT-DR, carefully perused the material on record, while none appeared on behalf of the assessee. Before proceeding further, it is important to reiterate the conduct of the assessee before all the authorities. The assessee did not file complete details before AO during the course of assessment proceedings. The assessee did not entered appearance before ld. CIT(A) despite several notices served on assessee. The assessee did not appear before the Bench

when this appeal was called for hearing on 20.01.2021 and 24.02.2021. Infact the assessee refused to accept postal envelop containing notice of hearing. The assessee was called upon by Registry of tribunal to remove defect as appellate order of Id. CIT(A) was not certified , but the assessee did not comply with the said defect memo. The Revenue has rendered assistance to the tribunal by supplying certified copy of appellate order passed by Id. CIT(A). We have elaborated conduct of the assessee in detail before all the statutory authorities in preceding para's of this order and the same is not repeated again.

6.2 The brief facts of the case are that the assessee is in legal profession. The assessee has, inter-alia, shown income from online trading in futures and options as well other sources. The assessee has claimed loss on share trading and other business to the tune of Rs. 2,85,66,234/- in the return of income filed with the Revenue. The assessee had claimed Rs. 2,66,78,299/- as current year loss to be carried forward. The assessee has shown following sundry creditors in his Balance Sheet and ledger accounts:-

| S.No. | Creditors Name from Balance Sheet | Closing Balance(Rs.) as shown in Balance Sheet | Fresh Credit in F.Y. 2014- 15 noted from ledger |
|-------|--------------------------------------|---|--|
| 1. | Anuj Sonkar | 2,07,30,500 | 2,55,48,500 |
| 2. | Chhatoo Prasad | 22,00,000 | 22,00,000 |
| 3. | Krishna Mohan | 13,00,000 | 13,00,000 |
| 4, | Siddharth Agrawal | 68,11,500 | 68,11,500 |

6.3 The assessee submitted confirmation from Mr. Chhatoo Prasad Gupta and Mr. Krishna Mohan before AO , and payments from both these parties were received through banking channel vide NEFT/RTGS and the Revenue has accepted these sundry creditors and no additions were made by AO . Thus, there is no dispute so far as these two creditors are concerned.

6.4 The dispute has arisen with respect to two sundry creditors namely Mr. Anuj Sonkar and Mr. Siddharth Agarwal, wherein the AO made additions to the tune of Rs. 2,55,48,500/- and Rs. 67,20,000/- respectively being fresh credits allegedly received by assessee during the year from the aforesaid two creditors, in cash. The aforesaid amounts aggregating to Rs. 3,22,68,500/- was found credited by way of fresh cash deposits in two ICICI Bank accounts maintained by assessee bearing numbers 628201540419 and 30901515693. The details of cash deposits with dates are extracted by AO in its assessment order. The assessee claimed that the aforesaid cash deposits were made directly by aforesaid two sundry creditors in the bank accounts of the assessee and the assessee reflected the said sundry creditors in his books of accounts in the ledger account of these two sundry creditors. The assessee did not submitted copies of ITR of these two sundry creditors nor confirmations from these two sundry creditors were submitted by assessee, before any of the authorities including before us. The assessee did not explain the details of purpose of the transactions with these two creditors. The assessee did not produce these parties for examination. The assessee instead of discharging its primary onus as is cast u/s 68 of the 1961 Act to prove identity and creditworthiness of the parties and genuineness of the transaction, instead asked the AO to summon these parties for examination. The AO issued summons u/s 131 of the 1961 Act to Mr. Anuj Sonkar who stated before the AO that he does not have any financial transactions with the assessee. Thus, Mr. Anuj Sonkar denied to have any financial transactions with the assessee during the financial year 2014-15 (ay: 2015-16). The assessee never asked for cross examination of Mr. Anuj Sonkar. The AO treated both these creditors namely Mr Anuj Sonkar and Mr. Siddharth Agarwal as bogus creditors and it was held that the amount of cash deposits in assessee's bank account is infact assessee's own money which is to be brought to tax. The additions to the income to the tune of Rs. 3,22,68,500/- towards alleged cash deposits in assessee's ICICI Bank account were made by AO u/s 68 read with Section 115BBE of the 1961 Act. The assessee did not appear before Id. CIT(A)

and the appeal filed by assessee was dismissed by Id. CIT(A) . Before us, also none appeared on behalf of the assessee when this appeal was called for hearing from time to time and no paper book nor written submissions etc. has been filed by the assessee. Before proceeding further, it is important to reproduce provisions of Section 68 of the 1961 Act as was applicable for relevant year, as under:

“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 :

[Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]”

As could be seen from provisions of Section 68 of the 1961 Act that if any sum is found credited in the books of accounts maintained for any previous year , and the assessee offers no explanation about the nature and source thereof or the explanation offered by the assessee is not , in the opinion of AO , satisfactory , the sum so credited may be charged to income-tax as the income of the assessee for that previous year. There has been fresh cash deposits in the bank accounts of the assessee maintained with ICICI Bank to the tune of Rs. 3,22,68,500/- in the year under consideration which is sought to be explained by assessee to have been received from Mr. Anuj Sonkar and Mr.

Siddharth Agarwal . The said amount is credited by assessee in its books of accounts in the ledger account of these two creditors. Mr. Anuj Sonkar has in statement recorded before AO has denied to have any financial transactions with the assessee during the year under consideration. The assessee has not filed copies of income tax returns/statement of affair/Balance Sheets of these two creditors nor the assessee has filed confirmations from these parties. The identity of Mr. Anuj Sonkar is proved as he appeared before AO and furnished his Aadhar Card , but he categorically denied to have any financial transactions with the assessee during the year under consideration. The assessee did not asked for cross examination of Mr. Anuj Sonkar, The assessee could not prove identity of Mr. Siddharth Agarwal nor creditworthiness could be proved as neither copy of income tax return nor copies of Balance Sheet/Statement of affair was filed by assessee. The assessee also could not prove the purpose of granting these alleged cash amounts and even terms and conditions of these alleged credit entries were not brought on record by assessee, thus genuineness of these transactions could not be proved. Thus, in nut-shell the assessee did not discharged primary onus as is cast by the 1961 Act within the provisions of Section 68 of the 1961 Act. It is only when the primary onus is discharged by tax-payer , then the onus will shift to Revenue to bring on record cogent material to bring to tax income by way of cash credit within provisions of Section 68 of the 1961 Act which section creates a deeming fiction wherein cash credits which are not satisfactorily explained are deemed as income of the taxpayer , but in the instant case the assessee has miserably failed to discharge primary onus as is cast u/s 68 of the 1961 Act with respect to cash deposits in his bank accounts with ICICI bank to the tune of Rs. 3,22,68,500/- allegedly from these two creditors.

6.5 Reference is also drawn to decision of Hon'ble Supreme Court in the case of Sumati Dayal v. CIT reported in (1995) 214 ITR 801(SC), wherein Hon'ble Supreme Court held as under:

“4. It is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee - Parimiseti Seetharamamma's case (supra) at p. 536. 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 case there is, prima facie, evidence against the assessee, viz., the receipt of money, and if he fails to rebut, the said evidence being un rebutted, 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 - Sreelekha Banerjee's case (supra) at p. 120.”

6.6 Reference is also drawn to the decision of Hon'ble Supreme Court in the case of CIT v.

Durga Prasad More (1971) 82 ITR 540(SC), wherein Hon'ble Apex Court held as under:

“8. Now we shall proceed to examine the validity of those grounds that appealed to the learned judges, (it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, other wise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.

9. Now, coming to the question of onus, the law does not prescribe any quantitative test to find out whether the onus in a particular case has been discharged or not. It all depends on the facts and circumstances of each, case. In some cases, the onus may be heavy whereas, in others, it may be nominal. There is nothing rigid about it. Herein the assessee was receiving some income. He says that it is not his income but his wife's income. His wife is supposed to have had two lakhs of rupees neither deposited in banks nor advanced to others but safely kept in her father's safe. Assessee is unable to say from what source she built up that amount. Two lakhs before the year 1940 was undoubtedly a big sum. It was said that the said amount was just left in the hands of the father-in-law of the assessee. The Tribunal disbelieved the story, which is, prima facie, a fantastic story. It is a story that does not accord with human probabilities. It is strange that the High Court found fault with the Tribunal for not swallowing that story. If that story is found to be unbelievable as the Tribunal has found, and in our opinion rightly, then the position remains that the

consideration for the sale proceeded from the assessee and, therefore, it must be assumed to be his money.”

6.7 Thus, keeping in view entire factual matrix of the case as detailed above, we hold that the authorities below have rightly invoked provisions of Section 68 of the 1961 Act and held that cash deposits in the assessee's ICICI Bank accounts to the tune of Rs. 3,22,68,500/- was the money of the assessee which was deposited by assessee in his bank accounts, during the year under consideration , and these two creditors namely Mr. Anuj Sonkar and Mr. Siddharth Agarwal in whose name the assessee has allegedly shown to have credited these amounts are bogus creditors. We uphold the orders of authorities below and hold that Section 68 was rightly invoked in the instant case. We order accordingly

6.8The AO have also invoked provisions of Section 115BBE read with Section 68 of the 1961 Act and denied the set off of loss of current year to the tune of Rs. 2,66,78,209/- against the assessed income. The provisions of Section 115BBE as were applicable during the relevant year are reproduced hereunder:

“[Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

115BBE. (1) Where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent; and

(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).]”

6.9 We have observed that the assessee has also challenged vide ground number 3 before Id. CIT(A) as to allowability of set off of loss of current year against income assessed to tax by AO by invoking provisions of Section 68 of the 1961 Act , as the AO had denied the set off of current year loss owing to provision of Section 115BBE of the 1961 Act. The ground number 3 raised by assessee before Id. CIT(A) is reproduced hereunder:

“ The loss on the basis of closed books of accounts should have been allowed.

3. That, in view of the matter, the loss as claimed by the assessee on the basis of closed books of accounts is considered true and correct but while calculating the income , benefit/set off was not allowed which action of the AO is highly unjustified on the facts of the case.

The Id. CIT(A) has not adjudicated on the applicability of Section 115BBE as was in statute at that time, while adjudicating appeal of the assessee. The decision of Id. CIT(A) is reproduced in preceding para's of this order . The assessee being aggrieved has raised ground number 4 in memo of appeal filed with tribunal agitating that the authorities are silent as to set off of current year loss against income charged to tax u/s 68 of the 1961 Act. Thus, in the fitness of things, interest of justice and fair play to both the parties , we are restoring this issue of invocation of Section 115BBE of the 1961 Act by AO for denying set off of current year loss against income assessed u/s 68 of the 1961 Act to the file of learned CIT(A) for fresh adjudication and to pass speaking and reasoned order as to applicability of Section 115BBE read with Section 68 on the facts and circumstances of the assessee's case before denying set off of current year loss against income charged to tax u/s 68 of the 1961 Act, in set aside remand proceedings. Needless to say that the learned CIT(A) shall grant proper and adequate opportunity of being heard to the assessee in denovo remand proceedings in accordance with principles of natural justice in accordance with law and the

assessee will be allowed to file evidences in his defense which shall be admitted by ld. CIT(A) to be adjudicated on merits in accordance with law. We order accordingly.

6.10 Thus in nut-shell , we have upheld invocation of provisions of Section 68 of the 1961 Act by authorities below in making additions to the income to the tune of Rs. 3,22,68,500/- as unexplained cash credit, so far as invocation of Section 115BBE of the 1961 Act is concerned, the issue is restored to the file of ld. CIT(A) for adjudication. We order accordingly.

7. In the result, appeal filed by the assessee with tribunal in ITA No. 32/Alld./2020 for ay: 2015-16 is partly allowed for statistical purpose.

Order pronounced on 10/03/2021 at Allahabad.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 10/03/2021

Copy forwarded to:

1. Appellant –Shri Malay Prasad, Allahabad
2. Respondent – ACIT, Circle-2,Allahabad, U.P.
3. CIT(A) –Allahabad, U.P.
4. CIT
5. DR -

By order
Assistant Registrar