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HIGH COURT OF CHHATTISGARH, BILASPUR

TAX Case No. 24 of 2011

- Pawan Kumar Agrawal, S/o Shri Shkhdeo P. Agrawal, Main Road, Baradwar, District – Champa (C.G.)

---- Appellant

Versus

- Income Tax Officer, Ward 2(2) Bilaspur.

--- Respondent

For Appellant	:	Mr. Neelabh Dubey, Advocate
For Respondent	:	Ms. Naushina Afrin Ali, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

04.04.2017

1. This appeal is under Section 260-A of the Income Tax Act, 1961 (herein after referred to as 'the Act') filed by the Assessee.

2. We have heard learned Counsel for the Appellant Assessee and learned Counsel for Revenue.

3. The Assessing Authority passed an order of assessment including certain amounts. That was challenged by the Assessee before the First Appellate Authority. The said authority considered the contention of the parties and held that the Assessee has discharged his burden under Section 68 of the Act to the extent of the burden stood on the Assessee. The First Appellate Authority further held that the credit transaction could have been established

from the Income Tax record of the lenders and in case of any doubt the same could have been verified in terms of section 131 or 133(6) of the Act. To arrive at such conclusion the First Appellate Authority relied upon a precedents referred to in its decision. Weighing the totality of the case, the First Appellate Authority came to the opinion that the Assessee has discharged the primary onus that lay on it in terms of Section 68 of the Act and therefore the addition of Rs.15,22,000/- was not sustainable as per law or on facts. Since, the Revenue had not discharged its resultant corollary onus.

4. The Tribunal reversed the decision of the First Appellant Authority at the instance of the Revenue. Hence this Appeal. Admitting this Appeal, this Court formulated the following substantial question of law:

> "Whether the formation of opinion by the Assessment Officer under Section 68 of the Income Tax Act, 1961 in a subjective manner will include collateral consideration of any closed assessment?"

5. Heard the learned Counsel for the Appellant and the learned Counsel for the Revenue.

6. Section 68 of the Act provides a process by which the Assessing Authority has to reach at transactions of those persons with whom the Assessee had entered into transactions in which the particular assessee is involved, to conclude the assessment on the basis of the transactions referable to those persons. Such concluded assessments will have a bearing on the acceptability or otherwise the plea set up by the Assessee in the course of proceeding under Section 68 of the Act. So much so, notwithstanding, the finality attained by the assessment proceeding in relation to the lender, the borrower is entitled to say that the contents of the returns of the lender and

the matters emanating therefrom have to be looked into. In that view of the matter, the First Appellate Authority was justified, also on the basis of the judicial precedents referred by it, in entering the finding that the Assessee had discharged his primary onus under Section 68 of the Act. That having been done, the First Appellate Authority was fully justified in taking the view that it was open to the department to take recourse of Section 131 or Section 133(6) of the Act if they were to further proceed. That not having done so, the First Appellate Authority was within its jurisdiction to conclude on facts and law, in favour of the Assessee. The Appellate Tribunal, in the Appeal at the instance of the Revenue, has not rendered the decision holding the finding of the First Appellant Authority regarding applicability of Sections 131 and 133(6) of the Act, as the case may be, is erroneous in law. So much so, the impugned decision of the Tribunal stands faulted on a substantial question of law referable to the contents of Section 68 of the Act and the failure of the Revenue to take recourse to Sections 131 and 133(6) of the Act, in the case of the Assessee, where the primary onus under Section 68 of the Act stood discharged by the Assessee.

7. For the foregoing reasons, we are of the view that the impugned order of the Tribunal has to be set aside, answering the question of law, framed and quoted above, in favour of the Assessee. We do so.

8. Resultantly, the impugned order of the Tribunal is set aside and the appeal is allowed accordingly.

Sd/-	**Sd/-**
(Thottathil B. Radhakrishnan)	**(P. Sam Koshy)**
Chief Justice	**Judge**

Kishore