

No addition of cash credit under sec. 68 if all deposits routed via banking channel and depositors were having PAN

Summary – The High Court of Gujarat in a recent case of Shanti Enterprise., (the Assessee) held that where deposits was made with assessee represented booking amount received toward construction and same was done through banking channel and copies of account of depositor were duly filed, section 68 would not apply

Facts

- The assessee partnership firm was engaged in construction of a market in joint venture. The assessee declared *nil* income which was processed under section 143(1).
- Later on, the Assessing Officer found that the assessee had shown receipts from booking deposit. Aforesaid entries were not found to be genuine by the Assessing Officer and he issued demand notice. The Assessing Officer determined the total income enhancing income and also directed initiation of penalty proceedings to levy penalty under section 271(1)(c).
- On appeal, the said penalty was set aside partly by the Commissioner (Appeals) in favour of the assessee.
- Further appeal to the Tribunal was dismissed by order.
- On the revenue's appeal:

Held

- The Tribunal has observed that all the aforesaid 23 persons (except one), from whom deposits were received are the income-tax assesseees. They are having PAN numbers. The amounts have been received through the banking channels. Copies of accounts of each depositor were duly filed. The assessee has duly explained in respect of each of the depositors and the circumstances under which deposits were received by the assessee. The deposited money represents the amounts towards booking received initially through Siddharth Corporation along with which the assessee has engaged in joint venture of developing the project on the land which was allotted from Surat Municipal Corporation. This is an admitted fact that the assessee has not carried out any business during the year under consideration. No evidence on record has been brought that the assessee had earned income during the year. It is rightly found by the Tribunal that the assessee has duly discharged its burden of proof. In the case of *Dy. CIT v. Rohini Builders* [\[2002\] 256 ITR 360/\[2003\] 127 Taxman 523 \(Guj.\)](#), amounts were received by the assessee by account payee cheques and initial burden of proving the credits was discharged. It is held that the assessee need not prove the source of the credits and the fact that the explanation was not satisfactory would not automatically result in deeming amounts as income of the assessee. Therefore, the view taken by the Tribunal is just and

proper and it is not required to be interfered with. In that view of the matter, question posed for our consideration is answered in favour of the assessee and against the department. Accordingly, this Tax Appeal is dismissed.