

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.277/Ind/2017
Assessment Year: 2013-14**

Shri Dinesh Goswami 190-C, Sarvadharam Kolar Road Bhopal (Appellant)	बनाम/ Vs.	DCIT Bhopal (Revenue)
P.A. No.AEDPG8897A		

Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, A.Rs.
Respondent by	Smt.Ashima Gupta, DR
Date of Hearing:	26.02.2019
Date of Pronouncement:	28.02.2019

आदेश / O R D E R

PER V. DURGA RAO, J.M:

This appeal filed by the assessee is directed against order of the CIT(A)-3, Bhopal dated 16.2.2017 for the assessment year 2013-14.

2. Facts are in brief that assessee is an individual. A Search action was carried out u/s 132 of the Income Tax Act, 1961 (hereinafter called as 'the Act') in the business premises of the assessee on 30.11.2012. The assessee is an employee of M/s. Amrit Group having salary income from M/s. Amrit Homes Pvt. Ltd. and M/s. Amrit Colonizer Pvt. Ltd. The assessee is working as a liaison officer in M/s. Amrit Group. Assessee is also a member of M/s. Amrit Group, Bhopal. The group is engaged in the business of Builders and Developers. The flagship concerns of the group are M/s. Amrit Homes Pvt. Ltd. and M/s. Amrit Colonizers Pvt. Ltd. The main persons of the group are Shri Dilip Singh Bindra, Shri Prit Singh Bindra and Shri Mahendra Ahuja. Subsequent to the search, a notice u/s 153A of the I.T. Act dated 3.6.2013 was issued to the assessee to file returns of income for A.Y.s 2007-08 to 2012-13. In response to the notice u/s 153A of the Act,

the assessee has filed returns of income for A.Ys 2007-08 to 2013-14 on 14.10.2014 and regular return was filed for A.Y. 2013-14 on 29.3.2014. In the assessment order, the A.O. has noted that during the course of search and seizure operations, it was found in locker No.44, Bank of India, Kolar Road, Bhopal in the name of the assessee and his wife Smt. Goswami, an amount of Rs.9,25,000/-. The A.O. has asked the assessee to explain the sources of the amount found in the locker No.44 during the course of search. It was submitted by the assessee by written reply dated 9.10.2014 that cash found of Rs.9,25,000/- at locker No.44, Bank of India, Kolar Road, Bhopal was savings of the assessee and his spouse retained for assessee's daughter's marriage. These amounts were deposited in the locker out of the savings of his wife and himself in more than 5 years. The A.O. after considering the explanation of the assessee has observed that the explanation given by

the assessee is not acceptable on the ground that at the time of search, assessee has not reconciled the cash found with the books of accounts and the explanation now given stating that the cash of Rs.9,25,000/- is past savings of his families is self-serving and afterthought. If there would have been cash balance in cash book as on date of search, the assessee could have explained the same at that time only. The assessee has not satisfactorily explained before the search party in respect of cash found in the locker. Accordingly, the A.O. has assessed entire income of Rs.9,25,000/- u/s 69A of the Act. The assessment is completed.

3. On appeal, Ld. CIT(A) confirmed the order of the A.O. by observing that the explanation given by the assessee is not convincing for the reason that a person would go, operate the locker and keep cash there from time to time, whereas depositing cash in the bank or making a FDR is a

better and easier option. The amount so deposited earns interest also.

4. On being aggrieved, the assessee carried matter in appeal before the Tribunal. Ld. Counsel for the assessee has submitted that the assessee and his wife both are working and so far as the amount found, returns of income filed by the assessee's wife Smt. Anita Goswami for the A.Yrs. 2007-08 to 2012-13 amounting to a total of Rs.11,59,993/-. In so far as her husband Shri Dinesh Goswami is concerned, the returns of income from 2007-08 to 2012-13 for Rs.10,74,346/- were filed and submitted that the assessee has filed all the details before the A.O. and during the course of search, a statement u/s 132(4) of the Act was filed and also submitted that the amounts kept in the locker are past savings of himself and his wife. The A.O. without considering the explanation of the assessee, simply made an addition u/s 69A of the Act. He has

submitted that there is no basis for the addition made by the A.O. as confirmed by the Ld. CIT(A). It was further submitted by the Ld. Counsel for the assessee that the Ld. CIT(A) confirmed the addition on the ground that instead of keeping the money in the locker, it is better to deposit in the bank, thereby assessee earns interest and hence, the explanation given by the assessee was not accepted. It is submitted by the Ld. Counsel for the assessee that the assessee has to decide whether to keep the money in the locker or deposit the same in the bank. The assessee has deposited it in the locker with which he performed his daughter's marriage, therefore, addition cannot be confirmed on the basis of personal presumptions and assumptions, therefore, requested that the Ld. CIT(A)'s order may be set aside.

5. On the other hand, Ld. D.R. strongly supported the orders passed by the authorities below.

6. We have heard the rival submissions, perused the materials available on records and gone through the orders of the authorities below. There is a search & seizure operation carried on and in the locker No.44 of Bank of India, Kolar Road, Bhopal an amount of Rs.9,25,000/- was found. Subsequently, A.O. was asked to file a return of income. Accordingly, the assessee has filed returns of income for all the assessment years 2007-08 to 2012-13. Assessee's wife had also filed returns of income for the A.Ys 2007-08 to 2012-13. In the course of search, a statement was recorded u/s 132(4) of the Act, wherein the assessee has submitted that the amount kept in the locker was past savings of the assessee and his wife for the purpose of performing his daughter's marriage. Even during the course of the assessment proceedings also, the assessee

has submitted before the Ld. A.O. the very same facts. It is also submitted before the A.O. that the assessee filed returns of income for the A.Ys 2007-08 to 2012-13 by declaring an income of Rs.10,74,346/- and for his wife's income returns filed for A.Ys 2007-08 to 2012-13 amounting to Rs.11,59,993/- and submitted that out of the savings, the amounts were kept in locker. The A.O. after considering the explanation of the assessee is of the opinion that the assessee has not given any satisfactory explanation for keeping the amount in the locker and even the assessee has not satisfactorily explained before the search team. Therefore, he made an addition u/s 69A of the Act. The Ld. CIT(A) confirmed the order of the A.O. and rejected the explanation of the assessee on the ground that the assessee should have deposited it in the bank instead of keeping it in the locker, if at all he deposited in the bank should have earned the interest, therefore, his explanation

is rejected. For the sake of convenience, the explanation submitted by the Ld. counsel for the assessee before the Ld. CIT(A) is extracted as under:

“The submissions of the learned AR on above grounds of appeal are as below:

Ground Nos.2 & 3 : The appellant was aged about 48 years and his wife Smt. Anita Goswami aged about 45 years all the time of search conducted in the year 2012. Both were carrying out business for past 25 years and were filling their return of income regularly. The appellant was carrying on the business of civil construction and supply of building material and his wife was carrying on profession of coaching in the name and style as Neeta Tutorial. Her qualification are M.A. Bed & PGDCA. They had built up house property at Plot No.190, Sarvdharm Colony, Bhopal. They had also plot No.179 at Sarvdharm colony, plot at Mandakini housing society & car before 31.3.2006. When the appellant started getting rental income, he stopped his business and started earning salary income from Amrit Colonisers Pvt. Ltd. from 1.4.2011. the appellant had prepared memorandum account books and had filed the capital account and balance sheets from A.Yrs 2007-08 to 2013-14 during the proceedings. Smt. Anita Goswami had also filed the balance shseets during the assessment proceedings against her u/s 153A 143(3) for A.Yrs 2007-08 to 2013-14 when she was assessed u/s 153A and 143(3) for A.Yrs 2007-08 to 2013-14 by her combined order. The copies of balance sheet of appellant and his wife and her assessment order are enclosed herewith.

During the search proceeding, the authorities raised the query about cash found in the locker operation and appellant had explained that he and his wife were saving money for their daughter’s marriage, copy of his statement u/s 132(4) is enclosed herewith. During the course of assessment proceedings the assessing officer also raised the same query about the cash found from the locker at Rs.9,25,000/- and the appellant had filed a detailed reply before him, the copy of the same is enclosed herewith for your kind perusal. It was submitted before the assessing officer that the appellant had a daughter and both the appellant and his wife were conscious about the marriage of their daughter and

financial requirement of the event. They were leading very frugal life and were earning money and were making investments and cash savings for the marriage of their only daughter. They deposited cash in the bank locker from time to time so as to make the funds out of their easy reach. The appellant was having cash of Rs.2,73,000/- and his wife was having cash of Rs.6,76,000/- on last date of locker operation i.e. 14.9.2012 as evident from memorandum cash book filed by the appellant and his wife during the course of assessment proceedings. The brief chart showing the income of the appellant and his wife from different sources as well as their bank deposits and withdrawal and investment prepared from the balance sheets is enclosed herewith which will show that appellant and his wife had cash balance of more than Rs.9,49,000/- on the date of locker operation i.e. 14.9.2012. On perusal of the same your honour will appreciate that all the cash found in the locker at Rs.9,25,000/- on the date of locker operation by the department was explainable and there was no unexplained investment so as to invite the addition u/s 69A in the hands of appellant. It is requested therefore that addition of Rs.9,25,000/- may kindly be removed.”

7. We have also considered the assessment order and gone through the orders passed by the Ld. CIT(A) and also explanation given by the assessee. We find that the Ld. CIT(A) simply rejected the explanation given by the assessee without giving any proper reasons. When the assessee has filed returns of income, same are accepted. His wife has also filed returns of income and the same are also accepted and the assessee has submitted that out of savings the amounts are kept in the locker. By taking into

the facts and circumstances of the case, in our opinion, assessee has fully explained the sources and he has discharged the burden casted upon him. The A.O. without giving any basis, rejected the explanation of the assessee. In our opinion, the A.O. is not correct. In so far as Ld. CIT(A) is concerned, he is of the opinion that instead of keeping money in the locker, it is better to deposit in the bank so that the assessee may earn the interest. In our opinion, the assessee is the person who has to decide himself whether to keep the money in the locker or deposit in the bank. In this case, the assessee has decided to keep money in the locker to perform his daughter's marriage and explained the sources. In view of the above, we find that the order passed by Ld. CIT(A) has to be reversed.

8. In so far as case laws relied by the A.O. are concerned judgement of Rajasthan High Court in the case of Rajendra Prasad Subhash Chand Vs. UOI 344 ITR 533 facts are

entirely different and no application to the facts of the present case. In so far as judgement of Kerala High Court in the case of ACIT Vs. B. Rajashekharan Nair 329 ITR 123, we find that the facts are entirely different. In the present case, explanation was given before the search party u/s 132(4) of the Act and the same is explained during the course of assessment proceedings. Detailed reply is given before the Ld. CIT(A). Before the A.O., the assessee has discharged his burden for explaining source of cash kept in the locker and even before Ld. CIT(A) also, the assessee has explained the sources. The A.O. without giving any proper reasons, simply rejected explanation of the assessee. The Ld. CIT(A) substituted the decision of the A.O. by saying that instead of keeping the money in the locker, it should be kept in the bank to earn the interest. Therefore, under these facts and circumstances, the case laws relied by the A.O. are not applicable. In view of the above, the order

passed by the Ld. CIT(A) is reversed and appeal filed by the assessee is allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order was pronounced in the open court on 28.02.2019.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIALMEMBER

Indore; दिनांक Dated : 28/02/2019
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore