

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER  
ITA NO.1061/MUM/2018(A.Y. 2014-15)

Shri Nandkumar Babulal Soni,  
7/11, Chunawala Bldg.,  
Kolsa Street, Pydhonie,  
Mumbai 400 003  
PAN:ALLPS9573N

..... Appellant

Vs.

DCIT CC-5(1),  
Air India Bldg.,  
Nariman Point,  
Mumbai 400 021

..... Respondent

Appellant by : Shri Rajesh Sanghvi  
Respondent by : Ms. Kavita P. Kaushik

Date of hearing : 18/09/2019  
Date of pronouncement : 31 /10/2019

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-53 ( In short the 'CIT(A) ), Mumbai dated 22/12/2017 for assessment year 2014-15.

2. The assessee has raised following grounds of appeal assailing the finding of CIT(A) :-

*"1. In the facts & circumstances of the case & in law , the Ld CIT (A) have erred by deleting the protective addition of Rs. 1,02,98,500/- done by the A.O, ignoring the typical facts of the case, legalities, satisfaction u/s 153C and other grievances especially centralization of cases of the appellant.*

*2. In the facts & circumstances of the case & in law , the Ld CIT (A) have erred by not appreciating that the appellant was the true owner of cash of Rs. 1,03,00,000/-seized on 01-07-2013 & that the appellant should have been substantively assessed accordingly based on his return filed & other evidences / statements.*

*3. In the facts & circumstances of the case & in law , the Ld CIT (A) have erred in his decision by relying on the assessment order dt: 27-07-2015 of Shri.Sureshbhai Somabhai Prajapati by the DCIT CC - 1(2) Ahmedabad which was mala fide done in violation of centralization provisions u/s 127 of the ITA & without waiting/coordinating with the appellants assessment proceedings, thereby causing civil financial loss to the appellant & for which grievances have been lodged.”*

3. Shri Rajesh Sanghvi appearing on behalf of the assessee has filed written submissions giving the facts and arguments. The same are reproduced herein below:-

*“1) A search action u/s 132 was conducted at Mumbai Central railway station on 01-07-2013 & cash of Rs 1,02,98,5007- was found from the driver of a truck & seized by the Investigation wing Mumbai. The owner of the truck i.e the Aangadia, Mr. Sureshbhai Prajapati's statement was recorded on 04-07-2013 & 05-07-2013 (PB/101-113) wherein he confirmed that the said'cash of Rs 1,02,98,5007- belonged to him. But his answers on source (Qts 6 on PB/105, Qts 9 on PB/107 & Qts 9 on PB/l 14) of earning this Rs. 1.03 crs was vague and unbelievable. He stated he earned this money from commission, sale of plots, property, cars during the period 1-4-13 to 1-7-13. This means that just 3 months he earned 1.03 crs but he could not produce any documentary evidence. His past antecedents did not support this averment.*

*2) On 15-07-2013 (PB/154) the said Sureshbhai Prajapati filed a retraction & stated that the cash of Rs 1,02,98,5007- belongs to the Appellant Nandkumar Babulal Soni, assessed at Mumbai (Proprietor of M/s. Shri Ganesh Gold). His statement was also recorded by Ahmedabad IT dept on 13-9-13 (PB/l 16-126) wherein he accepted that cash of 1.03 crs belonged to the appellant (refer Qts 5, Qts 9 to 12 on PB/l20-122, Qts 15 to 16 PB/l24-125 & Qts 18 PB/l26}. These answers from the Aangadia are very important piece of evidence favouring the appellant and proving the fact that the cash of Rs. 1.03 crs belonged to the appellant.*

3) Appellant filed a letter dt : 16-7-13 (PB/155) narrating true facts and stating that the cash 1.03 crs belonged to him and sent this letter to various IT authorities (PB/158)

4) The Appellant being a dealer in Gold, had sent the cash for transportation to Ahmedabad and the said Sureshbhai Prajapati is just an Aangadia. The cash on hand was supported by cash balance in Book of accounts of the appellant as accepted by AO on internal Page 6, para 6.2 point (2) of the impugned Asst order dt : 29-3-16. Appellant had also submitted all books of accounts & bills as seen from index on PB/I-2 and reiterated by AO in the asst order at para # 3 & 6.2 (A). Appellant explained the sources of accumulation of the cash of 1.03 crs by way of cash sales of gold and audited Books of Accounts etc were produced.

5) The IT dept recorded statements of (i). Appellant on 13-9-13 (PB/96-100) and of (ii). Mr. Bhau Tukaram Khillari (staff of the appellant who took the cash to the Aangadia) on 13-9-13 (PB/127-128) and of (iii). Mr. Hiten Gandhi (staff of Aangadia Suresh Prajapati) on 4-7-13 (PB/129-130) & everyone confirmed that the said cash of Rs 1,02,98,5007- belonged to the appellant and was given to the Aangadia.

6) Mr. Sureshbhai Prajapati, the Aangadia was assessed at Ahmedabad & Appellant at Mumbai. Ideally, in such a situation, both the cases ought to have been centralized at Mumbai or Ahmedabad u/s 127(2) & assessments done at one **place** u/s 153 A or 153C to determine who is the true owner of said cash seized. This was not done.

7) This has lead to the critical legal issue in this Appeal, namely " If as per Income tax Act the same income cannot be taxed twice and has to be assessed in one persons hands, then it is also equally important that it should be assessed in the correct persons hand, based on evidence & not on First-come-First-assessed basis ". The AO recognizes this anomaly in para 7 of the impugned asst order dt : 29-3-16 but still gave credence to the earlier assessed Asst order dt: 27-7-15 of the Aangadia done at Ahmedabad. Hence though the income of 1.03 crs was assessed in the hands of the Aangadia it was assessed in the hands of the wrong person without any evidence and against the statements of various persons and the Aangadia himself and even when the Aangadia filed a revised return withdrawing this claim in his revised return filed on 20-4-15. Presumably the only reason for assessing this income (by the Ahmedabad AO) in the hands of the Aangadia was his first statement on 4-7-13 and 5-7-13 or reasons beyond the comprehension of the appellant.

8) Mr. Suresh Prajapati filed his original IT return at Ahmedabad on 29-9-14 declaring the cash of 1.03 crs as his income. Thereafter since he did not pay Self Asst tax on this original income, he revised his return on 20-4-15 in which he withdrew the income of 1.03 crs and declared only Rs. 1,92,970/- as his income.

*Then by letter in his asst proceedings he accepts his original return. Finally he is assessed on Rs. 1.03 crs on substantive basis vide his asst order dt: 27-7-15. (extracts found on PB/168-171). Detailed asst order of the Aangadia is not with appellant because it was denied to him (PB/159)*

*9) Appellant filed his return on 13-8-15 and was assessed on protective basis on this 1.03 crs because as per AO, the Angadia was already assessed earlier on 27-7-15 at Ahmedabad on substantive basis. Refer para 7 of impugned asst order. None of the glaring statements of any person/staff, background of the appellant or books of accounts/bills/evidences were considered. What only mattered was that since the Angadia was already substantively assed at Ahmedabad, the Appellant was assessed on protective basis.*

*10) In other words, what happened was this entire cash of Rs 1.02.98.50/- was substantively assessed in the hands of Suresh Prajapati on 29/07/2015 by DCIT Ahmedabad and the Aangadia malafidely claimed that the seized cash of 1.03 crs be adjusted and balance seized cash be returned to him. Whereas the appellant being the true owner of the seized cash and with all statements of everyone confirming his and the books of accounts, and bills, still the appellants stand was ignored and he was assessed in Mumbai, on a protective basis which was quashed by the CIT(A) in his order dt: 22-12-17. Hence the appellant lost his claim to Rs. 1.03 which the Aangadia mischievously seeks to usurp. '*

*11) Appellant 2 Grievance being*

*(I). Why were both these assessments not centralised and done at the same time , same place by a common officer. In fact this is the reason why centralization of cases take place & Sec 127 (2) is created in the statute. Hence, injustice has been caused to the appellant & his legitimate cash of Rs 1,02,98,5007- has been taxed & thus effectively given to Suresh Prajapati who will enjoy the seized cash post tax adjustments &*

*(ii). If the income-tax act states that the same income cannot be taxed twice then the income-tax act also demands that the income should be taxed in the hands of the rightful person based on evidence and not on a concept of first-come-first-assessed.*

*12) Appellant in his own crude way and in Hindi filed over 54 grievances letters , till the PMO, on this lack of co-ordination and malafide state of affairs involving various IT officers (PB/131-153 & PB/180-187). He was constantly echoing the fact that the said seized cash belonged to him based on statements of various persons, retraction of the Angadia, books of accounts and bills etc. But nothing happened.*

*13) The appellant also wrote to the PCIT, Ahmedabad to invoke Sec. 263 to concluded substantive assessment of the Angadia vide letter dt : 5-2-18 (PB/188) there being time till 31-3-18, but that was seemingly ignored.*

*14) Hence gross injustice being done to the appellant, it is prayed that:*

- (a), the legal question in Point 11 be answered*
- (b). Directions be given to the Ahmedabad IT dept to do the needful in the case of Aangadia and not to part with any seized cash to the Aangadia*
- (c). Strictures be framed against the IT dept for causing financial loss to the appellant due to coordination issues of not centralization of cases*
- (d) The appellant case be sent back to AO to decide based on evidences and as per law, de-nova."*

4. Ms. Kavita P. Kaushik representing the Department has vehemently defended the impugned order and has prayed for dismissing the appeal by the assessee. The Id. Departmental Representative pointed that addition of the seized cash amount Rs.1,02,98,500/- was made in the hands of Shri Sureshbhai Somabhai Prajapati on substantial basis. In his return of income he owned the cash amount seized. The addition of Rs.1,02,98,500/- made in assessment proceedings under section 143(3) has been accepted by Sureshbhai Somabhai Prajapati and no further appeal was filed by him. The addition of seized cash was made on protective basis in the hands of assessee. Now that seized cash amount has been owned by Sureshbhai Somabhai Prajapati. and substantial addition made in his hands has been confirmed, the same amount cannot be added in the hands of assessee on the basis of protective addition. The CIT(A) has rightly dismissed the appeal of assessee.

5. We have heard the submissions made by Id. Departmental Representative and have perused the written arguments filed by the Id. Authorized Representative for the assessee. It is an undisputed fact that cash of Rs.1,02,98,500/- was found and seized from Shri Pragaram Prajapati an employee of Shri Sureshbhai Somabhai Prajapati at Mumbai

Central Railway Station. Statement of Shri Sureshbhai Somabhai Prajapati was recorded, under section 131 on 04/07/2013 and under section 132(4) on 05/07/2013, wherein he admitted that the cash seized belongs to him. Subsequently, on 15/07/2013 Sureshbhai Somabhai Prajapati retracted from his statement and stated that cash seized belongs to the assessee. However, in his return of income filed in response to notice under section 153C, Sureshbhai Somabhai Prajapati declared the cash amount seized in his return of income. The Assessing Officer vide order dated 27/07/2015 passed under section 143(3) r.w.s. 153B(b) of the Act made addition of the aforesaid amount in the hands of Sureshbhai Somabhai Prajapati. The aforesaid assessment order attained finality as no appeal was filed by Sureshbhai Somabhai Prajapati against the said assessment order. On the basis of retraction statement of Sureshbhai Somabhai Prajapati, cash seized was protectively added in the hands of the present assessee. During assessment proceedings, the assessee could not substantiate source of cash Rs.1.02,98,500/-. The assessee had claimed that amount of Rs.1.02,98,500/- belongs to him and the cash was handed over to Sureshbhai Somabhai Prjapati by the assessee. However, no documentary evidence was placed on record to show handing over of such a huge cash by the assessee to Sureshbhai Somabhai Prjapati. The impugned amount has been owned by Sureshbhai Somabhai Prajapati in his return of income and has been assessed to tax in his hands. We find no infirmity in

the order of CIT(A) in rejecting assessee's claim. The appeal of the assessee is without any merit, hence, the same is dismissed.

6. In the result, impugned order is confirmed and the appeal is dismissed.

Order pronounced in the open court on Thursday the 31st day of October, 2019.

Sd/  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Mumbai, Dated 31/10/2019  
Vm, Sr. PS(O/S)

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**