

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G" MUMBAI**

**BEFORE SHRI RAJESH KUMAR, HON. ACCOUNTANT MEMBER &
SHRI AMARJIT SINGH, HON. JUDICIAL MEMBER**

**ITA No. 5046/MUM/2018
(Asst. Year : 2016-17)**

Girdharilal Murlidhar Bawri, Vs. DCIT, Circle-2(4),
C/o Macleods Pharmaceuticals Mumbai.
Ltd., 304, Atlanta Arcade,
Marol Church Road, Andheri (E),
Mumbai.

PAN No. AABPB 7048 L
(Appellant)

(Respondent)

Assessee by : Shri Ashok Bansal – CA.
Department By : Shri V. Vinod Kumar - DR

Date of hearing : 04/12/2019.
Date of pronouncement : 05/12/2019.

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-48, Mumbai, dated 20/06/2018 for the A.Y. 2016-17.

2. The issue raised in ground No.1 is against the confirmation of addition of Rs. 1,79,163/- u/s. 69A of the Act by the Id.CIT(A) thereby upholding the order of the AO.

3. Facts of the case in brief are that a search and seizure action was conducted on M/s. Macleods Pharmaceuticals Ltd. on 28/01/2016. The assessee is the Director of the said company and also one of the partners of M/s. Jaipur Hospital & Drug Stores and consequently assessee is covered in the said search. Thereafter, the case of the assessee was centralized with the DCIT, Central Circle-2(4), Mumbai. During the course of assessment proceedings, the AO has observed from the cash books of the persons (family members) staying in the 3rd floor that cash in hand was Rs. 25,00,837/- as on 28/01/2016, the details of which are as follows:-

Girdharilal Bawri	575068
Ajay Agarwal	317982
Priyanka Agarwal	31531
Taradevi Bawri	208000
Jai Agarwal	0
Vijay Agarwal	167255
Girdharilal Bawri HUF	60000
Cash received from Banwarilal Bawri for engagement function	1141000
Balance cash as on 28/01/2016	2500837

Whereas as per the seizure on the date of search was Rs.26,80,000/- and thus, there was a discrepancy of Rs.1,79,163/- which was stated by the assessee to be on account of cash balances lying with the ladies of the family and were

stated to be out of their personal savings over the years. According to the AO, reply of the assessee was vague and not supported with any documentary evidences and was not found to be tenable. Accordingly, Rs. 1,79,163/- has been treated as unexplained money and consequently added to the total income of the assessee. Pertinent to state that the assessee lives with his two brothers in the same building in 3rd, 4th and 6th floors.

4. In the appellate proceedings, the Id.CIT(A) dismissed the appeal of the assessee by observing and held as under:-

"After considering the facts of case and written submission of the assessee it is seen that during the course of search and seizure action on 3'd floor of the premises, cash amount to Rs.26,80,000/- was found and as per the details in the cash books of the persons, and explanations given, cash of Rs. 25,00,837/- was held as explained. For the excess cash found of Rs.1, 79,163/-, assessee explained that amount of Rs.2,00,000/- approx was lying with ladies of the family which was saved by them out of past many years drawing amount. As there was no any documentary evidence supported by assessee, A.O. did not find the explanation to be tenable and therefore treated the difference of Rs.1, 79,163/- as unexplained money and added to the total income of the assessee u/s.69A.

Even in appeal, assessee argued the same reasons for the same. Thus excess of cash of Rs.1,79,163/- remains unexplained and unsubstantiated. The argument of part savings by ladies of the house is only an argument and assertion which has no corroborative evidence. The rigour law to substantiate the, claim remains unfulfilled."

5. After hearing the rival contentions of both the parties and perusing the material on record, we observe that in this case, the assessee was living with his two brothers in 3rd, 4th & 6th floors

and there were six ladies in the family as a whole. According to the assessee, the cash was found excess to the tune of Rs. 1,79,163/- on the date of search vis-a-vis books of account which was out of the personal savings of the ladies over the years. The lower authorities have relied on mainly on the ground that the said source was not explained with the evidences and accordingly added the same to the total income of the assessee. In our view, the cash per lady comes to Rs. 29,860/- which is quite reasonable and the explanation of the assessee appears to be reasonable and plausible having regards to the Indian traditions. Practically this much of cash is normally found to be with by every house-hold lady and there is nothing new about it. Keeping in view of these facts and circumstances especially the petty cash balance per lady, we are inclined to set aside the order of the Id.CIT(A) and direct the AO to delete the addition. Thus, this appeal filed by the assessee is allowed.

6. In the result, appeal of the assessee is allowed.

Order Pronounced in the open Court on 05th December, 2019

Sd/-
(AMARJIT SINGH)
Judicial Member

sd/-
(RAJESH KUMAR)
Accountant Member

Dated : 05th December, 2019.

vr/-

Copy to:

1. *The Assessee - Girdharilal Murlidhar Bawri, C/o Macleods Pharmaceuticals Ltd., 304, Atlanta Arcade, Marol Church Road, Andheri (E), Mumbai.*
2. *The Revenue-DCIT, Circle-2(4), Mumbai.*
3. *The CIT, Cental-1, Mumbai.*
4. *The CIT(A)-48, Mumbai.*
5. *The D.R., Mumbai.*
6. *Guard file.*

By order

//True Copy//

Assistant Registrar
I.T.A.T., Mumbai