

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"E" Bench, Mumbai**

**Before Shri Rajesh Kumar, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No. 1236/Mum/2012  
(Assessment Year: 2008-09)**

Mr. Jasjit Singh  
1001, Dalamal House 10<sup>th</sup> Floor,  
Nariman Point  
Mumbai – 400021

Dy. CIT Central Circle-42,  
Aayakar Bhavan, Ground Floor,  
M.K. Marg,  
Mumbai – 400 020

PAN – AAGPS7557Q

**(Appellant)**

**(Respondent)**

Appellant by: Shri J.D. Mistry, Senior Advocate  
Respondent by: Shri R. Manjunatha Swamy, D.R

Date of Hearing: 16.12.2019  
Date of Pronouncement: 19.12.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-38, Mumbai, dated 19.12.2011, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 30.12.2009. The assessee has assailed the impugned order on the following grounds of appeal before us:

**"GROUND 1:**

**Addition on account of Unexplained paintings: Rs. 34,00,000/-**

1. On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) - 38, Mumbai ("CIT(A)") erred in upholding the order of the Deputy Commissioner of Income Tax, Central Circle 42, Mumbai ("AO") in making an addition to total income on account of unexplained paintings on the alleged ground that there were certain discrepancies in the supporting documents.
2. He failed to appreciate and ought to have held that:
  - The aforesaid paintings were purchased several decades before the block period.

- The Appellant had filed evidences such as bills, vouchers, photographs and magazines to establish the cost, date of acquisition and source of purchases.
  - Certain discrepancies in evidences filed should not be the reason for making any addition on account of unexplained expenditure since the Appellant had filed sufficient evidences in support of its claim.
3. The Appellant prays that the aforesaid addition be deleted.

**GROUND II:**

**Addition on account of unaccounted cash: Rs. 10,00,000/-**

1. On the facts and circumstances of the case and in law, the Learned CIT(A) erred in upholding the order of the AO in making an addition to total income on account of unaccounted cash on the alleged ground that the explanations offered by the Appellant were a mere afterthought.
2. He failed to appreciate and ought to have held that:
  - The aforesaid cash was received from the Appellant's brother for safe custody while he was on a foreign tour.
  - The Appellant had submitted reconciliation of cash on hand as per cash book and actual cash.
3. The Appellant therefore prays that the aforesaid addition be deleted.

**GROUND III:**

The Appellant craves leaves to add to, alter, and / or amend all or any of the above grounds of Appeal.”

2. Briefly stated, the assessee is a director of ACG group of companies. Search and seizure proceedings were conducted on 17.04.2007 at the registered office of ACG Art group and its other offices in Mumbai. Also, the residential premises of the directors and the members of the group entities were also covered in the aforesaid search proceedings. Subsequently, the assessee had filed his return of income for A.Y. 2008-09 on 25.09.2008, declaring his total income at Rs.15,58,27,941/-. The case of the assessee was thereafter selected for scrutiny assessment under Sec. 143(2) of the Act.

3. In the course of the aforesaid search proceedings cash amounting to Rs.13,19,000/- was found at the residence of the assessee situated at 2-B, Kashitji Swapanlok, Nepean Sea Road, Mumbai. On being called upon to explain the source of the aforesaid amount, the assessee failed to come forth with any plausible explanation. Instead, the assessee in his statement recorded under Sec. 132(4) on 18.04.2007 expressed his unawareness about the source of the aforesaid amount and stated that his wife would explain the same. On the other hand, the wife of the assessee viz. Smt. Kavita Singh though in her statement recorded under

Sec. 132(4) on 17.04.2007 though confirmed the statement of her husband, but was unable to reconcile and explain the source of the aforesaid amount. In the absence of any plausible explanation forthcoming, an amount of Rs.10,00,000/- (out of Rs.13,19,000/-) was seized in the course of the search proceedings. Apart from that, in the course of the search action at the various business and residential premises of ACG Art group and its directors/members, costly paintings (288 nos.) were found. Observing, that the source of purchase of 71 paintings (out of 288 paintings) valued at Rs.9,99,20,000/- had remained unexplained, the same were put under constructive seizure as per the provisions of Sec.132(1)(iii) of the Act.

4. In the course of the assessment proceedings the A.O observed that the source of purchase of “two paintings” which were found at the business premises of the assessee at 7, Prabhat Industraital Estate, Jogeshwari (W), Mumbai, had remained unexplained by the assessee. Accordingly, the A.O observing that the assessee had made an unexplained investment towards purchase of the aforesaid “two Paintings”, therein made an addition of Rs.34,00,000/- in his hands, as under:

Sr. No.	Corresponding No. of Valuation Report	Artist Name	Titled	Medium	Size in inches	Value	Remarks	ownership on the basis of explanation
1.	7	Liela	Blue boats	Acrylic on canvas	48 X 78.5	9,00,000/-	Kutchha bill dated 28.09.2006. It is very difficult to accept	Jagjit Singh
2.	13	Sluello	Card Players	Oil on canvas	51 X 37.5	25,00,000/-	Proof shown is credit card payment. It is very difficult to accept	Jasjit Singh

On the basis of his aforesaid observations, the income of the assessee was assessed by the A.O at Rs.16,02,27,940/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) after deliberating at length on the contentions advanced by the assessee was not persuaded to subscribe to the same and dismissed the appeal.

5. Being aggrieved, the assessee has assailed the order of the CIT(A) before us. The Id. Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case. It was submitted by the Id. A.R, that though the assessee in the course of the assessment proceedings had duly explained that cash amounting to Rs.10,00,000/- (out of Rs.13,19,000/-)

found in the course of search proceedings from his residential premises was received by him from his brother Shri Ajit Singh for safe custody, however, the said explanation was whimsically rejected by the A.O and the said amount was treated as unexplained in the hands of the assessee. In order to fortify the genuineness and veracity of his aforesaid claim, it was submitted by the Id. A.R that the fact that a short/deficit cash of Rs. 10 lac had surfaced in the course of the simultaneous search proceedings which were carried out at the premises of Shri. Ajit Singh, therein substantiated the aforesaid explanation of the assessee. In order to support his aforesaid contention, it was submitted by the Id. A.R that the assessee had furnished with the A.O the confirmation of Shri Ajit Singh, wherein he had categorically stated that as he was proceeding on a foreign business tour from 15.04.2007 to 28.04.2007, therefore, as on 14.04.2007 he had kept an amount of Rs. 10 lac in safe custody of the assessee. It was further averred by the Id. A.R, that the A.O while framing the assessment of Shri. Ajit Singh (brother of the assessee), had vide his order passed under Sec. 143(3) r.w.s 153B, dated 30.12.2009, therein accepted that he had kept an amount of Rs.10 lac in the safe custody of the assessee. The Id. A.R taking us through the assessment order in the case of Ajit Singh, submitted that no adverse inference as regards the fact that he had given an amount of Rs.10 lac to the assessee for safe custody in the month of April, 2007 was ever drawn by the A.O. Also, it was submitted by the Id. A.R, that the said factual position had also been considered and accepted by the CIT(A) while disposing off the appeal for A.Y 2008-09 of Shri Ajit Singh (brother of the assessee), vide his order dated 19.12.2011. It was further submitted by the Id. A.R that the aforesaid order of the CIT(A) had been accepted by the revenue and the same had not been carried any further in appeal before the Tribunal .

6. As regards the addition of Rs. 34 lacs made by the A.O towards unexplained investment in “two paintings”, it was submitted by the Id. A.R that the same was based on misconceived facts and premature observations. It was submitted by the Id. A.R, that the assessee and his family members had nurtured a hobby of collecting paintings, antiques, artefacts and decorative articles for the last more than four decades. It was submitted by the Id. A.R that during the course of the search proceedings inventory of the paintings available at various business and residential premises of the ACG group entities and that of its directors/members was prepared. It was submitted by the Id. A.R, that in respect of “two

paintings” (out of 228 paintings), the A.O being of the view that the same were purchased by the assessee out of his undisclosed sources, had thus made an addition of Rs. 34 lac to his returned income. It was submitted by the Id. A.R that though the requisite details as regards the source of purchase of the aforesaid “two paintings” along with the corroborative evidence in support thereof was furnished by the assessee in the course of the assessment proceedings, however, the A.O had without giving any cogent reason drawn adverse inferences in the hands of the assessee. It was submitted by the Id. A.R that the aforesaid “two paintings” were purchased by the assessee for a total consideration of Rs. 3,60,385/-. It was submitted by the Id. A.R, that the assessee had purchased the aforesaid “two paintings” from the Gallery : Daugava, 10/12, Alksnata Street, Latvia for a purchase consideration of Rs.1,80,076.15 and Rs.1,80,309.54/-, respectively. It was submitted by the Id. A.R that the aforesaid paintings were purchased by the assessee by using his ‘credit cards’ i.e “Visa Gold” & “Master Gold” on 17.06.2006. In order to substantiate his aforesaid contention the Id. A.R took us through the relevant pages of the assessee’s ‘Paper book (for short ‘APB’). Our attention was drawn towards the credit card’ statements wherein the aforesaid transactions were reflected. Also, the Id. A.R took us through the payment coupon. It was submitted by the Id. A.R, that as the aforesaid paintings were purchased by the assessee by using the ‘credit cards’ of M/s Associated Capsules Pvt. Ltd. (though held in his name), therefore, he had thereafter reimbursed the said amount to the company vide account payee Cheque No. 366544 drawn on his bank account with State Bank of India, Nariman point, Mumbai. In order to drive home his aforesaid contention, the Id. A.R had taken us through the supporting documentary evidence viz. copy of credit card statements, copy of the payment voucher, copy of the bank statements of M/s Associated Capsules Pvt. Ltd., and the copy of the statements of the assessee. It was further submitted by the Id. A.R, that though the source of purchase/investment in the aforesaid paintings was duly substantiated by the assessee in the course of the assessment proceedings, however, the same was most arbitrarily brushed aside by the A.O. In order to dispel any doubts as regards the fact that the “two paintings” under consideration viz. (i) painting titled “Blue Boats” [Artist: Liela]; and (ii) painting titled “Card Player” [Artist: Sluello] were the same as regards which the impugned addition towards unexplained investment was made by the A.O, it was the claim of the Id. A.R that the size of the said respective paintings clearly tallied with those under consideration before the A.O. On the basis of his aforesaid contention, it was the

claim of the Id. A.R that though the assessee had substantiated the source of purchase of the aforesaid “two paintings” on the basis of sufficient documentary evidence before the lower authorities, however, they had most arbitrarily made/sustained the addition of Rs. 34,00,000/- under Sec.69 of the Act.

7. Per contra, the Id. Departmental Representative (for short ‘D.R’) relied on the orders of the lower authorities. It was submitted by the Id. D.R, that as the assessee had failed to come forth with any explanation as regards the source of the amount of cash of Rs.10,00,000/- (out of Rs 13,19,000/-) that was found in the course of the search proceedings from his residential premises, therefore, the A.O had rightly added the same as his unexplained income. It was submitted by the Id. D.R that the subsequent reconciliation filed by the assessee in his attempt to explain the source of the aforesaid amount of Rs.10,00,000/- was clearly a result of an afterthought and was rightly rejected by the lower authorities. As regards the addition of Rs. 34 lac made by the A.O under Sec.69 in respect of the “two Paintings” which were found in the course of the search proceedings from the business premises of the assessee, it was the claim of the Id. D.R that the said paintings were got valued by the revenue by availing the services of three experts, and in the absence of any explanation as regards the source of purchase of the same, their respective values had been added as an unexplained investment in the hands of the assessee. On the basis of his aforesaid contentions, it was the claim of the Id. D.R that as the appeal of the assessee was devoid of any merit, thus it was liable to be dismissed.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Our indulgence in the present appeal has been sought by the assessee, for adjudicating, as to whether the CIT(A) is right in law and the facts of the case in upholding the additions made by the A.O viz. (i) the addition of unexplained cash found in the course of search proceedings (from the residence of the assessee): Rs.10,00,000/-; and (ii) the addition under Sec.69 towards unexplained investments in “two paintings”: Rs.34,00,000/-. We shall first advert to the addition of unexplained cash of Rs.10,00,000/- that has been sustained by the CIT(A). As is discernible from the orders of the lower authorities, in the course of the search proceedings cash aggregating to Rs. 19,13,250/- was found from the residential/office premises of the assessee, viz. (i) cash found at the residence of the assessee situated at 2-B, Kshitij Swapanlok, Nepean Sea Road, Mumbai:

Rs.13,19,000/-; and (ii) cash found from the cabin of the assessee in the business premises of M/s ACG Arts Group, 1001, Dalamal House, Nariman Point: Rs.5,94,250/-. Admittedly, the assessee in his statement that was recorded on 18.04.2007 under Sec. 132(4) of the Act, on being called upon to explain the source of the cash of Rs.13,19,000/- that was found from his residential premises, had failed to come forth with a plausible explanation as regards the same. In fact, the assessee had tried to shift the onus on his wife, and had stated that an explanation as regards the source of the aforesaid amount would be furnished by her. However, Smt. Kavita Singh (wife of the assessee), on being called upon to explain the source of the aforesaid amount of Rs.13,19,000/- (supra), had however, in the course of her statement recorded under Sec.132(4), dated 17.04.2007, failed to do so. But then, on a perusal of the assessment order, we find, that the assessee in the course of the assessment proceedings had duly reconciled and texplained the source of the aforesaid amount of cash of Rs.19,13,250/- [Rs. 13,19,000/- (+) Rs. 5,94,250/-] that was found in the course of the search proceedings from his aforesaid residential/business premises. As per the records, the assessee had vide his letter dated 10.09.2009 furnished an explanation as regards the aforesaid cash that was found in the course of the search proceedings, as under:

“Cash in hand as per the cash book on 31.03.2007	Rs.10,10,331/-
Less: Drawing upto 16.04.2007	<u>Rs. 97,081/-</u>
	Rs. 9,13,250/-
Add: Cash Received from Ajit Singh for safe Custody	<u>Rs.10,00,000/-</u>
Cash in Hand	Rs.19,13,250/-
Cash found at residence-	Rs.13,19,000/-
Cash found at Dalamal House--	<u>Rs. 2,94,250/-</u>
Total	<u>Rs.19,13,250/-”</u>

On a perusal of the aforesaid reconciliation, we find, that it has been the claim of the assessee that an amount of Rs.10 lac (out of Rs. 13,19,000/-) which was found in the course of the search proceedings at his residential premises, was received by him from his brother Shri Ajit Singh for safe custody, as the latter was proceeding on a foreign tour. We find that as the lower authorities were not impressed with the aforesaid explanation of the assessee, therefore, they had rejected the same and had held the said amount of Rs.10,00,000/- as the unexplained income of the assessee for the year under consideration.

9. We have given a thoughtful consideration to the aforesaid issue before us, in the backdrop of the orders of the lower authorities and the contentions advanced by the authorized representatives for both the parties. AS regards the claim of the Id. A.R, that the A.O while framing the assessment in the case of Shri. Ajit Singh (brother), had vide his order passed under Sec. 143(3) r.w.s 153B, dated 30.12.2009 for A.Y 2008-09 accepted that he had kept an amount of Rs. 10 lac in safe custody of his brother i.e the assessee, we are afraid that the same in our considered view is not found to be correct and in fact militates against the facts borne from the records. As is discernible from the assessment order passed in the case of Shri. Ajit Singh, we find, that the A.O had categorically observed that the explanation of the said assessee that he had given cash of Rs.10,00,000/- for safe custody to his brother Shri Jasjit Singh (the assessee ) could not be relied upon. As such, we are not inclined to accept the aforesaid contention of the Id. A.R that the revenue had while framing the assessment in the case of the assessee brother i.e Shri Ajit Singh, accepted that he had kept an amount of Rs.10 lac in cash in safe custody of the assessee i.e Shri Jasjit Singh in the month of April, 2007. At the same time, we also cannot remain oblivious of the facts that had surfaced in the course of the simultaneous search proceedings which were conducted on Shri. Ajit Singh (brother of the assessee), who was also a director of M/s Associated Capsules Pvt. Ltd. As is borne from the records, in the course of the search proceedings conducted at the business/residential premises of Shri. Ajit Singh, cash amounting to Rs. 4,16,100/- was found, viz. (i) cash found at the residence of Shri Ajit Singh at 1-A, Brighton Rungtha Lane, Napean Sea Road, Mumbai : Rs.2,16,100/-; and (ii) cash found from the Cabin of Shri Ajit Singh at the business premises of M/s ACG Arts Group at 1001, Dalamal House, Nariman Point, Mumbai. On a perusal of the assessment order in the case of Shri Ajit Singh for A.Y 2008-09, we find, that the cash in hand as per his 'cash book' on 31.03.2007 was Rs.13,07,980/-. As against the aforesaid amount, cash amounting to Rs. 4,16,650/- only was found in the course of the search proceedings that were conducted at his residential/business premises. Also, it is the claim of the Shri Ajit Singh, that during the period prior to the search i.e from 01.04.2007 to 17.04.2007, he had received an amount of Rs. 2,00,000/- from M/s ACPL Corporation. In the backdrop of the aforesaid facts, we are of the considered view, that the short/deficit cash found in the course of the search proceedings at the business/residential premises of Shri. Ajit Singh, therein substantially fortifies the claim of the assessee that his brother i.e Shri. Ajit Singh had kept an amount of Rs.

10 lac for safe custody with him. Apart from that, we find, that the fact that the 'confirmation' of Shri Ajit Singh that he had in the month of April, 2007, before proceeding on a foreign tour that was spread over the period i.e 15.04.2007 to 28.04.2007, had kept an amount of Rs. 10 lac in safe custody of his brother, had not been dislodged or disproved by the revenue. In the backdrop of the aforesaid facts, we find substantial force in the claim of the Id. A.R that the lower authorities had without dislodging the veracity of the aforesaid claim of the assessee, therein most arbitrarily held the amount of Rs.10 lac as the unexplained income of the assessee for the year under consideration. On the basis of our aforesaid observations, we are persuaded to accept the claim of the assessee that the amount of Rs.10 lac (out of Rs. 13,19,000/-) that was found in the course of the search proceedings from his residential premises, was the amount that received by him from his brother Mr. Ajit Singh for safe custody. Accordingly, we set aside the order of the CIT(A) to the said extent and delete the addition of Rs.10 lac made by the A.O. **Ground of appeal No. 2** is allowed.

10. We shall now advert to the addition made by the A.O under Sec. 69 as regards the impugned 'unexplained investment' made by the assessee in "two paintings", viz. (i) painting titled "Blue boats" (Acrylic on canvas) – size 48" x 78.5" [Artist: Liela]; and (ii) painting titled: "Card Players" (Oil on canvas) – size 50" x 37.5" – [Artist: "Sluello"]. As claimed by the assessee, he had purchased the aforesaid two paintings from Gallery: Daugava, 10/12 Alksnaja Street, Latvia. It is the claim of the assessee that the aforesaid paintings were purchased by him for an aggregate consideration of Rs. 3,60,385.69. As regards the source of the aforesaid investment, it was submitted by the assessee that the said paintings were purchased by him through his 'credit cards' viz. (i) Visa Gold credit card; and (ii) Master Gold credit Card, vide two purchase transactions, both dated 17.06.2006 for a respective consideration of Rs.1,80,076.15 and Rs. 1,80,309.54. In order to fortify his aforesaid claim the Id. A.R has drawn support from certain documentary evidence viz. (i). copy of the credit card statements; (ii). copy of the bank account of M/s Associated Capsules Pvt. Ltd.; (iii). copy of the payment vouchers of the assessee; and (iv). copy of the bank account of the assessee with State Bank of India. On a perusal of the aforesaid documents/statements, we find, that it is the claim of the assessee that the aforesaid paintings were purchased by him by using the 'credit cards' of M/s Associated Capsules Pvt. Ltd., which were held in his name. Accordingly, the assessee by drawing support

from the aforesaid statements/documents had tried to impress upon us that as the aforesaid two paintings were purchased by him by using the funds of M/s Associated Capsules Pvt. Ltd. i.e the company in which he is a director, therefore, the said purchase consideration was thereafter reimbursed by him to the company through a cheque payment that was made through an 'account payee' Cheque No. 366544 for Rs.3,60,385.69/-, drawn on his bank account with State Bank Of India, Nariman point, Mumbai.

11. We have given a thoughtful consideration to the issue before us and find substantial force in the aforesaid claim of the assessee. As can be gathered from a perusal of the orders of the lower authorities, the assessee had placed on record sufficient documentary evidence that goes to substantiate the transaction of purchase of the aforesaid two oil canvas paintings viz. . (i) painting titled "Blue boats" (Acrylic on canvas) – size 48" x 78.5" [Artist: Liela]; and (ii) painting titled: "Card Players" (Oil on canvas) – size 50" x 37.5" – [Artist: "Sluello"], vide two purchase transactions on 17.06.2006 from a gallery viz. "Daugava", 10/12 Alksnaja Street, Latvia. No documentary evidence has been placed on record by the A.O which would conclusively dislodge the authenticity of the aforesaid claim of the assessee. In fact, it is not the case of the revenue that the aforesaid purchases transactions carried out by the assessee on 17.06.2006, were in respect of some other paintings purchased by the assessee. As per Sec. 69 of the Act, in case the assessee fails to offer any explanation about the 'nature' and 'source' of the investment made by him or the explanation offered by him is not, in the opinion of the A.O satisfactory, then the value of such investment may be deemed to be the income of the assessee for such financial year. However, in the case before us, the view taken by the lower authorities has to fail on two grounds viz (i). that, the assessee had duly evidenced the source of investment made by him for purchase of the aforesaid two paintings; and (ii). that, even otherwise as the aforesaid paintings were purchased by the assessee on 17.06.2006 i.e in the period relevant to the immediately preceding year i.e A.Y 2007-08, therefore, it was impermissible on the part of the revenue to draw any adverse inferences in the hands of the assessee during the year under consideration viz. A.Y 2008-09. Be that as it may, as the revenue had failed to place on record any 'material' which would irrefutably prove to the hilt that the investment in the aforesaid "two paintings" was made by the assessee during the year under consideration i.e A.Y 2008-09, therefore, the same on the said count also by no means

could have been treated as an unexplained investment in his hands for the said year. Accordingly, in the backdrop of our aforesaid observations we are unable to persuade ourselves to subscribe to the view taken by the lower authorities. Resultantly, the order of the CIT(A) is 'set aside' and the addition under Sec. 69 of Rs. 34 lac made by the A.O is vacated.

**Ground of appeal No. 1** is allowed in terms of our aforesaid observations.

11. The appeal of the assessee is allowed.

Order pronounced in the open court on 19.12.2019

Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 19/12/2019

Rohit, P.S.

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

**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.

BY ORDER,  
//True Copy//  
(Sr. Private Secretary)  
**ITAT, Mumbai**