

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. K. N. Chary, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 8005/Del/2019 : Asstt. Year : 2017-18

Vijay Chawla, C/o Raj Kumar & Associates, CA, L-7A (LGF), South Exten., Part-II, New Delhi-110049	Vs.	ACIT, CC-05, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AADPC8726A		

**Assessee by : Sh. Raj Kumar Gupta, CA
Revenue by : Sh. H. K. Choudhary, CIT DR**

Date of Hearing: 15.10.2020	Date of Pronouncement: 26.10.2020
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-24, New Delhi dated 16.09.2019.

2. Following grounds have been raised by the assessee:

"1. That under the facts and circumstances addition of Rs.17,61,950/- u/s.69A r/w Sec. 115BBE as for unexplained cash found during search is unwarranted in law as well as on merits.

1.1 That without prejudice, in view of the statement recorded during search on 07.04.16, 11.04.16 and 12.04.16, at the most, the issue of cash could had been considered for A.Y.16-17 only and not for A.Y. 17-18.

1.2 That in view of explanations and evidences furnished which remained unrebutted, the cash of Rs. 17,61,950/- should had been held as fully explained even on merits.

2. That under the facts and circumstances, there is no legality and justification for making and sustaining addition of Rs.2,50,000/- u/s.69A r/w Sec. 115BBE for cash found from locker No.487PNB being in old currency notes as operative before demonetization, which had ZERO intrinsic value as on the date of the search.

2.1 That without prejudice, in view of the fact that the locker No.487 of PNB was lastly operated on 29.10.15 (A.Y.16-17) prior to the date of search, under no circumstance, the issue of this cash can be considered in A.Y.17-18.

2.2 That without prejudice, in view of the explanations furnished, the cash of Rs.2,50,000/- stands explained even on merits."

3. A search and seizure operation u/s 132 of the Act was carried out on 07.04.2016 in the case of the assessee. During the search operation, cash amounting to Rs. 26,84,450/- was found from the residential premises C-17, Nizamuddin East, New Delhi out of which cash amounting to Rs. 17, 61,950/- belonging to the assessee was seized. During the search operation Sh. Vijay Chawla deposed in his statement recorded u/s 131 of the Act that there is approx Rs.17 lakhs cash belonging to him kept at his house and the same is his unaccounted income not recorded in his books of accounts. He further stated that he is ready to pay his tax liability on such unaccounted income. In his statement recorded on 12.04.2016 during the course of post search enquires, the assessee was categorically asked to furnish details regarding the period for

which unaccounted income belongs, number of clients from whom that unaccounted money has been reportedly received and any receipt/acknowledgement issued to related clients. The assessee then deposed that cash was belonging to FY 2015-16 and received from 25-30 separate clients for which no receipt /acknowledgement was issued. During the assessment proceedings the assessee was asked to explain the source of cash seizure of Rs. 17,61,950/-. The assessee submitted that he was not in stable state of mind and had under pressure admitted that amount was his unaccounted money as his statement recorded at the time of search action was under coercion, threats and severe pressure. The assessee submitted that cash seized was indeed cash in hand of the assessee and his wife.

4. However, the AO found that the same was not disclosed during the search. The spouse of the assessee did not disclose as to where her cash in hand lies. The AO held that perusal of books of the assessee and his wife revealed that unsecured loan in books of the wife of the assessee was not reflected in books of the assessee. Hence, the AO concluded that the books of accounts of the assessee are not reliable and explanation furnished by the assessee was not acceptable. Accordingly, cash found at the premises of the assessee remained unexplained and the same was added to the income of the assessee u/s 69A r.w.s. 115BBE of the Act.

5. The Id. CIT (A) confirmed the addition holding that the assessee has stated that the cash found related to AY 2017-18 as admitted by the assessee in his statement recorded during

post search enquiries. On the issue that the addition cannot be made in the AY 2017-18, the Id. CIT (A) held that on due consideration the cash to the tune of Rs. 17,61,950/- has been found and seized in FY 2016-17 hence addition has to be made in the assessment year 2017-18. Although the assessee stated that the said cash has been earned during FY 2015-16, the Id. CIT (A) held that the assessee has not been able to substantiate earning of such income in FY 2015-16. It was held that since the original statement given by the assessee was not substantiated the AO was fully justified in treating the said cash of Rs. 17,61,950/- as unaccounted income of the assessee for AY 2017-18. It was held that since the assessee has not been able to justify earning of professional income in cash from 25 to 30 clients as admitted in course of search action, the claim of the assessee that the cash of Rs. 17,61,950/- has been rightly dealt with in A Y 2017-18.

6. Aggrieved the assessee filed appeal before the ITAT.

7. During the hearing before us, the Id. AR argued that,

1. The search took place on 07.04.2016 wherein the cash of Rs.17,61,950/- has been found and by no stretch of imagination, it cannot be assumed that the assessee, a practicing advocate has earned Rs.17.61 lacs within a period of 7 days during the year.
2. Since, the amount could not have been earned in the FY 2017-18, no addition is warranted by the AO in this year.
3. The assessee has explained before the revenue authorities on 12.04.2016 i.e. 5 days after the search that the amount

belongs to FY 2015-16, hence it should have been rightly assessed in the assessment year 2016-17.

4. The assessee has filed a letter dated 23.05.2016 regarding the retraction of statement given on 07.04.2016 hence no addition can be made solely based on the statement.
 5. Since, the retraction is within the period allowed by various judgments and within 24 days of giving the statement, the same should not be considered for assessment purpose.
 6. The rejection of books of accounts and consequent addition is illegal and without any valid reasons.
8. On the other hand, the Id. CIT DR strongly argued on various provisions of Section 69A of the IT Act, the arguments are as under:
1. As per the Section 69A since the assessee is found to be the owner of the money and such money is not recorded in the books of accounts, the cash found on 07.04.2016 has been rightly added in the assessment year 2017-18.
 2. The assessee being a practicing advocate cannot claim any threat or coercion on the date of search with regard to recording of the statement. He relied on the judgment of the Hon'ble Apex Court in the case of Banna Lal Jaat Construction Pvt. Ltd. Vs ACIT SLP No. 7469 of 2019 and other judgments which have been duly produced, which are on the issue of recording of the statement.
 3. With respect to assessment of these amounts in assessment year 2016-17, it was argued that though the amounts may be claimed to have been received in the AY 2016-17 but since they have been found in the AY 2017-

18, the provisions of the Act mandates the revenue to consider the assessment in the current year and the AO was correct in making the addition in the AY 2017-18.

4. Regarding the rejection of books of accounts, it was argued that since it has been accepted under the statement recorded u/s 131 that the amounts have not been declared in the return, the books cannot be considered reliable.
 5. The period of earning of the money is immaterial and the cash was found on 07.04.2016 and the amount has been rightly brought to tax.
 6. The sanctity of the statement recorded on the date of search cannot be disputed at a later date.
9. Rebutting the arguments of the Id. DR, the Id. AR of the assessee argued that the statement recorded on 12.04.2016 has not been considered by the AO and addition has been made only based on statement recorded on 07.04.2016.
10. Heard the arguments of both the parties and perused the material available on record.
11. We find that following questions emanates from the facts of the case:
1. Whether the AO was right in not believing the books of accounts?
 2. Whether the addition can be made solely on the basis of statement recorded on the date of search i.e. on 07.04.2016?

3. Whether ignoring the statement recorded on 12.04.2016 wherein the assessee explained that the amounts pertain to assessment year 2015-16?
4. Whether the retraction filed before the ADIT(Inv.) on 23.05.2016 can be considered valid?

12. The argument that inspite of the undisputable evidences that the amounts have been duly reflected in the books of accounts, the AO went ahead with making of the addition has been examined.

13. We have perused the documents filed by the assessee before the revenue authorities to explain the cash found at the residence. The details are as under:

Vijay Chawla	B/S	As on 31.03.2015
	Complete cash book	01.04.2015 to 31.03.2016
	Cash book	01.04.2016 to 08.04.2016
	B/S	As on 31.03.2016
Shalini Chawla	B/S	As on 31.03.2015
	Complete cash book	01.04.2015 to 31.03.2016
	Cash book	01.04.2016 to 08.04.2016
	B/S	As on 31.03.2016

14. On perusal of the balance sheet of the assessee, we find that the cash in hand as at 31.03.2015 was Rs.3,52,074/- taking as this opening balance, the closing balance of cash as at 31.03.2016 was Rs.2,73,475/-. The cash as on 08.04.2016 was Rs.2,73,475/- out of which Rs.2,73,000/- has been seized by the department. Similarly, the cash in hand of Ms. Shalini Chawla was Rs.8,98,867/- as on 31.03.2015 as per the balance sheet. The cash book, opening balance as on 01.04.2015 was

Rs.8,98,866/- and the closing balance as on 31.03.2016 was Rs.9,88,227/- out of which amount of Rs.9,80,000/- has been seized by the department on 08.04.2016. The balance sheet of Ms. Shalini Chawla as on 31.03.2016 reflects an amount of Rs.9,88,228/-. From the perusal of the details filed before the revenue it can be held that the amounts have been duly reflected in the books of accounts of the assessee and his wife.

15. The AO held that perusal of the books of accounts of the assessee and his wife reveals that unsecured loans in the books of accounts of the wife of the assessee is not reflected in books of the assessee. Hence, the AO rejected the books of accounts. For the sake of ready reference, the relevant portion of the assessment order is reproduced below:

*"The assessee submits that cash seized was cash in hand of the assessee and his wife. However, the same was not disclosed during the search. **Spouse of the assessee did not disclose as to where her cash in hand lies. Also a perusal of books of the assessee and his wife reveals, that unsecured loan in books of the wife of the assessee is not reflected in books of the assessee.** Hence, books of the assessee are not reliable and explanation furnished by the assessee is not acceptable. Accordingly, cash found at the premise of the assessee remains unexplained and the same is added to the income of the assessee u/s 69A r.w.s. 115BBE of the act. In view of the foregoing, I am satisfied that the assessee has failed to disclose the nature and source of the above undisclosed income, therefore, penalty u/s 271AAB of the act is initiated separately."*

16. From the above, we are unable to accept the contention of the AO that "spouse of the assessee did not disclose as to where are cash in- hand lies". Further, the AO rejected books of accounts holding that "the unsecured loans in books of the wife of the assessee is not reflected in the books of the assessee".

The AO cannot expect to find the details of the unsecured loans of the wife of the assessee in the books of accounts of the assessee. This cannot be a valid reason to reject his books of accounts.

17. Section 145 of the Income Tax Act 1961, lays down that income chargeable under the head "Profit and gains of business or profession" or "Income from other sources" shall, be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Subsection 3 of Section 145 lays down that where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting namely cash or mercantile systems or accounting standards as notified by the Central Government, have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in Section 144 of the Act.

18. The Section 145 as it stands now restricts the choice of system to either the cash or mercantile system and Central Government has powers to notify accounting standards to be followed by the assessee. After going through the various decisions of the Courts upholding the rejection of books of accounts or otherwise it can be said that the A.O may proceed under Section 145(3) under any of the following circumstances:

- (a) Where he is not satisfied about the correctness or completeness of the accounts; or
- (b) Where method of accounting cash or mercantile has not been regularly followed by the assessee; or

(c) Accounting Standards as notified by the Central Government have not been regularly followed by the assessee.

19. In order to invoke one of the other parameters for rejection of books of account in a particular case, then a definite reason to be mentioned is sine-qua non on part of the Assessing Officer before rejection of books of accounts.

20. The Assessing Officer is required to analyze various other heads and details for the relevant period, before drawing any conclusion on rejection of books of accounts. Therefore, the Courts expect that the Assessing Officer shall bring on record specific defects in the books of account of the assessee before invoking the provisions of Section 145(3). The rejections of books of account simply without mentioning the reasons would not suffice and cannot stand the test of appeal.

21. In rejecting the books of accounts of the assessee there shall be justification for the same. In the instant case, the two observations made by the Assessing Officer cannot be said to be justifiable reasons to reject the books of accounts. Further, in case where the books of accounts are rejected u/s 145(3) then the assessment ought to have been completed u/s 144 of the Act. Section 144 provides for best judgment method of assessment by Assessing Officer and to complete the assessment u/s 144(1), the Assessing Officer has to afford an opportunity to the assessee to that extent.

22. Since, the amounts have been duly reflected in the books of accounts and the reasons specified by the Assessing Officer are not justifiable and since the assessment has not been

completed following the due procedure as mentioned u/s 144, we hereby hold that no addition in the case of the assessee is called for.

23. As the issue has been decided on the rejection of books of accounts, any adjudication on the other arguments taken up by the parties would be only academic in nature and hence not resorted.

24. Ground No. 2 relates to addition on account of old currency notes which had zero intrinsic value as on the date of operation of locker No. 487. During the operation of locker on 25.04.2017 an amount of Rs.2,50,000/- has found. The last date of operation of the locker was **29.10.2015** and it was operated by the revenue on 25.04.2017. There were no locker operations between 01.04.2016 to 25.04.2016. Hence, it was alternatively argued that the amount rightly belongs to assessment year 2016-17. The revenue argued that the factum that the assessee has had this "amount" at the time of operating of the locker proves unexplained source of the money liable to be taxed u/s 69A.

25. Heard the arguments of both the parties and perused the material available on record.

26. The amount has been added as unexplained money u/s 69A for the assessment year 2017-18. Hence, it needs to be considered as to whether for the period between 01.04.2016 to 25.04.2016, possession of these notes have any intrinsic value or not. On this issue, we are guided by the judgment of Hon'ble High Court of Karnataka in the case of CIT Vs Andhra Pradesh

Yarns Combines Pvt. Ltd. 200 CTR 641. The operative part of the said judgment is as under:

"9. Having heard the learned counsel for the parties to the lis and after carefully considering the findings and the conclusions reached by the Tribunal, we are of view, that the Tribunal is justified in their conclusion. The reason being, the assessee was in possession of unexplained money of Rs.1,35,000 during the previous year relevant to the assessment year and this amount was added to the return of income filed by the assessee while completing the assessments for the asst. yr. 1978-79. The assessment order so passed is accepted by the assessee, may be in view of smallness of the tax quantified by the ITO in spite of such addition. However, in the penalty proceedings, the assessee had contended that the addition made did not represent the concealed income, since on the date, when he was found 'to be in possession of the aforesaid amount, the same did not have any value in view of refusal by the RBI to honour the high denomination notes when it was tendered for exchange. In Tomlins Law Dictionary, 'money' is defined as, that metal, be it gold or silver, which receives authority by the prince's impress to be current; for as wax is not a seal without print, so metal is not money without impression. Money is said to be the common measure of all commerce, throughout the world, and consists principally of three parts, the material whereof it is made, being silver or gold; the denomination or intrinsic value, given by the king, by virtue of his prerogative; and the king's stamp thereon. It belongs to the king only, to put a value as well as the impression on money.

10. The expression 'money' has different shades of meaning. In the context of income-tax provisions, it can only be .a currency, token, bank notes or other circulating medium in general use, which has the representative value. Therefore, the currency notes on the day when it was found to be in possession of the assessee should have had the representative value, namely, it could be tendered as a money, which has intrinsic value. In the instant case, the final fact

finding authority, namely, the Tribunal, after noticing the ordinance issued by the Central Government, coupled with the fact of RBI refusing to exchange the high denomination notes when it was tendered for exchange, has come to the conclusion, that on the day, when the assessee was found to be in possession of high denomination notes, they were only scrap of paper and they could not be used as circulating medium in general use as the representative value and, therefore, it could not be said that the assessee was in possession of unexplained money, appears to us, correct, proper and reasonable conclusion. Therefore, the high denomination notes which, were in possession of the assessee as on 24th Jan., 1978 cannot be said as "unexplained money", which the assessee had not disclosed in his return of income".

27. Further, we find that the locker was last operated on 29.10.2015. The fact that the locker has not been operated in the assessment year 2017-18 is before the revenue authorities. Hence, the amount deemed to have been undisclosed income for the assessment year 2016-17 whereas the amount has been brought to tax for the assessment year 2017-18. Hence, the addition made in the AY 2017-18 cannot be upheld.

28. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 26/10/2020.

Sd/-

(K. N. Chary)
Judicial Member

Dated: 26/10/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR