

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'B', CHANDIGARH

BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 1582/Chd/2019

(Assessment Year: 2017-18)

M/s SKI Himalayas Ropeways Pvt. Ltd., Regency Company River Line View, New Anaj Mandi Road, Paonta Sahib.	बनाम	The Asst. Commissioner of Income Tax, Circle, Parwanoo.
स्थायी लेखा सं./PAN NO: AAPCS0762H		

निर्धारित की ओर से/Assessee by : Shri Tej Mohan Singh, Adv.

राजस्व की ओर से/ Revenue by : Dr.Ranjeet Kaur, Sr.DR

सुनवाई की तारीख/Date of Hearing: 01.02.2022

उद्घोषणा की तारीख/Date of Pronouncement: 10.02.2022

(Hearing through Webex)

आदेश/ORDER

Per Vikram Singh Yadav, Accountant Member:

This is an appeal filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), Shimla, [in short the 'Ld.CIT(A)'] dated 31.10.2019 pertaining to assessment year 2017-18, passed u/s 250(6) of the Income Tax Act, 1961 (in short 'the Act'), wherein the assessee has challenged sustenance of addition of Rs.15,89,438/- u/s 69A of the Act.

2. Briefly, the facts of the case are that the assessee company is engaged in running of Passenger Ropeway Project at Solang in District Kullu. The assessee company filed its return of income declaring total income of Rs. 1,72,35,780/- after claiming deduction u/s 80IC of the Act, amounting to Rs.31,31,861/-. The return was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were issued and after considering the submissions filed by the assessee, an addition of Rs.15,89,438/- was made u/s 69A of the Act and the assessed income was determined at Rs.1,88,25,218/-.

3. On appeal, the addition so made by the AO has been confirmed by the Ld.CIT(A) and against the said findings of the Ld.CIT(A), the assessee is in appeal before us.

4. During the course of hearing, the Ld. AR taken through the assessment order and submitted that in this case, Sundernagar police intercepted a vehicle on 09.11.2016 and cash of Rs.76 lacs was found in the possession of driver Shri Avdesh Kumar and co-passenger Shri Jagmohan. The said cash was requisitioned and seized u/s 132A of the Act by the Income tax Department on 17.11.2016. It was submitted that the statement of these persons were thereafter recorded and they claimed that the cash belonged

to Shri Amitabh Sharma, Director of M/s SKI Himalayas Ropeways Pvt. Ltd. and thereafter the statement of Shri Amitabh Sharma was recorded u/s 131(1A) of the Act, wherein he admitted that the cash belonged to the assessee company i.e. M/s SKI Himalayas Ropeways Pvt. Ltd. Thereafter during the post-requisition proceedings the assessee submitted that a sum of Rs.13,50,000/- pertains to cash received on sale of disposable material and a sum of Rs.43,75,000/- pertains to cash received from reference from hotels and various activities in Solang Valley and the remaining sum of Rs.18,75,000/- pertains to cash in hand and in support, copy of Daily Sale Book, Register for income from reference from hotels, income from reference from fun games and reference income from paragliding and cash receipt of disposable sale were submitted before the Investigation Wing. The submissions and documents so filed were summarily rejected by the Investigation Wing. The report of the Investigation Wing, contents of which find mention in the assessment order, were thereafter forwarded to the AO to make the addition of the entire amount of cash requisitioned of Rs.76 lacs u/s 69A of the Act after conducting independent enquiries.

5. It was further submitted by the ld AR that during the course of assessment proceedings, a show cause notice was

issued to the assessee regarding the seized cash of Rs 76 lacs and in response, the assessee submitted that it had shown an amount of Rs.57,25,000/- as part of its non-operational income over and above the ropeway receipts and the balance amount of Rs.18,75,000/- was submitted as genuine receipts from sale of tickets. It was submitted by the Ld. AR that the AO partly accepted assessee's submissions regarding the sum of Rs.57,25,000/- and no adverse inference was drawn. However, in respect of sum of Rs.18,75,000/-, the submissions of the assessee were not accepted. The reasoning adopted by the AO was that the basis findings of the Investigation Wing, the documents produced by the assessee regarding receipts from sale of tickets, were not reliable. The AO further held that keeping such huge cash is not normal in the case where the assessee is regularly maintaining bank accounts and bank was locally available. Considering the fact that the bank was closed on 09.11.2016, benefit of average receipt of ropeway from 1st November 2016 to 15th November 2016 amounting to Rs.2,85,562/- was given to the assessee and the balance cash was treated as un-explained money amounting to Rs.15,89,438/- u/s 69A of the Act.

6. It was submitted by the Ld. AR that as can be seen from the assessment order and findings of the AO, the AO

has not conducted any independent enquiries and solely basis the findings of the Investigation Wing, the addition had been confirmed by the AO. It was submitted that during the course of assessment proceedings, the assessee submitted copy of its cash book, bank books as well as bank statement as well as complete books of account and there is no adverse findings recorded by the AO regarding non-reporting of its cash receipts from sale of the tickets. It was accordingly, submitted that when the assessee's cash book and its books of accounts were not rejected, there is no basis for making the addition u/s 69A of the Act. Drawing our reference to the findings of the Investigation Wing, the Ld. AR further submitted that the Investigation Wing in its report has stated that the ticket register produced by the assessee is manipulated and fictitious and fresh entries have been made to inflate sale proceeds of the ropeway business. In this regard, it was submitted by the Ld. AR that such a finding is not supported by any corroborative evidence on record and not a single entry has been pointed out either by the Investigation Wing or by the AO which supports such a finding so recorded by the Investigation Wing and which has been summarily accepted by the AO. It was accordingly, submitted that there is no basis for making the addition where all the receipts from sale of tickets have

been duly accounted for in the books of account of the assessee.

7. Further our reference was drawn to the findings of the Ld.CIT(A) where he has stated that given that the assessee had offered Rs.57,25,000/- as 'income from other sources', no distinction can be made between the receipt offered for taxation and not offered for taxation out of the seized cash and no basis, whatsoever, is available for making only partial disclosure out of the total cash seized. It was submitted that the said findings of the CIT(A) cannot be accepted for the fact that the amount which has been offered by the assessee of Rs.57,25,000/- as 'income from non-operational receipts', the same have also been accounted for in the books of account and basis thereof, the assessee has submitted that the said receipts cannot again be brought to tax in its hands and no adverse inference has accordingly been drawn by the AO. It was submitted that on similar footing, the cash of Rs.18,75,000/- was from its operational receipts from sale of tickets and which has also been accounted for in its books of account and the AO should have accepted the assessee's contention and which has not been accepted for the reasons best known to the assessee and has even not been appropriately appreciated by the ld CIT(A). It was accordingly, submitted that the

addition so made and confirmed by the Ld.CIT(A) be directed to be deleted.

8. Per contra, the Ld. DR relied upon the findings of the lower authorities and our reference was drawn to the findings of the Ld.CIT(A) which are contained at para 5.1 of his order which read as under:

“I have perused the facts of the case, the action of the A.O. and the submission of the appellant. The facts of the case and the submission of the assessee have already been reproduced supra and are not repeated here for the sake of brevity. The only issue in appeal is regarding the action of the A.O. in treating Rs. 15,89,438/- as unexplained money. The appellant is only arguing that the receipts are out of his cash in hand and is duly reflected in the books of accounts. I do not find the arguments of the appellant convincing at all. Cash of Rs.76,00,000/- was found and seized during the demonetization period on 09.11.2016. Surprisingly, the cash book produced by the appellant shows cash in hand at Rs.81.64 lacs as on 08.11.2016. The A.O. found that the appellant is regularly depositing cash in his bank account located in PNB, Palchan Branch, Manali. The last deposit was made on 08.11.2016 of Rs.4,25,250/-. In fact, cash deposits were regularly made, detailed as under:-

01.11.2016	204650
02.11.2016	344250
03.11.2016	464300
04.11.2016	508950
05.11.2016	493650
07.11.2016	375010
07.11.2016	387100
08.11.2016	425250
Total	3203160

Hence, to accept the contention of the appellant that it had huge cash in his books of accounts when the cash was found and seized cannot be accepted. Surprisingly, the appellant itself has offered Rs.57,25,000/- as already undisclosed income as income from other services/sale of Misc. disposable items over and above the ropeway

operational receipts. No distinction can be made between the receipts offered for taxation and not offered for taxation out of the seized cash. No basis whatsoever is available for making only partial disclosure out of the total cash seized. The A.O. after analyzing and giving the credit for the cash sales for the period 1st Nov. to 15th Nov. at Rs.2,85,562/-, treated the balance amount of Rs.15,89,438/- (Rs.18,75,000/- - Rs.2,85,562/-) as undisclosed and unexplained money u/s 69A of the Income Tax Act. I find no reason to interfere with the findings of the A.O. Accordingly, for the detailed reasons mentioned above and the detailed finding of the A.O. and also in view of no reliable evidence brought on record to the contrary by the appellant, the action of the A.O is upheld and the appeal of the assessee is dismissed.”

9. We have heard the rival contentions and perused the material available on record. The limited issue under consideration relates to taxability of Rs 15,89,438/- out of cash of Rs 76,00,000/- which was found in possession of two persons on 9.11.2016 by the Sundernagar police and subsequently requisitioned and seized by the Income tax Department u/s 132A on 17.11.2016. The Assessing officer has invoked the provisions of section 69A while bringing to tax the said sum of Rs 15,89,438/- in the hands of the assessee company and it would therefore be useful to refer to the provisions of section 69A of the Act which read as under:

“Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other

valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.”

10. There is no dispute that the cash had been found in possession of two persons namely, Shri Avdesh Kumar and Shri Jagmohan, however, basis their statements and statement of Shri Amitabh Sharma, the Director of the assessee company, it has been found by the department and which has not been disputed by the assessee company that cash so found seized belongs to the assessee company. Therefore, as far as the first condition for invoking provisions of section 69A is concerned that during the financial year, the assessee is found to be owner of the cash so seized, the said condition is satisfied in the instant case.

11. The second condition for invoking provisions of section 69A is that cash so found is not recorded in the books of accounts, if any so maintained by the assessee for any source of income and the assessee offers no explanation about the nature and source of acquisition of the money, or the explanation offered by it is not satisfactory in the opinion of the Assessing Officer. In the instant case, the assessee is in the business of running of passenger ropeway project at Solang in district Kullu and has maintained its

books of accounts and has reported cash in hand of Rs 81.64 lacs on 8.11.2016 in its books of accounts, a day prior to the date when the vehicle was intercepted and cash amounting to Rs 76 lacs was found and seized belonging to the assessee company. It has been contended by the assessee company that the said cash in hand of Rs 81.64 lacs includes cash of Rs 76 lacs which has been found and seized which comprises of a sum of Rs.13,50,000/- pertaining to cash received on sale of disposable material, a sum of Rs.43,75,000/- pertaining to cash received from reference from hotels and various activities in Solang Valley, and the remaining sum of Rs.18,75,000/- pertains to cash from sale of tickets. In other words, it has been contended by the assessee that all that cash which has been seized is duly recorded in its cash book which forms part of its books of accounts and nothing remaining unaccounted for in its books of accounts. The Assessing officer has partly accepted the assessee's contention regarding sum of Rs 57,25,000/- and has not accepted the assessee's contention regarding sum of Rs 18,75,000/- except for allowing credit for a sum of Rs 2,85,562/-.

12. While accepting assessee's contention regarding sum of Rs 57,25,000/-, the Assessing officer has stated that since the assessee has offered this amount as part of its non-

operational income, no adverse inference is drawn. From perusal of submissions filed by the assessee before the Assessing officer placed at APB Pages 5-6, it is noted that the assessee has reported a sum of Rs 57,25,000/- as part of its non-operational income in its balance sheet and has produced cash receipts and registers accounting for such non-operational receipts having entries prior to 8.11.2016 which forms part of its books of accounts even before the Investigation Wing. Therefore, it can be seen that cash so found and seized amounting to Rs 57,25,000/- has been duly recorded in its books of accounts in its cash book on one hand and following the double entry system of accounting, has been credited to non-operational revenues and has been offered to tax and basis thereof, no adverse inference has been drawn by the Assessing officer. In other words, the explanation of the assessee company that cash so found and seized amounting to Rs 57,25,000/- forms part of cash in hand as on 8.11.2016 amounting to Rs 84.16 lacs has not been disputed rather the same has been accepted by the Assessing officer.

13. On parity of reasoning, where a substantial part of the cash seized of Rs 57,25,000/- representing non-operational receipts has been accepted as cash in hand prior to date of seizure, when it comes to remaining cash of Rs 18,75,000/-

representing operational receipts, reasoning adopted by the Assessing officer that keeping such huge cash of Rs 18,75,000/- is not normal where the bank is locally available cannot be accepted.

14. Further, the Assessing officer has stated that documents produced by the assessee regarding receipts from sale of tickets cannot be accepted and has referred to and relied upon the report of the Investigation wing for reaching such a conclusive finding. Where we look at the report of the Investigation Wing, it states that the ticket register produced by the assessee is manipulated and fictitious and fresh entries have been made to inflate the sale proceeds of the ropeway, though without highlighting which all entries falls under such category and basis of arriving at such a conclusion, and at the same time, it has asked the Assessing officer to conduct independent enquiries. During the course of assessment proceedings, the assessee has produced its books of accounts before the Assessing officer for necessary verification as evident from submissions of the assessee dated 27.11.2018 placed at APB page 10 and we find that there is no finding recorded by the Assessing officer regarding any fictitious sale entries recorded by the assessee in its books of accounts. Therefore, the findings recorded by the Assessing officer that documents so

produced in support of sale receipts from tickets sales are not reliable cannot be accepted in absence of any findings recorded either by the Investigation wing or any independent findings recorded by the Assessing officer himself. In light of the same, we are of the considered view that the onus which has been cast on the Assessing officer to record a categorical finding that the cash so found has not been recorded in the assessee's books of accounts has not been satisfied in the instant case and therefore, the second condition for invoking the provisions of section 69A cannot be held to be fulfilled in the instant case.

15. Further, we find that the Assessing officer, considering the fact that the bank was closed on 09.11.2016, had given benefit of average receipt of ropeway from 1st November 2016 to 15th November 2016 amounting to Rs.2,85,562/- to the assessee company without appreciating the fact that Sundernagar police intercepted the vehicle carrying the cash on 09.11.2016 and the said cash was requisitioned and seized u/s 132A of the Act by the Income tax Department subsequently on 17.11.2016. Therefore, the position of average receipt of ropeway prior to 8.11.2016 has to be seen and not subsequent to 8.11.2016. In any case, there is no reasonable and justifiable basis for restricting the credit for just one day merely on the basis of finding that there are

regular cash deposits in the bank account from 1.11.2016 to 8.11.2016 more so in light of the fact that the assessee has shown cash in hand of Rs 81.64 lacs as on 8.11.2016 in its books of accounts and which are represented by corresponding revenues which have been accepted and brought to tax and even deduction u/s 80IC has been allowed by the Assessing officer.

16. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, the addition of Rs 15,89,438/- so made by the Assessing officer invoking provisions of section 69A and confirmed by the Id CIT(A) is hereby set-aside and directed to be deleted.

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

Order pronounced on 10.02.2022.

Sd/-
(DIVA SINGH)

**न्यायकि सदस्य/Judicial Member
Member**

Dated: 10.02.2022

रती

Sd/-
(VIKRAM SINGH YADAV)

लेखा सदस्य/Accountant

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar