

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.101/Rjt/2018  
(निर्धारण वर्ष / Assessment Year 2014-15)

Kishorkumar Jamnadas Sodha, 81, Aradhana Socieity, Airport Road, Rajkot.	<b>बनाम/</b> Vs.	A.C.I.T., Central Circle-1, Rajkot.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AFHPS6453F</b>		
(अपीलार्थी / <b>Appellant</b> )		(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी ओर से / <b>Appellant by</b> :	None
प्रत्यर्थी की ओर से / <b>Respondent by</b> :	Shri B.D. Gupta, Sr. D.R.

सुनवाई की तारीख / <b>Date of Hearing</b>	27/06/2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	29/06/2022

**आदेश / O R D E R**

**PER BENCH:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad [Ld. CIT(A) in short] dated 08/01/2018 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (A.Y.) 2014-15.

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2. The only issue raised by the assessee is that the learned CIT-A erred in confirming the addition made by the AO for ₹19 lakhs, representing the cash found during the course of search proceedings, treating the same as unexplained cash.

3. The facts in brief are that the assessee in the present case is an individual and engaged in the trading activities of grain and pulses and deriving income from the commission. As a result of search at the premises of the assessee, a cash of ₹19,43,000/- was found. On question about the source of cash during the course of search, the assessee admitted that the impugned cash represents the unaccounted income which was generated from his proprietorship firm namely M/s Kishore Jamnadas and sons and partnership firm engaged in the business of construction namely M/s Parth Construction.

3.1 However, the assessee during the course of assessment proceedings claimed that impugned amount of cash belongs to the company namely M/s JP Structure Pvt. Ltd. and JP Inn in which his son is director and partner. The assessee in support of his contention also produced the copy of the cash book.

4. However, the AO was not satisfied with the contention of the assessee on the reasoning that the assessee has taken different stand that during the search proceedings viz a viz assessment proceedings. As per the AO the assessee at the time of search has contended that the cash belongs to M/s Kishore Jamnadas and sons and partnership firm engaged in the business of construction namely M/s Parth Construction whereas during the assessment proceedings, it was contended that cash belongs to M/s Kishore Jamnadas & sons and partnership firm engaged in the business of construction namely M/s Parth Construction. Accordingly, the AO held that declaration furnished by the assessee is not reliable. Hence, the AO confirmed the addition of ₹19 lakhs treating the same as unexplained cash by adding to the total income of the assessee.

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5. Aggrieved assessee preferred an appeal to the learned CIT-A. The assessee before the learned CIT-A submitted that the fact that the cash belongs to M/s JP structure private Ltd and JP inn was brought to the notice of the search team. The assessee further submitted that the cash belongs to these companies can be verified from the cash book and the audited financial statements of the above concerns.

6. The assessee further submitted that he has retired from the firm namely M/s Parth construction company with effect from 1 April 2012 which is a date much prior to the statement recorded under section 132(4) of the Act dated 18 December 2013. Thus there is no sanctity of the statement furnished that the cash belongs to the firm.

7. The learned CIT-A after considering the submission of the assessee confirmed the order of the AO by observing as under:

*During the course of appellate proceedings, the appellant reiterated his contentions made before the Assessing Officer, which have been reproduced above. The contentions of the appellant are not found acceptable as on the date of search on the above mentioned premises, only the appellant and his wife were staying. His son Hiren K Sodha was not staying with him. He was staying with his family in other premises. Thus, the premises was under the control of the appellant absolutely. As per the Annexure CF prepared for cash found during the course of search and part of the Panchhama drawn in the present of two independent witnesses, it is clearly mentioned that the cash found has been claimed to belonging to the appellant. Therefore, the Assessing Officer has correctly assessed the cash in the hands of the appellant. While giving statement u/s.132(4) of the Act during the course of search, the appellant stated that this cash is from unaccounted income generated from partnership firm M/s.Parth Construction and proprietorship concern Kishore Jamnadas & Sons. He will refer to the books of accounts and will state how much cash balance has been shown in the books of these two concerns. He never stated that this cash or any part of this cash was kept by his son Hiren K. Sodha at this premises. Neither Shri Hiren K. Sodha or any other partner/director of any firm/company sated during the course of search that the cash belonging to other concerns was kept at the premise of the appellant. Cash was found and seized on 18.12.2013 and the appellant's locker was opened with Bank of India on 9.1.2014 i.e about 20 days after the cash was found but the appellant did not inform the department that the cash does not belong to him but to these two concerns. Even after the search was concluded, the appellant did not filed any letter or affidavit before any authority in the department retracting the statement made u/s.132(4) of the Act. The appellant filed return on*

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*30.03.2015 i.e 15 months after the search, in which he did not show the cash seized as his income. For 15 months, he considered that his statement made during the course of search about the cash stating as his unaccounted income was correct. After lapse of 15 months time, not considering the own statement made on oath u/s.132(4) of the Act, cannot be considered true and correct. Regarding the contention of the appellant that he has been retired from Parth Construction from 1.4.2012, it can be considered then the appellant received this cash on his share in cash on retirement, which is unaccounted in the books of the firm as well as the appellant. Keeping in view the above discussion, it is considered that the contentions of the appellant is explaining the cash seized in nothing but an afterthought to evade payment of tax. The additions made by the Assessing Officer is strictly in accordance with the provisions of the Act, hence, these are confirmed. This ground of appeal is dismissed.*

8. Aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

9. The learned DR before us vehemently supported the order of the authorities below.

10. We have heard the learned DR and perused the materials available on record. The facts of the case have been reproduced in the preceding paragraph which are not disputed. Therefore we are not repeating the same for the sake of convenience and gravity. At this outset it was noticed that the appeal was preferred by the assessee in the year 2018 and the same was listed several times for hearing but none of the occasion anybody appeared from the side of the assessee. Accordingly, we decided to proceed to adjudicate the issue ex parte to the assessee.

10.1 The assessee in the statement of facts filed along with the appeal has stated that he and his wife are handicapped and the son used to stay with them only. Merely, the address of the son is different on the passport does not prove that the son, Shri Hiren Sodha was not residing with them. This fact is also fortified with the search warrant as it was issued in the name of the son wherein the address of the assessee was mentioned. Thus, there remains no ambiguity that the son was staying with the assessee.

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10.2 It was also explained that the assessee at the time of search put a caveat in the statement furnished under section 132(4) of the Act that he will clarify the exact position of cash after the verification of the books of accounts. Thus it cannot be said that the assessee was sure enough that impugned cash represents his undisclosed income.

10.3 There was no question raised to the directors/ partners of the companies/ firm namely M/s JP Structures Pvt Ltd and M/s JP Inn about the availability of cash. Neither the cash was impounded during the course of search nor inventoried any amount of cash. The amount of cash was duly reflected in the audited financial statements which was accepted by the revenue in the block assessment without any question/ verification in the case of M/s JP Structures Pvt Ltd and M/s JP Inn.

10.4 The assessee also submitted in the written submission that immediately after the date of search within a period of one month, the companies namely M/s JP Structures Pvt Ltd and M/s JP Inn have requested to the income tax department for release of the cash which evidences that cash found from the premises of the assessee was not belonging to him but to the impugned companies. Therefore, the assessee did not retract the earlier statement under the impression that the admission of the cash by the companies is sufficient enough that the cash belongs to them.

10.5 On perusal of the order of the learned CIT-A, we note that the order passed by him is well speaking and reason. Indeed, the assessee in the statement of facts filed along the memo of appeal has made various submissions but the same were not supported by the documentary evidence. Therefore, in the absence of necessary information, we find difficult get convinced with the submission of the assessee filed along with the statement of facts. As such, there

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was no information/materials brought on record contrary to the finding of the learned CIT(A). Accordingly, we do not find any reason to interfere in the order of the learned CIT(A). Hence, the ground of appeal of the assessee is hereby dismissed.

11. In the result, the appeal of the Assessee is hereby dismissed.

**This Order pronounced in Open Court on 29/06/2022**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Rajkot, Dated 29/06/2022  
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