

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad

Before Shri R. K. PANDA, ACCOUNTANT MEMBER

ITA No.133/Hyd/2022		
Assessment Year: 2019-20		
M/s. M. Nemichand Jewellers Secunderabad PAN:AACFM8833B	Vs.	A.C.I.T. Central Circle 1(2) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri Pawan Kumar Chakrapani	
Revenue by:	Sri Y.V.S.T. Sai, DR	
Date of hearing:	12/07/2022	
Date of pronouncement:	15/07/2022	

ORDER

This appeal filed by the assessee is directed against the order dated 20.02.2022 of the learned CIT (A)-11, Hyderabad relating to A.Y. 2019-20.

2. Facts of the case, in brief, are that the assessee is a partnership firm and is engaged in the business of Retail-Trading of Gold Jewellery and Pawn Brokers. During the course of vehicle checking duty conducted during parliament elections, the Police intercepted Shri Anil Kumar Jain at 8.30 P M on 20.02.2019 near Subhan Bakery, Nampally, Hyderabad and found a bag containing Cash of Rs. 10,00,000/- while he was riding Honda Activa bearing Reg. No.TS10EL1501 and seized the cash.

3. Sri Anil Kumar Jain S/o. Late Nemichand Jain was summoned u/s.131 of the Act and his statement was recorded.

During the course of enquiry, the assessee, Sri Anil Kumar Jain was not able to explain the sources with supporting evidence for the cash of Rs.10,00,000/- found and seized by the Police. Therefore, a warrant u/s.132A(1) of the Act was executed and cash of Rs.10,00,000/- was seized from the office of the Sub-Inspector of Police, Police Station, Nampally.

4. In the statement recorded, Shri Anil Kumar was asked to substantiate the sources for cash of Rs. 10,00,000/- found along with documentary evidence. Sri Anil Kumar Jain stated that the cash belongs to his partnership from M/s. Nemichand Jewellers, that the said cash was taken for depositing into his firm's bank account at around 5.00 PM. It was further stated that the Bank was closed and thus he carried the said cash to his relative's office at Nampally. While returning from his relative's house from Nampally, the Police intercepted him and the cash was seized. He also stated that the said cash was taken from the balance available in the books of his firm and as per the books of account of M/s. Nemichand Jewellers, cash in hand available as on 21/03/2019 was Rs.10,57,217/-

5. It was seen from the copy of cash book that the sources of cash-in-hand was mainly on account of cash sales of the firm. In response, the assessee submitted bank account statements, sales invoices related to cash sales and cash book of M/s. Nemichand Jewellers. On verification of the cash sales, invoices verified with the firm's cash book, it was noticed that the assessee submitted only a part of the sales invoices for verification and was further asked to produce the remaining invoices. To this, the assessee replied that he was not maintaining proper books of account for his business and unable to produce the remaining

sales invoices of the cash sales made in support of his claim. Therefore, the Assessing Officer held that the cash book furnished by the assessee was not reliable. On confronting the facts and issues, Sri Anil Kumar Jain admitted the same as undisclosed business income in the hands of the firm M/s. Nemichand Jewellers for the Assessment Years 201-20 in addition to its regular income for the Asst. Year 2019- 20. The same was confirmed by Sri Anil Kumar Jain in his sworn statement dated 22/03/2019.

6. The Assessing Officer noted that in the return of income filed for AY 2019-20, the assessee has included income of Rs.10,00,000/- for the A.Y.2019-20 in addition to its regular income for the A.Y.2019-20. The assessee filed Return of Income for the Asst. Year 2019-20 admitting total income of Rs.20,25,890/- and included Rs. 10,00,000/- in the computation of total income as additional income.

6.1 The Assessing Officer observed from the report of verification of the details that the assessee has shown the additional income of Rs. 10,00,000/- in the P&L account under the head Indirect income with the narration Addl.Business Income Declared 10,00,000.00". In the balance sheet the cash of Rs. 10,00,000/- seized by the department is shown under current assets with narration Cash seized by Department 10,00,000.00".

6.2 The above entry according to the Assessing Officer indicates that the cash seized by the department is passed by a separate entry as "Cr. Addl.Business Income Declared 10,00,000.00 (P&L account) and Dr. Cash seized by Department 10,00,000.00 (Balance sheet)". The cash book with the cash is

continued with cash balance as shown on the date of seizure by the department. The issue according to the Assessing Officer is how the cash which was seized by the department is continued in the cash book with cash on hand.

7. Rejecting the various explanations given by the assessee and in the absence of any conclusive evidence/ satisfactory explanation for Rs.10.00 lakhs, the Assessing Officer treated the same as unexplained money and added the same u/s 69A r.w.s.115BBE of the Act.

8. In appeal, the learned CIT (A) upheld the additions sustained by the Assessing Officer. However, he directed the Assessing Officer to change the head from Section 69A to Section 68.

9. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. The impugned order of the learned Assessing Officer in so far as it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The Appellant denies himself liable to be assessed on a total income of Rs. 20,25,889/-, as against the income returned an amount being Rs. 20,25,889/-which was under the normal provision of laws, under the facts and circumstances of the case.

3 Whether the learned Assessing Officer is justified in making an addition of Rs. 10,00,000/, as unexplained cash credit under section 69A of the Act, under the facts and circumstances of the case. A. Whether the learned Assessing Officer is justified in making addition of Rs. 10,00,000/-, even when the documents were submitted before the learned Assessing Officer, under the facts and circumstances of the case.

4. The appellant denies himself liable to be charged to interest u/s 234A, 234B & 234C of the I.T. Act, 1961 under the facts and circumstances of the case.

5. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

6. *In the view of the above and other grounds, that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity”.*

10. The assessee has also taken the following additional grounds of appeal:

The appellant begs to submit the under mentioned additional grounds of appeal, which were not urged specifically in the original grounds of appeal filed at the time of institution of appeal before this Hon'ble Tribunal due to inadvertence. These grounds do not involve investigation of any facts otherwise than on the record of the department and are also pure questions of law. It is humbly prayed before this Hon'ble Tribunal that the additional grounds which are pure questions of law be kindly admitted and disposed off on merits for the advancement of substantial cause of justice. Reliance is placed on the decision of the Hon'ble Apex Court in the case of National Thermal Power Company Limited Vs. CIT, reported in 229 TR 383 and also on the ratio of the decision of the Hon'ble Karnataka High Court in the case of Gundathur Thimmappa & Sons Vs. CIT, reported in 70 ITR 70 in support of this prayer.

ADDITIONAL GROUNDS OF APPEAL

1. *Whether the learned Commissioner Of Income-tax (Appeals), is justified in changing the head of addition from section 69A of the Act, to section 68 of the Act, without giving the Appellant an opportunity, under the facts and circumstances of the case.*

2. *Whether the learned Commissioner of Income-tax (Appeals), is justified in sustaining the addition under section 68 of the Act, even when the Appellant has offered the explanation that the amount of cash is from the books of account of the appellant, under the facts and circumstances of the case.*

3. *The appellant craves leave to add, alter, delete or substitute, change or delete any of the grounds of appeal.*

4. *For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered”.*

11. Referring to the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs Commissioner Of Income Tax on 4 December, 1996 reported in 229 ITR 383 and the decision of the Karnataka High Court in

the case of Gundathur Thimmappa & Sons, reported in 70 ITR 70, the learned Counsel for the assessee submitted that these grounds being purely legal in nature and all facts are already available in record and no new facts are required to be investigated, therefore, should be admitted.

12. The learned DR, on the other hand objected to the admission of the additional grounds.

13. After hearing both the sides and considering the fact that the additional grounds do not involve investigation of any new facts and these details are already available on the record of the Department and are purely legal in nature, therefore, these additional grounds are admitted for adjudication.

14. The learned Counsel for the assessee while challenging the order of the learned CIT (A) submitted that the learned CIT (A) without giving any opportunity of being heard to the assessee, changed the head of addition from section 69A to section 68 of the I.T. Act. He submitted that in the interest of justice, the matter may be restored to the file of the CIT (A) with a direction to grant at least one opportunity to the assessee before deciding the change of head from section 69A to section 18 of the Act.

15. The learned DR, on the other hand, strongly supported the order of the learned CIT (A) and submitted that the powers of the CIT (A) are co-terminus with that of the Assessing Officer and he can do what the Assessing Officer has failed to do. He accordingly submitted that the order of the learned CIT (A) be upheld.

16. I have heard the rival arguments made by both the sides, perused the orders of the AO and CIT (A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me by both sides. I find the AO in the instant case made an addition of Rs.10 lakhs u/s 69A on the ground that the assessee failed to explain the source with supporting evidence for the cash of Rs.10 lakhs found and seized by the Police. I find the learned CIT (A) upheld the action of the Assessing Officer. However, he has changed the head of income from section 69A to section 68 to be read with section 115BBE of the I.T. Act. Perusal of the order of the learned CIT (A) nowhere shows that before changing the head of income from section 69A to section 68, he has given any opportunity to the assessee to substantiate as to why the provisions of section 68 should be applied in place of section 69A. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the learned CIT (A) with a direction to grant an opportunity to the assessee to substantiate as to why the provisions of section 68 shall not be applicable to the facts of the present case. The CIT (A) shall decide the issue as per fact and law after giving one opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised on this issue are accordingly allowed for statistical purposes.

17. Before parting with the order it is to be mentioned here that the assessee did not challenge the addition of Rs.10 lakhs but challenged only the part of the order of the learned CIT (A) for changing the taxability of the same u/s 68 as against 69A of the I.T. Act. Therefore, other grounds are not being adjudicated as not pressed.

18. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 15th July, 2022.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Hyderabad, dated 15th July, 2022.

Vinodan/sps

Copy to:

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2	ACIT, Central Circle 1(2) Aayakar Bhavan, Basheerbagh, Hyderabad
3	CIT (A)-11, Hyderabad
4	Pr. CIT – Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order