

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI PAVAN KUMAR GADALA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 178/Mum/2021 (A.Y. 2015-16)

Devendra Rajnikant Ladhani,
1, Om Building, Opp. Rishi Vihar Complex,
Bolinj Road, Virar (W),
District-Palghar-401303
PAN: ABFPL5079C

..... Appellant

Vs.

ACIT, Central Circle-3,
6th Floor, Ashar IT Park,
Wagle Industrial Estate, Road No.16X,
Thane (West)-400604.

..... Respondent

Appellant by	:	Sh. Subhodh Ratnaparkhi
Respondent by	:	Sh. Nimesh Yadav, CIT-DR
Date of hearing	:	09/05/2022
Date of pronouncement	:	03/08/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals) -11, Pune [hereinafter referred to as ('Ld. CIT(A)') dated 30.12.2020 for the Assessment Year (AY) 2015-16. The assessee has raised the following grounds of appeal:

"The Hon. CIT(A) erred in upholding the addition of Rs.3,82,84,000/- made u/s 69A of the IT. Act, 1961 as unexplained money on account of cash found at the residence and from the bank lockers of the appellant during the course of

search action u/s 132 on 31.07.2014, not accepting the explanation of the appellant that the said cash belonged to the M/s Rashmi Ameya Development Housing and Estate Realtors Pvt. Ltd, in which company the appellant is one of the directors and therefore the addition in the hands of the appellant is not justified and bears to be deleted."

2. Brief facts of the case are that the assessee/appellant is an individual and is a promoter director in the MAAD Group of Companies, the prominent ones being M/s Maad Relaters and Infra Ltd. & M/s Rashmi Ameya Developers Housing & State Relaters Pvt. Ltd. (RADHE). A search and seizure action under section 132 of the Act was carried out on 31.07.2014 at Maad group of cases and the resident of the appellant/assessee. At the residential premises and bank lockers cash amounting to Rs. 3,82,84,000/- was found. Assessee in his statement under section 132(4) admitted that the same cash belong to him and offered for taxation for AY 2015-16 i.e. the year of search. But the return filed for AY 2015-16 on 30.03.2016, assessee returned the total income of Rs. 2,06,26,620/-. The AO completed assessment under section 143(3) of the Act and assessed total income at Rs. 5,89,96,520/- this includes amount of Rs. 3,82,84,000/- declared during the search and an amount of Rs. 85,904/- as unexplained expenditure.

3. Aggrieved with the assessment order, assessee preferred an appeal before the Ld. CIT (A). In his order the Ld. CIT (A) also confirmed the action of the AO. Against this order of Ld. CIT (A) now the assessee is in appeal before us.

4. The Ld. CIT (A) in his order strongly relied on the statements by the assessee given under section 132(4) of the Act. To elaborately discuss the gravity of matter, we are herein below reproducing section 132(4) and 132(4A) of the Act as under:

“(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

[Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.]

[(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;*
- (ii) that the contents of such books of account and other documents are true; and*
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.]”*

5. A bare reading of section 132(4) and 132(4A) of the Act apparently leave any rescue to the assessee, as statement given under section 132(4) of the Act is admissible as evidence in any proceeding under the Income Tax Act. Whereas as per section 132(4A) as mentioned (supra) any books of account, other documents, money, bullion, jewellery and any other valuation articles or thing found in the possession or the control of any person in the course of a search, it may be presumed that these belongs to such person. A combined reading of section 132(4) and 132(4A) of the Act cast a definite burden on the assessee in terms of finality and admissibility of the statement given and about the ownership of cash, etc. Found in the possession and control of the assessee.

6. In this case, there is no doubt assessee himself has given statement and any element of pressure or coercion not found. It is also evident that cash has been found at the premises and locker of the assessee. Assessee's submission before the Ld. CIT (A) vide page 4, para 5 & 6, we are reproducing as under:

"[5. During the appeal proceedings, on behalf of the appellant, it is claimed that while cash totalling to Rs.3,82,84,000/- was found during search, the appellant was under tremendous psychological pressure and erroneously admitted the said amount to be his additional income. It is claimed that cash amounting to Rs.3.82,84,000/- found during search belong to M/S RADHE, a private limited company, in which the appellant is one of the directors. It is also claimed that this was communicated to the AO, vide letter dtd.9/9/2016, along with the original affidavit stating these facts. It is further claimed that in the course of search action at the office premises of M/s MAAD Realtors and Infra Ltd, loose excel sheet marked as page no.25/bundle no.1 reflecting proposed sale of FSI to various parties by M/s RADHE was found and seized. The said paper is claimed to reflect the details of transactions of proposed sale of FS1 to various parties. As per the said paper, it is stated that a sum of Rs 59,73,77,100/- was received in cash by M/s RADHE from various parties along with bank receipts of Rs.04,31,00,000/- Shri Anil Gupta another director of M/s RADHE, in his statement recorded u/s 132(4) confirmed that the cash receipts were advances for sale of proposed FS1 to the parties reflected on seized paper. It is stated that the cash receipts totalling Rs.69,73,77,100/-, have been taxed as undisclosed income in the hands of M/s RADHE by the AO for AY 2011-12 to AY 2015-16 and this has also been confirmed in appeal by CIT(A)-11, Pune. It is claimed that M/s RADHE has substantial amount of cash on the date of search and the appellant being one of the director was holding part of such cash as a custodian. It is also claimed that the AO has relied on the statement of the appellant and ignored the statement of Shri Anil Gupta (another director) which was also recorded during the search Reliance is also placed on the copy of cash flow statement of M/s RADHE submitted in the course of assessment proceedings of M/s RADHE, which shows that on the day of search, there was sufficient cash available with M/s RADHE It is claimed that the fact that search action revealed cash of Rs.59,23,77,100/- received by M/s RADHE as advance towards proposed sale of land, plots, FSI from various parties has not been disputed by the AO. It is also submitted that the appellant in post search proceedings vide letter

dtd.21/11/2014, filed with the DDIT (inv)-1, had clarified that cash found at his residence and bank lockers belong to group entities and subsequently, during assessment proceedings, the affidavit dtd. 14/5/2015 affirming these facts was submitted with the AO vide letter dtd. 9/9/2016. It is also claimed that no other incriminating documents was found from the residence of the appellant indicating any evidence that the cash seized belong to the appellant. The appellant has relied on the following documents in support of its arguments

- 1. Photocopy of statement recorded u/s 132(4) of the appellant in the course of search between 31/7/2014 to 1/8/2017.*
- 2. Copy of letter dtd.9/9/2016, along with affidavit dtd.14/5/2015 submitted to the AO.*
- 3. Copy of letter dtd.9/9/2016 along with cash flow statement of M/s RADHE submitted in the course of assessments of M/s RADHE*
- 4. Copy of letter dtd.21/11/2014 filed with DDIT (Inv)-1 during post search proceedings.*
- 5. Assessment order u/s 143(3) of M/s RADHE passed by ACIT Central Circle-3, Thane which is the AO himself.*

6. On behalf of the appellant, it is also submitted that the appeals in case of M/s RADHE for A.Y. 2011-12 to 2015-16, have been decided by this office by order dtd.23/3/2020 and the cash receipts of Rs.59,73,77,100/- have been upheld as undisclosed income of M/s RADHE for A.Yrs 2011-12 to 2015-16. It is therefore claimed that the same amount cannot be taxed twice, once in the hands of Me RADHE and again in the hands of the director custodian i.e, the appellant. Reliance has been placed on the decisions in the case of K.S. Mohammed Vs. ITO (1989) 33 TTJ (Bom) 468, CIT Vs. A.N. Dyanshewaran (2008) 172 Taxman 110 (Mad) and Premier Car Sales Ltd Vs. DGIT (2013) 40 taxmann.com 19 (All)."

7. The above submission of the assessee has to be read with the finding of Ld. CIT (A), he made with reference to assessee's submission on page 22, para 14 as under:

"14. On behalf of the appellant a copy of letter dtd.9/9/2016 along with cash flow statement of M/s RADHE submitted in the course of assessments of M/s RADHE has also been produced. A perusal of the said cash flow statement, indicate cash receipt and payments end on 31/7/2014 # sum of Rs.3,82 84,000/- has been shown as cash seized from Devendra Ladhani from the opening balance of cash of Rs.29,79,76,438/- in the books of M/s RADHE as on 1/7/2014. It is

therefore, claimed that the company M/s RADHE had sufficient cash balance and cash of Rs.3,82,84,000/- was kept at the residence of the appellant which was found and seized on the day of search e. 31/7/2014. Admittedly, this cash flow statement has been prepared after the search and therefore, the entries are only suggestive and not Confirmatory in nature and the evidentiary value of the same is suspecting at the best and cannot be taken at face value."

8. This submission of assessee cannot be ignored. The provisions of section 132(4) and 132(4A) of the Act has to be read with other circumstantial situations and submissions of the assessee. The statute casts an obligation on the assessee to prove otherwise. As reproduced above in para-7, the amount of cash found at assessee's residence and locker has already been disclosed and considered in the cash flow statement of the company as opening balance in the name of assessee, same cannot be added back to the income of the assessee/appellant. To substantiate this legal proposition, we have relied on following pronouncements by various Hon'ble High Courts and ITAT as under:

1. **Commissioner of Income-tax v. S.P. Jain [1973] 87 ITR 370 (SC)**
2. **Saveetha Institute of Medical & Technical Sciences v. Assistant Commissioner of Income-tax [2012] 25 taxmann.com 138 (Chennai - Trib.)**
3. **Commissioner of Income Tax-14, Mumbai v. Rakesh Ramani [2018] 94 taxmann.com 461 (Bombay HC)**
4. **Deputy Commissioner of Income Tax, Central Circle – 23 v. Kanakia Hospitality (P.) Ltd. [2019] 110 taxmann.com 4 (Mumbai - Trib.)**
5. **Joint Commissioner of Income Tax Central Circle 1(3), Hyderabad v. Narayana Reddy Vakati [2021] 128 taxmann.com 377 (Hyderabad - Trib.)**

9. Considering the submission of the assessee and the law pronounced as discussed (supra), such a vital submission of the assessee cannot be ignored. The cash flow statement which has been produced by the company and relied upon by the Department has a very specific reference of the amount found at the

residence and locker of the assessee. Ignoring this fact will tantamount to double addition of the same amount.

10. A document has to be relied upon in to-to and piece meal reference is not permissible. If cash flow statement has been accepted in its totality by the Department in the case of company, no addition in the hands of assessee can be made. Statement made under section 132 and cash found [with reference to section 132(4A)] certainly make assessee rival for taxation but this liability of assessee has to be evaluated with other circumstantial evidences. If assessee is able to prove otherwise, certainly he will get rescue from the provisions of section 132(4) and 132(4A) of the Act. In that situation onus will be shifted on the Revenue to prove otherwise to make assessee liable for tax.

11. In the light of the above, we set-aside the additions made by the AO and restore the matter back to the file of AO, with a direction to verify assessee's submission with specific reference to the cash flow statement filed by company and relied upon by the assessee.

12. If the version of assessee found to be correct, it is directed to the AO to provide consequential relief to the assessee otherwise assessment framed earlier, he can restore.

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

Order pronounced in the open court on day of August, 2022.

Sd/-

(PAVAN KUMAR GADALA)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 03/08/2022

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai