

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 376/Rjt/2017
निर्धारण वर्ष/Asstt. Years: 2013-2014

Shri Ishwardas Bachomal Ramchandani, 23-Vinayak Krupa, Jalaram Society, Street No.1, Junagadh. PAN: ABMPR5244C	Vs.	D.C.I.T., Central Circle-2, Rajkot.
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Assessee by :	Shri Mehul Ranpura, A.R
Revenue by :	Shri Shramdeep Sinha, CIT. D.R

सुनवाई की तारीख / **Date of Hearing** : **20/09/2022**
घोषणा की तारीख / **Date of Pronouncement**: **16/11/2022**

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

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, dated 04/09/2017 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal:

1.0 The grounds of appeal mentioned hereunder are without prejudice to one another.

2.0 The learned Commissioner of Income-tax (Appeals)-H, Ahmedabad erred on facts as also in law in retaining addition made u/s.69A of the Act of Rs.16,97,000/- by the AO on account of unexplained cash being found during the course search The retention of addition is totally unjustified on facts as also in law and may Kindly be deleted.

3.0 The Id CIT(A) erred on facts as also in law in retaining the addition of Rs.83,03,000/-on the alleged ground that the appellant has retracted from the income disclosed during the course of search which was without filing any affidavit or letter. The addition retained is totally unjustified on facts also in law and may kindly be deleted

4.0 Your Honor's appellant craves leave to add, amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal. The 1st issue raised by the assessee is that the learned CIT-A erred in confirming the addition made by the AO for ₹16.97 Lacs on account of unexplained cash found during the search proceedings.

3. Briefly stated facts are that the assessee in the present case is an individual who was subject to search and seizure operation under section 132 of the Act dated 30 May 2012. In the course of search proceedings, the cash of ₹16.97 Lacs was found. In this regard the assessee submitted that amount of cash represents the cash withdrawal of various family members towards the household expenses.

4. However, the AO was not satisfied with the contention of the assessee on the following reasons:

- i. There was no supporting document brought on record suggesting that the cash was duly accounted for in the books of accounts. Furthermore, none of the family member of the assessee was maintaining any books of accounts.
- ii. There were various seized documents bearing numbers annexure A-2, containing the information about the land transaction deals in cash. About the same, one of the family member of the assessee Shri Tarachand B Ramchandani admitted that such cash relating to the land transaction deal was not disclosed in the income tax return.

4.1 In view of the above, the AO treated the amount of cash found during the search and seizure operation amounting to ₹16.97 Lacs as unexplained cash and added the same to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A.

6. The assessee before the learned CIT-A submitted that the cash found in the course of search and seizure operation was duly accounted for in the books of accounts of Smt. Chandrikaben Ramchandani which was also disclosed in the income tax return filed by her in different assessment years. As per the assessee, all these income tax returns, disclosing the amount of cash in hand were filed much before the date of search. According to the assessee, all the details were furnished to the AO during the assessment proceedings in response to the letter dated 12 December 2014 issued by the AO vide letter dated 15 February 2015.

6.1 It was also submitted that even during the search and seizure operation, it was submitted in the statement recorded under section 132(4) of the Act, the cash belongs to his family members. But at that point of time, the assessee was not able to explain the exact source of cash based on the books of accounts but it was assured to furnish the necessary details within a period of one week. As such, the assessee vide letter dated 16th of July 2012 in response to the summon issued under section 131(1) of the Act dated 24 June 2012 has furnished the copies of the income tax returns along with the financial statements of Shrimati Chandrikaben Ramchandani disclosing the cash in hand found during the course of search.

6.2 Likewise, there were various documents inventoried as annexure A-2 containing the land transaction deals during the search proceedings which were settled by way of cash. According to the assessee all the transactions relating to the immovable properties were duly accounted/ disclosed by the respective family members. As such a detailed explanation was submitted to the AO during the assessment proceedings vide letter dated 16-7-2015 with respect to the documents

seized during the search and seizure operation and no defect was pointed out by the AO. Thus, the assessee submitted that no addition on account of cash found during the search and seizure operation is warranted in the given facts and circumstances.

7. However, the learned CIT-A disregarded the contention of the assessee by observing that:

After taking into consideration the overall facts of the submission, in my opinion, the documents seem to have been prepared by the AR of the assessee as an afterthought just to mislead the AO. If he was having genuine evidence in support of the submissions, he should have furnished copy of income tax returns duly accompanied by the above evidence in the case of Smt. Chandrikaben Ramchandani. The submission did not have any supporting independent evidence such as details of income tax returns filed upto the A.Y. 2011-12 accompanied by P&L account balance sheet, capital account etc. which are mandatory requirements for their authenticity. Thus, the appellant seems to have tried to make willing suspense in disbelief. No other evidence, such as source of the cash on hand, source of withdrawal from the bank, copy of bank statements etc. of Smt. Chandrikaben Ramchandani were filed before the AO or in the appeal proceedings.

In view of the above, it was evident that the explanation of the assessee was false and misleading. Accordingly, the ground of appeal is dismissed.

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

9. The learned AR before us filed a paper book running from pages 1 to 76 and contended that cash in hand was duly disclosed by the assessee in the return of income of his wife namely Shrimati Chandrikaben Ramchandani. The learned AR in support of his contention drew our attention on the returns of income, computation of income, balance sheet, profit and loss account and capital accounts in the case of Shrimati Chandrikaben Ramchandani for the period from the assessment years 2008-09 to 2011-12 which are placed on pages 45 to 58 of the paper book.

10. On the other hand, the learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the cash was found during the search

proceedings conducted under section 132 of the Act at the premises of the assessee. The onus lies upon the assessee to explain the source of cash. In this regard, we note that the assessee before the investigation wing post search in response to the notice issued under section 131 of the Act vide letter dated 16 July 2012 has submitted as under:

My wife Smt. Chandrikaben I. Ramchandani is engaged in "bharat gunthan labour work" and "stitching and embroidery work". Copies of acknowledgments of her returns of income, computation of income, balance sheets, profit and loss accounts and capital accounts for the A.Y. 2008-09 to 2011-12 are attached herewith.

11.1 Likewise, the assessee before the AO vide letter dated 16 February 2015 has made the following submission:

As it may kindly be seen from the above submission that the Smt. Chandrikaben Ramchandani has filed her return of income u/s.139 of the Act for the assessment years 2008-09 to 2011-12 before the date of search, wherein, she has enclosed the financial statements, i.e., balance sheet, profit & loss account and capital account. Summary of cash balance as per the said financial statements is as under:

<i>Assessment Year</i>	<i>Return of Income filed on</i>	<i>Returned Income</i>	<i>Cash Balance as per financial statement</i>
<i>2008-09</i>	<i>31-03-2010</i>	<i>1,20,199</i>	<i>15,84,640</i>
<i>2009-10</i>	<i>31-03-2010</i>	<i>1,58,690</i>	<i>17,13,330</i>
<i>2010-11</i>	<i>30-03-2012</i>	<i>1,64,550</i>	<i>18,47,882</i>
<i>2011-12</i>	<i>30-03-2012</i>	<i>1,69,480</i>	<i>19,87,359</i>

In view of the above, the appellant consistently held the cash, which is verifiable from the financial statements forming part of the returns of income filed u/s.139 of the Act with the jurisdictional assessing officer. Therefore, allegation of the AO that the appellant was having no basis to explain the cash found is devoid of facts.

11.2 Furthermore, we find that the necessary details about the return of income, computation of income, balance sheet, profit and loss account and capital accounts for the assessment year 2008-09 to 2011-12 of Shrimati Chandrikaben Ramchandani are placed on pages 45 to 58 of the paper book wherein the availability of cash in her hands was duly disclosed. None of the authorities below has pointed out any iota of defects in the details furnished by the assessee before them. As such, it seems to us that the assessee has duly discharged the onus about the cash found during the course of search and seizure operation and the onus now shifted upon the revenue to disprove the contention of the assessee based on the tangible materials. But we note that the revenue has not disproved the contention

of the assessee except making a statement by the learned CIT-A that all the documents were prepared to mislead the AO and likewise these documents were prepared afterthought. However, in our considered view the revenue has not brought any cogent basis for rejecting the contention of the assessee. Accordingly we hold that there cannot be any addition to the total income of the assessee with respect to the cash found during the search proceedings. Hence, the ground of appeal of the assessee is hereby allowed.

12. The 2nd issue raised by the assessee is that the learned CIT-A erred in confirming the addition made by the AO for ₹ 83,03,000.00 on the basis of admission made by the assessee in the statement furnished under section 132(4) of the Act.

13. The assessee in course of search proceedings has admitted to make disclosure of undisclosed income for an amount of ₹1 crore but the same was not honoured in the return filed. Furthermore, the assessee has also not explained the reasons for retracting from the disclosure made during the search and seizure operation during the assessment proceedings. Therefore the AO after adjusting the addition made on account of the cash found during the search proceedings for ₹16.97 lacs has added the balance amount of ₹ 83,03,000.00 to the total income of the assessee.

14. Aggrieved assessee preferred an appeal to the learned CIT-A.

15. The assessee before the learned CIT-A submitted that he has made disclosure of ₹1 crore on ad hoc basis but after analyzing the seized documents, he found that there was no discrepancy, error, omission suggesting any unaccounted income of the group of the assessee. Therefore, the assessee did not declare any undisclosed income in the income tax return.

16. However the learned CIT-A disregarded the contention of the assessee by observing as under:

The facts of the case, findings of the AO and submission of the appellant have been considered. It was noticed that during the course of search the assessee recorded statement u/s. 132(4) wherein he made a candid statement for making disclosure of unaccounted income of Rs.1.00 crore on account of land transactions held in cash. The statement of the assessee was based on the documents seized from his premises and marked as Annexure-A2. This statement was also subsequently confirmed in the statement of Shri Tharachand B Ramchandani. Further a letter dated 14.09.2012 was filed voluntarily to this effect by the assessee. The retraction was made without proving that it was recorded under any sort of pressure or coercion or threat. The assessee replied all the questions in his statement u/s.132(4). The issue is settled in the decisions discussed by the AO in the assessment order. The facts in the case of Kamleshbhai B Kandoi (supra) are by directly applicable to the facts of the case of the appellant. The AR of the assessee did not furnish any material evidence to establish that the disclosure of the unaccounted income was not based on the seized incriminating material in the possession of the AO. His; contention is purely devoid of any substance.

17. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

18. The learned AR before us contended that the assessee vide letter dated 14 September 2012 before the investigation wing has clearly stated that income of ₹1 crore has been admitted to be disclosed before the verification, crosschecking and proper technical analysis of the seized documents. The learned AR in support of his contention drew our attention on pages 59-60 of the paper book where the latter dated 14 September 2012 furnished to the investigation wing was placed.

18.1 It was also submitted that the land transaction deals recorded in the seized documents bearing Annexure A-2 were representing the transactions which were duly disclosed in the books of accounts of the respective family members. Furthermore, there was no addition of whatsoever made by the AO based on the documents seized bearing No. Annexure A-2.

18.2 The learned AR also submitted that the re-traction statement was filed after duly execution of the sworn affidavit and therefore the finding of the AO that there was no re-traction letter filed by the assessee is devoid of any merit. As such the disclosure made by the assessee is not corroborated by any tangible materials.

Therefore, in the absence of supporting documentary evidence, the same (disclosure statement) cannot be treated as strong piece of evidence.

18.3 The learned AR also drew our attention on the explanation furnished by the assessee with respect to each and every document seized during the search proceedings which is placed on pages 24 to 34 of the paper book and none of the seized document was representing the income of the assessee.

19. On the other hand the learned DR vehemently supported the order of the authorities below.

20. We have heard the rival contentions of both the parties and perused the materials available on record. As a result of search at the premises of the assessee, there were found various documents which were seized and inventoried bearing number annexure A-2. According to the revenue, these transactions were representing the land deals which were not disclosed by the assessee during the assessment proceedings. Thus the assessee to avoid further litigation and to buy piece of mind has made a disclosure of ₹1 crore but the same was not offered to tax in the income tax return.

20.1 The 1st and foremost allegation of the AO was that the assessee has retracted from the disclosure statement without furnishing any letter or the affidavit. However we disagree with the finding of the AO on the reasoning that the assessee has retracted his earlier statement by way of sworn affidavit dated 3rd February 2015 which is placed on pages 35 to 37 of the paper book.

20.2 Besides the above we note that the disclosure was made by the assessee for ₹1 crore but there was no reference made by the assessee with respect to any undisclosed income of the assessee. Thus the question arises whether any addition can be sustained merely on the basis of the statement furnished during the search proceedings. In this regard we note that CBDT vide its instruction F.No.286/2/2003-

IT (Inv. II), dated 10-3-2003 has discouraged its officers to make any addition based on the statement until and unless it is corroborated by any tangible material. The relevant extract of the CBDT circular reads as under:

"Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of search and seizure and survey operations. Such confession, if not based upon credible evidence, are later retracted by the concerned assessee while filing returns of income. In these circumstances, such confessions during the course of search and seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Department. Similarly, while recording statement during the course of search and seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, Assessing Officers should rely upon the evidences/materials gathered during the course of search/survey operations of thereafter while framing the relevant assessment orders."

20.3 It is also pertinent to note that the Hon'ble Gujarat High Court in the case of Kailashben Manharlal Chokshi vs CIT(2010) 328 ITR 411

"In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority. We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission. We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence there is no reason not to disbelieve the retraction made by the Assessing Officer and explanation duly supported by the evidence. "

20.4 We also note that there were various land transactions carried out as evident from the seized documents but we note that such land transaction had been considered by the revenue in the hands of Smt. Parvatiben in the assessment which can be verified from the assessment order of and the order of the learned CIT-A placed on pages 61 to 76 of the paper book. In view of the above and after considering the facts in totality, we are of the view that no addition based on admission is warranted in the given facts and circumstances. Hence, we set aside

the finding of the learned CIT-A and direct the AO to delete the addition made by him. Hence, ground of appeal of the assessee is hereby allowed.

21. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 16/11/2022 at Ahmedabad.

Sd/-
(T.R SENTHIL KUMAR)
JUDICIAL MEMBER
(True Copy)

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 16/11/2022
Manish