

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

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.472/Hyd/2022		
Assessment Year: 2018-19		
Ankit Biscuits P Ltd Hyderabad PAN:AABCA7142D (Appellant)	Vs.	Dy. CIT Central Circle 1(3) Hyderabad (Respondent)
Assessee by:	Advocate Smt. S. Sandhya	
Revenue by:	Shri Kumar Aditya for Shri KPRR Murthy, DR	
Date of hearing:	14/03/2023	
Date of pronouncement:	17/03/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 2.12.2022 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 company engaged in the business of manufacture and sale of biscuits and allied products. A search & seizure operation u/s 132 of the I.T. Act was conducted on 15.11.2018 in the case of the assessee along with M/s. Ravi Foods Pvt Ltd and Group cases. The assessee filed its return of income on 25.10.2019 admitting total income of Rs.3,71,18,230/-. The Assessing Officer issued statutory notices u/s 143(2) and 142(1) of the Act calling for

various details to which the AR of the assessee appeared before the Assessing Officer from time to time and furnished the requisite details.

3. During the course of assessment proceedings, the Assessing Officer noted that during the course of search operation in the case of the assessee, an amount of Rs.15,57,520/- was found in the office premises, out of which an amount of Rs.15.00 lakhs was seized as the assessee could not explain the sources of the same with supporting evidence. A sworn statement of Mr. S. Ganesh, Accountant of the assessee company was recorded on 15.11.2018 wherein he had stated that the physical cash available in the premises is Rs.15,57,520/- and he was unable to explain the discrepancy of Rs.5,06,125/- being the excess cash. The Assessing Officer, therefore, asked the assessee to explain the source of the cash so found.

3.1 The assessee in response to the same filed the following explanation which has been reproduced by the Assessing Officer in the body of the assessment order:

“A sum of Rs.15,00,000/- was seized from the business premises of Ankit Biscuits Pvt Ltd. The balance as per books of account as on 15.11.2018 was a sum of Rs.10,51,395-. A sum of Rs.5,00,000/- was kept in the office of Sri Vimal Agarwal, Director, by his wife Mrs. Greeshma Agarwal a family member of the group for a short period. Mrs. Greeshma Agarwal withdrew this sum from M/s Nirmay Builders LLP wherein she is a partner. Thus, the total cash balance in the business premises of Ankit Biscuits Pvt Ltd works out to a sum of Rs.15,57,520/ out of which a sum of Rs.15,00,000- was seized by the departmental authorities. It is submitted that cash seized of Rs. 15,00,000/ stands fully explained as it was accounted cash in the books and cash of Smt. Greeshma Agarwal who had kept in

the premises where in her husband is a director, for a short period”.

4. However, the Assessing Officer was not satisfied with the explanation given by the assessee on the ground that the Accountant of the assessee company could not explain the discrepancy. He observed that if the wife of the assessee Smt. Greeshma Agarwal had kept an amount of Rs.5.00 lakhs cash in the company, then the Accountant should have reflected the cash of Rs.5.00 lakhs kept in the company's premises in the books of account and he could have given the same explanation. He, therefore, was of the opinion that the explanation that the cash was kept in the office premises by the wife of the Director of the company for a brief period is in the nature of “unexplained cash” u/s 69A of the Act. The Assessing Officer, therefore, made the addition of entire cash of Rs. 15,57,520/- found during the course of search & seizure as unexplained cash u/s 69 A of the Act.

5. In appeal, the learned CIT (A) deleted an amount of Rs.10,51,395/- being cash balance available on the date of search in the books of account. He however, sustained the balance amount of Rs.5,06,125/- holding the same as not a bonafide explanation. Relevant observation of the CIT (A) from para 6 onwards reads as under:

“6. The Decision: In the instant case, assessment was completed u/s. 143(3) of the T Act by making addition of cash of Rs. 15,57,520/- found during the course of search proceedings as unexplained money u/s. 69A of the IT Act to the income returned by the appellant.

Going into the facts of the case, during the course of search operation, cash of Rs. 15,57,520/ was found at the premises of the appellant company and it is seen from the cash book of the appellant company that the cash balance on the date of search was Rs. 10,51,395/-. A sworn statement of the Sri S. Ganesh, accountant of the appellant company was recorded wherein he was asked about the discrepancy pertaining to

presence of excess cash of Rs. 5,06,125/- and he could not explain the same.

During the course of assessment proceedings, when the appellant company was asked to explain the sources for cash of Rs. 15,57,520/- found during the course of search operation, the appellant stated that an amount of Rs. 10,51,395/- pertains to the cash balance of the appellant company as per the cash book and Rs. 5,00,000/- belong to the Smt. Greeshma Agarwal, which was kept with her husband, Sri Vimal Agarwal, director of the appellant company.

The cash found at the premise was more than what was available as per books, this is a discrepancy but that does not mean entire cash found in the premise can be called unaccounted, especially when no discrepancy has been found with regard to the cash book and its recordings. It is observed from the assessment order that, the Assessing officer had largely discussed about the excess cash of Rs. 5,06, 125/- present over and above the cash book balance on the date of search and had not pointed out any discrepancy with regard to the cash available as per cash book and also the book results have been accepted by the Assessing Officer . Therefore, the cash balance present in the cash book i.e. 10,51,395/- is treated as accounted for and cannot be treated as unexplained. Thus, relief is granted to the appellant to the extent of Rs. 10,51,395/- and accordingly ground no. ii, iii (a) iii(b) and iv are partly allowed.

Further, with regard to the excess cash present, the appellant submitted during the course of appellate proceedings as well as assessment proceedings that an amount of Rs. 5,00,000/- belonged to Smt. Greeshma Agarwal which was kept with her husband Sri Vimal Agarwal, director of the appellant company. It is pertinent to note that the same information was not furnished during the course of search operation. When a joint family runs business through multiple companies and other business concerns, it is common that all the family members will have available cash balances with them. Keeping the cash available with one individual in the premises of a business concern should have a reasonable logic and explanation. Smt. Greeshma Agarwal is neither a director nor related to the appellant company, therefore, the claim of Smt. Greeshma Agarwal keeping cash available with her husband. in the premises of the appellant company without sufficient reason looks devoid of logic and an afterthought. The director was covered u/s. 132 and he never made any such statement that he was in possession of his wife's cash as the appellant's business premise and this statement is recorded under Oath and the director is duty bound to disclose the said fact especially when this being a one-off recent transaction. Therefore, it is concluded that it is not a bona fide explanation in respect of cash of Rs. 5,06,125/- as there is no nexus between the cash available with Smt. Greeshma Agarwal and the excess cash found at the appellant company's premises. Therefore, the addition of Rs. 5,06,125/- is upheld and the ground no. iii(c), v and vi are dismissed.

The ground no. i, vii and viii are general in nature and need no separate adjudication.

To sum up, the appeal is partly allowed.”

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

“1. The order of the CIT(A) dt 26.10.2022 upholding the assessment order passed u/s 144(1)(b) dt.28.03.2019 passed by the learned Assessing Officer is not justified and incorrect both on facts and in law, to the extent appealed against.

2. The CIT(A) is not justified in dismissing the appeal without giving an opportunity that too after a long gap since the last notice given on 24.12.2020 and that too when the faceless appeals are being enabled only since past 2-3 months.

3. The CIT(A) ought to have studied the detailed statement of facts and the grounds appealed which are more legal in nature, along with the Assessment Order before dismissing the appeal in a perfunctory manner.

4. The CIT(A)/Assessing Officer is not justified in estimating the income at 10% of the total sales merely because the Appellant agreed for estimation, and ought to have estimated the income at 8% especially when the Appellant is supplying the ready-mix concrete to construction industry.

5. The CIT(A)/Assessing Officer is not justified in not allowing the deduction of depreciation from the estimated net profit, ignoring CBDT instructions.

6. The CIT(A)/Assessing Officer ought to have allowed set-off of brought forward business losses and unabsorbed depreciation and incorrect in not allowing the same merely because the tax returns for previous years were not filed and especially when the same are allowed in AYs 6 2018-19 and 2019-20.

7. The appellant craves leave to add, supplement, modify, and delete any of the above ground during the course or appeal”

7. The learned Counsel for the assessee strongly challenged the order of the CIT (A) in confirming the addition of Rs.5,06,125/- out of the addition of Rs. 15,57,520/- made by the Assessing Officer. Referring to Page 19 & 20 of the Paper Book, she drew the attention of the Bench to the ledger a/c of Smt.

Greeshma Agarwal in the books of Ankit Biscuits Pvt. Ltd. Referring to page 21 to 23 of the Paper Book, she drew the attention of the Bench to the ledger extract of Smt. Greeshma Agarwal in the books of Nirmay Constructions LLP (fixed capital). She submitted that Smt. Greeshma Agarwal has withdrawn an amount of Rs.45.00 lakhs on 13.11.2018 from M/s. Nirmay Constructions LLP. Referring to page 20 of the Paper Book, she drew the attention of the Bench that on 15.11.2018 she had given an amount of Rs.5,00,00/- to Ankit Biscuits (P) Ltd. She submitted that the reasons given by the Assessing Officer that the amount should have entered into the books of account of the company and that the Accountant would have given the same explanation is incorrect since the amount was kept in the office of her husband for safe custody and not business cash and therefore, the same need not be entered in the books of account of the company. She submitted that Smt. Greeshma Agarwal has sufficient source because she had withdrawn an amount of Rs.45,00,000/- only on 13.11.2018 from the partnership firm Nirmay Constructions LLP which has not been disputed by either of the lower authorities. She accordingly submitted that the addition sustained by the CIT (A) should be deleted.

8. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the CIT (A). He submitted that if the amount of Rs.5.00 lakhs was in fact kept by Smt. Greeshma Agarwal, then the same should have been entered in the books of account of the assessee company and it should have been in the knowledge of the Accountant who could have explained the same on the date of search. Since the learned CIT (A) has passed a detailed order on this issue, therefore, the same

should be upheld and the grounds raised by the assessee should be dismissed.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.15,57,520/- u/s 69A of the I.T. Act on the ground that cash of Rs.15,57,520/- the same was found in the office premises of the assessee during the course of search and the assessee could not explain to his satisfaction regarding the source of such cash. We find the learned CIT (A) deleted an amount of Rs.10,51,395/- being the cash balance available on the date of search in the books of account of the assessee and sustained the balance amount of Rs.5,06,125/- the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that an amount of Rs.5.00 lakhs was kept by Mrs. Greeshma Agarwal, wife of the Director Shri Vimal Agarwal, in the office premises out of the amount withdrawn by her from Nirmay Constructions LLP where she is a partner. It is also her submission that Smt. Greeshma Agarwal has sufficient source to explain the amount kept in the office premises of her husband Shri Vimal Agarwal and the same should not have been doubted merely on the ground that the Accountant of the company Shri S. Ganesh could not explain the discrepancy.

10. A perusal of the assessment order shows that the Assessing Officer made the addition basically only on the basis of statement of Shri S. Ganesh, Accountant of the assessee company recorded on 15.11.2018 wherein he was unable to

explain the discrepancy. The relevant question and answer which has been reproduced by the Assessing Officer in the body of the assessment order is as under:

"Q4. I am showing you inventory of cash found with the cashier Sri Bodiga Venkatesh Goud as per which physical cash available in the premises is Rs. 15,57, 520-. Please confirm.

Ans: Yes, after consulting the cashier, it is hereby confirmed that physical cash available in the premises is Rs. 15,57,520

Q5. Please explain the discrepancy of Rs.5,06,125- being the excess cash arrived after casting the actual cash balance as on date as arrived by you.

Ans: I am unable to explain the discrepancy as of now."

11. However, it is neither coming from the assessment order or from the order of the CIT (A) or from the Paper Book filed by the assessee as to whether the Director of the assessee company Mr. Vimal Agarwal was asked any question on this issue on the date of search or thereafter. In our opinion, the statement of the Director Mr. Vimal Agarwal who was privy to such cash kept by his wife has a bearing on this vital issue. It is not known as to whether the Director was examined on the issue of cash of Rs.5.00 lakhs kept by his wife Mrs. Greeshma Agarwal which she has withdrawn from the partnership firm namely Nirmay Constructions LLP. Therefore, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to verify the statement of Mr. Vimal Agarwal, Director of the assessee company recorded u/s 132(4), if any, and if he has stated during the course of search or thereafter that the cash of Rs.5.00 lakhs was kept by his wife Mrs. Greeshma Agarwal in the company, then the same is directed to be deleted. Needless to say, the Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold

and direct accordingly. The grounds raised by the assessee are partly allowed for statistical purposes.

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

Order pronounced in the Open Court on 17th March, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 17th March, 2023.

Vinodan/sps

Copy to:

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

By Order