

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

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.712/Hyd/2022		
Assessment Year: 2019-20		
Shri Bhabut Singh Rajpurohit, Hyderabad PAN:AIIPR2543P (Appellant)	Vs.	Asstt. C. I. T. Central Circle 1(1) Hyderabad (Respondent)
Assessee by:	Shri Kumar Pal Tated, CA	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	21/03/2023	
Date of pronouncement:	24/03/2023	

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 an individual and engaged in the business of photo accessories. He filed his return of income originally for the A.Y 2019-20 on 30.09.2019 admitting total income of Rs.10,45,940/-. During the search and seizure operation a cash of Rs.3,27,650/- was seized by the Hyderabad Police in the case of the assessee on 7.11.2018. A search action was conducted by the Investigation Wing u/s 132A on 23.7.2019 in connection with the search action

conducted in the case of Shri Sunil Kumar Ahuja and his son Sri Ashish Kumar Ahuja. In response to the notice u/s 153A of the Act, the assessee filed his return of income on 18.2.2021 admitting total income of Rs.10,45,940/-. The Assessing Officer issued statutory notices u/s 143(2) and 142(1) of the Act to which the AR of the assessee appeared before the Assessing Officer and filed the requisite details.

3. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain the source of the cash seized of Rs.3,27,650/- along with necessary documentary evidence. The assessee furnished a cash sales and cash expenses statement to show that there is cash balance as on the date of cash seizure. However, the Assessing Officer did not accept the contention of the assessee on the ground that the assessee failed to explain the cash seized of Rs.3,27,650/- along with documentary evidence. He, therefore, made addition of Rs.3,27,650/- u/s 69A of the I.T. Act.

4. In appeal, the CIT (A) sustained the addition made by the Assessing Officer by observing as under:

“6. Decision: In the instant case, assessment u/s. 153A was completed by making the following additions:

1. Disallowance of excess claim of pre-construction period interest or borrowed loans of Rs. 16,819/-.

2. Unexplained money u/s. 69A of Rs. 3,27,650/- being the cash seized during the search action u/s. 132A.

The appellant has contested only the addition of Rs.3,27,650/-

Going into the facts of the case, the appellant individual is engaged in the business of photo accessories. An amount of Rs. 3,27,650/- was

seized from the residence of the appellant on 07.11.2018 by the Hyderabad Police. Search action u/s. 132A was conducted by the Investigation wing in connection with the said cash seizure. Subsequently, assessment u/s. 153A was completed by the Assessing Officer by treating the cash seized of Rs. 3,27,650/- as unexplained money u/s. 69A and adding to the income returned by the appellant.

During the assessment proceedings, the appellant submitted the cash sales and cash expenses statement in support of the cash balance as on the date of cash found in his residence. The Assessing Officer had added the cash of Rs. 3,27,650/- to the returned income after considering the submissions filed by the appellant being devoid of evidences. During the course of appellate proceedings, it is observed from the submissions made by the appellant that the appellant had a total turnover of Rs. 2,91,78,961/- in FY 2017-18 and Rs. 7,67,11,861 /- in financial year 2018-19., The appellant claimed that he had an closing cash balance of Rs 2,77,199/- and the same had been reported in the ITR filed for Financial year 2017-18. The appellant further submitted that he had been maintaining completed book of account audited u/s. 44AB of the Income Tax Act. It is important to note that inspite of having a substantial turnover and maintaining book of account, the appellant could not furnish cash book in support of the cash balance as on 07.11.2018. The appellant made various submissions during the appeal proceeding but for producing the cash book with necessary evidence. It is surprising that in spite of the claim of books of accounts being maintained, the appellant has not filed the cash book with supporting nor has taken plea that the cash book as produced before the Assessing Officer with necessary evidence. Multiple opportunities (six in number on 07/03/2022, 23/02/2022, 31/03/2022, 20/04/2022, 09/06/2022 and 05/07/2022) have been given to the appellant. It is important to note that just because one has turnover and income does not mean that one necessarily has cash in hand. The appellant was aware of the fact that the Cash was seized and it would be required to prove the source of the same in form of Cash book in the assessment proceedings but the appellant has failed to do so. There is a probability that the appellant might have cash balance but the onus is on the appellant to prove that it had cash in hand on that day but this factual matter has not been addressed by the appellant in its submissions or grounds of appeal.

The submission made by the appellant is generic of filing regular returns. The filing of income does not translate in to automatic cash in hand and further no evidence has been adduced by the appellant which reflects that the proper cash book with evidence was submitted to the Assessing Officer. It is also important to note that the appellant has a huge turnover but very thin margins, therefore the general availability of cash in hand has to be explained and the opening balance as on that year cannot be used for the cash found 07.11.2018. The appellant has even has not filed a simple extract of the cash book of the last month to even justify the cash in hand. The Assessing Officer has very categorically rejected the cash book as devoid of evidence and the same has not been rebutted by the appellant. In view of the fact that no documentary evidences filed there is no other option left with the undersigned but to

confirm the addition of the cash found and seized from his residence and therefore, the addition made by the Assessing officer is confirmed and ground no. 1, 2, 3 and 4 are dismissed.”

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

“1. The Ld. AO erred in upholding the order of Assessing officer passed u/s 153A of the Act dated 01.09.2021 which is bad both under facts and law.

2. The Ld. AO erred in making an addition of Rs. 3,27,650/- to the income as Unexplained money in hands of assessee u/s 69A.

3. The Ld. CIT(A) ought to have appreciated the fact that the cash relates to his business cash sales and the same has been deposited in bank account.

4. The Ld. CIT(A) ought to have appreciated the fact that the AO erred in not considering the submissions made by the assessee and went on to add the entire amount of Rs. 3,27,650/- as unexplained money u/s 69A.

5. The Ld. CIT(A) ought to have appreciated the fact that assessee is maintaining the complete books of accounts and is been audited u/s 44AB of the act. As per the audited Financials the opening cash balance was Rs.2,77,199/, total turnover during the year was Rs.7,67,11,862/ which shows that the assessee has enough source to have the cash balance of Rs.3,27,650/-.

6. The Appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal. “

6. The learned Counsel for the assessee strongly challenged the order of the CIT (A) in sustaining the addition made by the Assessing Officer. Referring to various pages of the paper book, he submitted that the assessee is in the business of more than 15 years and he is regularly filing his return of income for the past so many years. Referring to various pages of the paper book, the learned Counsel for the assessee drew the attention of the Bench to the income declared by the assessee for the last 5 years which is as under:

A.Y	Total Income
18-19	13,42,270
17-18	9,85,670
16-17	4,55,410
15-16	5,55,060
14-15	4,78,450
Total	38,16,860

7. Referring to the above, he submitted that the assessee has earned more than Rs.38.00 lakhs in the last 5 years and offered the income to tax which justify the availability of cash of Rs.3,27,650/-. In another plank of his argument, he submitted that the assessee is maintaining complete books of account which are audited u/s 44AB of the I.T. Act since A.Y 2018-19. Referring to the audit report for A.Y 2018-19, he submitted that the closing cash balance available with the assessee as on 31.3.2018 is Rs.2,77,199/-. He accordingly submitted that as on 1.4.2018, the assessee was having a cash balance of Rs.2,77,199/-. He submitted that for the impugned A.Y, the assessee has declared income of Rs.10,45,940/- and his total turnover was Rs.7,67,11,862/-. Thus, the assessee had enough source to have cash balance of Rs.3,27,650/- with him as on 17.11.2018 i.e. on the date of search. He submitted that during the assessment proceedings, although the assessee had explained the source of the cash available on the date of search, however, the Assessing Officer for reasons best known to him, did not accept the explanation given by the assessee. He further submitted that the cash was seized from the residence of the assessee on the date of Diwali and the Assessing Officer did not accept the contention of the assessee that the cash available with various family members is sufficient to explain the source of such cash. Relying on various decisions, he submitted that under identical circumstances, such

type of addition made by the Assessing Officer as unexplained cash seized during the course of search has been deleted by the Tribunal.

8. The learned DR on the other hand, heavily relied on the order of the lower authorities.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned 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.3,26,650/- u/s 69A of the Act on the ground that the assessee could not explain the source of cash of Rs.3,27,650/- seized from the residence of the assessee on 7.11.2018 by the Hyderabad Police. We find the learned CIT (A) sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph.

10. It is the submission of the learned Counsel for the assessee that the assessee is a regular tax filer and has declared more than Rs.38.00 lakhs as income in the last 5 years on which taxes have been paid. Further, the accounts for the A.Y 2018-19 were audited according to the cash balance for the year as on 31.3.2018 is Rs.2,77,199/- which is otherwise the cash available as on 1.4.2018. It is also his submission that the search took place in the date of Diwali at the residence of the assessee and the cash available with various family members is sufficient to explain the source of such cash balance of Rs.3,27,650/-.

11. We find some force in the above argument of the learned Counsel for the assessee. As mentioned earlier in the preceding paragraph, the assessee is regularly filing return of income and for A.Y 2018-19, he has declared an income of Rs.13,42,270/-. Further, as per the balance sheet, the closing cash balance as on 31.3.2018 is Rs.2,77,199/- which is the cash available as on 1.4.2018 and this fact is not disputed by the lower authorities. Further, for the impugned A.Y, the turnover of the assessee was Rs.7,67,11,862/- and the assessee has filed the return of income declaring total income of Rs.10,45,940/-. Under these circumstances, the availability of cash of Rs.3,27,650/- in our opinion, cannot be doubted. Even if the assessee has not filed the cash book, however, the circumstantial evidence cannot be simply brushed aside especially when the assessee is having taxable income of Rs.10,45,940/- for the A.Y 2019-20, Rs.13,42,270 for the A.Y 2018-19 and Rs.9,85,670/- for the A.Y 2017-18.

12. In these circumstances, we are of the considered opinion that the availability of cash of Rs.3,27,650/- should not have been doubted as unexplained. It is also pertinent to mention here that when the search took place on the date of Diwali at the residence of the assessee, it is unbelievable that the assessee cannot have a single rupee since the lower authorities have not even given credit of a single rupee. In this view of the matter, we set aside the order of the CIT (A) and direct the Assessing Officer to delete the addition.

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

Order pronounced in the Open Court on 24th March, 2023.

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 24th March, 2023.

Vinodan/sps

Copy to:

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2	Pr.CIT, Central Circle Hyderabad
3	ACIT, Central Circle 1(1) Hyderabad
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order