

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.503/Hyd/2022		
Assessment Year: 2019-20		
Disha Foods (P) Ltd Hyderabad PAN:AABCD2266P (Appellant)	Vs.	Dy. C. I. T. Central Circle 1(3) Hyderabad (Respondent)
Assessee by:	Advocate Smt. S. Sandhya	
Revenue by:	Shri KPRR Murthy, CIT(DR)	
Date of hearing:	17/04/2023	
Date of pronouncement:	25/04/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 29.07.2022 of the learned CIT (A)-11, Hyderabad relating to A.Y.2019-20.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the CIT (A) in confirming the addition of Rs.9,05,120/- made by the Assessing Officer u/s 69A of the I.T. Act.

3. Facts of the case, in brief, are that the assessee company is engaged in the business of manufacturing 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 along with M/s. Ravi Foods Pvt. Ltd & Others. The assessee filed its return of income on 4.10.2019 admitting total income of Rs.3,41,40,280/-. In response to the notices u/s 143(2) & 142(1) of the Act, the AR of the assessee appeared before the Assessing Officer from time to time and furnished the requisite details.

3.1 During the course of assessment proceedings, the Assessing Officer noted that during the course of search action on 15.11.2018, cash of Rs.16,03,550/- was found. A sworn statement of Shri Tikaram Sharma, Cash Assistant of M/s. Disha Foods Pvt Ltd was recorded on 15.11.2018 wherein he could not explain the difference satisfactorily. The Assessing Officer, therefore, asked the assessee to explain the source of cash found amounting to Rs.16,03,550/- and as to why this amount should not be treated as unexplained cash.

3.2 The assessee explained that the cash so found is out of the cash balance as per individual books of a/c of Shri Adarsh Agarwal, M.D and his family members. The cash balance as on the date of search was explained to be as under:

Name & Place	Cash balance as per books as on 15.11.2018	As per Panchanama	Seized amount
M/s. Disha Foods (P) Ltd	5,92,469	16,03,550	16,00,000
Adarsh Agarwal	1,04,805		
Kavita Agarwal	7,27,313		
Harsh Bakers	9,00,913		
Total	23,25,500	16,03,500	16,00,000

4. It was explained that a sum of Rs.16.00.000/- was seized from the business premises of Disha Foods Pvt Ltd. Sri Adarsh Agarwal is a whole-time director in Disha Foods Pvt Ltd

and also the proprietor of M/s. Harsh Bakers which is engaged in the business of manufacture of biscuits. The cash balance as per books as on 15.11.2018 of Harsh Bakers was Rs.9,00,913/- and a sum of Rs.1,04,805/- was the cash balance from his own cash book, aggregating to Rs.10,05,718/- and kept in the business premises of Disha Foods Pvt. Ltd. Smt. Kavita Agarwal, another director of Disha Foods, has a cash balance of Rs.7,27,613/- as on 15.11.2018, of which a sum of Rs.6,00,000/- was kept in the business premises of M/s. Disha Foods Pvt. Ltd., all aggregating to Rs.16,05,718/-.

5. It was submitted that the above mentioned facts are only in the knowledge of Sri Adarsh Agarwal, Director of M/s Disha Foods Pvt Ltd and it is not correct to rely on the statement of Sri Tikaram Sharma, cash assistant of M/s Disha Foods Pvt Ltd and expecting him to be in the knowledge of personal books of Sri Ashish Agarwal and Smt. Kavitha Agarwal, the Directors of the Company. It was argued that there was sufficient cash balance available as per the personal books of the individuals Sri Adarsh Agarwal and Sri Kavitha Agarwal, the Directors of the Company, that were maintained in regular course. It was accordingly claimed that the cash found during the course of search stands fully explained.

6. However, the Assessing Officer was not satisfied with the explanation given by the assessee by recording the following reasons:

4.5 As on the date of search and seizure operation u/s 132 on 15.11.2018, as per Tally Package, there is a cash balance of Rs.6,98,473/-. After physical search of the room of Sri Adarsh Agarwal, cash of Rs.16,03,550/- was found. During the search proceedings, Sri Tikaram Sharma, Cash Assistant of M/s Disha Foods Pvt Ltd was asked to explain the variation. Sri Tikaram Sharma could not explain the same.

4.6 Later, during the post search proceedings, it was submitted to the Wing Investigation Agarwal that the cash as per personal books of account of the Directors Sri Adarsh Agarwal and Smt. Kavitha Agarwal, are also kept at business premises of Disha Foods Pvt and Ltd. During the assessment proceedings also the assessee has given the same explanation.

4.7 The of explanation of the assessee that the cash as per personal books of Directors of the Company and cash pertaining to business entities of the Directors in personal capacity is kept at the office premises of M/s Disha Foods Pvt Ltd is a protracted explanation. If it is a practice of Sri Adarsh Agarwal to keep cash of the Directors at office premises of M/s Disha Foods Pvt Ltd, Sri Tikaram Sharma would have explained the same during the course of search proceedings.

4.8 In any case, cash of the assessee Company M/s Disha Foods Pvt Ltd ought to have truly reflected in its cash book on daily basis and in the event of any transfer of cash either in or out, the same should have been reflected in the books of account of M/s Disha Foods Pvt Ltd.

4.9 Sri Tikaram Sharma, being Cash Assistant of M/s Disha Foods Pvt Ltd, during the normal course of performing his duties, might be aware if cash belong to the Directors of the Company in their individual capacity, as per their personal books, is kept at the office premises of M/s Disha Foods Pvt Ltd. In the statement, Sri Tikaram Sharma could not explain the discrepancy in the cash available. The statement of Sri Tikaram Sharma, has evidentiary value as he is working in the assessee company in the capacity of Cash Assistant. It is only during post search proceedings, the explanation that the cash as per personal books of account of the Directors Sri Adarsh Agarwal and Smt. Kavitha Agarwal, are also kept at business premises of M/s Disha Foods Pvt Ltd, was put-forth by the assessee company.

4.10 Further, in the explanation given to the Investigation Wing, the assessee, in one way stated that 'sometimes the personal cash of the Directors/ Partners of various entities of the Group are kept at the business premises of the Group'. At the same time, the assessee also stated that Cash belong to business entities of the group reflected in their respective books of account was kept at the residence of the family members who are either Partners/ Directors. in such entities for safe custody.

4.11 Thus, there is no consistency in handling and keeping record of the cash by the assessee Company. Further, the assessee, in the explanation, stated that there is a cash Balance of Rs. 23,25,500/- as per Books of M/s Disha Foods Pvt Ltd. Adarsh Agarwal, Harsh Bakers and Kavita Agarwal as on 15.11.2018. However, during the search, cash of Rs. 16,03,550/- was only found and has not mentioned where the remaining amount was kept. Thus, the explanation given by the assessee is vogue. Hence, the claim of the assessee that the cash as per personal books of

account are kept in the business premises of M/s Disha Foods Pvt Ltd., is not acceptable.

4.12 Notwithstanding the above, though the assessee was asked to substantiate the claim, he has not substantiated the availability of the cash balance in their respective books by producing complete cash books with supporting documents. Thus, the assessee has not discharged the onus of proving the cash balances claimed to be available in the case of the individuals i.e. Sri Adarsh Agarwal and Smt Kavitha Agarwal. Hence, the claim of the assessee that it has substantiated the cash balances as per books, is not correct. Hence, it is not correct to say that the source of the cash found was explained by the assessee Company. Therefore, the entire cash of Rs.16,03,550/-, found during the course of search proceedings, is treated as unexplained cash u/s 69A of the Income Tax Act and the same is added to the total income of the assessee for the A.Y 2019-20."

7. The Assessing Officer accordingly made addition of Rs.16,03,550/- u/s 69A of the I.T. Act.

8. Before the learned CIT (A), the assessee made elaborate arguments based on which the learned CIT (A) deleted an amount of Rs.6,98,473/- holding the same to be available on the date of search as per books of account of the company and Director of the company Shri Adarsh Agarwal and sustained the balance amount of Rs.9,05,120/-.

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

"1. The order of the learned CIT (A) is erroneous to the extent it is prejudicial to the appellant.

2. The learned CIT (A) is erred in sustaining the addition to the extent of Rs.9,05,120/- on the ground that there is no nexus between the cash available with Harsh Bakers, its proprietor Sri Adarsh Agarwal and the Director of the appellant company.

3. The learned CIT (A) erred in confirming the addition of Rs.9,05,120/- u/s 69A of the I.T. Act though the Assessing Officer did not find the appellant to be the owner of the said cash.

4. The learned CIT (A) erred in holding that the explanation with regard to the amount of Rs.9,05,120/- is an afterthought when the appellant pleaded the same before the investigation wing which was not denied by the Assessing Officer.

5. Any other ground that may be urged at the time of hearing”.

10. The learned Counsel for the assessee, at the outset of hearing filed a copy of the order of the Tribunal in the case of Anikit Biscuits (P) Ltd in ITA No.472/Hyd/2022, dated 17.3.2023 and submitted that under identical circumstances, the issue was set aside to the file of the Assessing Officer on the ground as to whether any statement of the Director of the assessee company was recorded and whether he was asked any question on the issue of availability of cash kept by various family members on the date of search or not. She submitted that since the facts of the instant case are identical to the facts of the case already decided by the Tribunal therefore, she has no objection if the matter is restored to the file of the Assessing Officer with similar direction.

11. The learned DR, on the other hand, heavily relied on the order of the CIT (A). He submitted that the CIT (A) has already granted substantial relief and there remains nothing to grant further relief. He accordingly submitted that the order of the CIT (A) should be upheld and the grounds raised by the assessee should be dismissed.

12. 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.16,03,550/-

u/s 69A of the I.T. Act on the ground that the assessee could not explain the source of cash found at the business premises of the assessee on the date of search. We find the learned CIT (A) deleted an amount of Rs.6,98,473/- and sustained the balance of Rs.9,05,120/-. It is the submission of the learned Counsel for the assessee that an amount of Rs.7,00,000/- lakh was kept by Smt. Kavitha Agarwal, and another amount of Rs.1,04,805/- by Shri Adarsh Agarwal, Directors of the assessee company as per books of account. However, despite having sufficient source in their books of account, the Assessing Officer made the addition merely on the basis of the statement of the Accountant of the assessee company Shri Tikaram Sharma. A perusal of the assessment order shows that the Assessing Officer basically made the addition on the basis of the statement of the Accountant Shri Tikaram Sharma. However, it is neither coming from the assessment order nor from the order of the CIT (A) or from the Paper Book filed by the assessee as to whether the statements of the Directors of the assessee company were recorded or not and whether they have been asked any question or not on this issue either during the course of search or during the course of assessment proceedings especially when Mr. Ramesh Agarwal, on behalf of all family members and the companies had declared Rs.100 crores as undisclosed income. We find an identical issue have come up before the Coordinate Bench of the Tribunal in the case of Ankit Biscuits (P) Ltd (Supra) and the Tribunal has restored the issue to the file of the Assessing Officer by observing as under:

“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”.

13. Since the facts in the instant case are identical to the facts of the case in the case of Ankit Biscuits (P) Ltd (Supra), therefore, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh in the light of the direction given in the case of Ankit Biscuits (P) Ltd and in the light of the declaration of additional income of Rs.100 crores by Mr. Ramesh Agarwal on behalf of all family members and the companies as additional income. Needless to say the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court on 25th April, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 25th April, 2023.

Vinodan/sps

Copy to:

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1	Disha Foods (P) Ltd, Plot No.82, IDA, Kattedan, Hyderabad 500077
2	Dy.CIT, Central Circle 1(3) Aayakar Bhavan, Hyderabad
3	Pr.CIT Central Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order