

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकर अपील सं/ I.T.A. No. 1164/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2002-03)

Gopal Krishna S. Revankar Lotus House, Off Andheri- Kurla Road, Sakinaka, Andheri (E), Mumbai- 400072.	बनाम/ Vs.	ACIT, Circle-19(2) (Now ACIT-22(3) Piramal Chambers, Lalbaugh, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPR4742C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Mitesh Mehta	
Revenue by:	Shri Sanjeev Ranjan (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 24/01/2023
घोषणा की तारीख /Date of Pronouncement: 21/04/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-34, Mumbai dated 21.12.2017 for assessment year 2002-03.

2. The grounds of appeal raised by the assessee are as under: -

“1. The learned CIT(A) erred in not realizing the fact that the appellant has already added Rs. 10,43,700/- to its total income after considering Rs.7,65,000/- from Meenakshi Bhavan and other receipts in the rough cash book and loose papers found during the survey action on the assessee on 28.2.2002.

2. The learned CIT (A) erred in making addition of Rs. 7,70,536/- on account of unexplained cash found during the survey. This amounts to taxing the same amount twice.

3. The learned CIT(A) erred in making addition of Rs. 7,65,000/- on account of unaccounted receipts from Meenakshi Bhavan resulting into taxing the same income three times.



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4. The learned CIT(A) erred in not allowing telescoping of Rs. 7,65,000/- from the cash found at the time of survey into the amount of addition to the total income resulting into same income being taxed multiple times.

5. The learned CIT(A) erred in stating in para 4.3 on page 12 of order that, “.....*no specific argument has been taken except that the receipt from Meenakshi Bhavan should be subjected to telescoping and adjustment with the available cash in hand and cash as per rough cash book. This argument is contra to the argument made in the earlier years.*”

6. The learned CIT (A) erred in stating in para 4.3 on page 12 of order that, “*no such adjustment has been claimed in earlier ears against the receipt from Meenakshi Bhavan...*” which is factually incorrect.

7. The appellant craves to add, alter, amend and/or delete all or any of the above grounds of appeal either in full or in part on or before the final hearing of the appeal.”

3. The concise grounds of appeal of the assessee are as under: -

1. The learned CIT (A) erred in law and on facts by confirming the addition of Rs. 7,70,536/- on account of “*unexplained cash found during the survey*” without realizing that the said amount is already included in the Return of income.

2. The learned CIT (A) erred in confirming the addition of Rs. 7,65,000/on account of “*unexplained receipts from Meenakshi Bhavan*” without realizing that the said amount is already included in the Return of income.

3. The learned CIT(A) erred in not allowing telescoping of an amount of Rs. 7,65,000/- and Rs.7,70,536/- from the cash found at the time of survey amounting to Rs 10,43,700/- resulting to



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same income being taxed multiple times which is summarized as under.

Sr.	Details	Amount
1	Cash Found was included in Courier Charges in P/L Account	Rs.10,43,700/-
2	Meenakshi Bhavan Receipts (included in Cash found as stated in 1 above)	Rs.7,65,000/-
3	Diff in Cash on hand as per books Rs.2,73,164/- and Cash found of Rs.10,43,700/- as stated in 1 above.	Rs.7,70,536/-

4. The appellant craves to add, alter, amend and/or delete all or any of the above grounds of appeal either in full or in part on or before the final hearing of the appeal.”

4. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the addition of Rs.7,70,536/- added by the AO as unexplained cash found during the survey and the action of the Ld. CIT(A) confirming the addition of Rs.7,65,000/- made by the AO as unexplained receipt from Meenakhsi Bhavan, despite assessee offering seized cash of Rs 10,43,700/- in its turn-over.

5. Brief facts are that the assessee is an individual who is carrying on the business of Data Entry Services in the name and style of M/s. Indian Computing, M/s. *Micro Digital System Corporation* and courier services in the name of M/s. *Courier Express* as proprietary concerns. The assessee has declared income from business and other sources and had filed his return of income on 29.10.2002, declaring total income of Rs.41,87,912/-. The case of the assessee was taken up for scrutiny and the AO noted during assessment proceedings that assessee's concerns had undergone survey action on 28.02.2002 u/s 133A of the Income Tax Act, 1961 (hereinafter “the Act”) [*at the assessee's office premises at Lotus House*]. And during the course of survey proceedings, some rough cash book and loose papers were found and the statement of



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Smt. Anagha Vazandar, the General Manager of the concerns was recorded on 28.02.2002; and the assessee's statement was recorded u/s 131 of the Act on 18.03.2002 with reference to these rough note books, loose papers [because he was abroad/USA at that time]. According to the AO, survey team had noted from the noting/scribbling made in the rough cash book that the (i) assessee had made payment of Rs.2,05,200/- and (ii) received an amount of Rs.3,27,300/-; and the rough book showed transaction between the assessee and Meenakshi Bhavan wherein the assessee had made (iii) payment to Meenakshi Bhavan (N. Shah) Rs. 25,000/- on 28.09.2001 and (iv) has received on 30.06.2001 of Rs.2,40,000/-, and (v) on 15.10.2001 Rs.5,50,000/- thus received total amount of Rs.7,90,000/- from Meenakshi Bhavan and the recording in the rough book in respect of Meenakshi Bhavan cash receipt and cash payment are as under: -

1. Cash payments, receipts appearing in rough cash book

S. No.	Date	Description	Payments	Receipts
1	3.4.01	\$ purchased \$ 2200 x 47	1,03,400	-
2	5.4.01	3DL Tickets Mr. Masani		60,000
3	4.4.01	For DEL (Edwin)	50,000	-
4	10.4.01	Less Ref against 3 TKTs Mr. Masani	4,800	-
5	11.04.01	C.M. Exports		47,300
6	23.04.01	Less \$ purchased 1000x47	47,000	
7	28.04.01	O cash	-	100,000
8	08.05.01	R. D. Zardari on A/c	-	50,000
9	22.05.01	Mohan, Thomas TKT.O	-	55,000
10	2.6.01	R.D. Zardari Duty	-	15,000
			2,05,200/-	327,300

2. Meenakshi Bhavan cash receipts and cash payments

1	30.6.01	M.B Aug, Oct, Nov, Dec, 199	-	240,000
2	28.9.01	Less M. Shah M.B	25,000	-
3	15.10.01	M.B. Jan 2000 to	-	550,000



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		Nov 2000		
			25,000	790,000

6. Survey team also found cash of Rs.10,43,700/- and US \$9278, which was confronted to Smt. Anagha Vazandar, [General Manager] who submitted that as per the books of accounts as on date [of survey] cash balance was to the tune of Rs.2,73,164/- and regarding US \$9278 she stated that it was brought by the assessee in FY. 1998 and to support the explanation she produced the declaration form as submitted to customs authority at that time [*no adverse view taken by AO*]; and the difference of cash found i.e, Rs.7,70,539/- [Rs.10,43,700/- minus Rs.2,73,164/-] was offered for taxation on behalf of the assessee. The AO after taking note of the aforesaid questions and answers recorded (the assessee's and the General Manager) thereafter, refers to the assessee's submission regarding Rs.7,90,000/- that the same was not income but was refund of the amounts which was advanced by the assessee to partnership concern M/s. Meenakshi Bhavan in the year 1989-90. According to the assessee, this amount was advanced to this firm/ M/s. Meenakshi Bhavan, but they did not utilize the same for the purpose for which it was given, which prompted him to ask for returning the same, which they failed. So, the assessee filed a civil suit in the Hon'ble Bombay City Civil Court and based on a memorandum of understanding (MOU) entered between assessee and the partnership firm (Meenakshi Bhavan) assessee started receiving his advanced amounts in installments. Thus, Rs 7,90,000/- was the refunded amount and



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therefore, it was not income in his hand. In order to prove that this amount was recovered from the firm (Meenakshi Bhavan) the assessee submitted that for retrieving this amount, he had to seek the assistance of some recovery agents to whom the assessee has to pay (for their services) i.e, 25% of the amount realized [*and the payment of Rs.25,000/- shown is to N. Shah who was the recovery agent*]. And thus, according to the assessee, in the year under consideration, the assessee received net amount of Rs.7,65,000/- (Rs.7,90,000/- minus Rs.25,000/-). Thus it was contended by the assessee that out of total cash found of Rs.10,43,700/- as per books of accounts of the assessee as on date of survey 28.02.2002, the assessee had Rs.2,73,164/- which leaves excess cash of Rs.7,70,536/- which stands explained (Rs.7,65,000/- net from Meenakshi Bhavan). So therefore, according to assessee the cash found at his premises stands explained and also brought to AO's notice that he has offered the entire amount of Rs.10,43,700/- seized during survey in his turn-over [Courier Service]. And in the light of the above, he pleaded before AO that when income found in the rough book has been included in turnover, the expenditure noted therein (rough book) may be allowed.

7. The AO noted that on the date of survey on 28.02.2002 cash found was to the tune of Rs.10,43,700/- and the assessee's cash book showed only Rs. 2,73,164/-; and the General Manager Smt. Anagha Vazandar was not able to explain the source of the excess amount and so she offered Rs.7,70,536/- as income for AY 2002-03 in the hands of the assessee. According to the AO, the aforesaid contentions of the



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assessee cannot be accepted regarding the source of money to the tune of Rs. 7,90,000/- from Meenakshi Bhavan which according to the assessee was an afterthought (*make belief story*). Therefore, he brought to tax an amount of (i) Rs.7,65,000/- (Rs.7,90,000/- - Rs.25,000/-); and according to the AO, there is no reason to dis-believe General Manager Smt. Anagha Vazandar, therefore, the remaining balance amount of (ii) Rs.7,70,536/- was treated separately as unexplained cash found (Rs.10,43,700/- - Rs.2,73,164/-) was *inter-alia* added to the total income of the assessee vide assessment order dated 28.03.20005. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same. Aggrieved, the assessee is before us.

8. We have heard both the parties and perused the records. The assessee is into various business (*courier service and data entry service*). A survey operation was conducted at his office premises on 28.02.2002 wherein incriminating material in the form of rough cash book, loose papers etc were found. Based on which, assessment of AY. 1995-96 to AY. 2001-02 has been reopened u/s 147 of the Act; and; accordingly assessment orders for those years were framed against the assessee which were challenged by the assessee before this Tribunal and the Tribunal vide order dated 10.03.2016 had restored the assessments back to the file of AO for framing de-novo assessment, after giving opportunity to the assessee. Thereafter, the AO has framed re-assessment orders for AY 1996-97 to 2000-01 vide order dated 29.12.2018. And the assessee has filed an affidavit before us dated



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12.08.2021 wherein he has affirmed that neither he nor his authorized representative have filed any appeal against the re-assessment orders framed by the AO for AY 1996-97 to AY 2000-01 dated 29.12.2018. Therefore, we conclude that the issues/addition made by the AO based on incriminating materials found during survey dated 28.02.2002 stands settled for those assessment years which are as under: -

Sr. No.	A.Y		Addition u/s 68 of the Act
1	1996-97	LTCG	Rs.2,88,451/-
2	1998-99	Rs. 5 Lakhs on account of money received from Meenakshi Bhavan	Rs.57,108/- unexplained cash
3	1999-2000	Rs.4.75 Lakhs on account of money received from Meenakshi Bhavan	Rs.1,43,775/- unexplained cash
4	2000-01	Rs.2.25 Lakhs on account of money received from Meenakshi Bhavan	Rs.3,75,965/- unexplained cash
	Total	12,00,000/-	5,76,848/-

9. We are concerned with the relevant assessment year in which year the survey has been conducted on 28.02.2002 i.e. AY. 2002-03. The AO noted that on the date of survey on 28.02.2002 cash found was to the tune of Rs.10,43,700/- and the assessee's cash book reflected only Rs. 2,73,164/-; and during survey the General Manager of assessee, Smt. Anagha Vazandar was not able to explain the source of the excess amount; and so she offered the excess amount to the tune of Rs.7,70,536/- as income for AY 2002-03 in the hands of the assessee. However, during assessment proceedings, assessee didn't offer the same for taxation; and his explanation of Rs.7,70,536/- (difference of amount) or source of it was Rs.7,90,000/- [which had been seen recorded in seized rough book as received from Meenakshi Bhawan] which fact according to him, is evident from the book seized during



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survey (refer chart supra) wherein along with this payment received, outgoing payment of Rs.25,000/- is also recorded. So according to assessee, he had in his hands Rs.7,65,000/- (net) from Meenakshi Bhavan as on the date of search 28.02.2002; and since on the date of survey he was abroad his G. M. Smt Anagha's erroneously offered it as income Rs.7,70,536/-. Moreover, he brought to AO's notice that the entire cash seized i.e. Rs.10,43,700/- was deposited on 2.03.2002 in Canara Bank account of his concern viz M/s. Courier Express and shown it in its turn-over. So the assessee pleaded that no addition may be made on the seizure of cash (difference of Rs.7,70,536/-). However, AO didn't accept the aforesaid submission/explanation of Rs.7,70,536/-. According to the AO, the contention of the assessee cannot be accepted regarding the source of money to the tune of Rs. 7,90,000/- from Meenakshi Bhavan which according to the assessee was an afterthought (make belief story). Therefore, he firstly brought to tax an amount of Rs.7,65,000/- (Rs.7,90,000/- - Rs.25,000/) ;and secondly, according to the AO, there is no reason to dis-believe General Manager Smt. Anagha Vazandar, therefore, the remaining balance (excess) amount of Rs.7,70,536/- (Rs.10,43,700/- - Rs.2,73,164/-) was also treated separately as unexplained cash found and *inter-alia* added to the total income of the assessee vide assessment order u/s 143(3) of the Act dated 28.03.2005. On appeal, Ld CIT(A) was pleased to confirm both the addition. Aggrieved, the assessee is before us.



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10. There are two additions which has been challenged before us. (i) regarding addition of Rs.7.65 Lakhs and another is regarding addition of Rs.7,70,536/-. First we will deal with the addition made of Rs.7,65,000/-. The survey team noted from the rough book found during survey that the assessee in this relevant assessment year has received an amount of Rs.7,90,000/- from Meenakshi Bhavan (firm) and has shown expenditure of Rs.25,000/- paid to (Shri N. Shah). Thus net amount as per the rough book pertaining to Meenakshi Bhavan (him) is to the tune of Rs.7,65,000/-. However, we find from records that survey team as such has not confronted the GM about payment recorded from Meenakshi Bhavan. And since the assessee was out of station (USA) when survey took place, his statement was later recorded wherein he submitted that this amount [Rs 7.65 lakhs] was refund from the Meenakshi Bhavan [*which according to assessee was given to it for a particular purpose and since it did not utilize it for that purpose, it was returned back and for recovering the amount he had to seek the service of a recovery agent (Shri N. Shah) who recovered an amount of Rs.7.90 Lakhs and for which service he has been paid 25,000/-, thus net Rs.7.65/- Lakhs was in his hands on the date of survey*]. And since the amount recovered was his investment in Meenakshi Bhavan, this amount was not taxable. However, we note that other than the rough book entries of receiving to Rs.7.90 Lakhs and payment made of Rs.25,000/- to Shri Shah, no material/evidence has been adduced before the AO/Ld. CIT(A) or before us to support the contention that $Rs.7.90 - Rs.25,000 = Rs.7.65$ Lakhs was refund of



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investment from Meenakshi Bhavan. In the absence of any material to support the assertion of assessee about the true nature/character of money received from Meenakshi Bhavan, AO has made the addition of Rs.7.65 Lakhs. Further, we note that an amount of Rs.12 Lakhs which has been received in earlier years from Meenakshi Bhavan has been added in the hands from AY. 1998-99 to 2000-01 which has been accepted by the assessee as unexplained income for those years. Therefore, in the absence of any evidence to support the contention of the assessee regarding payment received from Meenakshi Bhavan as his investment refunded [which amount was earlier subjected to tax or it will be treated as un-explained investment], we find no infirmity in the action of AO to have added this amount which has been rightly confirmed by Ld. CIT(A) and so we sustain the addition of Rs.7.65 Lakhs.

11. Now we will deal with the addition of Rs.7,70,536/- [which was the difference of money found during survey to the tune of Rs.10,43,700/- and the cash reflected in the books in Rs.2,73,164/-]. The assessee's explanation about this amount i.e. Rs.7,70,536/- was that since Rs.7.65 Lakhs has been received from Meenakshi Bhavan, it may be telescoped. In this context, having confirmed the addition of Rs.7.65 Lakhs received from the Meenakshi Bhavan, this amount was available in the hands of assessee, unless AO has been able to show that the same has been utilized for investment same where else or assessee has made unexplained expenditure. Since Rs.7.65 Lakh was in the hands of assessee (as confirmed by us) it should be presumed



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that Rs.7.65 Lakh was part of Rs.7.70,536/-. Therefore only Rs.5,536/- stands unexplained (Rs.7,70,536/- - Rs.7,65,000/-). However, taking into consideration the fact that Rs.5,76,848/- has been added as unexplained u/s 68 of the Act [in earlier years], and that has crystallized (since no appeal preferred by assessee), Rs.5,536/- also stands explained. Moreover, we note that assessee has deposited the entire cash seized to the tune of Rs.10,43,700/- into the Canara Bank and shown it in the turnover of his courier service, so taking into considered all these facts, we are of the opinion that Rs.7,70,536/- stands explained and therefore addition on this score is deleted.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 21/04/2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 21/04/2023.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai