

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 332/Ind/2020
Assessment Year : 2018-19

Shri Mukesh Sachdeva, F-109, Industrial Area, Govindpura, Bhopal	<u>बनाम/</u> Vs.	Dy. CIT, (Central)-II, Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
PAN: ACPPS7569B		
Assessee by	Shri S.P.Kanitkar, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	17.08.2023	
Date of Pronouncement	21.08.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 22.09.2020 passed by learned Commissioner of Income-Tax (Appeals)-3, Indore ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 24.12.2019 passed by learned Dy. CIT (Central)-II, Bhopal ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. This appeal was originally decided by the ITAT Indore Bench vide order dt. 24.01.2023 *ex-parte* assessee due to non-representation by assessee. The appeal was dismissed and the impugned order of CIT(A) was upheld. Subsequently, the assessee filed a Misc. Application No. 19/Ind/2023 which the ITAT decided vide order dt. 23.06.2023 whereby the order dt. 24.01.2023 was re-called and the case was re-fixed for hearing. This way, the appeal has again come up before this Bench for hearing.

4. The sole issue for our adjudication is the addition of Rs. 5,49,500/- made by the AO in respect of unexplained cash seized from locker of assessee during a search u/s 132 conducted upon assessee. Brief facts are such that a search u/s 132 was conducted upon assessee on 12.01.2018. In the course of search proceeding, a cash balance of Rs. 7,49,500/- was seized from locker no. 24, SBI SME Branch, Bhopal, on 05.02.2018. During assessment proceedings when the assessee was called to explain its source, the assessee claimed that a sum of Rs. 6 lakh was given by his mother Smt. Vidyawati Sachdeva for safe keeping and the remaining amount was saving of assessee and his wife. The assessee also filed an affidavit of his mother as well as the copies of ITRs filed by his mother in earlier assessment years. The AO accepted that assessee's mother was having income in earlier years from assessment years 2012-13 to 2018-19. However, the AO did not accept the explanation given by the assessee regarding source of cash, more particularly the amount given by his mother, precisely for three reasons, namely, (i) the affidavit of mother was dated 01.02.2018 whereas the search

was conducted on 12.01.2018, (ii) the statement of assessee was recorded on 12.01.2018 wherein the assessee did not mention anything about cash balance in impugned locker, and (iii) the currency notes in locker were of the denominations of Rs. 2000, 500, 100 and 50. According to AO, although mother of assessee had shown income in earlier years, the currency notes of denomination of Rs. 2000 and 500 were not shown to have been received from any withdrawal or exchange post-demonetization. Ultimately, the AO accepted the currency notes of denominations of Rs. 100 and 50 amounting to Rs. 1,55,000/- as explained and treated the currency notes of denomination of Rs. 2000 and 500 amounting to Rs. 5,94,500/- as unexplained; this way made addition of Rs. 5,94,500/-. During first appeal, Ld. CIT(A) upheld the addition by observing and holding thus:

"4.2 Though this ground of appeal the appellant has challenged the addition of Rs. 5,94,500/- on account of unexplained cash u/s 69A of the of the Act. Cash amounting to Rs. 7,49,500/- has been found and seized from the locker no. 24 of SBI SME Branch, Bhoal, on 05.02.2018. The appellant submitted that Smt. Vidyavati Sachdeva, mother of the appellant has given Rs. 6,00,000/- in cash for safe keeping. The appellant's mother was not having any regular source of income. During the course of recording of statement, Shri Mukesh Sachdeva, appellant failed to explain the source of cash. The cash has not been entered into the any cash book. Therefore, the addition made by the AO

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*amounting to Rs. 5,94,500/- is confirmed. Therefore, the appeal
on this ground is dismissed."*

5. Aggrieved by orders of lower authorities, now the assessee has come before us in this appeal.

6. During hearing before us, the Ld. AR for assessee attacked heavily the orders of lower authorities and made following submissions:

(i) He submitted that before opening the impugned locker No. 24, SBI SME Branch, Bhopal, the authorities recorded statements of assessee u/s 132 on 05.02.2018 and interrogated the assessee as to the contents of locker and the owners of those contents in Q.No. 3 and the assessee faithfully and truly submitted his reply; the said question as well as reply by assessee are reproduced as under :-

प्र. 30-1. कृपया बतायें कि आपके उक्त Locker No-24, SBI, SME Branch, Bhopal में क्या-2 रखे हुए हैं एवं वह किस से सम्बन्धित हैं ?

उक्त Locker No-24, SBI, SME Branch, Bhopal स्थित मेरे Locker में ₹ 50 लाख का नगद पैसा है जो मेरी Cash में रखे हुए है जो मुझे मेरी माता जी श्रीमति विद्यावती सचदेवा ने मेरे पुत्र श्री दुष्यंत सचदेवा एवं पुरी कुं. त्रिकिता सचदेवा के विवाह पर स्वयं अपने हाथ से देने की मंशा से मेरे पास रखवाया था। इसके अतिरिक्त कुछ Cash यदि हुआ तो वह मेरी पत्नी श्रीमति रंजना सचदेवा का हो सकता है।

Thus, in his reply, the assessee not only explained that the locker contained cash balance but also made a pointed submission that cash of Rs. 5 to 6 lakh was given by his mother, Smt. Vidyadevi Sachdeva, for safe keeping so that the same can be given to assessee's son Shri Dushyant Sachdeva and the assessee's daughter Nikita Sachdeva on the occasions of their marriages and the remaining cash balance belonged to assessee's wife Smt. Rekha Sachdeva. Ld. AR submitted that the statement was given u/s 132 even before opening the locker and this statement, unless proved otherwise, is a valid evidence and since the department is having nothing to rebut or controvert the same, the reply made by assessee cannot be disbelieved on mere conjecture. Ld. AR submitted that the affidavit of assessee's mother dated 01.02.2018 is also filed before opening of locker on 05.02.2018 and there is nothing wrong in this. Thus, the assessee has clearly proved the owner/source of cash beyond doubt. Still if the AO had any doubt, he could very well make enquiries from mother of assessee but the AO has not done. In absence of any enquiry from assessee's mother, the AO is not justified to draw adverse conclusion.

- (ii) Secondly, Ld. AR submitted that the mother of assessee was having adequate income from pension of late husband, rent and business in earlier assessment years and has shown such income in the returns of assessment year 2012-13 to 2018-19 which is very much admitted by the AO himself at two places in assessment-order. Copies of returns of assessment years 2014-15 to 2018-19 are also filed before us as Annexure-III to Written-Submission. Ld. AR submitted that the CIT(A) has made a wrong finding that the assessee's mother was not having any regular source of income.
- (iii) Lastly, Ld. AR submitted that the AO has selectively picked the currency notes of high denomination of Rs. 2,000/- and Rs. 500/- out of his own choice and made addition to the extent of Rs. 5,94,500/- on mere surmise that the currency notes of those denominations

cannot come without withdrawal or exchange. Ld. AR submitted that demonetization had taken place in Nov-Dec2016 but the assessee's mother being a senior lady could very well exchange from her near and dear ones for which record cannot be kept but it is also a fact that the locker was operated between the date of demonetization and date of search. Therefore, the AO is not justified to draw any adverse inference on this basis.

7. Ld. DR for revenue relied heavily upon the orders of the lower authorities.

8. We have considered rival submissions of both sides and perused the documents placed in Paper-Book. On a careful consideration, we find a strong force in the submission of Ld. AR that before opening the impugned locker, the authorities recorded statement of assessee u/s 132 in which the assessee made a pointed reply that the cash in locker was given by his mother for safe custody. We find that the statement recorded by department u/s 132 has an evidentiary value and cannot be brushed aside unless otherwise proved. In the present case, the AO is not having any evidence to discard or reject the assessee's reply in response to Q.No. 3 recorded in statement. So far as the source of income available to mother for generating cash, we find that the AO has himself noted in assessment-order that assessee's mother was having income in earlier years. Even the Ld. AR has also filed copies of income-tax returns of earlier years in the Paper-Book and discussed the incomes declared therein in the presence of Ld. DR. Thus, assessee's mother was having income in earlier years to justify holding of cash with the assessee. Faced with these facts, we are inclined to accept

that the cash balance held by assessee in lockers is sufficiently explained and the revenue authorities do not have any sound or cogent basis to reject assessee's explanation. Therefore, we are persuaded to delete the addition made/confirmed by lower-authorities. Ordered accordingly. The assessee succeeds in this appeal.

9. Resultantly, this appeal of assessee is allowed.

Order pronounced in the open court on 21.08.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 21.08.2023

CPU/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*