

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1186/Del./2023
(ASSESSMENT YEAR : 2019-20)**

Narendra Kumar Gupta,
9/6696, Gali 8, Dev Nagar,
Karol Bagh, S.O. Central Delhi,
New Delhi – 110 005.

vs. DCIT, Central Circle 20,
New Delhi.

(PAN : AAEPG8204E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gaurav Jain, Advocate
Shri Sudarshan Roy, Advocate
Ms. Shweta Bansal, CA

REVENUE BY : Shri Subhra Jyoti Chakraborty, CIT DR

Date of Hearing : 13.09.2023

Date of Order : 11.10.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id.
CIT (Appeals)-27, New Delhi dated 22.03.2023 pertaining to the
assessment year 2019-20.

2. Grounds of appeal taken by the Revenue read as under :-

“1. That on the facts and circumstances of the case and in law the Ld. CIT(A) grossly erred in sustaining the addition of Rs.52,02,500/- made u/ s. 69A of the Income Tax Act (hereafter 'the Act') by the Id. AO vide the assessment order

dated 16.06.2021 failing to appreciate that the Assessment order is ex facie illegal and arbitrary since the same was passed without appreciating the documents and explanations furnished by the Appellant during the course of assessment.

2. That on the facts and circumstances of the case and in law the Id. CIT(A) erred in sustaining the addition of Rs.24,71,352/- made by the Id. AO u/ s 69A of the Act failing to appreciate that the: same was not unaccounted money of the Appellant but was proceeds of cash sales and bank withdrawals of the sole proprietorship concern of the appellant namely, M/ s. Nelly's Creations Inc. and was duly accounted in the books of the proprietorship concern for the relevant previous year under consideration.

3. That on the facts and circumstances of the case and in law the Id. CIT(A) erred in sustaining the addition of Rs.27,31,148/- made by the Id. AO u/ s. 69A of the Ad failing to appreciate that the same was not unaccounted money of the Appellant but pertains to the business operations of Narendra Kumar Gupta and Sons HUF and the same is derived out of cash sales of kirana-items as well as from periodic bank withdrawals, thereby, do not warrant invocation of section 69 A of the Act.

4. That on the facts and circumstances of the case and in law, the impugned assessment order passed under section 143(3) read with section 153A deserves to be quashed, since the same has. been passed without obtaining valid approval of Addl CIT /Jt. CIT under section 153D of the Act.”

3. Brief facts of the case are that there was a search & seizure operation on Faquir Chand Lockers and Vaults Pvt. Ltd. group of cases. The assessee's locker No.237 at 6704A, Khari Baoli, Delhi-6 was also covered under section 132(1) of the Income-tax Act, 1961 (for short 'the Act'). On operation of the locker no.237, cash amounting to

Rs.52,02,500/- was found and seized. On an enquiry in this regard, assessee submitted that cash of Rs.24,71,352/- was from assessee's proprietorship concern, Nelly Creations and the remaining cash of Rs.28,00,000/- was from trading of kirana items by Narender Kumar Gupta and Sons HUF. AO was not convinced with this explanation. He rejected the cash found said to be from Nelly Creation. He also rejected the claim of Rs.28,00,000/- from trading of kirana items by Narender Kumar Gupta and Sons HUF.

4. Against the above order, assessee appealed before the Id. CIT (A). Ld. CIT (A), as regards the cash from Narender Kumar Gupta and Sons HUF, rejected the same on the ground that return filed u/s 44AD was an after-thought. He also took adverse inference that books and vouchers were not produced. Hence, he rejected the assessee's plea in this regard. Therefore, he rejected the amount of Rs.27,30,648/- out of cash seized of Rs.52,02,500/- pertains to Narender Kumar Gupta and Sons HUF.

4.1 As regards remaining cash of Rs.24,71,352/-, Id. CIT (A) referred to assessee's cash book and ledger. He found fault therein that sales in cash are very low and the expenditure incurred by the assessee was also very low. He noted that assessee has withdrawn cash in the months of July, September, October and November. He also found that it was not

logical that assessee withdrew total amount of Rs.19,00,00/- from the bank and put in locker. Hence, he rejected this aspect also.

5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. As regards the rejection of claim of cash from assessee's proprietorship concern, we find that books have not been rejected. It has also not been proved that cash withdrawn is also put to any other use. In such circumstances, there is no reason to reject the source of cash in this regard. In this regard, we draw support from the decision of Hon'ble Delhi High Court in the case of CIT vs. Kulwant Rai (2007) 291 ITR 36 (Delhi) for the following proposition :-

“16. This cash flow statement furnished by the assessee was rejected by the Assessing Officer which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of the Assessing Officer as well as the Commissioner of Income-tax are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs.10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lakhs on December 4, 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the Assessing Officer or the Commissioner of Income-tax (Appeals) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lakhs is legally not sustainable under

section 158BC of the Act and the same was rightly ordered to be deleted.”

7. As regards, the amount belonging to Narender Kumar Gupta and Sons HUF is concerned, we note that 44AD return has been submitted which has been accepted. The income, therefore, therein has been accepted. In such circumstances, there is no reason why the cash due of the income disclosed u/s 44AD should not be accepted. It is settled law that books of account & vouchers are not required in 44AD return. Hence, adverse inference cannot be taken that cash book & vouchers have not been maintained. The same income cannot be taxed twice once in the hands of HUF and once again in the hands of the assessee. In these circumstances, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

8. In the result, assessee's appeal stands allowed.

Order pronounced in the open court on this 11th day of October, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 11th day of October, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-27, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.