

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1836/Del/2021  
(Assessment Year: 2017-18)

DCIT, Central Circle-28, New Delhi  (Appellant) <b>PAN:AAJPK0068P</b>	Vs.	Atul (Kumar) Gupta, C-26, Oppo. Pamposh Public School, G. K. Enclave-I, New Delhi (Respondent)
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Assessee by :	Shri Ajay Wadhwa, Adv
Revenue by :	Shri P. Praveen Sidharth, CIT DR

Date of Hearing	31/07/2023
Date of pronouncement	20/10/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1836/Del/2021 for AY 2017-18, arises out of the order of the Commissioner of Income Tax (Appeals)-29, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10145/2018-19 dated 14.09.2021 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 26.12.2021 by the Assessing Officer, ACIT, Central Circle-28, New Delhi (hereinafter referred to as 'Id. AO').
2. The only effective issue to be decided in this appeal is as to whether the Id CIT(A) was justified in deleting the addition made on account of cash found of Rs. 1,12,62,700/- and foreign currency of Rs. 4,34,400/- during the course of search in the facts and circumstances of the instant case.
3. We have heard the rival submissions and perused the materials available on record. The original return was filed by the assessee for AY 2017-18 on 01.08.2017 declaring income of Rs. 22,74,720/-. After demonetization, a

search and seizure operation was carried by the Income Tax department on 21.03.2017 at Agson Global Group and others including the assessee. During the course of search operation in assessee's premises, cash amounting to Rs. 1,12,62,700/- and foreign currency total value of Rs. 4,34,400/- were found. The assessee was asked to furnish complete details and source with necessary supporting documentary evidences. The assessee vide letter dated 21.12.2018 submitted that the cash found during the course of search belonged to M/s. Sigma Supply Chain Solutions Pvt. Ltd wherein, the assessee is one of the Directors and that said company had withdrawn cash from its 11 bank accounts and the assessee had retained the cash in hand only in the fiduciary status in the capacity of Director of the said company. Infact same reply was given by the assessee vide letter dated 28.04.2017 before ADIT, Unit 7(4), Delhi. The assessee also explained the reasons for the company withdrawing huge cash by stating that the company had to meet huge expenses and pursuant to announcement of demonetisation by Govt and restriction on cash withdrawal limit imposed initially, there was fear and anticipation that some more drastic restrictions may be imposed on cash withdrawals after March 2017. Accordingly, company i.e. Sigma Supply Chain Solutions Pvt. Ltd had to make cash withdrawals from various bank accounts of the company to take care of fund contingencies in the business of the company. The Id AO however did not agree to this contention of the assessee and observed that nothing has been brought on record as to why huge cash was withdrawn when there was restriction of making payment in cash over and above Rs. 20,000/-. Further, as per the past history of the company i.e. M/s. Sigma Supply Chain Solutions Pvt. Ltd they were not holding huge cash in hand. Further, there are other directors in the said company and in that scenario how the cash belonging to the company would remain only in the custody of the assessee.

4. With regard to foreign currency worth Rs. 4,34,400/-, the assessee submitted that the said foreign currency belonged to Ms Jeny Kemp, sister in law of the assessee who is crew member in Jet Airways. The confirmation from Ms. Jeny Kemp was also filed before the Id AO. It was explained that being a very frequent traveller, the assessee's sister in law had to carry lot of foreign currency

with her and she had placed such unused foreign currency in the custody of the assessee.

5. The Id AO however, did not agree to this contention and treated the cash and foreign currency found during the course of search to be unexplained and added the same u/s 69A of the Act amounting to Rs. 1,16,97,100/-. The Id AO also proceeded to tax the same u/s 115BBE of the Act.

6. The assessee before the Id CIT(A) filed a confirmation from M/s. Sigma Supply Chain Solutions Pvt. Ltd confirming the fact that as on 20.03.2017, the companies cash in hand of Rs. 1,16,77,229/- was in the custody of the assessee in the capacity of Director. The assessee drew the attention of the Id CIT(A), details of various withdrawals made by the company from 11 bank accounts of the HDFC Bank belonging to company prior to the date of search. These details are tabulated at page 20 of the order of the Id CIT(A) from whereby it is evident that total cash withdrawals made by the company from 11 bank accounts worked out to Rs. 1,53,26,000/-. The assessee also explained modus operandi of the business of the company and submitted that companies activities are carried out at remote sites/ warehouse and the cash belonging to the company cannot be stored at those places for security reasons. Accordingly, the assessee in the capacity of Director had come forward to retain the cash belonging to the company in his safe custody. The assessee also drew attention of the Id CIT(A) that the assessee in the statement recorded u/s 131(1A) of the Act had clearly stated that source of cash deposit was the cash belonging to the company. The assessee also gave complete details of cash withdrawals made by company i.e. M/s. M/s. Sigma Supply Chain Solutions Pvt. Ltd during AY 2015-16, 2016-17, 2017-18 as under:-

Assessment Year	Cash withdrawal
2015-16	2,72,25,828
2016-17	3,04,83,313
2017-18	2,41,09,527

7. The assessee also furnished the details of complete cash withdrawals made by the company and expenditure incurred in cash by the company for the period 08.11.2016 to 20.03.2017 before the Id CIT(A). These details are enclosed in pages 31 to 41 of the Paper Book. On perusal of the said details, it could be seen that the cash withdrawals made by the said company totaling to Rs. 1,53,26,000/- and cash expenses incurred by the company totaling to Rs. 36,48,771/-, net balance of cash as on 20.03.2017 belonging to the company was Rs. 1,16,77,229/-. This figure matched with the confirmation given by the said company which is enclosed in page 109 of the Paper Book. The Id CIT(A) sought remand report from the Id AO with regard to these evidences submitted by the assessee. The Id AO submitted the remand report on 10.02.2020 reiterating the same stand taken by him in the assessment order. The Id CIT(A) however appreciated the evidences submitted by the assessee and the explanation offered by the assessee and deleted the addition made on account of cash found in the sum of Rs. 1,12,62,700/-.

8. It is not in dispute that the assessee during the course of search had given a categorical statement that the cash found in his premises on the date of search belongs to the company i.e Sigma Supply Chain Solutions Pvt. Ltd. The said fact is also confirmed by him in writing vide his letter dated 28.04.2017 filed before the Investigation Wing. Further, this fact is also corroborated by the confirmation given by the company itself that the assessee has been holding the cash belonging to the company amounting to Rs. 1,16,77,229/- as on 20.03.2017 in the capacity of Director. The reasons for the assessee ( being a Director) holding the cash belonging to the company has been stated to be for keeping the cash in safe environment in view of the fact that the business of the assessee is being operated in various remote sites and warehouses where there is no security for keeping cash. This explanation has been offered by the assessee right from the time of search till the completion of assessment proceedings. We find that the company had come forward give details of various cash withdrawals made by them and details of cash expenses incurred by them from 08.11.2016 to 20.03.2017 which is evident from the details furnished in pages 31 to 41 of the

Paper Book. The net balance of withdrawal after meeting expenses works out to Rs. 1,16,77,229/- which exactly matches with the confirmation given by the company i.e. Sigma Supply Chain Solutions Pvt. Ltd , wherein, they had confirmed that assessee was holding the company's cash of Rs. 1,16,77,229/- as on 20.03.2017 in the capacity of Director. When all these facts are staring on us, we do not find any infirmity in the order of the Id CIT(A) granting relief to the assessee. The Id DR before us vehemently relied on the provisions of section 132(4A) of the Act and section 292C of the Act, which states that any asset which is found in the premises of the searched person during the course of search is presumed to be belonging to him. But it is crucial that these presumptions are rebuttable. In the instant case, the assessee has duly rebutted this presumption by giving proper explanation for the cash found in his custody. Hence, the recourse taken by the Id DR to the provisions of section 132(4A) read with section 292C of the Act does not come to the rescue of the revenue. Accordingly, we hold that the Id CIT(A) had rightly deleted the addition made on account of cash found in the sum of Rs. 1,12,62,700/-.

9. With regard to addition made on account of foreign currency of Rs. 4,34,400/-, the assessee had merely stated that the same belongs to Sister in law Ms. Jeny Kemp, who is employed in Jet Airways and she had placed the unused foreign currency in the custody of the assessee. We find that the assessee had not come forward to produce any evidence to prove the fact as to whether his sister in law Ms. Jeny Kemp was residing in the same premises of the assessee. Hence, the presumption in terms of the section 132(4A) read with Section 292C of the Act would come into operation in the instant case and works against the assessee. In our considered opinion, the aforesaid explanation given by the assessee has been rightly dismissed by the Id AO as an afterthought. Merely because the said foreign currency was not seized by the search party, it does not amount to acceptance of the explanation given by the assessee. Hence, we hold that the Id CIT(A) erred in deleting the addition made on account of foreign currency found and valued at Rs. 4,34,400/-.

10. Accordingly, ground No. 1 raised by the revenue is dismissed and ground No. 2 raised by the revenue is allowed.

11. In the result, the appeal of the revenue is partly allowed.

Order pronounced in the open court on 20/10/2023.

-Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated:20/10/2023  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi