

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 2947/MUM/2023
Assessment Year: 2020-21

Rakesh Sharma,
D-205, Sujata ShoppingCentre,
Navghar Road, Bhayander (East),
Thane-401105.

PAN NO. AESPS 6920 H

Appellant

Vs.

DCIT, Central Circle-3,
Room No. 12, A-Wing, Ashar IT
Park, 6th floor, Thane-400604.

Respondent

Assessee by

Revenue by

: Mr. Ashok Bansal A/w Ajay Daga
: Mr. Surendra Kumar Meena, Sr. DR

Date of Hearing : 06/02/2024
Date of pronouncement : 06/02/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 06.07.2023 passed by the Ld. Commissioner of Income-tax (Appeals)-11, Pune [in short 'the Ld. CIT(A)'] for assessment year 2020-21, raising following grounds:

- 1. The Ld. CIT (A) erred in confirming addition of Rs. 14,27,000/- (Rs. 17,50,000/- less Rs. 323,000/-) u/s 69A of the Act.*
- 2. The Ld.CIT (A) did not appreciate that above income is duly reflected in computation of income for the year under appeal the.*
- 3. The Ld. CIT (A) did not appreciate that the AO in his remand report has confirm that the above income is part of computation of income for the year under appeal.*



2. Briefly stated, facts of the case are that a search and seizure operation u/s 132 of the Income-tax Act, 1961 (in short 'the Act') was conducted at assessee's locker No. 158 at Shree Mumbadevi Safe, Zaveri Bazar, Mumbai on 19.10.2019, wherein cash amounting to 17,50,000/- was found and seized. In the statement recorded, the assessee accepted the cash as belonging to him and offered the same for the purpose of income-tax. However, while filing return of income, the assessee offered gross receipt from business of transport commission at Rs.18,75,000/- and after claiming commission expenses of Rs.7,75,000/- and convenience expenses of Rs.25,650/-, declared net income from transportation commission amounting to Rs.10,74,350/-, on which the assessee paid taxes accordingly. During scrutiny proceedings before the Assessing Officer, the assessee explained the source of cash found as received from business of transport commission, sale of jewellery and money received from friends and relatives for the purpose of medical treatment of his younger brother. The Assessing Officer rejected the explanation of the assessee and made addition for the cash found of Rs.17,50,000/- as unexplained money in terms of section 69A of the Act.

3. On further appeal before the Ld. CIT(A), the assessee filed evidence in support of money received from friends and relatives amounting to Rs.3,23,000/- which has been accepted by the Ld. CIT(A) and accordingly relief of Rs.3,23,000/- has been granted to



the assessee, against which revenue is not in appeal. Regarding the remaining cash found, the Ld. CIT(A) did not accept the contention of the assessee and sustained the addition of Rs.14,27,000/- (17,50,000 – 3,23,000).

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Before us, the Ld. Counsel for the assessee submitted that the cash seized has been explained by the assessee by way of three sources, firstly received from transportation commission, secondly, sale of jewellery and thirdly, received from friends and relatives. The Ld. counsel submitted that as far as amount of Rs. 3,23,000/- received from friends and relatives is concerned, same has been accepted by the Ld. CIT(A). Regarding the balance amount, the Ld. counsel submitted a chart of working of cash-in-hand, which is reproduced as under:

Working of cash-in-hand as on 19.10.2019

	Amt. (Rs.)
Add: Commission income offered in the return of income (PB Page 14)	1074350
Add: Commission expenses claimed as deduction still not paid on account of seizure of cash found in the locker (PB Page 26-28 & 35)	775000
	1849350
Less: Commission income earned during the period 20.10.2019 to 31.03.2020 (PB Page 34-35 & 39)	125000
	1724350
Add: Add: Cash received from relatives & friends till 19.10.2019 (PB Page 48)	323000
	2047350

4.1 We are of the opinion that source of balance cash of Rs. 14,27,000/- can only be explained by way availability of cash in



hand with the assessee as on the date of search. The Ld Counsel has submitted detail of availability of cash of Rs. 17,24,350/- as on date of search, which is exceeding the amount of cash addition sustained by the ld CIT(A). The objection of ld DR is that AO/ CIT(A) has raised doubt on the commission income/expenses shown by the assessee. But, regarding the business income of Rs.10,20,207/- declared by the assessee, the Ld. Assessing Officer has neither disturbed the receipt from transportation commission nor the commission expenses claimed by the assessee. If AO was having any doubt of genuineness of commission income, he should have assessed the same as protective only but he has assessed the same on substantive income. The Ld. Counsel referred to Paper Book page No. 15 wherein the assessee has filed the computation of the income from transport commission which is reproduced as under:

Schedule 2	
<u>Income: Transport Commission Income</u>	
<u>Income details</u>	<u>Amount</u>
Transport Commission Income	18,75,000
<u>Deductions u/s 57</u>	
Commission Paid	7,75,000
Conveyance Paid	25,650
<u>Taxable income</u>	<u>10,74,350</u>

4.2 Further, the assessee has also filed details of sundry creditors in respect of commission expenses which are available on page 26 and 27 of the Paper Book. The Assessing Officer has not disputed the sundry creditors for the commission expenses. Thus, we are of



the opinion that the Assessing Officer has accepted the income from the transport business therefore, the availability of the cash in hand as on the date of the search from transportation business as worked out by the assessee being in excess of the cash found, there is no scope for addition on account of unexplained money u/s 69A of the Act. Accordingly, we set aside the finding of the Ld. CIT(A) in respect of addition sustained of Rs.14,27,000/-. The ground of the appeal of the assessee is accordingly allowed.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 06/02/2024

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai