

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH

श्री विक्रम सिंह यादव, लेखा सदस्य  
BEFORE: SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA No. 71/Chd/2023  
निर्धारण वर्ष / Assessment Year : 2019-20

City Petroleums Near Mata Modi, Sunam, Punjab, India-148028	बनाम	The ACIT/DCIT Central Circle Patiala
स्थायी लेखा सं. / PAN NO: AAFC3097P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Rajiv Saldi, CA  
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 30/11/2023  
उद्घोषणा की तारीख/Date of Pronouncement : 28/02/2024

**आदेश/Order**

**PER VIKRAM SINGH YADAV, AM**

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-5, Ludhiana dt. 04/01/2023 pertaining to Assessment Year 2019-20.

2. In the present appeal, the assessee has raised the following revised grounds of appeal:

1. That CIT(A) and AO wrongly concluded that the withdrawal of surrender, of Rs 38,50,000/-, was an afterthought, the same is against the facts on record and is against the settled law.

2. That CIT(A) has wrongly confirmed the addition of Rs 29,72,645/- made by AO on the basis of loose papers without any corroborating evidence.

3. That CIT(A) has wrongly confirmed the addition of Rs 29,72,645/- on account of alleged advances as the same is against the facts on record and against the settled legal position.

4. That the alternate plea of assessee to allow peak cash theory benefit and to treat the alleged advances of Rs 29,72,645/- out of the cash in hand available in

*books of account was wrongly rejected by CIT(A) threatening the alternate plea as contrary to main submissions.*

*5. That the CIT(A) and AO have wrongly applied the provisions of section 69 against the facts on record and against the settled legal position.*

*6. The appellant craves leave for reserving the right to add, alter, modify, amend or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

3. Briefly the facts of the case are that the assessee is a partnership firm running a petrol pump under the name and style of M/s City Petroleum. A survey operation under section 133A was carried out at the business premises of the assessee on 31/10/2018 wherein the statement of the assessee's partner, Shri Ashok Kumar was recorded wherein he surrendered a sum of Rs. 29,72,945/- on account of advances to farmers which were not recorded in the books of account and an amount of Rs. 8,77,055/- on account of difference in cash as per the books of account and what has been physically verified during the course of survey. Subsequently, the assessee filed a retraction letter dt. 14/01/2019 addressed to the Additional CIT, Sangrur Range, Sangrur withdrawing the surrender so made. Thereafter, the assessee filed its return of income on 03/10/2019 which was selected for compulsory scrutiny and notice under section 143(2) and 142(1) were issued.

3.1 As per the AO, the withdrawal of surrender was made after more than two months from the date of survey and secondly, the retraction was not accompanied by any documentary evidence supporting the claim of the assessee and therefore, it was held that the retraction appears to be an afterthought to safeguard the assessee from the tax liability arising out of the discrepancy observed during the course of survey operation and thereafter, a show cause dt. 27/09/2021 was issued to the assessee to show cause as to why the income so surrendered on account of advances to the farmers and excess

cash should not be brought to tax under section 69 and 69A of the Act respectively.

3.2 In response to the show cause, the assessee reiterated the fact that it has already retracted from the voluntarily surrender as the surrender was without any basis and assessee was forced to surrender the same during the course of survey. It was submitted that there were no incriminating documents which were found during the course of survey and there was no excess cash and infact the cash in hand available in the books of account of the assessee was more than the alleged advances and the books of account regularly maintained can be produced as and when the same is required for verification.

3.3 The submission so filed by the assessee were considered but not found acceptable to the AO. As per the AO, the retraction is clearly an afterthought and the assessee could not furnish the source of cash amounting to Rs. 8,77,055/-, hence the same was treated as unexplained money under section 69A of the Act. Similarly, the assessee has failed to offer any explanation regarding the source of money used for making advances to the farmers amounting to Rs. 29,72,945/-which was treated as unexplained investment under section 69 of the Act and accordingly, the income of Rs. 38,50,000/- was brought to tax as per the provisions of Section 115BBE of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A). The submissions made before the AO were reiterated. It was submitted that it was a case of forced surrender without any corroborating evidence and merely basis the statement of the assessee, the addition cannot be made in the hands of the assessee. It was submitted that the assessee has already filed a retraction statement well before the filing of the return of income which was not appreciated by the AO. Further, a prayer was made before the Ld. CIT(A) for admission of additional evidence by way of cash book as the assessee was

prevented by sufficient cause in terms of lack of opportunity before the AO during the course of assessment proceedings.

4.1 It was further contended that as evident from the cash book, the cash in hand as on the date of survey was Rs. 41,45,550/- instead of Rs. 93,500/- as recorded by the survey team and therefore it is not a case of excess cash in hand and therefore, the addition so made on account of excess cash amounting to Rs. 8,77,055/- be deleted.

4.2 It was further submitted that the said cash in hand as per the books of account is even sufficient to account for the alleged advances to the farmers amounting to Rs. 29,72,945/- and therefore the provision of Section 69 cannot be invoked.

5. As per the Ld. CIT(A), the survey was conducted at the business premises of the assessee on 31/10/2018 and the retraction letter was filed with Additional CIT on 17/01/2019 whereby the surrender was withdrawn after a period of 78 days. As per the Ld. CIT(A), in case the assessee had any doubt on the surrender made, the said retraction should have been made on an immediate basis i.e; within a matter of few days rather than waiting for close to three months to file the said retraction. It was held by the Ld. CIT(A) that in case there was any coercion and pressure from the Department, then the surrender should have been retracted on an immediate basis. Referring to the judgment rendered by the various Courts, it was held by the Ld. CIT(A) that retraction not filed on an immediate basis loses relevance after a course of time and appears to be an afterthought to evade the due taxes. Accordingly, the contention so advanced by the assessee in so far as the retraction of the surrender so made was not accepted.

5.1 Regarding the contention of the assessee that there was sufficient cash available in the books of account as on the date of survey and the Department

did not verify cash as per the books and the figures of cash in hand as so recorded in the survey statement was only an imaginary figure, the Id CIT(A) called for the remand report from the AO to seek comments on the additional evidence in from of cash book furnished by the assessee and held that the assessee has provided an important document which have a bearing on the calculation of total income and the same cannot be brushed aside, the additional evidence was admitted and taken on record.

5.2 The Id CIT(A) thereafter, referring to the remand report submitted by the AO, the contents of the cash book as well as the month wise details of the sales and the GST returns filed by the assessee, recorded a finding that the AO could not produce any evidence to the effect that cash in hand as on the date of survey was Rs. 93,500/-, that the assessee produced the cash book as per which the cash in hand as on the date of survey exceeded Rs. 41,00,000/-, that the AO relied only on the statement of the assessee recorded at the time of survey to justify the cash in hand, that the assessee submitted copy of GST 3B returns, month wise sales of petroleum products and their reconciliation to justify the entries in the cash book and that the copy of the cashbook was forwarded to the AO for his comments and further inquiries but there was no rebuttal from the AO regarding the same beyond the contention that the same was not genuine. The Ld. CIT(A) accordingly held that in light of above facts and available material evidence on record, it is not possible to sustain the addition made on account of excess cash found at the time of survey premises. It was held by the Id CIT(A) that as per the available facts, the excess cash found was Rs. 9,70,605/- and the cash as per books exceeded Rs. 41 lacs and in view of the same, addition made by the AO on account of excess cash was deleted. While deleting the said addition, it was emphasized by the Ld. CIT(A) that the said ground of appeal has been allowed not on the basis of retraction done by the assessee but basis the fact that there was no evidence available with the

Department to corroborate the cash in hand on the date of survey as recorded in the statement of the partner of the assessee firm.

5.3 Regarding advance to the farmers and addition of Rs. 29,72,945/- made by the AO, the same was however confirmed by the Ld. CIT(A). The Ld. CIT(A) referred to the contents of the impounded documents as well as the statement of the assessee and stated that from the statement of the partner of the assessee firm, it is clear that the said documents was duly confronted to the assessee during the course of survey and the said document was duly signed by the assessee acknowledge the contents of the same and therefore the Department has evidence in the nature of impounded document which is further supported by the statement of the partner of the assessee firm recorded during the course of survey wherein he has acknowledged that the said advances are from unknown sources.

5.4 Referring to the provisions of Section 292C, the Ld. CIT(A) held that the impounded documents found from the premises of the assessee firm belongs to the assessee and the contents of the same are true. It was held that the said document is a genuine piece of evidence and its evidentiary value cannot be denied just because the assessee has filed a retraction letter. It was held that the department has got both the statement of the assessee recorded during the course of survey and the corroborative evidence in the nature of impounded documents to justify the said addition. It was held that the contention of the assessee that the said impounded documents is in same handwriting with no addresses, no dates and not signed by any partner or manager of the firm goes against the case of the assessee. It was held that in case the said document is written in a single handwriting then it is obvious that someone of the firm was given the work to manage the unaccounted transactions. It was further held that with no address and dates on the documents and neither the same being

signed by the partner or manager of the firm, it further establishes the fact that the said transactions are unaccounted for.

5.5 Further regarding the contention of the assessee that the advances should be considered to be a part of cash found short during the course of survey as the cash as per books exceeded Rs. 41 lacs and the cash physically found was Rs. 9,72,605/-, it was held by the Id CIT(A) that the advances to farmers/persons have been duly noted on the impounded document. The assessee during the course of statement has clearly recorded the fact that the said advances are from unknown sources. The contention of the AR that the said advances were from the available cash-in-hand falls flat on the ground that in case the said advances were out of the regular books of accounts of the assessee, the same would have been properly recorded in the books against the respective names of the persons. In the case of the assessee, the same has not been done. Duty was cast upon the assessee to incorporate the said advances in the books of accounts of the firm in case the said amounts were out of the excess cash-in-hand available with the assessee. No such evidence was brought before the Assessing Officer as well as during the appellate proceedings to prove the fact that the said advances were from the excess cash. In fact, in the submissions filed, the assessee is taking contrary views i.e. (1) that there were no such persons existing to whom such cash was advanced because had there been genuine persons the department would have immediately proceeded to collect corroborative evidence from these persons, hence the said entries are sham entries; (2) the said cash was available within the books of accounts maintained by the assessee, so the said advances should be considered from the said available cash in hand.

5.6 It was held by the Id CIT(A) that the above two submissions of the assessee are totally contrary to each other. This shows that the AR is not sure of what is the correct version or the factual position of the case. A perusal of the cashbook

filed by the AR from 01.04.2018 till the date of survey shows that no such withdrawals or entries in the names of said persons in the nature of advances given exists which can support the contention of the assessee. It was held by the Id CIT(A) that (i) Impounded document showing money advanced to various persons, (ii) The said document has been found at the premise of the assessee, (iii) The contents of the same have been verified by the partner of the assessee firm in the statement recorded during the course of survey, (iv) The said entries were confirmed by the partner of the assessee firm to be unaccounted transactions, (v) The AR has taken different stands on the issue of advance to farmers, firstly denying the transactions all together and secondly, claiming benefit from the available cash-in-hand; (vi) Had the said advances been from available cash-in-hand then the same would have been recorded in the books of accounts of the assessee on the date of survey which was never the case, (vii) No prudent businessmen would advance his accounted money to persons without recording the entries in the books of accounts, (viii) No entry of equivalent amount of cash withdrawn is visible in the cashbook from 01.04.2018 till the date of survey which shows that the said contentions of the assessee are an afterthought, and (ix) The assessee has been changing his stances wherein, at one level, he is totally denying the surrender by filing a retraction letter and on the other hand, he is claiming benefit on account of excess cash in hand against the advances given to farmers.

5.7 It was accordingly held by the Id CIT(A) that the advances to farmers cannot be treated to be made out of the available cash-in-hand available with the assessee firm. The existing facts & circumstances clearly point out that the said advances were unaccounted transactions of the assessee. It was further held that to treat any income/investment as business income, the source of the same should be from the business of the assessee. The AR in the present case has not been able to adduce any evidence to bring on record the nexus

between the money advanced and the business income of the assessee and accordingly the arguments of the assessee that the advances to farmers should be treated as out of excess cash available with the assessee was not found acceptable and the addition so made by the AO under section 69 was confirmed.

6. Against the said findings and directions of the Ld. CIT(A), the assessee is in appeal before us.

7. During the course of hearing, the submissions made before the lower authorities were reiterated. It was submitted by the Id AR that the assessee under pressure and undue force from the survey team was made to surrender an amount of Rs. 38,50,000/- on account of excess cash and alleged advances to the farmers. It was submitted that the assessee subsequently withdrew the surrender clearly stating that no excess cash or discrepancies were found in the books of account regularly maintained and no incriminating documents were found. It was submitted that both the AO as well as the Ld. CIT(A) have wrongly held that the retraction was an afterthought where as facts on record proves otherwise.

7.1 It was further submitted that the coercion and threat in case of the assessee can be proved from the fact that the assessee was forced to surrender the sum of Rs. 8,77,055/- on account of excess cash without verifying any cash book at the time of survey. It was submitted that the Ld. CIT(A) has appreciated the said fact, examined the cash book and other documentation and after calling the remand report from the AO, the addition on account of excess cash was deleted. However regarding the surrender on account of alleged advances of Rs. 29,72,945/-, it was submitted that both the AO as well as the Ld. CIT(A) have failed to appreciate that the handwriting on these two pages doesn't belong to any of the partners or manager of the firm, even these pages

are not signed by any of the partners or manager of the firm, the initials on these pages also are not of any of the partners or manager of the firm, there are 16 entries in total consisting of 9 entries on 1<sup>st</sup> page and 7 entries on 2<sup>nd</sup> page and all the entries are written in single handwriting even the handwriting doesn't belong to any of the partners, manager or employees of the firm, there are no addresses or telephone numbers of the persons mentioned in the alleged list, even the dates on which these advances are made is not mentioned on the alleged list. It was submitted that it is hard to believe that the account recoverables of 16 persons involving a huge sum of Rs 29,72,945/- can be kept anywhere in the office and that too without any basic details of the persons to whom such huge sums are advanced. There is nothing written on these slips whether these are advances given or received or these are payable amounts being all imaginary entries. It was submitted that the alleged two slips contain only names and amounts which was not sufficient to treat the same as income of the assessee for the year under consideration. It was submitted that the AO has not made any efforts to or inquiry to take statements of the persons whose names were written in the slips or even to find out whereabouts of those persons and had this inquiry been conducted there would have been certain corroborative evidence brought on record which is clearly absent in the instant case.

7.2 It was further submitted that even if it is presumed that the alleged advances of Rs 29,72,645/- were made by appellant, even then, the same are to be treated as made out of the cash in hand available in the books of accounts of the appellant. It was submitted that the cash in hand was Rs 41,45,550/- on the date of survey i.e. 31/10/2018 which is sufficient enough to cover the alleged advances of Rs 29,72,945/-. It was submitted that the cash in hand in the books of accounts has been duly verified and accepted by the

CIT(A). The appellant produced the cash book before the CIT(A) as additional evidence. The CIT(A) in his order duly confirmed that the cash in hand was Rs 41,45,550/- on the date of survey. After accepting the cash in hand of Rs 41,45,550/- the CIT(A) deleted the addition made by AO on account of cash surrender amounting Rs 8,77,055/-. Once the cash in hand as per books of accounts of the appellant are accepted by CIT(A), then the concept of widely accepted peak cash theory is clearly applicable in this case. The below chart explains the availability of cash in hand in the books of accounts of appellant:

<b>Sr No</b>		<b>Amount (Rs)</b>
1	Cash in Hand accepted by CIT(A) (As per books)	41,45,550/-
2	Cash physically found during survey	9,72,605/-
3	Actual Cash found short on physical verification during survey	31,72,945/-
4	Alleged Surrendered Advances to farmers	29,72,645/-
	SURPLUS after adjustment of Surrendered advances	2,00,300/-

7.3 It was submitted that from the above chart, it is clear that the cash found short, during survey, on physical verification amounting Rs 31,72,945/- can be treated as utilized for the alleged advances to farmers amounting to Rs 29,72,645/-. It was submitted that considering the alternate plea of the assessee, the alleged advances at most can be treated as unrecorded transactions but under no circumstances, can be treated as unexplained income. It was accordingly submitted that the assessee has provided the necessary explanation about the source of such unrecorded transactions and therefore the provision of Section 69 are not attracted in the instant case. In support, reliance was placed on various Coordinate Bench decisions and it was

submitted that the addition so made and sustained by the Ld. CIT(A) amounting to Rs. 29,72,945/- be directed to be deleted.

8. Per contra, the Ld. DR relied on the findings of the lower authorities. It was submitted that the AO has invoked the provisions of Section 69 of the Act for the reason that the assessee during the course of survey has surrendered the said amount and our reference was drawn to statement of the partner of the assessee firm as well as the surrender letter. It was submitted that the retraction after a period of two months has rightly been rejected by both AO and Id CIT(A). It was submitted that the onus is clearly on the assessee to prove that the source of such advances and which the assessee has failed to offer any explanation. Further, regarding the alternate contention to set off the advances against the cash in hand, the Id DR relied on the findings of the Id CIT(A) which we have already taken note of supra. It was accordingly submitted that the AO was right in invoking the provisions of Section 69 of the Act and which has been confirmed by the Id CIT(A) which should be sustained and the appeal of the assessee be dismissed.

9. Heard the rival contentions and perused the material available on record. The AO has brought to tax alleged advances to farmers amounting to Rs 29,72,645 surrendered by the assessee during the course of survey invoking the deeming provisions of Section 69 of the Act based on certain documents found during the course of survey and statement of the one of the partner's of the assessee firm recorded during the course of survey. The assessee has basically contested the contents of the documents so found during the course of survey and submitted that no such advances as alleged were given to so called farmers during the year. Secondly, it has been contested that even where it is held that the assessee had given these advances to so called farmers, the source of such advances was cash in hand as on the date of survey

and which is sufficient enough to advance the said money and therefore, cannot be termed as unexplained and in absence thereof, even where the transactions were not recorded, the same doesn't qualify as unexplained as source thereof has been sufficiently explained and in view of the same, the deeming provisions cannot be invoked.

10. For the deeming provisions of Section 69 to be attracted in the instant case, there has to be a finding that the assessee has made investments during the financial year and such investments are not fully recorded in the books of accounts so maintained by the assessee, and the assessee offers no explanation about the nature and source of the investments or the explanation so offered is not found satisfactory in the opinion of the AO, the latter can proceed and the value of the investment may be deemed as income of the assessee for such financial year. There is thus a distinction between the undisclosed income and unexplained income and the deeming provisions are attracted in respect of undisclosed income which also qualifies as unexplained income in absence of any explanation regarding the nature and source of such investment or reasonability of the explanation so offered by the assessee.

11. In the instant case, it is manifestly clear from the findings of the Id CIT(A) that the cash-in-hand as per books of accounts as on the date of survey was wrongly taken by the survey team and based on review and examination of cash book furnished by the assessee during the appellate proceedings and after calling for the remand report from the AO, the Id CIT(A) has recorded a categorical finding that cash-in-hand as per books of accounts as on the date of survey exceeded Rs 41 lacs. The said finding has not been challenged by the Revenue and has attained finality. In light of the same, I find force in the alternate contention of the assessee that even where it is held that the assessee had given these alleged advances to so called farmers and were unrecorded at the time of survey, the source of such advances was cash in hand as on the

date of survey and which is sufficient enough to advance the said money and therefore, cannot be termed as unexplained and in absence thereof, even where these transactions were not recorded, the same doesn't qualify as unexplained as source thereof has been sufficiently explained and infact demonstrated by the assessee and which has been duly verified by the Id CIT(A). In view of the same, the deeming provisions of section 69 cannot be invoked and the findings of AO and that of the Id CIT(A) are set-aside. Given that the cash of Rs 29,72,645/- is held to be utilized, to that extent, the said cash would not be eligible for utilization towards meeting any other expenditure during the subsequent period and the addition of Rs 29,72,645/- made is hereby directed to be deleted.

12. In view of the aforesaid discussions where the addition of Rs 29,72,645/- has been deleted, various other contentions advanced by the Id AR have become academic in nature and the same are thus dismissed as infructious.

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

**(Order pronounced in the open Court on 28/02/2024 )**

Sd/-  
विक्रम सिंह यादव  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / ACCOUNTANT MEMBER

**AG**

**Date: 28/02/2024**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar