

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.146/Del/2020
Assessment Year: 2019-20

Vini Garg,
KD-58, Kavi Nagar,
Ghaziabad,
Uttar Pradesh – 201 002.

Vs DCIT,
Central-3,
Delhi.

PAN: BNIPG5479B

(Appellant)

(Respondent)

Assessee by	:	Shri Nirbhay Mehta, Advocate
Revenue by	:	Ms Sapna Bhatia, CIT-DR
Date of Hearing	:	24.01.2024
Date of Pronouncement	:	18.04.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 23.12.2022 of the Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.CIT(A), Delhi-23/10526/2018-19 arising out of the appeal before it against the order passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the ACIT, Central Circle-3, Delhi (hereinafter referred to as the Ld. AO).

2. During the course of search on the residential premises of the appellant, on 29.11.2018, cash aggregating Rs. 22,20,430/- was found, out of which cash aggregating Rs.20,00,000/- was seized. A query seeking explanation regarding the source of cash found during search was confronted during the course of assessment proceedings. In response to the same the appellant inter- alia submitted that she is a 10% partner in M/s Luv Films LLP. The said partnership firm was producing a film titled as "Turram Khan" which was later released as "Challang". The shooting of the said film was taking place in and around Delhi and Haryana. The cash found with the appellant was the cash withdrawn from the bank account of M/s Luv Films LLP for meeting cash payments for wages, food, transport etc. and the cash was kept at the residence of the appellant which is in Ghaziabad and close to the place of shooting. In substantiation of the same the appellant has filed summary of cash withdrawals and the relevant portion of the bank statement of M/s Luv Films LLP showing the withdrawal of cash on different dates. The appellant also filed the audited balance sheet of M/s Luv Films LLP as at 31.03.2019 and 31.03.2020 where the amount of Rs.20,00,000/- has been shown as cash seized by the Income Tax Department, whereas, the A.O. has rejected the aforesaid explanation by making an observation in the assessment order that the assessee failed to produce any documentary evidence in the form of any written agreement. The A.O. has also placed reliance on the presumption available in view of the provisions of section 292C read with section 132(4A) of the Act.

2.1 Before the Ld. CIT(A), the appellant had filed the summary of cash withdrawals from the bank account of M/s Luv Films LLP which is as under:-

Sl,	Date of withdrawals	Amount (in Rs.)	Details of Bank Account
1,	03.10.2018	2,50,000/-	A/C No. 50448062921 of Luv Films LLP with Allahabad Bank
2,	15.10.2018	2,50,000/-	A/C No. 50409665788 of Luv Films LLP with Indian Bank
3,	23.10.2018	3,00,000/-	A/C No. 50409665788 of Luv Films LLP with Indian Bank
4,	23.10.2018	2,00,000/-	A/C No. 50448062921 of Luv Films LLP with Allahabad Bank
5.	26.10,2018	2,00,000/-	A/C No. 50409665788 of Luv Films LLP with Indian Bank
6.	01.11.2018	1,50,000/-	A/C No. 50409665788 of Luv Films LLP with Indian Bank
7.	01.11.2018	3,00,000/-	A/C No. 50437797722 of Luv Films LLP with Allahabad Bank
8.	02.11.2018	1,00,000/-	A/C No. 50409665788 of Luv Films LLP with Indian Bank
9,	06.11.2018	2,00,000/-	A/C No. 50409665788 of Luv Films LLP with Indian Bank
10.	15.11.2018	2,00,000/-	A/C No. 50467112407 of Luv Films LLP with Allahabad Bank
	Total	21,50,000/-	

2.3 Further before the Ld. CIT(A), in support of the claim that the amount of Rs,20,00,000/- was received from M/s Luv Film LLP, the appellant has furnished the ledger account in the books of the M/s Luv Films LLP, From the ledger, it is seen that there are contra entries in the ledger wherein the amount withdrawn from the bank is shown to have been handed over to the appellant.

3. Ld. CIT(A) was satisfied of the submissions but still observed that;

“18. From the above details it is noted that the date of cash withdrawals are in the proximity of the date of search i.e. 29.11.2018. It is also noted

that the film titled "Challang" was actually produced by Luv Films LLP and was released on OTT platform somewhere around November, 2020. The appellant being a partner in Luv Films LLP the explanation furnished regarding the source of cash found during search action appears to be plausible and therefore the AO has erred in outrightly rejecting the same. The evidences above explains atleast a portion, if not all the amount, of the seized cash assessed in the hands of the appellant,

19. The plea taken by the A.O. that the appellant failed to furnish any documentary evidence in the form of a written agreement is not tenable. There cannot be a written agreement between the partners and the partnership firm for maintaining the cash balance of the firm with the partner when such need is driven by the business expediency of the partnership firm, which in the present case is the shooting/filming of the movie in and around the residential premises of the appellant. It is also noted that the business premises of the partnership firm M/s Luv Films LLP is located in Mumbai and the said partnership firm does not have any office in and around Delhi. The appellant also furnished a copy of ledger account wherein the amount transferred to the appellant by M/s Luv Films LLP is reflected. During the course of assessment proceedings, the appellant vide her reply in response to show cause notice dated 31.05.2021 explained the facts and furnished the relevant documents before the Assessing Officer also.

20. As regards, the reliance placed by the A.O. on the provisions of section 292C read with section 132(4A), the appellant was able to explain at least a portion (Rs. 10,00,000/-) at the time of search in the statement. However, the statement u/s 132(4) was ignored by the Assessing Officer and the presumption u/s 132(4A) was invoked in respect of the entire amount disregarding the fact that a portion of the cash seized was explained.

21. It is a settled proposition of law that the provisions of section 132(4A) do not provide that if some cash is found at the time of search in the premises of assessee, it shall be a conclusive proof that the said cash belongs to the assessee only and it cannot belong to some other person (Luv Film LLP in the present case). Section 132(4A) provides only a rebuttable presumption. The very fact that the provisions of section 132(4A) uses the word "may" indicates that the presumption under the said provisions is rebuttable. In the present case the appellant has furnished sufficient documentary evidence and a plausible explanation to rebut the aforesaid presumption and to explain the source of a portion of cash found during the search action.

22. *It is a matter of record that the appellant was confronted with the amount of cash found from the premise. In her statement under oath u/s 132(4) she stated as under:-*

"Q.No.21 During the search proceedings of your premises i.e K-D-58, Kavi Nagar, gahaziabad, cash of Rs. 22,20,430/-has been found. Please state whose money is this?A!so state the source(s) of this amount

Ans I confirm that this amount has been found. Regarding the source, my father-in-law must be in the knowledge of the same."

23. *Shri Ajay Kumar Garg the Father-in-law of the appellant was confronted with the issue during the course of search on 29.11.2018. In his statement under oath u/s 132(4), he has stated as under:-*

"Q.26 Please confirm that cash amounting to Rs.22,20,430/- has been found from the premises KD-58, Kavi Nagar, Chaziabad during the course of the search proceedings?

Ans Yes I confirm the same.

Q.27 Please explain the source of cash found from your premises?

Ans. Out of Rs.22,20,430/- found from my premises, rs. 10,00,000/- belongs to Shri Luv Ranjan. Around Rs.2-3 Lakhs were withdrawn from the bank. For the rest of the amount, I am not able to recall the source of cash. This is from the family's past saving.

Q.28. In the preliminary statement; you had stated that no cash belonging to any other person is lying at your premises.

Ans I completely forgot about the same.

Q.29. When did Sh. Luv Ranjan hand over this cash to you?

Ans He handed this over to me yesterday."

24. *From the above statement of Shri Ajay Kumar Garg, it is evident that cash of Rs.10,00,000/- was actually handed over to the appellant's premise and does not belong to the appellant. The documents furnished by the appellant and discussed above also points to the facts that cash of*

Rs. 10,00,000/- does not belong to the appellant. The addition to the extent of Rs,10,00,000/- is deleted as the appellant has furnished plausible explanation for the source of the cash.

25. For the balance amount of cash of Rs,10,00,000/-, the appellant has furnished documents and tried to explain that it belongs to M/s Luv Films LLP. However, such an explanation of the appellant is contrary to what was stated by Shri Ajay Garg during the course of search, Shri Ajay Garg during the course of search it clearly stated that only an amount of Rs.10,00,000/- was handed over to him by Shri Luv Ranjan. The transaction of handing over the' cash was just one day before the search. Therefore, it is presumed that Shri Ajay Garg must have stated the truth about the quantum of cash received. It is not a case wherein the cash was handed over long time ago and the person did not remember the quantum. Neither the appellant nor her father in law Shri Ajay Garg could explain the source of cash of Rs. 10,00,000/- found from the possession of the appellant. Therefore, the evidences furnished by the appellant explaining the balance amount of Rs.10,00,000/- is not a reliable document, the explanation that entire Rs.20,00,000/- was belonging to M/s Luv Films LLP appears to be an afterthought because there was some cash withdrawal from that account some 2-3 months back. Such an argument of the appellant is not considered as plausible explanation for explaining the source of balance amount of Rs.10,00,000/-."

4. Appreciating the matter on record, we are of the considered view that the CIT(A) has fallen in error in sustaining the addition to the extent of Rs.10 lakhs for the very fundamental reason that the CIT(A) has accepted the explanation of the assessee in part without justifying the same. This Bench is of the considered view that when the burden is placed on the assessee in regard to deeming income provisions and the assessee discharges the initial burden, then, merely on surmises a part of the explanation on the same set of facts cannot be made basis for sustaining the addition. Here, in the case in hand, the assessee had made a very specific plea that the amount of Rs.20 lakh was received from M/s

Luv Films LLP and based upon the ledger account in the books of M/s Luv Films LLP and the bank statements the CIT(A) had concluded that M/s Luv Films LLP had made cash withdrawals of over Rs.20 lacs in proximity to the date of search. The fact that film 'Challang' was actually under production in that period is also found to be established. The appellant being a partner in Luv Films LLP is also not disputed. However, on the basis of the statement of father-in-law recorded u/s 132(4), the CIT(A) has concluded that the assessee received only Rs.10 lakhs from Luv Films LLP and the remaining Rs.10 lakhs remained unexplained. In fact, if the statement of father-in-law as reproduced above in para 23 of the order of the CIT(A) is considered, it only goes to show that father-in-law of the assessee had given an explanation of the amount of Rs.22,20,430/-, but, the CIT(A) accepted it only to the extent of Rs.10 lakhs without going on corroborating material and evidences of the assessee qua the fact that she had received Rs.20 lacs from Luv Films LLP. Thus, we are inclined to accept the ground raised. The impugned addition is deleted.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 18. 04.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 18th April, 2024.

dk

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi