

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri Laliet Kumar, Judicial Member**  
**And**  
**Shri Madhusudan Sawdia, Accountant Member**

आ.अपी.सं / **ITA No.571/Hyd/2023**  
(निर्धारण वर्ष / Assessment Year: 2019-20)

Shri N. Nemichand Jain Jewellers Secunderabad PAN:AACFM8833B	Vs.	Asstt. C. I. T. Circle 1(2) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Pawan Kumar Chakrapani, CA	
राजस्व द्वारा/Revenue by:	Shri Shakeer Ahmed, DR	
सुनवाई की तारीख/Date of hearing:	01/05/2024	
घोषणा की तारीख/Pronouncement:	07/05/2024	

**आदेश/ORDER**

**Per Laliet Kumar, J.M**

This appeal filed by the assessee is directed against the order dated 25.09.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2019-20. This is the second round of litigation by the assessee before the Tribunal. The assessee has raised the following grounds:

1. The impugned order of the learned Authorities below in so far as it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.
2. The Honorable CIT[A]'s is not justified in changing the head from section 69A of the Act, to section 68 of the Act, under the facts and circumstances of the case.
3. The Honorable CIT[A]'s is not justified in observing that the Honorable Tribunal has decided the issue on merits, under the facts and circumstances of the case.
4. The Appellant denies himself liable to be assessed on a total income of Rs. 20,25,889/-, as against the income returned an amount being Rs. 20,25,889/-, which was under the normal provision of laws, under the facts and circumstances of the case.
5. Whether the learned Authorities below are justified in making an addition of Rs. 10,00,000/-, as cash credit under section 68 of the Act, under the facts and circumstances of the case.
6. Whether the learned Authorities below are justified in sustaining the addition under section 68 of the Act, even when the Appellant has offered the explanation that the amount of cash is from the books of accounts of the Appellant, under the facts and circumstances of the case.
7. Whether the learned Authorities below are justified in making addition of Rs. 10,00,000/-, even when the documents were submitted before the learned Assessing Officer, under the facts and circumstances of the case.
8. The Appellant denies himself liable to be charged to interest under section 234A, 234B & 234C of the Income-Tax Act, 1961, under the facts and circumstances of the case.
9. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.
10. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.

2. Facts of the case, in brief, are that the assessee is engaged in business of Retail-Trading of Gold Jewellery and Pawn Brokers. During the course of vehicle checking duty conducted during parliament elections, the Police intercepted Shri Anil Kumar Jain at 8.30 P M on 20.02.2019 near Subhan Bakery, Nampally, Hyderabad, and found a bag containing Cash of Rs. 10,00,000/- while he was riding Honda Activa bearing Reg.No.TS10EL1501 and seized the cash. Sri Anil Kumar Jain S/o Late Nemichand Jain was summoned u/s.131 of the Act and his statement was recorded. During the course of enquiry, the assessee, Sri Anil Kumar Jain was not able to explain the sources with supporting evidence for the cash of Rs.10,00,000/- found and seized by the Police. Therefore, a warrant u/s.132A(1) of the Act was executed and cash of Rs.10,00,000/- was seized from the office of the Sub-Inspector of Police, PS, Nampally.

3. In the statement recorded, Shri Anil Kumar was asked to substantiate the sources for cash of Rs. 10,00,000/- found along with documentary evidences. Sri Anil Kumar Jain stated that the cash belongs to his partnership from M/s. Nemichand Jewellers. It was further stated that the said cash was taken for

depositing into his firm's bank account at around 5.00 PM. But the Bank was closed and thus he carried the said cash to his relative's office at Nampally. While returning from his relative's house from Nampally, the Police intercepted him and the cash was seized. He also stated that the said cash was taken from the balance available in the books of his firm and as per the books of account of M/s. Nemichand Jewellers, cash in hand available as on 21/03/2019 was Rs.10,57,217/-. It was seen from the copy of cash that the sources of cash-in-hand was mainly on account of cash sales of the firm. In response, the assessee submitted bank account statements, sales invoices related to cash sales and cash book of M/s. Nemichand Jewellers. On verification of the cash sales, invoices verified with the firm's cash book, it was noticed that the assessee submitted only a part of the sales invoices for verification and was further asked to produce the remaining invoices. To this, the assessee replied that he was not maintaining proper books of account for his business and unable to produce the remaining sales invoices of the cash sales made in support of his claim. Therefore, the cash book furnished by the assessee was not reliable. On confronting the facts and issues, Sri Anil Kumar

Jain admitted the same as undisclosed business income in the hands of the firm M/s. Nemichand Jewellers for the Assessment Years 201-20 in addition to its regular income for the Asst. Year 2019- 20. The same was confirmed by Sri Anil Kumar Jain in his sworn statement dated 22/03/2019.

4. In the return of income filed for AY 2019-20, the assessee has included income of Rs. 10,00,000/- and included the same in the computation of total income as additional income for the A.Y.2019-20 in addition to its regular income for the A.Y.2019-20. The assessee filed Return of Income for the Asst. Year 2019-20 admitting total income of Rs.20,25,890/-. On verification of the details, the Assessing Officer noticed that the assessee has shown the additional income of Rs. 10,00,000/- in the P&L account under the head Indirect income with the narration "Addl. Business Income Declared 10,00,000.00". In the balance sheet the cash of Rs. 10,00,000/- seized by the department is shown under current assets with narration "Cash seized by Department 10,00,000.00". The above entry indicate that the cash seized by the department is passed by a separate entry as Cr. Addl.Business Income Declared 10,00,000.00 (P&L

account) and Dr. Cash seized by Department 10,00,000.00 (Balance sheet). The cash book with the cash book is continued with cash balance as shown on the date of seizure by the department. The issue is how the cash which was seized by the department is continued in the cash book with cash on hand. This indicate that the assessee has introduced physical cash in the cash book to the extent seized by the department. In this case, the assessee has introduced cash of Rs. 10,00,000/- in the cash book. Thus, the cash introduced in the books of account (cash book) represents unexplained money U/s. 69A introduced into the books of account. 6.4 As per the provisions of sec. 115BBE, in case the assessee includes any income referred in section 69A the income tax payable shall be at special rate.

5. In view of the above, in the absence of any conclusive evidence/satisfactory explanation for Rs. 10,00,000/- as narrated above, the Assessing Officer treated the sum as 'unexplained money' u/s. 69A of the Income Tax Act, 1961 and the same is brought to tax under the head income from other sources.

6. In appeal, the learned CIT (A) NFAC confirmed the additions made thereof by the Assessing Officer u/s 68 of the Act.

7. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

8. The learned Counsel for the assessee submitted that the source of money of Rs.10 lakhs seized by the Police was duly explained before the learned CIT (A) NFAC. It is the contention of the assessee that the initially the additions were u/s 69A of the I.T. Act however, thereafter, the learned CIT (A) NFAC confirmed the additions made by the Assessing Officer u/s 68 of the I.T. Act. It was the submission of the assessee that the assessee preferred an appeal before the Tribunal and the Tribunal (SMC Bench) vide its order vide ITA No. 133/Hyd/2022 dated 15.07.2022 has held as under:

*“16. I have heard the rival arguments made by both the sides, perused the orders of the AO and CIT (A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me by both sides. I find the AO in the instant case made an addition of Rs.10 lakhs u/s 69A on the ground that the assessee failed to explain the source with supporting evidence for the cash of Rs.10 lakhs found and seized by the Police. I find the learned CIT (A) upheld the action of the Assessing Officer. However, he has changed the head of income from section 69A to section 68 to be read with section 115BBE of the I.T. Act. Perusal of the order of the learned CIT (A) nowhere*

*shows that before changing the head of income from section 69A to section 68, he has given any opportunity to the assessee to substantiate as to why the provisions of section 68 should be applied in place of section 69A. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the learned CIT (A) with a direction to grant an opportunity to the assessee to substantiate as to why the provisions of section 68 shall not be applicable to the facts of the present case. The CIT (A) shall decide the issue as per fact and law after giving one opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised on this issue are accordingly allowed for statistical purposes.*

17. *Before parting with the order, it is to be mentioned here that the assessee did not challenge the addition of Rs.10 lakhs but challenged only the part of the order of the learned CIT (A) for changing the taxability of the same u/s 68 as against 69A of the I.T. Act. Therefore, other grounds are not being adjudicated as not pressed.*

18. *In the result, appeal filed by the assessee is allowed for statistical purposes.”*

9. The learned AR submitted that the assessee has never considered and agreed to the addition of Rs.10.00 lakhs and the findings of the Tribunal as well as the learned CIT (A) NFAC is contrary as indicated by the Tribunal in the last para.

10. Per contra, the learned DR submitted that once the order of the Tribunal has recorded that the assessee has agreed to the addition of Rs10.00 lakhs then it is not permissible to the assessee to raise the same issue in the present appeal more particularly, when the assessee chosen not to file the rectification

application against the order of the Tribunal or have challenged the order before the higher courts.

11. We have heard the rival arguments made by both the sides and perused the orders of the AO and the learned CIT (A) as well as the order of the Tribunal which has been reproduced by the learned CIT (A) NFAC in the impugned order. Since the assessee has not challenged the addition of Rs.10.00 lakhs and has only restricted its claim only with respect to not providing opportunity of changing section, therefore, the Tribunal has remanded back the issue to the file of the learned CIT (A) NFAC. The aspect of Rs.10.00 lakhs has already attained finality; therefore, no contrary view can be taken at this stage by the Bench. Further, the findings given by the SMC Bench has not been assailed by the assessee either before by moving application for rectification or by filing appeal. If we look into the impugned order, then it is clear that the learned CIT (A) NFAC had granted the opportunity as directed by the Tribunal for changing the section i.e. taxing u/s 68 instead of 69A and had passed the reasoned order for making the additions u/s 68 of the Act. We

find no error in it. In the light of the above, the appeal of the assessee is treated as dismissed.

12. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 7<sup>th</sup> May, 2024.

Sd/-

Sd/-

<b>(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER</b>	<b>(LALIET KUMAR) JUDICIAL MEMBER</b>
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Hyderabad, dated 7<sup>th</sup> May, 2024

*Vinodan/sps*

Copy to:

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2	ACIT, Central Circle 1(2) Aayakar Bhavan, Basheerbagh, Hyderabad
3	CIT (A)-11, Hyderabad
4	Pr. CIT – Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*