

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE "A" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.1241/PUN./2023  
Assessment Year 2019-2020

Shri Abdul Sattar Bashmiyan Shaikh, R.No.102, 1 <sup>st</sup> Floor, Sathi CHS, C-Wing, 90 Feet Road, Dharavi, Mumbai. PIN – 400 017 PAN AWCPS6183J Maharashtra.	vs.	The ACIT, Central Circle, C.S.No.622/623, 1 <sup>st</sup> Floor, Shriram Heights, Shahuouri, KOLHAPUR – 416 001. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	CA Rameshwar L. Nehere
For Revenue :	Shri Keyur Patel, CIT-DR

Date of Hearing :	10.04.2024
Date of Pronouncement :	16.05.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

This assessee's appeal for assessment year 2019-2020, arises against the CIT(A), Pune-11, Pune's Din and Order No.ITBA/APL/S/250/2023-24/1055275319(1), dated 21.08.2023, involving proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *“Learned CIT erred by invoking section 69A, as there is no unexplained money, since sized cash is reflected in the cash book, and nature of business i.e., cash sales is totally ignored.*
2. *Learned CIT erred in passing order that no bills and vouchers submitted despite ignoring fact ample submission of bills and vouchers.*
3. *Learned CIT erred in passing the order U/S 143(3) by dismissing the all grounds of appeal of raised by the appellant without giving sufficient opportunity being heard.*
4. *Because the Assessee denies the tax liabilities since Id, assessing officer passed the order u/s 143(3) and u/s 250 are bad in law as well as facts and liable to be annulled.*
5. *The Assessee craves leave to add/alter any grounds of appeal or before the date of final hearing.”*

3. Both the learned representatives next invited our attention to the CIT(A)'s detailed discussion upholding the impugned addition of Rs.50 lakhs made by the Assessing Officer in his assessment dated 30.09.2021, reading as under :

**9.1** I have considered the facts of the case, remand report of the Assessing Officer and the submissions made by the appellant. The only issue involved in this appeal is as to whether the cash of Rs. 50,00,000/- seized by the department is explained or not. In this connection, it is seen that the appellant was first examined under oath on 26/11/2018 at the time of interception by police. The relevant portion of the said statement recorded u/s 131 of the Act is as under:-

*Q.5: Please explain the sources of the cash of Rs.50,00,000/- found in your possession, while travelling in the Car Bearing No. MH13AZ1586.*

*Ans: I took cash of Rs.50,00,000/- from my customer at Mumbai on 25.11.2018 and carrying the same to Hyderabad for payment to the farmers from whom I have*

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*purchased eggs a week days back.*

*Q.6: Please furnish the name & address, telephone number of the customer from whom you have received cash of Rs.50,00,000?*

*Ans: I am not in a position to furnish the details of the customer from whom the amount of Rs.50,00,000/- is received by me on 25.11.2018.*

*Q.7: Please furnish the names of the persons, detailed addresses and telephone numbers from whom you had purchased eggs and the quantitative details of eggs purchased and to whom you intend to pay the cash?*

*Ans: I am not in a position to furnish the details of persons to whom I intend to pay the cash.*

*Q.8. In view of your failure in furnishing the details of the customer from whom you have received cash and the list of persons from whom you have purchased eggs, quantitative details of eggs purchased, details of persons to whom cash is to be paid, also the details of persons from whom you intend to purchase, and since no proof for receipt of money is furnished by you, please explain as to why the amount of Rs.50,00,000/- found in your possession should not be treated as unexplained cash?*

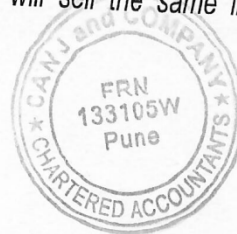
*Ans: I have no explanation to offer.*

**9.2** It can be seen from above that the appellant stated that he collected cash from one customer at Mumbai on 25/11/2018 and was carrying the same to Hyderabad for payment to be made to farmers from whom he purchased eggs, a week back. However, he could not furnish the details of customer as well as the details of person to whom the cash was supposed to be paid. He could also not furnish quantitative details of eggs purchased etc.

**10.1** Thereafter, the appellant was again examined by DDIT (Inv.) on 25/01/2019. The relevant portion of this statement is as under:-

*Q.11 In the statement recorded from you on 26.11.2018, you have confirmed the cash seized by police, Chiragpally Police Station, Sangareddy at Rs. 50,00,000/- from you. However, the sources of the cash seized was not explained by you. In this connection, please explain the sources of the cash found.*

*Ans. I took cash of Rs. 50,00,000/- from my customers (street vendors @ about 2000 shops) in Mumbai for the last four weeks and carrying the same to Hyderabad for payment to the farmers from whom I have purchased eggs a week days back. I am dealing in a business where only cash sales will be made. My business comes under the purview of poultry farm. The modus operandi of my business is, that I will purchase eggs from farmers and poultries and will sell the same in retail and*



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*wholesale to small general stores in Mumbai Dharvi and other areas. Most of my business will run on cash sales. An egg costs 3-4 Rupees, out of which we get a margin of 0.25ps -0.50p.*

**Q12. Please produce books of account.**

*Ans. I maintain the books of account and now producing the same before for your verification. The closing balance as per the cash book is Rs. 31,15,006/-. I am also producing cash book maintained by my wife Mrs. Faridabanu Shaikh who is also doing the same business. The cash balance available as per her books of account is Rs. 21,23,678/-. I submit that the cash seized is tallied as per our books of account.*

**Q13. Please produce the bills/vouchers for payment & sales made.**

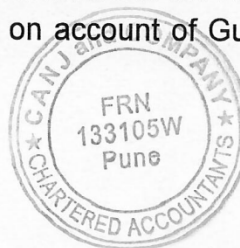
*Ans. We prepare manual vouchers by taking the shop vendor signatures. Other than this, in this style of business it is not possible to maintain perfect and authenticated vouchers for the sales & payments made.*

**Q.14. Failure to produce bills/vouchers for the sales/payments made, please state why the amount seized at Rs. 50,00,000/- cannot be treated as unaccounted money.**

*Ans. Sir, I submit that ours is a petty business and deals only with cash sales. As seen by you we have produced all the books maintained by us. However, to purchase peace with the department, I offer Rs. 10,00,000/- lakhs as additional income for the current Financial Year 2019-20.*

**10.2** It can be seen from above that the appellant stated that he took cash which was collected from about 2000 vendors for the last four weeks. He also mentioned that closing balance in his cash book was Rs. 31,15,006/- and cash balance in the books of his wife Mrs. Faridabanu Shaikh was Rs. 21,23,678/-. However, no sale bills were produced by him saying that he is doing a petty business wherein he deals with cash sales only. Moreover, in this statement, he disclosed an amount of Rs. 10,00,000/- as additional income for A.Y. 2020-21.

**11.** During the assessment proceedings, vide letter dated 26/09/2021, the appellant submitted to the Assessing Officer that he purchases eggs from Hyderabad and nearby area and sell them at Mumbai on wholesale basis. It is his usual business to order on phone and pay to suppliers through RTGS/NEFT. He is required to settle the account with the supplier within a week. It was also submitted that he has offices at Mumbai, Solapur, Latur and Hyderabad to facilitate his business. The appellant submitted to the Assessing Officer that before 25/11/2018 there were holidays on account of Gurunanak



AWCPS61833- ADJUDICATOR SATTAR BASHALIYAN SHAIKH  
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Jayanti and Eid and the cash collected from the customers could not be kept at Mumbai as this office is very small in size. Since he could not take risk of keeping so much cash at Mumbai, therefore, in order to make payment to suppliers he was carrying this cash to Hyderabad. Since the cash is already recorded in the books of accounts, the said cash should not be considered as unexplained cash.

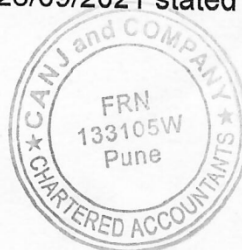
**12.** The above explanation was reiterated by the appellant during the appellate proceedings wherein he has submitted that due to bank holidays, the cumulative cash collections from debtors, was required to be travelled from Mumbai to Hyderabad in order to deposit the same in bank account. Since the collection from debtors is duly reflected in the cash book, the addition made by the Assessing Officer should be deleted.

**13.** I have considered the above explanations of the appellant and same cannot be accepted for following reasons:-

i) At the time of interception, the appellant has clearly stated that the cash of Rs. 50,00,000/- was collected from one customer at Mumbai on 26/11/2018. However, in the statement recorded on 25/01/2019 he stated that the cash was collected from '2000 street vendors' during last four weeks. Thus, there is a clear contradiction in both statements.

ii) Despite repeated requests, the appellant has not submitted the sale bills corresponding to such sales from which Rs. 50,00,000/- were received by him. The main argument of the appellant is that he is doing a petty business and therefore does not keep sale bills in an organised manner. The said argument of the appellant cannot be accepted because for the F.Y. 2018-19, the total turnover declared in the P/L Account is Rs. 31,75,29,598/- i.e. about Rs. 32 Crores. Therefore, the appellant cannot be said a petty retailer. Since his sale is much higher than the threshold limit prescribed for tax audit, therefore, he is required to maintain complete books of accounts along with complete sale vouchers as well as purchase vouchers. Hence, the explanation for not maintaining sale and purchase vouchers by saying that he is doing a petty business is factually incorrect.

iii) While explaining the business activities before the Assessing Officer, the appellant vide submission dated 26/09/2021 stated that he is



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wholesale egg seller. Since the appellant is a wholesale egg seller, the claim that he is not maintaining sale invoices cannot be accepted.

iv) The appellant has not filed the quantitative details for eggs purchased and sold by him.

v) In the statement dated 25/01/2019, the appellant said that the said cash of Rs. 50,00,000/- was out of cash balance in his cash book amounting to Rs. 31,15,006/- and out of cash balance in hand of his wife which was shown as Rs. 21,23,678/- This is also a contradiction to his explanation that he collected cash of Rs. 50,00,000/- from 2000 vendors in four weeks preceding 26/11/2018.

vi) The appellant has submitted that he collected cash from his customers during four weeks preceding 26/11/2018. However, a perusal of cash book of the appellant shows that from 01/09/2018, following cash was collected on account of sales:-

31/08/2018	Rs. 1,65,600/-
15/09/2018	Rs. 1,64,550/-
30/09/2018	Rs. 1,56,650/-
16/10/2018	Rs. 1,51,550/-
31/10/2018	Rs. 1,50,750/-
15/11/2018	Rs. 1,57,600/-

Thus, the appellant's claim that he collected Rs. 50,00,000/- from 2000 customers during four weeks preceding the date of seizure, is factually incorrect

vii) The appellant has shown a receipt of cash of Rs. 20,00,000/- on 25/11/2018 from his wife Mrs. Farida A. Sattar Shaikh. However, no documentary evidence substantiating the availability of such huge amount of cash with his wife, has been submitted.



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viii) It has also not been explained by the appellant as to why the said cash was given by his wife to him and how come this cash was received by him at Mumbai and was carried to Hyderabad.

ix) The appellant has claimed that his office at Mumbai was small and it was not safe for him to keep cash at his office. Further, he could not deposit the said cash in his bank account due to bank holidays in the week started from 19/11/2018. Both these contentions cannot be accepted because as per the cash book, the appellant had cash in hand as on 01/04/2018 amounting to Rs. 39,66,945/-. This cash is appearing as cash in hand continuously with the appellant till 25/11/2018, therefore, the claim that it was not safe to keep cash at Mumbai office for a week cannot be accepted.

x) The Assessing Officer has examined the cash in hand as on 01/04/2012, 01/04/2013, 01/04/2014, 01/04/2015, 01/04/2016 and 01/04/2017 and found that the cash in hand shown by the appellant on these dates is less than Rs. 3,00,000/-. Suddenly cash in hand as on 01/04/2018 is shown as Rs. 39,66,946/- without explaining this sudden rise in cash in hand.

xi) It is also seen that the ITR for AY 2018-19 (relevant for financial year ending on 31.3.2018) was filed only on 31/01/2019 that is much after the date of cash seizure and statement dated 25/01/2019.

**14.** The above discussion clearly suggests that there are various contradictions in the explanation furnished by the appellant at various points of time and none of these contradictions have been explained by the appellant. The appellant kept changing his stand. Also, he has failed to substantiate his explanation that Rs. 50,00,000/- were out of sale collection from his customers during last four weeks preceding 26/11/2018. No sale bills or purchase bills have been filed during the assessment proceedings or appellate proceedings even though he is showing gross sales of more than Rs. 32 Crores. The appellant has also taken a contention that an amount of Rs. 20,00,000/- out of cash received from his wife, however, no documentary evidence substantiating the availability of cash in the hands of his wife has been filed. The overall facts of the case suggest that the cash book filed by the appellant has been manipulated and is not reliable. The appellant has shown huge opening cash in hand as on 01.04.2018 but could not substantiate this. It is



also seen that the ITR for AY 2018-19 (relevant for financial year ending on 31.3.2018) was filed only on 31/01/2019 that is much after the date of cash seizure and statement dated 25/01/2019. In view of above discussion, the action of the Assessing Officer in treating the seized cash of Rs. 50,00,000/- as unexplained is upheld. Ground no. 1 & 2 raised are **DISMISSED**.

4. Learned counsel representing the assessee vehemently argued during the course of hearing that both the lower authorities have erred in law and on facts in making the impugned sec.69A unexplained cash addition in his hands thereby not giving credit of the corresponding cash-in-hand figures in his cash book.

5. The Revenue has strongly supported the learned CIT(A)'s detailed discussion hereinabove confirming the impugned addition in assessee's hands.

6. We have given our thoughtful consideration to the learned counsel's vehement rival submissions and perused the assessee's detailed paper book. Suffice to say, there is hardly any dispute between the parties that this assessee was nabbed by the police authorities at Hyderabad on 26.11.2018 with cash of Rs.50 lakhs found in his possession. And that the same led to his sec.131 statement recorded by the learned departmental authorities wherein he claimed to have realized the foregoing cash as regular business receipts from customer(s) in Mumbai. Learned counsel could not dispute the clinching fact that no such list of the corresponding customers

has seen light of the day right from 26.11.2018 till date. Coupled with this, the assessee appears to have submitted his final submissions on 26.09.2021 before the learned Assessing Officer at Kolhapur neither proving his stand adopted throughout nor attributing source of the cash found to the alleged cash in hand figures in the cash book. It is in these peculiar facts, we are of the considered view that the assessee's foregoing sole argument does not deserve to be accepted before us without any corroboratory evidence. Hon'ble apex court's landmark decisions in Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC) and CIT vs. Durga Prasad More [1971] 82 ITR 540 (SC) has already settled the issue long back that any explanation/evidence filed in income tax proceedings has to be considered in light of the human probabilities thereby removing all blinkers. We wish to reiterate here before parting that the assessee allegedly carries his business in Mumbai, assessed at Kolhapur and was found with the impugned cash of Rs.50 lakhs in his possession in Telangana, which he fails to explain in the facts and circumstances narrated hereinabove. We see no merit in his arguments. The impugned addition is confirmed in very terms.

7. This assessee's appeal is dismissed in above terms.

Order pronounced in the open Court on 16.05.2024.

Sd/-  
[DR. DIPAK P. RIPOTE]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 16<sup>th</sup> May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Pune-11, Pune.
4.	The Pr. CIT, Pune concerned
5.	D.R. ITAT, "A" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.