

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.4580/M/2023
Assessment Year: 2019-20**

Shri Hemant Samarataji Lohar, IVY-A 403, Park City, Kilwani Road, Amlī, Silvassa, Dadra and Nagar Haveli (UT) PAN: ABKPL7048N	Vs.	Commissioner of Income Tax (Appeals-54) 1 st Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bharat Raichandani, A.R.

Revenue by : Shri C.T. Mathews, Sr. DR

Date of Hearing : 22 . 05 . 2024

Date of Pronouncement : 29 . 05 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 20.10.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2019-20.

2. In the instant case, the assessee had declared his total income at Rs.13,43,340/- after claiming deduction of Rs.1,83,502/- under chapter VI-A of the Act, by filing his return of income on 25.08.2019 which was processed under section 143(1) of the Act. Subsequently, on the basis of search carried out in the case of Bhilosa Group on 15.10.2018, the case of the assessee was also processed and consequently notice dated 25.09.2020 under section 143(2) of the Act was issued to the assessee. The assessee, in response to the notice, filed his reply and financials. On perusing the same the Assessing Officer (AO) observed that the assessee has shown to have earned salary from M/s. Omhari Textiles Pvt. Ltd. as well as rental income and other sources of income. During the search action at the premises of the assessee gold jewellery totaling to 100 grams, silver jewellery of 20 grams, silver coins of 30 grams and cash amount of Rs.4,82,275/- were found. In the statement recorded, the assessee stated that he would produce the relevant bills of jewellery items but failed and therefore the assessee was show caused as to why the said cash and value of jewellery should not be treated as undisclosed income of the assessee for the year in which search had taken place. The assessee, in response to the show cause vide letter dated 29.04.2021, contended that cash was received/accumulated on various occasions, whereas during the search action the assessee had explained that said cash sum of Rs.4,82,275/- belonged to himself, his wife's savings and contribution received for happiness programs conducted by the Art of living, wherein the assessee is a teacher and also a sum of Rs.2,25,000/- belonged to "Devvanshiya Malviya Lohar Samaj" wherein he is a treasurer.

2.1 The AO though considered the explanation of the Assessee and made no addition on account of jewellery, however on being deviated by the assessee from the statement recorded under section 132(4) of the Act during the search action at his residence, doubted the said cash amount of Rs.4,82,275/- and ultimately treated the same as un-explained money within the meaning of section 69A of the Act and accordingly added in the income of the assessee.

3. The assessee, being aggrieved, challenged the said addition before the Ld. Commissioner who affirmed the same by concluding as under:

“That the assessee has not been able to furnish any documentary evidence in respect of his claims regarding the cash found. The only evidence is so called balance sheet as on 31.03.2019 while the fact remains that no such financial statements were shown during the course of the search. Moreover, the cash in hand position as on 31.03.2019 as per the balance sheet drawn much after the search in any case cannot explain the cash found on the date of the search i.e. 16.10.2018, also no cash book has been furnished to ascertain the day-to-day cash deposit”.

4. The assessee, being aggrieved, challenged the affirmation of the addition of the Ld. Commissioner and during the course of hearing drew our attention to the page 8 of the impugned order wherein the Ld. Commissioner reproduced the written submissions of the assessee wherein para-no.1.4 it has been categorically recorded as under:

“That to substantiate the same, a copy of the balance sheet and cash book were submitted before the AO and are hereby enclosed at page No.32 of the paper book which clearly shows that a balance of Rs.4,00,792/- was also recorded in the regular books of account. As regards, to a marginal difference of Rs.81,483/- it is submitted that the same is out of savings in the course of meeting household expenses and on various instances cash gifts were received by the family members on the occasion of festivals,

engagement, marriage, anniversaries, housewarming ceremony, success parties and the birth of assessee's children. Thus, it is submitted that cash found during the search & seizure proceedings pertains to the cash already recorded in books of account coupled with the savings of the assessee out of household expenses over the past years and gifts received by the assessee's family members on various occasions. Accordingly, no addition in respect of the cash found is called for".

5. We have given thoughtful considerations to the peculiar facts and circumstances of the case. Admittedly, the assessee had declared his total income of Rs.13,43,340/- after claiming deduction of Rs.1,83,502/-. As we have observed above that the assessee not only filed the balance sheet and cash book before the AO but also submitted the same vide paper book (page No.32) before the Ld. Commissioner in order to demonstrate the balance of Rs.4,00,792/- recorded in the regular books of account. The assessee further in para-no.1.4 of his written submissions has also disclosed the source of Rs.4,82,275/- having been accumulated/received from relatives on various occasions as well as by the family members of the assessee which the assessee has recorded in his books of account. However, the Ld. Commissioner not only failed to consider the balance sheet and cash book submitted by the assessee but in fact held contrary that the assessee has not been able to furnish any documentary evidence qua his claims regarding the cash found and therefore on this count itself, the impugned order is liable to be set aside. We otherwise also do not find any reason or material on record contrary to the claim of the assessee and to affirm the addition. Hence, considering the peculiar facts and circumstances specific to the effects that the assessee has been able to demonstrate the source of amount of Rs.4,82,275/-, we are inclined to delete the addition of Rs.4,82,275/- as made by the AO under section 69A of the Act and affirmed by the Ld. Commissioner.

6. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 29.05.2024.

**Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.