

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.796/Bang/2024
Assessment Years : 2018-19

Smt. Shakuntala Vijaykumar, No.105/17, 8 th Cross, RMV Extension, 8 th Cross, Sadashivanagar, Bengaluru-560 080.	Vs.	The Dy. Commissioner of Income Tax, Central Circle-2(2), Bengaluru.
PAN – AGAPS 4998 M		
APPELLANT		RESPONDENT

Assessee by	:	Shri Rohit Goutamchand, CA
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for the Department

Date of hearing	:	11.06.2024
Date of Pronouncement	:	18.06.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Id. CIT(A)-15, Bangalore dated 28/02/2024 in DIN No. ITBA/APL/M/250/2023-24/1061713129(1) for the assessment year 2018-19.

2. Briefly stated facts are that the assessee in the present case is an individual and a partner in the firm, namely M/s Vijay Gems and Jewellery. There was a search and seizure operation in the premises of the firm and its partners dated 4/11/2018 u/s 132 of the Act. As a result of the search at the premises of the assessee, a cash of Rs. 5,90,000/- was sized u/s 132 of the Act. The statement of the assessee was

recorded u/s 132(4) of the Act dated 5/1/2018, wherein the assessee was asked to clarify the source of cash vide question No. 12 of the statement, but the assessee failed to give any satisfactory reply.

3. However, the assessee vide letter dated 25/01/2018 addressed to Director, Income-tax (Investigation) submitted that she has withdrawn the sum of Rs. 8,35,500/- from the partnership firm in the financial year 2017-18 and the sum seized was offered to be treated as payment towards the advance tax. The assessee vide letter dated 27/11/2019 also submitted that at the time of search, she sought time to recall the source of cash found during the course of search. However, the AO was not satisfied with the reply of the assessee and, therefore, treated the sum of Rs. 5,90,000/- as unexplained money u/s 69A of the Act and added to the total income of the assessee.

4. Aggrieved, assessee preferred an appeal to the Id. CIT(A)

5. The assessee before the Id. CIT(A) submitted that cash withdrawal from the firm was duly recorded in the books of the accounts of the firm. The supporting documents justifying the availability of cash were furnished to the search team and no defect whatsoever was pointed out therein. The assessee also submitted that she has been maintaining the books of accounts as specified us/ 44AA of the Act, wherein the withdrawal from the partnership firm was duly recorded. Likewise, all the withdrawals from the firm were also recorded in the partnership firm. As per the assessee, she has been withdrawing cash from the partnership firm consistently for her personal needs. The assessee in support of her claim has filed her cash book and cash book of the partnership firm along with the current account for the assessment years 2018-19, 2017-18 and 2016-17.

6. However, the Id. CIT(A) disagreed with the submissions of the assessee and confirmed the order of the AO by observing as under:

"7.0 The appellant in the written submissions states that the cash of Rs. 5,00,000/- that has been seized was capital withdrawals from the partnership firms for personal drawings of the family. In support of this, they have submitted cash book of the firm for the AY 2016-17 which shows cash withdrawals in the name of all the partners Shri Bharat V Jain, Shri Deepak V Jain, Sunil Kumar Surana, Shri Kishan Kumar, Shri Prasana Kumar, Shri Vinay Kumar, Shri Asha Surana & Smt. Shakunthala Surana. Considering the time gap between the withdrawals and the date of seizure, it is held that the appellant as not convincingly explained the source of this cash. Therefore, the action of the Assessing Officer is confirmed."

7. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

8. The Id. AR before us filed a paper book running from 1 to 591 pages and reiterated the contentions made before the authorities below. The Id. AR in support of his contention has filed copy of cash book, capital account in the books of accounts of the partnership firm for the assessment year 2016-17, 2017-18 and 2018-19 which are placed in the paper book.

9. The Id. AR also submitted that the withdrawal of the cash from the firm by the partner has not been disputed by the AO of the partnership firm, who was also the AO of the assessee. In view of the above, the Id. AR submitted that the addition made by the AO and confirmed by the Id. CIT(A) is liable to be deleted.

10. On the other hand, the Id. DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the availability of cash out of the withdrawal

from the firm by the assessee in the financial year 2017-18 corresponding to the assessment year 2018-19 from the partnership firm was very much available before the Id. CIT(A) which is placed on pages 513 and 514 of the paper books. On perusal of the current account of the partner being assessee, we note that there was a substantial cash withdrawal by the assessee, which is sufficient to justify the cash in the hands of the assessee. At the time of hearing, the Id. DR could not bring anything contrary to the argument advanced by the Id. AR of the assessee. It is also pertinent to note that the availability of cash in the hands of the partnership firm has nowhere been doubted by the authorities below. As such the same was accepted by the revenue in the assessment framed in the case of the partnership firm which is placed on pages 515 to 539 of paper book. Thus, in the view of the above and after considering the facts in totality, we do not find any reason to uphold the order of the authorities below. As such, we set aside the order of the Id. CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal raised by the assessee is hereby allowed.

12. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in court on 18th day of June, 2024

Sd/-

(GEORGE GEORGE K)
Vice President

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore,
Dated, 18th June, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore