

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.1591/Del/2023  
Assessment Year 2019-20

<b>Neeraj Jain</b> 388/5, 1 <sup>st</sup> Floor, Khari Baoli Delhi	Vs.	<b>DCIT</b> Central Circle-31 New Delhi
TAN/PAN: ABQPJ3048Q		
(Appellant)		(Respondent)

Applicant by:	Shri Amit Goel, Chartered Accountant Shri Pranav Yadav, Advocate		
Respondent by:	Shri Subhra Jyoti Chakraborty, CIT-DR		
Date of hearing:	03	07	2024
Date of pronouncement:	25	07	2024

**ORDER**

**PER PRADIP KUMAR KEDIA - A.M.:**

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-30, New Delhi ('CIT(A)' in short) dated 30.03.2023 arising from the assessment order dated 31.05.2021 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2019-20.

2. The grounds of appeal raised by the assessee read as under:

*"1. On the facts and circumstances of the case and in law, the notice u/s. 143(2) of the Act issued in this case is without jurisdiction and barred by limitation and therefore, the assessment order passed on the foundation of such notice is liable to be quashed and CIT(A) erred in not holding so.*

*2. On the facts and circumstances of the case and in law,*

*the notice u/s. 143(2) of the Act was not issued within the stipulated statutory time and therefore, the assessment order passed by the assessing officer is liable to be quashed and CIT(A) erred in not holding so.*

3. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is bad-in-law, without jurisdiction and barred by limitation and CIT(A) erred in not holding so.*

4. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is illegal and non-est as the order has been passed without valid DIN and CIT(A) erred in not holding so.*

5. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as it is contrary to the provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.*

6. *On the facts circumstances of the case and in law, the CIT(A) erred in confirming the addition made by assessing officer of Rs. 1,32,61,467/- u/s. 69A of the Act.”*

3. Briefly stated, the assessee is engaged in the wholesale and retail business of Kiryana items at Delhi and Haryana. The assessee is stated to derive income solely from the aforesaid business only and has no other source of income. A search under Section 132 of the Act was conducted on 31.10.2018 to 17.12.2018 at the business premises of M/s. Faqir Chand Lockers and Vaults Pvt. Ltd. It was found by the Investigation Team that one of the lockers was allotted in the name of the assessee herein. Consequently, a search warrant was issued in the name of the assessee and was executed on 04.12.2018. During the search, cash of Rs.1,70,00,000/- was found from the locker allotted to the assessee. As per assessment order, statement of the assessee was recorded under Section 131(1A) of the Act. Thereafter, the assessee filed return of income under Section

139 of the Act on 27.09.2019 declaring income of Rs.5,31,150/-. Notice under Section 143(2) and 142(1) were issued to the assessee wherein the cash amount found in the locker was not admitted as income of the assessee. The AO, based on information gathered in the course of hearing towards month-wise turnover, cash sales and cash in hand for F.Y. 2016-17, 2017-18 and 2018-19 formed a view that the cash found and seized from the lockers remains unexplained. Based on average cash holding between April, 2018 to September, 2018 which stands at Rs.38,37,533/-, the AO took a view that out of Rs.1,70,00,000/- cash in hand to the extent of Rs.37,38,533/- (average cash balance) stands explained and the source of remaining cash balance of Rs.1,32,61,467/- remains unexplained. The AO accordingly invoked provisions of Section 69A of the Act and added the same to the total income of the assessee. The income was thus assessed at Rs.1,37,92,617/- as against returned income of Rs.5,31,150/-.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) denied relief both on legal grounds as well as on merits. The legal grounds in relation to Document Identification Number (DIN), mechanical approval under Section 153D, absence of jurisdiction upon the AO issuing notice under Section 143(2) were adjudicated to be without merit.

5. On merits also, the CIT(A) endorsed the action of the AO and denied any relief.

6. Further aggrieved, the assessee preferred appeal before the Tribunal.

7. When the matter was called for hearing, the Id. counsel for the assessee vociferously assailed the action of the AO and CIT(A). It

was asserted that the legal grounds raised by the assessee has been arbitrarily rejected by the CIT(A) despite long line of judicial precedents. It was contended that the assessment has been completed based on mechanical approval under Section 153D of the Act. Likewise, the assessment order passed without DIN was not held to be *non-est*. However, on inquiry from the Bench, the ld. counsel submitted that the grounds taken in this regard as per Ground No.4 may be treated as not pressed.

8. Ground No.4 is thus dismissed as not pressed.

9. Continuing further, the ld. counsel for the assessee addressed case on merits broadly as under:

(a) The assessee is engaged in the wholesale and retail business of Kiryana items in Delhi and Haryana. The assessee has no other source of income other than business income from aforesaid business. Search and seizure operations were carried out on 04.12.2018 at the locker of the assessee maintained with M/s. Faqir Chand Lockers and Vaults Pvt. Ltd. and an amount of Rs.1,70,00,000/- was found from the above locker. During the course of assessment proceedings, the assessee explained before the AO that the cash found in the locker was duly recorded from the books of account and the source of cash is thus duly explained. The AO however only partly accepted the submissions of the assessee towards source of cash by holding that average balance of cash in hand between April, 2018 to September, 2018 comes to Rs.37,38,533/- and thus allowed the credit of this amount of Rs.37,38,533/- and made additions of remaining amount of Rs.1,32,61,467/-. While doing so, the AO observed that in the statement recorded before the Investigation Wing, the assessee had admitted undisclosed income of

Rs.1,20,00,000/-. The additions made by the AO was confirmed by the CIT(A) on mis-appreciation of facts.

(b) The Statement of assessee before Investigation Wing does not form the basis of the action of the AO. The AO has not made addition of Rs.1,32,61,467/- on the basis of statement of the assessee. In fact neither the additions have been made based on so called confessional statement nor could have been made merely on the basis of bald statement in the light of the judgment of Hon'ble Supreme Court in the case of *Pullangode Rubber and Produce Company Limited vs. State of Kerala (1973) 91 ITR 18 (SC)* wherein it is held that an admission made is not conclusive and it is open to the person who made the addition to show that it is incorrect.

(c) The CBDT vide Instruction No.286/2/2023 IT(Inv.) has lent emphasis that during the search and seizure, there should be focus and concentration on collection of evidence of income and no attempt should be made to obtain confession as to the undisclosed income. The CBDT has recognized the position that assessment of undisclosed income has to be based upon the evidence and not on statement. Thus statement obtained in the course of search do not carry much weight in the absence of evidence.

(d) Without prejudice, even as per statement as reproduced at page no.3 of the assessment order, the amount of Rs.1,20,00,000/- was mentioned as sales, i.e., gross income and entire sales have been wrongly assessed as income instead of only profit element embedded therein.

(e) Be that as it may, the AO has not made the addition of

Rs.1,32,61,467/- on the basis of any statement. The AO has made the additions independent of any statement based on the fact that average cash balance between April, 2018 to September, 2018 was Rs.37,38,533/- only and therefore, credit to this extent was given as explained source while assessing the balance amount of Rs.1,32,61,467/- as unexplained income. In this regard, the ld. counsel for the assessee contends that there is no logic or rationality in the action of the AO in adopting average balance of cash in hand. The balance of cash in hand has to be seen on the date of search and giving credit for average cash balance disregarding the actual cash in hand is incomprehensible.

(f) The AO himself in paragraph 7.4 of the assessment order has recorded that assessee has started business in the name of new proprietary concern M/s. Sambhav Trading Company in Bahadurgarh, Haryana wherein cash in hand of Rs.1,22,22,497/- was shown on 25.10.2018. It was further observed by the AO that assessee has shown total turnover of Rs.7.46 crore during the F.Y. 2018-19 relevant to A.Y. 2019-20 in question as against Rs.2.02 crore for F.Y. 2017-18 relevant to A.Y. 2018-19 and during the current period cash sales of the assessee has increased substantially. It was thus contended that adverse inference could not have been drawn on such facts.

10. The ld. counsel thus submitted that where the turnover has increased and business operations have started in new place, the cash in hand at the disposal of the assessee is bound to be higher as compared to earlier period particularly where the assessee is engaged in cash sales in Kiryana goods.

11. The ld. counsel next adverted to additions made under the

shelter of Section 69A and contended that provisions of Section 69A are not applicable in the facts of the case since the amount of cash found at the time of search is duly recorded in the books of account and such books including cash book has not been rejected by the AO at any point of time in the course of assessment and further contended that cash book is included in the definition of 'books of account' as given in sub section (12A) of Section 2 of the Act. The ld. counsel adverted to the decision of the Co-ordinate Bench in *Teena Bethala vs. ITO in ITA No.1383/Bang/2019 dated 28.08.2019* to submit that the onus is upon the AO to find that the assessee is the owner of any money, etc which was not recorded in the books of account which onus has not been discharged. The ld. counsel also referred to the decision rendered in the case of *DCIT vs. Karthik Construction Co. in ITA 2292/Mum/2016, order dated 23.02.2018* to reiterate that Section 69A cannot be made in respect of those assets/monies/transactions which are recorded in the books of account. In the instant case, the books of account are duly subjected to statutory audit and are remain intact in the absence of its rejection by the AO. The ld. counsel next submitted that there is no case of any unexplained money in the light of the evidences furnished such as complete details of purchases, sales and stocks both quantity-wise as well as amount-wise; details of party-wise purchase, details of party-wise sales and complete cash books. No defect has been pointed out in the details/documents/cash book furnished before the AO. The sales are duly recorded in the books and audited. The sales amount has been duly accepted by the AO, Books have not been rejected. Almost all the purchases have been made through account payee cheques and therefore, purchase cannot be doubted. The AO has accepted such purchase transactions as well as stock declared. Once, the AO has accepted the purchases and

stocks, there is no justification for him to draw adverse inference in respect of sales. A reference in this regard was made to the judgment in the case of *CIT vs. Paradise Holiday, (2010) 325 ITR 13 (Del)*; *ITO vs. Surana Traders (2005) 92 ITD 212 (ITAT Mum)*; *Shree Sanad Textile Industries Ltd. vs. DCIT, ITA No.1166/Ahd/2014 (ITAT Ahd)*. The Id. counsel thus submitted that impugned addition is devoid of any rational basis both on facts and on law.

11. Without prejudice and in the alternative, the Id. counsel submitted that the action of the AO has resulted in double addition to the extent of Rs.1,32,61,467/- one by way of cash sales and second by way of cash found. Thus, both debit and credit has been assessed simultaneously contrary to the principles of double entry system of accounting which is yet again unsustainable in law. For this proposition, the judgment rendered by the Hon'ble Delhi High Court in the case of *CIT vs. Vishal Exports Overseas Ltd. in Tax Appeal No.2471/2009 order dated 3.07.2012* was referred. The Id. counsel thus urged for reversal of the impugned additions and restoration of the income declared.

12. The Id. DR for the Revenue, on the other hand, relied upon the assessment order and the first appellate order. The Id. DR also referred to the statement made by the assessee under Section 131(1A) of the Act wherein the assessee himself admitted to have earned undisclosed income of Rs.1,20,00,000/-. The Id. DR thus submitted that the position taken by the assessee is contrary to the admitted statement as well as documents placed on record and thus action of the Revenue cannot be assailed.

13. We have carefully considered the rival submissions and perused the material available on record as well as orders of both the authorities.

14. The assessee has disputed the addition of Rs.1,32,61,467/- made by the AO under Section 69A of the Act towards unexplained source of cash in hand. The assessee has challenged the additions on legal ground such as lack of jurisdiction in appropriate approval under Section 153D and non-mentioning of DIN, etc. The assessee has also assailed the action of the Revenue on the factual matrix as well. It is the case of the assessee as recorded in the preceding paragraphs that complete details of purchases, sales and stocks including quantity details were provided in the course of the assessment. The relevant details such as party-wise sales, party-wise purchases were also filed together with cash book showing cash in hand in excess of the cash found in the course of search covering locker maintained with M/s. Faqir Chand Lockers and Vaults Private Limited. The books and the details so filed have not been rejected and also the additions so made would result in double taxation. It is further case of the assessee that without rejection of books, the additions on account of unexplained cash cannot be made *dehors* the cash book. It is further case of the assessee that credit for average cash balance held in past six months is totally incomprehensible and what is to be seen is cash in hand at the time of search. The assessee also contends that the additions have not been made on the basis of statement nor could have been made based on some additions without dislodging the facts available on record in view of CBDT Instruction and the judgment rendered in the case of *Pollangode Rubber (supra)*. Without prejudice and in the alternative, the assessee contends that it is only the profit element embedded in the sales of Rs.1,20,00,000/- which can be treated as income on estimated basis. The Id. counsel thus submitted that the ingredients of Section 69A are not met in the present case and thus additions made are outside the sanction of law.

15. On appraisal of facts on record, we observe that the AO has not adversely commented on the details of sales, purchases and stocks both in terms of quantity and amount and the party-wise sales/purchase etc. The AO has also accepted the sales declared by the assessee. As a sequel to such undisputed facts, we are compelled to think that cash in hand declared in the books is backed by documentary evidences. The assessee being in Kiryana business where large cash transactions are generally involved, the source of cash in hand draws considerable strength. The purchases made are stated to be through banking channel which further strengthens the audited financial accounts. Besides, we see no semblance in the view taken by the AO that only average balance of cash in hand needs to be given credit. For doing so the cash book necessarily has to be discarded. The books of account are admittedly not rejected. The sales, purchases and stocks have been accepted. Thus, the prerequisites of Section 69A do not appear to have been fulfilled. Several judgments have been quoted on behalf of the assessee to contend that rejection of books is necessary to indulge in such addition. The action of the AO in our view, as rightly contended on behalf of the assessee has resulted in double additions which is not permissible in law. We thus see no rationale in confirming the additions to the extent of Rs.1,32,67,467/- towards unexplained cash under Section 69A in the facts of the case by granting credit only towards average cash balance rather than actual cash in hand at the relevant point of time.

16. However in the vein, we note that as against the sale of Rs.7,46,90,131/-, the assessee has declared a net profit ratio of 0.9% as against the immediately previous F.Y. 2017-18 where against the turnover of Rs.2,02,83,095/-, the net profit ratio stands at 3.43%. Thus, there is a drastic fall in the net profit ratio vis-à-vis earlier

year. Hence, in the balance of things, additional business income @2.53% being difference in net profit ratio of turnover of 7.46 crore which stands at Rs.18,89,660/- calls for addition attributable to cash sales in question. Thus, the additions to the extent of Rs.18,89,660/- is retained and the remaining amount of Rs.1,13,77,807/- is deleted. The order of the CIT(A) and AO are modified to this extent.

17. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open Court on 25<sup>th</sup> July, 2024.**

Sd/-  
**[YOGESH KUMAR US]**  
**JUDICIAL MEMBER**

Sd/-  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**

DATED: 25<sup>th</sup> July, 2024  
*Prabhat*

Copy forwarded to:

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

Assistant Registrar