

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member,

Sh. Sudhir Kumar, Judicial Member

ITA No. 3122/Del/2023 : Asstt. Year: 2016-17

DCIT, Central Circle-31, New Delhi-110055	Vs	Manoj Tanwar, H. No. 09, Fatehpur Beri, New Delhi-110074
(APPELLANT)		(RESPONDENT)
PAN No. AQLPT3257H		

Assessee by : Sh. Pranshu Singhal, CA

Revenue by : Sh. M. G. Joseph Gangte, CIT-DR

Date of Hearing: 21.05.2024

Date of Pronouncement: 19.08.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-30, New Delhi dated 30.08.2023.

2. Following grounds have been raised by the Revenue:

"1. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 45,46,950/- as unexplained money u/s 69A.

2. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 45,46,950/- as unexplained money u/s 69A ignoring the fact that the assessee has failed to explain and submit any evidence in support of his claim regarding the opening balance as on 01.04.2016 as per cash flow statement submitted by the assessee during assessment proceedings.

3. The order of Ld. CIT(A) is erroneous and is not tenable on facts and in law.

4. The grounds of appeal are without prejudice to each other. It is relevant to mention that issues involved in the present

matter falls under exception (e) of CBDT Circular no. 3 of 2018, hence appeal is maintainable."

Brief Facts:

3. On 24.01.2020, cash of Rs 78,00,000/- was found in the car of the assessee and was then intercepted by Static Surveillance Team from the assessee. On receiving the information about interception, a search warrant of authorization u/s 132 was issued by the Pr. DIT (Inv.)-2, New Delhi, and the amount of Rs. 78,00,000/- was seized from the possession of the assessee. Subsequently, the AO initiated the assessment proceedings by issuing notices u/s 153A on 12.08.2021 for A.Y. 2014-15 to 2019-20 and notice u/s 143(2) of the Act was issued for the AY 2020-21 to the assessee.

4. Regarding the cash seized on 24.01.2020, notice dated 16.08.2021 was issued to the assessee for A.Y. 2020-21 to enquire about the source of cash of Rs.78,00,000/-. In response to this notice, the assessee filed reply on 25.09.2021, wherein it was submitted that the said cash belongs to the assessee and his family comprising of total 18 members. To substantiate the same, detailed cash flow statements of the assessee and family members was also submitted. The AO accepted the source of cash of Rs.78,00,000/- and the explanation that the cash belonged to the assessee and his family members in the A.Y. 2020-21 (i.e. in the year of search) and passed the assessment order in favour of the assessee for A.Y. 2020-21 vide order dated 30.09.2021.

5. However, at the same time, the AO did not accept the opening balance shown by the assessee in his and his family member's name as on 01.04.2016 and made the addition of Rs.45,46,950/- in the A.Y. 2016-17, on the basis that the assessee has not submitted cash flow statements prior to 01.04.2016.

6. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the addition.

7. Aggrieved, the Revenue filed appeal before the Tribunal.

8. Heard the arguments of both the parties and perused the material available on record.

9. The cash was found in the possession of the assessee in the A.Y. 2020-21 and in the statement recorded u/s. 132(4) at the time of search operation, the assessee stated that the cash belong to a company called M/s. Softage Technology Limited.

10. The company disowned the cash and the statement of the assessee. The onus was on the assessee to explain the cash failing which same was taxable in A.Y. 2020-21. During the assessment proceedings, the assessee changed his stand and stated that the cash in question pertain to him as well as 16 family members. The cash flow statement was submitted by the assessee from F.Y. 2016- 17 to F.Y. 2019-20 showing sufficient cash in hand on the date of search. The explanation of the assessee was accepted by the Assessing Officer and no addition has been made by him in the A.Y. 2020-21 in which the cash was found. Thus, the Assessing Officer has accepted that the

seized cash does not belong to the assessee alone but 17 persons.

11. Once the cash flow statement submitted by the assessee from 01.04.2016 onwards has been accepted by the Assessing Officer in respect of the assessee as well as his 16 family members the opening balance as on 01.04.2016 shown against 17 persons cannot be rejected. Further the whole amount of opening balance cannot be added the hands of the assessee alone as it would be contrary to the AO's own finding in the A.Y. 2020-21.

12. If the AO was not satisfied with the cash flow statement, then the whole theory of explanation given by the assessee fails and then the addition should be made in A. Y. 2020-21 in terms of section 132(4A) and 69A of the Act.

13. The assessee has shown Rs.2,95,500/- only as cash in hand as on 01.04.2016 in his individual hands. The Assessing Officer has not brought on record any incriminating material pertaining to A.Y. 2016-17 in the case of the assessee in respect of opening balance shown by him amounting to Rs.2,95,500/- as on 01.04.2016. The impugned year being the unabated assessment, no addition can be made u/s. 153A in absence any incriminating material found/unearthed during the year.

14. Reliance is placed on the decision of Hon'ble Supreme Court in the case of DCIT vs. Abhisar Buildwell Pvt. Ltd. [149 taxmann.com 399]

15. The cash balances available as on 01.04.2016 cannot be doubted as the same was nothing but the accumulated cash balance in the hands of the assessee and his family members. Thus, when the cash balance of the succeeding assessment years has been accepted in the hands of the assessee as well as his family members, the whole amount of opening balance as on 01.04.2016 pertaining to the assessee and his family members cannot be added in the hands of the assessee.

16. Thus, when the source of income arising in the hands of the assessee and his family members has been duly accepted by the AO in AY 2020-21, the source of cash balance as on 01.04.2016 cannot be rejected in the AY 2016-17. Keeping in view the entire facts, we hold that the Id. CIT(A) has rightly deleted the addition made in the A.Y. 2016-17.

17. Since, matter has been adjudicated on merits, the issue of low tax effect become academic and hence dismissed as infructuous.

18. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 19/08/2024.

Sd/-

(Sudhir Kumar)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 19/08/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT