

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 4146/MUM/2024
Assessment Year: 2019-2020**

Shri Om Prakash Adukia,
701, Avarsekar Heights, 130, Dr
Annie Besant Road, Worli,
Mumbai-400018.

**PAN NO. AABPA 4795 M
Appellant**

Vs. Dy. CIT Central Circle-7(1),
Room No. 653, 6th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Respondent

Assessee by : Mr. Vimal Punmiya
Revenue by : Mr. Krishnakumar, Sr. DR

Date of Hearing : 26/09/2024
Date of pronouncement : 28/10/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 24.06.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – 49, Mumbai [in short ‘the Ld. CIT(A)'] for assessment year 2019-2020, raising following grounds:

(1) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in



upholding the action of the learned Assessing Officer (AO) of making addition of sum of Rs.6,39,300/- as unexplained cash u/s. 69A of the Income Tax Act, 1961 (the Act) which is wrong and contrary to the facts of the case, the provisions of the Act and the Income Tax Rules, 1962 (Rules) made thereunder.

(2) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the aforesaid addition made by the learned AO without appreciating that the learned AO erred in making the said addition by rejecting the affidavit dated 21-05-2018 of the appellant without controverting the contents therein and or making any effort to cross-examine him, which is wrong, unjustifiable, illegal and arbitrary.

(3) On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that the learned AO's action of rejecting the appellant's aforesaid affidavit without giving any advance notice of his intention to do so, was wrong and against the cardinal principles of nature justice thereby making the impugned addition and order as void ab initio.

(4) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in rejecting the appellant's submission that the seized cash belonged to other members of his family on the reasoning that the said plea was not raised earlier but at the time of impugned assessment proceedings without appreciating that the said plea was raised immediately after the conclusion of search proceedings during the course of post search appraisal proceedings conducted by the Deputy Director of Income Tax (Investigation), Unit 4(3), Mumbai.

2. Briefly stated, facts of the case are that a search and seizure action u/s 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out at the premises of the 'Jatia' Group on 17.04.2018 along with premises of the assessee. During the course of search action total cash amounting to Rs.16,50,000/- was found from the residential premises and bank lockers. During the course of search action, the assessee could explain availability of the cash of Rs.10,10,693/- in statement recorded u/s 132(4) of the Act. In view of statement, the balance cash of Rs.6,39,300/- was seized by the search team. Subsequently, the return of income filed by the



assessee for the year under consideration on 19.07.2019 declaring total income at Rs.9,44,59,830/- was selected for scrutiny and statutory notices under the Act were issued and served upon the assessee. During the scrutiny proceedings the assessee was asked to explain the source of the cash of Rs.6,39,300/-. The assessee submitted that said cash belonged to other family members who were residing with him. The assessee provided statement of the cash in hand available with family members as on the date of the search i.e. 17.04.2018 and submitted that cash at Rs.16,68,825/- was available as on the date of the search with all family members and therefore, the cash found of Rs.16,50,000/- was fully explained and no addition for the cash seized of Rs.6,39,300/- was required. However, the Assessing Officer rejected the affidavit dated 21.05.2018 explaining the availability of the cash in hands of the assessee and his family members. The relevant finding of the Assessing Officer is reproduced as under:

“6.4 The submission of the assessee is considered, but is not found to be justifiable. The assessee has merely submitted a purported reconciliation statement of cash balance in his and his relatives' hands as on 21-05-2018 which is a self-prepared unaudited statement and therefore cannot be relied upon. Further, in the Income Tax Returns filed by these relatives of the assessee also (except his son, Shri Rajiv Adukia), the details of Balance Sheet and or cash balance are not reported in the Income Tax Returns filed by them. Therefore, the self-made Balance Sheets prepared for the relatives of the assessee which were not submitted during the course of Search and Seizure proceedings, are merely an after-thought and can have no evidentiary value.”

3. On further appeal, the Ld. CIT(A) mainly relied on the statement of Shri Prakash Adukia during the course of the search



wherein he explained availability of the cash of Rs.10,10,693/- with the assessee and family members. The relevant finding of the Ld. CIT(A) is reproduced as under:

“9.4.4 During the appeal proceedings before me, it is submitted that, the appellant is staying alongwith his 8 family members and the income declared by them in the return filed for A.Y 2017-18 is of Rs 2.22 crores. The appellant has also filed a statement of cash along with balance sheets as on 31/03/2017 of 9 family members (which had been filed before the AO also) and contended that the cash in hand available with all the family members together was in excess of the cash found during search, and, therefore, there was no cash which had remained unexplained.

9.4.5 I have considered the submission of the appellant. On perusal of the balance sheets, it is seen that, the same are prepared after the search and were not filed alongwith the IT returns. Hence these documents has no sanctity. Further, as already discussed above, during the search the appellant's statement was recorded wherein he was asked to explain the source of cash found. He had furnished the details of 4 persons and explained the cash to the extent of Rs. 10,10,693/-. For the remaining cash the appellant had not furnished any documentary evidence. It was not claimed that the cash pertains to other family members also. Hence, taking this plea at the time of assessment proceedings is nothing but an afterthought. Hence the contention of the appellant is not acceptable. Accordingly the addition made by the A.O of Rs.6,39,300/- is confirmed. The appeal on this ground is thus DISMISSED.”

4. Aggrieved the assessee is in appeal before the Tribunal by way of raising the grounds as reproduced above.

5. We have heard rival submission of the parties and perused the relevant material on record including the Paper Book filed by the assessee containing pages 1 to 88. The Ld. counsel for the assessee referred the page 85 to 87 of the Paper Book which are copy of the Annexure appended to the 'panchnama' prepared on the date of the search. The Page 85 is inventory of cash of Rs.6,39,300/- which was seized from the bank locker of the wife of the assessee Shri



Om Prakash Adukia. The Paper Book page 86 is copy of the annexure 2 which is inventory of cash of Rs.3,00,000/- found from the resident of assessee Shri Om Prakash Adukia. The Ld. counsel for the assessee referred to the above inventory and submitted that from the assessee only cash of Rs.3,00,000/- was found from the residence and cash seized of Rs.6,39,300/- was found from locker of the wife of the assessee. The Ld. counsel accordingly submitted that no addition could have been made in the hands of assessee in respect of cash belonging to the wife of the assessee. Further without prejudice to the argument, the Ld. counsel submitted that assessee could not file complete details of availability of the source during the course of the search proceedings and therefore during the course of the assessment proceedings complete details along with evidences containing bank statements, supporting withdrawal etc. in respect of all family members were filed. The Ld. Assessing Officer has rejected the submission merely for the reason that evidences in respect of availability of the cash were neither filed along with regular return of income nor same were audited statement. The Ld. counsel however submitted that said statements were prepared on the basis of the bank statements and same were not required to be filed along with return of income and therefore, the Assessing Officer should have examined and thereafter decided the availability of the cash in the hands of the assessee. We find that the Ld. CIT(A) has rejected the contention of the assessee following the conclusion of the Assessing Officer that details of the



cash statement filed by the assessee was not reliable. We have examined the details filed by the assessee before the Assessing Officer. The assessee has filed copy of the bank statements and withdrawal of the money from the bank. In the case of Shri Rajiv Adukia cash balance was also appearing in the return of income filed by him. The relevant finding of the Ld. counsel for the assessee is reproduced as under:

“The appellant, aged 82 years at the time of Search proceedings, stays at 701, Avarsekar Heights, 130, Dr Annie Besant Road, Worli, Mumbai - 400 018 alongwith his family members. Details of his family and other related are as per Annexure 1

It is submitted that while all major transactions by the appellant are undertaken through normal banking channels, as an abundant caution and to meet unforeseen/medical and other emergent/pressing cash needs more particularly due to age of the appellant and his wife, cash resources are maintained which are kept in bank lockers and/or at home.

During the Section 132 proceedings at the appellant's residence in April 2018, the authorised person and his team recovered an amount of Rs 16,50,000 of which Rs 6,39,300 was treated as unexplained and therefore seized

A statement of cash together with balance sheets dt 31.3.2017 of all the aforesaid entities is annexed at paper-book page nos. 11 to 24 according to which the amount of cash balance in hand as on 17.4.2018 (the day of seizure) ought to have been Rs 16,68,825 which is almost equal to/less than the amount of Rs 16,50,000 recovered during the aforesaid Search proceedings. The appellant vide his letter dated 10-02-2021 filed with the learned AO during the impugned assessment proceedings had submitted these details which formed part of letter dated 18-05-2018 annexed to the said letter dated 10-02-2021. A copy of the said letter dated 10-02-2021 alongwith the annexures thereto are collectively annexed at paper-book page nos. 25 to 33.

The cash balance of the following family members has not been accepted by the learned AO:



Name	Returned income of AY 2017-18	Opening Balance as on 01-04-2017	Cash inflows/ withdrawals during FY 2017-18	Cash outgo during FY 2017-18	Balance as on 31-03-2018
Urmila Devi Adukia (wife)	7,44,915	844	10,000 (pg46of paper book)	Nil	10,844
Shilpa Rajiv Adukia (daughter-in-law)	94,493	8,558	16,978 (pgs. 56 and 58 of paper book)	14,981	10,555
Vanshika Adukia (grand-daughter-in-law)	7,36,988	1,96,435	8,58,303 (pg. 67 of paper book)	6,35,730	4,19,008
Namha Adukia (granddaughter)	10,52,503	94,351	Nil	Nil	94,351
Om Prakash Adukia (HUF)	6,42,428	1,40,371	6,000 (pg 69 of paper book)	6,000	1,40,371
Total		4,40,559	8,91,281	6,56,711	6,75,129

On perusal of the above, it will be appreciated that:

(i) Urmila Devi Adukia, wife of assessee had an opening cash balance as on 01-04-2017 of Rs. 844. She had cash inflows of sum of Rs.10,000/- during FY 2017-18 and had a closing cash balance of Rs.10,844/- as on 31-03-2018. She had returned income of Rs.7,44,915/- in A.Y. 2017-18.

(ii) Shilpa Rajiv Adukia, daughter in law of assessee had an opening cash balance as on 01-04-2017 of Rs. 8,558/-. She had cash inflows of sum of Rs. 10,000/- during FY 2017-18 out of which she had cash outflow of Rs. 16,978/- and had a closing cash balance of Rs.10,844/- as on 31-03-2018. She had returned income of Rs.94,493/- in A.Y. 2017-18.

(iii) Vanshika Adukia, grand-daughter in law of assessee had an opening cash balance as on 01-04-2017 of Rs. 1,96,435/-. She had cash inflows of sum of Rs.8,58,303/- during FY 2017-18 out of which she had cash outflows of Rs.6,35,730/- and had a closing cash balance of Rs.4,19,008/- as on 31-03-2018. She had returned income of Rs.7,36,988/- in A.Y. 2017-18.

Vanshika Adukia is a professional physiotherapist and earns income which is mainly by way of cash receipts by providing physiotherapy sessions to her patients.

(iv) Namha Adukia, grand-daughter of assessee, had an opening cash balance as on 01-04-2017 of Rs. 94,351/- which was maintained as



closing cash balance as on 31-03-2018. She had returned income of Rs.10,52,503/- in A.Y. 2017-18.

(v) Om Prakash Adukia (HUF), HUF of assessee, had an opening cash balance as on 01-04-2017 of Rs. 1,40,371/-. The HUF had cash inflows of sum of Rs.6,000/- during FY 2017-18 out of which it had cash outflows of Rs.6,000/- and had a closing cash balance of Rs.1,40,371/- as on 31-03-2018. The HUF had returned income of Rs.6,42,428/- in A.Y. 2017-18.

On perusal of the said details, it will be appreciated that looking at the returned income of the above family members/ entity the cash balance maintained by them was justifiable and therefore no portion of the said amounts should be treated as unexplained.

It is further submitted that in the aforesaid balance sheets, the amount of cash-in-hand as at 31.3.2017 appears on the Asset side. It might be mentioned that under the current regulations, there is no provision for annexing any papers, etc. with the income-tax return. Cash- in - hand is however reportable in Schedule Assets & Liabilities (AL) in Return of Income (ROI) of persons having taxable income in excess of Rs 50 lacs. Since the appellant's son, Mr. Rajiv Adukia, falls under this category, his cash balance was shown in the said Schedule AL of his ROI for the AY 2017-18. (Copy of the relevant extract of the said ROI is annexed at paper-book page nos. 34 to 36). Rest of the entities did not have taxable income of Rs 50 lacs or more and thus their respective ITs did not have this AL Schedule.

As evidence of withdrawals during FY 2017-18, extracts from pass books/ bank statements are annexed at paper-book page nos. 37 to 82.

In view of the above, your Honour will appreciate that the cash recovered of Rs.16,50,000/- was fully explained by the appellant and the addition made by the learned AO without bringing anything to the contrary on record to controvert the appellant's explanations is bad in law, illegal, arbitrary and void”

6. On perusal of the above, we are of the opinion that firstly; the cash seized belong to the wife of the assessee and hence no addition could have been made in the hands of the assessee in respect of cash belonging to the wife of the assessee. The wife of the assessee is separately assessed and whatever cash belonging to the wife should have been assessed in her hands only. Secondly, without prejudice to the above, we find that assessee has filed reconciliation



of availability of the cash on the basis of the bank statement which could not be rejected merely for the reason that same was not filed alongwith the regular return of income filed. In our opinion, there is no such requirement of the provisions of the Act for filing such cash statement along with the return of income except income above Rs.50,00,000/- and therefore, the Assessing Officer cannot reject such statement merely for the reason that same were not filed along with the return of income. On verification of the availability of the cash, we found that cash found during the course of search amounting to Rs.6,39,300/- stands duly explained and therefore no addition is warranted otherwise also. Accordingly, the addition of Rs.6,39,300/- made in the hands of the assessee is deleted. The grounds of appeal of the assessee are accordingly allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 28/10/2024.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 28/10/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai