

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3228/MUM/2024
(Assessment Year: 2019-20)**

Nitin Amratlal Brahmhatt

711, May Fair Gardens,
Azad Lane, S.V.Road,
Mumbai – 400 058
Maharashtra
[PAN:AABPB7197G]

..... **Appellant**

Vs

**Assistant Commissioner of Income Tax,
Central Circle 2(1), Mumbai**

Room No.804, 4th Floor,
Pratishtha Bhavan, Old CGO Annex,
Maharishi Karve Road
Mumbai – 400 020.

..... **Respondent**

Appearance

For the Appellant/Assessee : Ms. Neha Paranjpe
For the Respondent/Department : Shri Ajay Singh

Date

Conclusion of hearing : 01.10.2024
Pronouncement of order : 24.10.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 07/08/2023, passed by the Learned Commissioner of Income Tax (Appeals) - 48, Mumbai, [hereinafter referred to as 'the **CIT(A)**'] whereby the CIT(A) had dismissed the appeal preferred against the Assessment Order, dated 23/04/2021, passed under Section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] for the Assessment Year 2019-2020.

2. The Appellant has raised following grounds of appeal :

- "1. *The Ld. Commissioner of Income Tax (Appeal) [hereinafter referred to as 'Ld. CIT (A)'] erred in upholding the action of the Ld. A.O. in assessing the total income of the Assessee at Rs.51,88,850/- as against the returned income declared by the Assessee at Rs.38,78,450/- without appreciating the facts and circumstances of the case.*
2. *The Ld. CIT(A) erred in confirming the action of the Ld. A.O, in making the addition of Rs.13,10,400/- under section 69A of the Act by treating the cash seized during the course of search action at the Assessee's premises without appreciating the fact the Assessee has duly established nature and source of the said cash. Hence, the addition made under section 69A of the Act is not justified and the same may be deleted.*
3. *The Ld. CIT(A) failed to appreciate that the Assessee has furnished all the details and evidence to explain the source of the cash seized during the course of a search action and therefore, the same cannot be treated as unexplained Income. Thus, the addition of Rs.13,10,400/- made by the Ld. A.O. and confirmed by the Ld. CIT(A) is not at all justified and the same may be deleted.*
4. *The Appellant denies the liability imposed on account of the interest under section 234A, 234B, 234C and 234D and the same maybe deleted."*

3. The relevant facts in brief are that the Appellant filed return of income for the Assessment Year 2018-19 on 31/10/2019 declaring total income at INR 38,78,450/-. Some documents pertaining to the Appellant were found and seized during the course of search and seizure action carried out in the case of Shri Naresh Manakchand Jain on 19/03/2019. Further, during the course of search action, cash of INR 16,06,420/- was found at the premise of the Appellant. At the time of search the Appellant could only provide the source of cash aggregating to INR 3,05,000/-. According to the Appellant a sum of INR.2,00,000/- was sourced out of household savings while the sum of INR.1,05,000/- belonged to the mother of the Appellant.

Since the Appellant was not unable to offer valid explanation regarding the balance cash of INR.13,01,400/-, the same was seized as unexplained cash. Subsequently, regular scrutiny assessment proceedings were initiated in the case of the Appellant for the Assessment Year 2019-2020 as notice under Section 143(2) and notice under Section 142(1) of the Act alongwith letter of requisition were issued by the Assessing Officer was served upon the Assessee. In response, the Assessee furnished various details and submissions. However, the Assessing Officer concluded that the Appellant had failed to explain the source of cash of INR.13,01,400/- seized during search proceedings. Thus, regular scrutiny assessment was completed under Section 143(3) of the Act in the case of the Appellant at the total income of INR.51,88,850/- after making an addition of INR 13,10,850/- as unexplained cash under Section 69A of the Act.

4. Being aggrieved the Assessee carried the appeal before the CIT(A). Before the CIT(A) the Appellant made following submission [reproduced in paragraph 5 of the impugned order passed by the CIT(A)]:

"Pursuant to search action in the case of Mr. Naresh Jain, the Appellant's residential premises were also searched (date of search 19/03/2019) and cash of Rs.16,06,420/- was found. It was explained that cash of Rs.2,00,000/- was out of household savings and Rs.1,05,000/- was belonging to his mother. The balance cash of Rs.13,10,400/- remained unexplained during the course of search and hence the same was seized.

1.2. Documents submitted during assessment: After the search action on the Appellant, he had on 26/03/2019 (i.e. within a week of search) submitted to the Dy. Director of Income Tax, Unit 7(1), Mumbai a letter explaining the source of the cash found and seized during the course of search.

It was explained as under:

<i>Opening Balance as on 01.04.2018 (In book of Nitin Brahmbhatt)</i>	<i>7,19,046</i>
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<i>Add: Cash Withdrawn during the year by Mr. Nitin Brahmhatt till 19.03.2019</i>	<i>6,60,000</i>
<i>Less: Personal Drawings/Expenses till 19.03.2019</i>	<i>(9,66,644)</i>
<i>Add: Cash withdrawn by Arcadia Shares & Stock Brokers Pvt. Ltd. (Co. in which assessee is Director) lying with the Director for security</i>	<i>11,93,998</i>
<i>Total Cash on Hand found at the time of search</i>	<i>16,06,420</i>

The same explanation was provided to the Ld. AO during the course of the assessment proceedings, along with the following documents;

Copy of letters submitted by the Appellant and Arcadia Share & Stock Brokers Pvt. Ltd with DDIT on 26.03.2019 w.r.t cash belonging to Company given to Director

Copy of the balance sheet of the Appellant for the F.Y 2017-2018 which reflects the closing cash balance as on 31.03.2018 of Rs. 7,19,046

Copy of the bank statement of the Appellant for the F.Y 2018-2019 reflecting the cash withdrawals of Rs. 6,60,000 till the date of search

Copy of the cash ledger account in books of Arcadia Share & Stock Brokers Pvt. Ltd as on 19.03.2019 reflecting their cash on hand of Rs. 17,71,002 (which included the cash given to Director)

1.3. Comments of the AO and Contention of Appellant

Comments of Ld. AO	Contention of Appellant
<i>The Ld. AO disregarded the aforesaid documents since he was not able to explain the source of cash on hand during the course of search and hence the explanation of the Appellant was an after thought (Para No. 3(a)(1)]</i>	<i>It may be appreciated that the search was carried out on the Appellant on 19.03.2019 and he had vide his submission dated 26.03.2019 (te. within one week), informed the Investigation Wing the nature and source of the cash found. Therefore, the contention of the AO that it is an afterthought and misleading is incorrect.</i>
<i>As regards the opening balance of cash on hand of Rs. 7,19,046/-, the Ld. AO has stated that "The return of Income of the assessee for A.Y.-2018-19 was duly perused however there is no cash balance shown in the return of Income." [Para No. 3(a)(ii)]</i>	<i>This is factually incorrect since the Appellant has filled Schedule AL in his ITR for A.Y 2018-2019, wherein the said cash on hand of Rs. 7,19,046/- is duly reflected.</i>

<p><i>The Ld. AO has stated that "The assessee could not furnish any documentary evidences in respect of claim of cash on hand except handmade balance sheet which is not reflected in its IIR" [Para No. 3(a)(iii)]</i></p>	<p><i>The Appellant is not having any income from business and profession and hence not liable to maintain books of accounts. Hence, the Balance Sheet provided to the Ld. AO was not reflected in his ITR filed. However, the Appellant was required to fill the Schedule AL in his ITR, which duly reflects the cash on hand.</i></p>
<p><i>"The opening balance was on 01.04.2018, whereas the search was conducted on 19.03.2019. So it cannot be said that the opening balance of cash kept for such long time without any use" [Para No. 3(a)(iv)]</i></p>	<p><i>The Appellant has never contended that the opening balance as on 01.04.2018 was kept idle and not used. Infact, the Appellant had clearly provided a table wherein it was mentioned that the cash withdrawals for personal use was Rs. 9,66,644/- which was out of the opening cash on hand ar on 01.04.2018 as well as the cash withdrawn during the year.</i></p>
<p><i>Cash withdrawn during the year of Rs. 6,60,000/-till 19.03.2019 Le. Rs. 60,000 each month is a fused pattern for household expenses</i></p>	<p><i>The Appellant has never contended that the cash withdrawn during the year was kept on hand as on 19.03.2019. Infact, the Appellant had clearly provided a table wherein it was mentioned that the cash withdrawals for personal use was Rs. 9,66,644/- which was out of the opening cash on hand as on 01.04.2018 as well as the cash withdrawn during the year.</i></p>
<p><i>As regards cash of Rs. 11,93,998/- belonging to Arcadia Share & Stock Brokers Pvt Ltd lying with the Director as security, the Appellant did not furnish documentary evidences such as note/memo in respect of receipt of cash by director-Shri Nitin Brahambhatt"</i></p>	<p><i>The Appellant had furnished the copy of the ledger account of cash book of M/s Arcadia Share & Stock Brokers Pvt Ltd which reflected cash on hand as on 19.03.2019 of Rs. 17,71,002/- out of which Rs. 11,93,998/- was lying with the Appellant, Director. Also letter from the Company was provided which stated that cash of Rs. 11,93,998/- belonging to the company was lying with the Director/Appellant.</i></p>

..." (Emphasis Supplied)

- The above submissions did not find favour with the CIT(A) who confirm the addition of INR.13,10,400/- made by the Assessing Officer under Section 69A of the Act and dismissed the appeal

preferred by the Appellant vide order dated 07/08/2023.

6. Being aggrieved, the Assessee has preferred the present appeal before the Tribunal on the ground reproduced in paragraph 2 above.
7. The Learned Authorized Representative for the Appellant relied upon the submissions made before the Authorities below. She submitted that the CIT(A) had failed to take into consideration the documents/supporting evidence placed before him. It was vehemently contended that the CIT(A) had failed to appreciate that the Appellant had opening cash balance of INR.7,19,046/- that was duly disclosed in the return of income for the Assessment Year 2018-19. The findings written by the Assessing Officer that no cash balance was shown in the return of income for the Assessment Year 2018-19 was factually incorrect. She was also placed reliance upon copy of submissions dated 17/12/2020, 08/04/2021 and 19/04/2021 filed before Assessing Officer to support contention that the Appellant had explained the source of cash seized during search proceedings. She further submitted that the Director of M/s. Arcadia Shares and Stock Brokers Private Limited (i.e. Mr. Antony Sequeria) had given confirmation, dated 25/03/2019, that was addressed to the Assessing Officer wherein it was clearly stated that out of cash balance of INR 17,71,002/-, as per books of account of M/s. Arcadia Shares and Stock Brokers Private Limited, cash of INR.11,93,998/- was lying with the other Director (i.e. Mr. Nitin Brahmhatt – Appellant herein) at his residence. The aforesaid confirmation was supported by the financial statements of M/s. Arcadia Shares and Stock Brokers Private Limited for the Financial Year 2018-19. However, the Assessing Officer and the CIT(A) failed to appreciate the aforesaid documents/details while incorrectly concluding that the Appellant had failed to substantiate and explain the source of cash seized during search operations.

8. Per contra the Learned Departmental Representative placed reliance upon the Assessment Order and submitted that the Assessing Officer had categorically recorded that the explanation offered by the Appellant was misleading. Referring to paragraph 3 of the Assessment Order the Learned Departmental Representative submitted that search was conducted on 19/03/2019 and therefore, it cannot be said that opening balance of cash-in-hand could have been found seized when search was conducted on 19/03/2019. The Assessing Officer had clearly recorded that on perusal of income tax return for the Assessment Year 2018-19, it can be seen that no cash balance was shown in the return of income. It was also submitted that the Appellant was not able to furnish any document/evidence before the Assessing Office in respect of cash-in-hand except for some unaudited balance sheet.
9. We have considered the rival submissions and perused the material on record. We find that the averments made by the Authorised Representative for the Appellant are factually correct. On perusal of return of income filed by the Assessee for the Assessment Year 2018-19 (placed at page 58 to 62 of the paper book), we find that the Appellant had declared cash-in-hand of INR.7,19,046/-. The aforesaid return of income was filed on 28/12/2019, much prior to the date of search. Further, vide letter dated 17/12/2020, the Appellant had explained before the Assessing Officer that the Appellant was Director in M/s. Arcadia Shares and Stock Brokers Limited and had submitted copy of Balance Sheet and Profit & Loss Account of the said company for the Financial Year 2018-19 relevant to the Assessment Year 2019-2020. The Appellant had also filed letter, dated 25/03/2019, issued by Mr. Antony Sequeria, Director of M/s. Arcadia Shares and Stock Brokers Private Limited during the assessment proceedings wherein it was stated that cash of INR.11,93,998/- belonging to M/s. Arcadia Shares and Stock Brokers

Limited was lying at the residence of the Appellant. Thereafter, vide submission dated 19/04/2021, the Appellant had again explained the source of cash found at his premises during the course of search in the following manner:-

"During the course of search at the residential premises of the assessee, cash of Rs. 16,06,420/- was found out of which a sum of Rs. 13,01,400/- was seized. It was explained that a sum of Rs. 2,00,000/- was out of household savings, a sum of Rs. 1,05,000/- belongs to his mother. Such cash was returned back to the assessee.

The details of the cash found of Rs. 16,06,420/-is as under:

<i>Opening Balance as on 01.04.2018 (In books of Nitin Brahmbhatt)</i>	<i>7,19,046</i>
<i>Add: Cash Withdrawn during the year by Mr. Nitin Brahmbhatt till 19.03.2019</i>	<i>6,60,000</i>
<i>Less: Personal Drawings/Expenses till 19.03.2019</i>	<i>(9,66,644)</i>
<i>Add: Cash withdrawn by Arcadia Share & Stock Brokers Pvt. Ltd. (Co. in which assessee is Director) lying with the Director for security</i>	<i>11,93,998</i>
<i>Total Cash on Hand found at the time of search</i>	<i>16,06,420</i>

....."(Emphasis Supplied)

10. We note that the Appellant had also filed following documents before the Assessing Officer in support of the above explanation regarding the course of cash during the assessment proceedings:

- a. Copy of the balance sheet of the assessee for the FY 2017-2018 which reflects the closing cash balance as on 31.03.2018 of INR.7,19,046/-.*
- b. Copy of the bank statement of the assessee for the FY 2018-2019 reflecting the cash withdrawals of INR.6,60,000/-*
- c. Copy of the cash ledger account in books of Arcadia Share & Stock Brokers Pvt. Ltd as on 19/03.2019 reflecting their cash on hand of INR.17,71,002/-.*

11. In view of the above, we hold that the finding returned by the Assessing Officer and the CIT(A) that the Appellant had failed to disclose the source of cash-in-hand and had failed to file documents in support of the same is factually incorrect. In our view the

Appellant has offered explanation regarding source of cash of INR 13,01,400/- seized during search proceedings before the Assessing Officer and has furnished relevant documents to support the same. Opening cash-in-hand of INR.7,19,046/- is supported by the return of income filed by the Appellant for the Assessment Year 2018-19 on 28/10/2018 while the availability of cash of INR.11,93,998/- is supported by confirmation letter issued by M/s. Arcadia Shares and Stock Brokers Private Limited acting through its Director Mr. Antony Sequeria. The Assessing Officer has failed to bring on record any material to doubt veracity of the aforesaid documents. We note that the Assessing Officer has made an observation that the drawings of INR.9,66,744/- claimed to have been made by the Appellant are less when compared to the lifestyle of the Appellant and/or where the Assessee resides. However, in our view the same are not based on any material on record. In view of the aforesaid we hold that addition of INR.13,10,400/- made in the hands of the Appellant under Section 69A of the Act cannot be sustained and is, therefore, deleted. In view of the above Ground No.1 to 3 raised by the Appellant are allowed while Ground No.4 pertaining to computation/charging of interest under Section 234A/B/C/D of the Act is disposed off as being consequential in nature.

12. In result, the present appeal preferred by the Assessee is Allowed.

Order pronounced on 24.10.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.10.2024
Milan,LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai