



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW**

BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No.389/LKW/2023
Assessment Year: 2019-20

Divesh Kumar 19, Shishgarh, Bareilly, Uttar Pradesh-243105.	v.	Shri Kharak Singh Rawat, DC/ACIT-Cent, Bareilly Office of the ACIT, Central Circle DC/ACIT Cent Bareilly-1-243001
PAN:CFDPK1712F		
(Appellant)		(Respondent)

Appellant by:	None (Adj application filed)
Respondent by:	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing:	19 11 2024

ORDER

PER ANADEE NATH MISSHRA, A.M.:

This appeal has been filed by the assessee against the order of the Ld. CIT(A), Lucknow-3 dated 16.02.2023 for the assessment year 2019-20. The grounds of appeal of the assessee are as under: -

"1 The Learned Commissioner of Income Tax (Appeals) has erred in confirming an addition of Rs. 266000/- made by the Assessing Officer with total disregard to the facts and circumstances of the case.

2. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 2,66,000/- u/s 69A of Income Tax Act without finding a fault with the details filed by the assessee.

3. The Entire addition has been confirmed by the Commissioner of Income Tax (Appeals) solely on the basis of suspicion.

4-The assessee reserves its right to add, amend, alter or delete any grounds of appeal at the time of hearing of appeal."

2. In this case, the assessment order dated 24.09.2021 was passed by the Assessing Officer (“AO”) u/s 143 of the Income Tax Act, 1961 (hereinafter “the Act”) whereby the assessee’s total income was assessed at Rs.5,86,720/- as against the returned income of Rs.3,20,720/-. In the aforesaid assessment order an addition of Rs.2,66,000/- was made u/s 69A of the Act on account of cash seizure from Mahindra Bolero Vehicle (Registration No. UK06 AN 4195) during General Election, 2019. The relevant portion of the assessment order is reproduced as under: -

“2. In the instant case, during the general election 2019 FST Magistrate, Sheesgarh, Bareilly has made a seizure of Cash of Rs.2,66,000/- on 23.03.2019, from Mahindra Bolero, Vehicle Registration no. UK06 AN 4195 which at the time of seizure was occupied by the assessee. Subsequently, on receipt of information, a warrant of authorization u/s 132A of the Income tax Act, 1961 was issued by the Pr. Director of Income tax (Investigation), Lucknow on 30.03.2019. Consequently, A demand draft dated 02.04.2019 of Rs. 2,66,000/in favor of Pr. DIT (Inv), Lucknow has been prepared and sent to be deposited in PD Account.

The Deputy Director of Income tax (investigation), Bareilly vide letter F.No. DDIT (Inv.)/Bareilly/132A/G.E.2019/2019-20/537 dated 23.09.2019 has forwarded appraisal report with the recommendation for necessary action u/s 143(2)/153A of the Income tax Act, 1961 for A.Y. 2019-20 to the jurisdictional Assessing officer.

3. Therefore, the case of assessee was picked up for compulsory Scrutiny and a notice u/s 143(2) r.w.s. 153A of the Act being specified previous year was issued on 30.09.2020 and duly served upon the assessee, fixing the case for hearing on 15.10.2020.

In response assessee submitted his Acknowledgment of Return filed u/s 139(1) for the A.Y. 2019-20 on 06.11.2020.

4. The case of assessee was centralized to the jurisdiction of Central Circle Bareilly by the Ld. Principal Commissioner of Income tax, Bareilly vide order u/s 127 of the Act dated 12.01.2021 in pursuance to CBDT guidelines F.No.25/126/220/ITA-I| dated 17/09/2020 and CBDT direction F.No. 187/3/221/ITA-| dated 18/09/2020 and SOP circulated vide letter C.No. 51/CC/LKO/ Tech/Centralization/19-20 dated 16/10/2020 issued by the CCIT, Lucknow.

5. Thereafter, a notice u/s 142(1) of the Act containing specific questionnaire was issued on 23/03/2021 electronically and the date of compliance was fixed on.26/03/2021.

The specific questionnaire is being reproduced herewith as under:

Specific Questionnaire in the case of Shri Devesh Kumar (CFDPK1712F) for A.Y 2019-20

An information received on 25.03.2019 from FST Magistrate, Sheeshgarh, Bareilly that a cash of Rs. 2,66,000/- (Rs. Two Lakh Sixty Six Thousand Only) was intercepted from Shri Devesh Kumar S/o Shri Nanhu Ram on 23.03.2019. On receipt of the above information and after making necessary enquiry, a Warrant of Authorization u/s 132A of the Income Tax Act, 1961 was issued by Principal Director of Income Tax (Investigation), Lucknow on 30.03.2019 which was executed by Shri Rajiv Chaturvedi, Magistrate Flying Squad, Sheeshgarh, Bareilly on 02.04.2019. The amount of Rs. 2,66,000/- was seized and deposited in PD account.

In his statement recorded on oath Shri Devesh Kumar has stated that he is engaged in retail trading of fertilizer at Sheeshgarh and the seized cash was collected on 23.03.2019 in cash from sundry debtors of his business to whom fertilizers have been sold earlier on credit. But could not furnish any documentary proof of source of such cash at the time of interception.

In this regard you are requested to explain the sources of seized money with necessary evidences viz. statement of bank account, copy of purchase vouchers alongwith your cash flow statement for the year under consideration. You are also requested to show cause as to why the seized money may not be treated unexplained money within the meaning of provisions of sec. 69A of the IT Act, 1961. ”

Please furnish complete set of your books of account alongwith statement of bank account for the relevant assessment year. ;

5. In response to the above questionnaire, assessee did not file any reply. Subsequently, a notice u/s 142(1) of the IT Act, 1961 issued on 05/07/2021 to the assessee requiring him to furnish his reply on the questionnaire dated 23.03.2021. Again, assessee failed to furnish any reply.

As can be seen from above discussion, the assessee did not cooperate during the assessment proceedings. The assessment proceedings neither attended by the assessee nor were notices issued by this office were complied with. The attitude of the assessee is totally non co-operative with the Department. It also shows the non-willingness of the assessee to complete the assessment proceedings and its intention to delay the tax proceedings. Despite being provided enough opportunity, the assessee chose to remain silent and decided not to bring any material on record. Hence, the assessing officer has left with no other option but to complete the assessment proceedings in the case of assessee on the basis of factual material available on record.

5.1 **Observation..**

On examination of documents and facts of the case, the following facts have been observed:

During the course of investigation proceedings, the assessee could not produce evidence regarding the source or the use of the cash carried by him.

In his statement, the assessee stated that he is engaged in retail trading of fertilizers by running a shop at Girdharpur, Sheeshgarh. Further stated that the sale of fertilizers of Rs. 10-11 lakh in cash or on credit during F.Y. 2018-19 were made. The assessee also stated that seized cash is the amount collected on 23.03.2019 from sundry debtors of

business to whom he had sold fertilizers earlier on credit. But could not furnish any documentary proof of source of such cash at the time of interception.

During the investigation the assessee was asked to explain as to how the amount of cash Rs. 2,66,000/- may be treated as one day collection from sundry debtors as one day collection is about 25% of gross sale of Rs. 10-11 lakh in cash or on credit. In this regard, assessee contended that the buyers of fertilizers mostly belong to rural areas and payment from them is generally received after cultivation of crops. However, no supporting evidence has been provided by the assessee.

From the above facts it is clear that cash of Rs. 2,66,000/- found in possession of Shri Devesh Kumar represents unaccounted income as the source of the same remains unexplained and is liable to be added to the total income of the assessee.

In the light of all the fact & circumstances of the case, Rs. 2,66,000/- is treated unexplained money within the meaning of section 69A of the IT Act, which is to be taxed in accordance with the provision of section 115BBE of the Act.”

3. The assessee's appeal against the aforesaid assessment order dated 24.09.2021 was dismissed by the Ld. CIT(A). Vide impugned appellate order dated 16.02.2023, the relevant portion of the order of the Ld. CIT(A) is reproduced as under: -

“2. During the general election 2019 FST Magistrate, Sheesgarh, Bareilly has made a seizure of cash of Rs.2,66,000/- on 23.03.2019, [11:56 AM, 11/26/2024] Self: from Mahindra Bolero, Vehicle Registration no - UKO6 AN 4195 which at the time of seizure was occupied by the assessee. Subsequently, on receipt of information, a warrant of authorization u/s 132A of the Income tax Act, 1961 was issued by the Pr. Director of Income tax (Investigation), Lucknow on 30.03.2019 and accordingly cash of Rs. 2,66,000/seized by the department. Therefore, a notice u/s 143(2) r.w.s. 153A of the Act was issued on 30.09.2020 and duly served upon the assessee, fixing the case for hearing on 15.10.2020. In this case Original Return of income was e-filed u/s 139 (1) of the Income Tax Act, 1961 on 09.08.2019 declaring total income of Rs. 3,20,720/-. The case of assessee was centralized to the Central Circle Bareilly. Thereafter, a notice u/s 142(1) of the Act was issued. However no reply was submitted. The assessing officer has noted that in his statement, the assessee stated that he is engaged in retail trading of fertilizers by running a shop at Girdharpur, Sheeshgarh. Further stated that the sale of fertilizers of Rs. 10-11 lakh in cash or on credit during F.Y. 2018-19 were made. The assessee also stated that seized cash is the amount collected on 23.03.2019 from sundry debtors of business to whom he had sold fertilizers earlier on credit. But could not furnish any documentary proof of source of such cash at the time of interception. During the investigation the assessee was asked to explain as to how the amount of Cash Rs. 2,66,000/- may be treated as one day collection from sundry debtors as one day collection is about 25% of gross sale of Rs. 10-11 lakh in cash or on credit. In this regard, assessee contended that the buyers of fertilizers mostly belong to rural areas and payment from them is generally received after cultivation of crops. However, no supporting evidence has been provided by the assessee. From the above facts the assessing officer held

that cash of Rs. 2,66,000/- found in possession of Shri Divesh Kumar represents unaccounted income as the source of the Same remains unexplained and added to the total income of the assessee.

3. Therefore assessment has been completed at the total income of Rs. 5,86,720/- vide order dated 24-09-2021.

4. Aggrieved with the above order this appeal has been filed on 2510-2021 in Form no-35 wherein statement of fact has been stated as under:

“That the appellant Mr. Divesh Kumar engaged in the activities of Wholesale and retail trading of fertilizers and pesticides. The amount of Rs. 2,66,000.00 was seized and deposited in PD account of by Shri Rajiv Chaturvedi, Magistrate Flying Squad, Sheesgarh, Bareilly, U.P. The amount of Rs. 2,66,000.00 seized and deposited by Shri Rajiv Chaturvedi, Magistrate Flying Squad, Sheesgarh, Bareilly, U.P. was collected by appellant from sundry debtors of his business to whom fertilizers have been sold earlier on credit. The amount of Rs.2,66,000.00 is business income and not in any kind of undisclosed income.”

5. In the appeal following grounds of appeal have been raised.

(i) That the Assessing Officer erred’ in making addition on account of Cash seized from appellant was recovery from sundry debtors without appreciating that amount under reference has already been considered as income by the Appellant in the year under reference or in earlier years and, therefore, addition made in this respect has resulted in double addition which cannot be made as per settled legal position.

(i) That the Assessing Officer erred in applying provisions of Section 115BBE of the Act in the facts and circumstances of the case of Appellant and determining the tax liability as per the aforesaid Section Without appreciating that provisions of Section 68/69A were not applicable in the facts of the case and, therefore, provisions of Section . 115BBE of the Act could not be invoked.

6. During the appellant proceedings, the written submission has been Made, produced hereunder:

‘Before the Honorable Commissioner Of Income Tax (Appeals) In the Case of Mr. Divesh Kumar (PAN : CFDPK1712F) Appeal against an order passed U/S 143(3) of IT Act, 1961 by the DC/ ACIT CENT, Bareilly for A.Y. 2019-2020. Points wise my reply are given as under:

1. As the Income Tax Deptt have introduced new website at that time of hearing of my case before the Assessing officer was not able to submit my reply on this website because of many glitches was there at website. Many times when I tried to submit the reply, the detail of assessment proceeding found missing under E-proceeding Option.

2. That I am a small trader of Fertilizers and Pesticide goods which I am selling to Farmers in small quantities and amount on credit basis and out of them many farmers are not able to pay as and when sale are made to them. We have received the cash against my sale to those farmers on the date when the cash was sized. Farmers paid such amount out of cash sale of agriculture produce in small quantities to the open market. (List of Payment received from debtors (Farmers) is attached herewith for your reference).

3. The Assessing Officer erred in making addition on account of cash Seized from appellant was recovery from sundry debtors without

appreciating that amount under reference has already been considered as income by the Appellant in the year under reference or in earlier years and, therefore, addition made in this respect has resulted in double addition which cannot be made as per settled legal position.

4. That the Assessing Officer erred in applying provisions of Section 115BBE of the Act in the facts and circumstances of the case of Appellant and determining the tax liability as per the aforesaid Section Without appreciating that provisions of Section 68/69A were not applicable in the facts of the case and, therefore, provisions of Section 115BBE of the Act could not be invoked.

5. That the Assessing Officer erred in determining tax liability as per Section 115BBE of the Act in the case of the appellant in respect of income which has already been included in the Return of Income without appreciating that the income which has already been declared in return Cannot be deemed to be undisclosed income as per Section 68/69A of the Act and therefore Section 115BBE is not applicable in this case.

It is requested to place the reply and submission on record and take the necessary action to complete the case or ask if any other information or explanation is required to close the case. Thanking You. Divesh Kumar PAN CFDPK1712F Date: 03-Feb-2023 Place: Bareilly.”

7.1. Ground No. 1: That the Assessing Officer erred in making addition on account of cash seized from appellant was recovery from sundry debtors without appreciating that - amount under reference has already been considered as income by the Appellant in the year under reference or in earlier years and, therefore, addition made in this respect has resulted in double addition which cannot be made as per settled legal position.

7.2 In this case during the general election 2019 Cash of Rs. 2,66,000/- was intercepted on 23.03.2019, from Mahindra Bolero, Vehicle UKO6 AN 4195 & source of cash has 'not been explained and a warrant of authorization u/s 132A of the Income tax Act, 1961 was issued on 30.03.2019. Therefore the cash of Rs. 2,66,000/- was seized. During the assessment proceeding, the assessee has not submitted any reply. The assessing officer has noted that in his statement, the assessee stated that he is engaged in retail trading of fertilizers by running a shop at Girdharpur, Sheeshgarh. Further stated that the sale of fertilizers of Rs. 10-11 lakh in cash or on credit during F.Y. 2018-19 were made. The assessee also stated that seized cash is the amount collected on 23.03.2019 from sundry debtors of business to whom he had sold fertilizers earlier on credit but could not furnish any documentary proof of Source of such cash at the time of interception. Therefore being source of the same remains unexplained and added to the total income of the assessee.

7.3 During the appellate proceeding, it has been submitted that the appellant is a small trader of Fertilizers and Pesticide goods which he was selling to Farmers in small quantities and amount on credit basis and out of them many farmers are not able to pay as and when sales are made to them. He has received the cash against sale to those farmers on the date when the cash was seized. Farmers paid such amount out of cash sale of agriculture produce in small quantities to the open market. (List of Payment received from debtors (Farmers) is attached herewith for your reference). It has been further submitted that the Assessing Officer erred in making addition on account of cash seized from appellant which was recovery from sundry debtors and without appreciating that amount under reference has already been considered as income by the Appellant in the

year under reference or in earlier years, therefore, addition made in this respect has resulted in double addition which cannot be made as per settled legal position.

7.4 I have carefully considered facts and submission made by the appellant. On perusal of Trading and Profit & Loss Account, it has been noted that during the year total sales has been disclosed at Rs. 7,18,125/- and sundry debtors & other receivables at Rs. 3,32,425/-. It is a fact that total-sales have been disclosed at Rs. 7,18,125/- and about 90% has been shown as sundry debtors. If we include 2,66,000/- received at the fag end of the financial year then figure of sundry debtors increases substantially, this fact is not acceptable unless supporting documents are provided. Further, it has also been noted that Mahindra Bolero bearing registration no. UKO6 AN 4195 which was intercepted is registered in the name of appellant has not found place in the balance Sheet. This vehicle was purchased by the appellant in 2017 in cash. This fact also proves that appellant is engaged in practice of unaccounted © trading in cash. Further the cash of Rs. 2,66,000/- which has been seized is also not disclosed in the balance sheet. Therefore, the genuineness Of balance sheet and Trading & Profit & Loss Account filed during the appellate proceeding cannot be accepted. Considering these facts and other relevant details of the case, I am of the view that assessing officer has tightly added Rs. 2,66,000/- in the total income of the appellant, therefore there is no need of interference in the decision of the assessing - officer. Therefore addition of Rs. 2,66,000/- is hereby confirmed. Thus this ground of appeal is dismissed.

8.1 Ground No. 2 : That the Assessing Officer erred in applying provisions of Section 115BBE of the Act in the facts and circumstances: of the case of Appellant and determining the tax liability as per the aforesaid Section without appreciating that provisions of Section 68/69A were not applicable in the facts of the case and, therefore, provisions of Section 115BBE of the Act could not be invoked.

8.2 It is fact that appellant could not produce documentary evidence in support of his claim that the money intercepted was payment related with his credit sales to the farmers. In these circumstances it would be fair to say that the source of money under consideration remains unexplained and hence provision of section 69A attracts. Extracts of section 69A is reproduced here under:

“69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books Of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or Other valuable article may be deemed to be the income of the assessee for such financial year.”

8.3 For the sake of clarity, provision of section 115BBE is produced hereunder:

115BBE. (1) Where the total income of an assessee,

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a),

the income-tax payable shall be the aggregate of -

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1)."

8.4 On perusal of provision of section 115BBE "t's noted that if addition of income has been made in terms of provision of section-68, 69A, 69B, 89C & 69D then taxes has to be charged in this section. Since in this case addition of Rs. 2,66,000/- has been-made u/s 69A of the Act, therefore, no interference is required. Thus, this ground of appeal is dismissed."

4. The present appeal has been filed by the assessee in Income Tax Appellate Tribunal (ITAT) against the aforesaid impugned appellate order dated 16.02.2023 of the Ld. CIT(A). The appeal has been filed by the assessee beyond time limit prescribed under section 254(3) of the Income Tax Act, 1961 (hereinafter "the Act"). The assessee has filed an application seeking condonation of delay on medical grounds and has also submitted the medical certificates from M/s. Mehta Health Care Centre, Shahjahanpur Road, Bareilly. The Ld. Sr. Departmental Representative for Revenue did not express any objection to the delay being condoned. In view of Section 254(3) of the Act, I condone the delay in filing of this appeal and I admit the appeal for decision of merits.

5. In the course of appellate proceedings in ITAT, no further written submission or oral submission have made from the assessee's side. At the time of hearing before us, the Assessee was represented by none. In the absence of any representation from the assessee's side, the Ld. Sr. Departmental Representative

("DR") was heard. He relied on the aforesaid order dated 24.09.2021 of the Assessing Officer as well as order dated 16.02.2023 of the Ld. CIT(A).

6. The aforesaid addition of Rs.2,66,000/- was made on account of cash seizure from the Mahindra Bolero Vehicle during General Election 2019. The assessee failed to provide satisfactory explanation regarding this amount during the assessment proceedings in the office of the Assessing Officer and during the appellate proceedings in the office of the Ld. CIT(A). Further, no explanation has been furnished in the course of appellate proceedings in ITAT. No material has been brought for consideration which would require any interfere with the impugned appellate order dated 16.02.2023 of the Ld. CIT(A). Therefore, this appeal is dismissed and the aforesaid addition of Rs.2,66,000/- is confirmed.

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

Order pronounced in the open Court on 28/11/2024.

Sd/
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED: 28/11/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

By order

//True Copy//

Assistant Registrar