

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 1608/Del/2023
(Assessment Year : 2019-20)

Pramod Kumar Rustagi C/o. Advocate Kanika Jain D-80, LGF, Panchsheel Enclave, New Delhi – 110 017 PAN : AAEPR 2763 D (Appellant)	Vs.	ACIT Central Circle – 20 New Delhi (Respondent)
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Assessee by	Shri K. Sampath, Adv. and Shri V. Rajakumar, Adv.
Respondent by	Ms. Anu Krishna Agarwal, CIT-D.R.

Date of Hearing	10.10.2024
Date of Pronouncement	13.12.2024

ORDER

PER VIMAL KUMAR, JM:

1. The appeal filed by assessee is against the order dated 22.03.2023 of Learned Commissioner of Income Tax (Appeals)-27, New Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of assessment order dated 07.09.2021 of the Asst. Commissioner of Income Tax, Central Circle-20, Delhi (hereinafter referred as 'Ld.AO') under section 143(3) of the Income Tax Act, 1961

[hereinafter referred to as “the Act”] for the Assessment Year 2019-20.

2. Brief facts of the case are that a search & seizure operation under section 132 of the Act was conducted by the Investigation Wing on 01.11.2018 in Faquir Chand Lockers and Vaults Pvt. Ltd. group of cases. Assessee’s Locker Nos. 122 & 125 were also covered under section 132(1) of the Act. The case was centralized to this Circle vide order dated 24.12.2020 under section 127 of the Act by learned PCIT (Central)-II, New Delhi. The assessee filed its return of income declaring income of Rs.51,23,030/- on 26.10.2019. Notice under 143(2) of the Act dated 30.09.2020 was issued and statutory notice under section 142(1) of the Act along with detailed questionnaire was issued on 02.02.2021. On operation of assessee’s Locker Nos. 122 & 125, cash of Rs.2,68,99,500/- was recovered and seized. In response to notice under section 142(1) of the Act, Ms. Kanika Jain and Mr. Ayush Jain, Authorized Representative for the assessee attended proceedings. The submission of assessee dated 24.02.2021 were perused and found untenable. A final show-cause notice dated 25.02.2021 was issued asking to furnish source of cash of Rs.2,68,99,500/- seized from the Locker Nos. 122 & 125. Assessee submitted reply dated 03.03.2021 vide order dated 07.09.2021. Learned AO made addition of Rs.2,68,99,500/- under section 69A r.w.s 115BBE of the Act.

3. Appellant/assessee preferred appeal before the learned CIT(A) which was dismissed vide order dated 22.03.2023.

4. Being aggrieved by the order of CIT(A), assessee/appellant preferred present appeal before the Tribunal.

5. Learned Authorized Representative for the assessee/appellant submitted that recovery of Rs.96,99,500/- from Locker No.122 was part of books of accounts of the appellant for the year, the profit from which had been reported in the return of income. To prove that fact supporting evidence of the sale entries was filed before the AO in the shape of cash book, ledger, sales invoice, sales register, stock register, sales tax returns etc. The reason for the sharp rise in the cash sales in the month of October was also duly explained. Cash vouchers for sales were produced in that behalf to the AO. After failing to locate any deficiency or discrepancy the AO arbitrarily and unreasonably chose to ignore all material and evidence to embark on making the additions.

5.1 Without rejecting the books of accounts wherein the cash of Rs. 96,99,500/- stood incorporated, the AO added the relevant sum as an unexplained investment u/s. 69A of the Act. For so doing he reasoned that the increase in cash sales was not borne out from the past trends of business of the Appellant. He also stated that the unprecedented cash sales in the month of October of this year of

nearly a crore was not in accordance with the pattern of monthly cash sales in the other months. A third reason was that there was no evidence for the old dhania (coriander) procured in A.Y. 2017-18 going bad. The AO sought stock-wise details of inventory in order to accept the Appellant's explanation that the cash as recovered was out of sales on which the Appellant had paid GST. Even after filing those details and such details remaining un-impeached, the AO arbitrarily ignored them and proceeded to make the addition u/s 69A of the Act.

5.2 Section 69A of the Act as invoked by the AO for making the addition has no application and has been done perhaps only with a view to bring the addition under the fold of S.115BBE of the Act. The authorities little realized that the amount recovered was a business receipt which is not amenable to an addition under the various limbs of the deeming provision incorporated u/s. 68, 69, 69A and 698 of the Act. It is a fact that in the financial year appellant was found to be the owner of money. Ownership of the money was inextricably related to the sales effected by the Assessee during the year. Not one part of the explanation as tendered with evidence by the Assessee has been rebutted by the AO even by way of a whisper. The opinion and findings of the AO in this regard is apparently misconceived and erroneous. Being so Section 69A of the Act would even otherwise have no application to the facts of the case since the cost recovered originated out of the sale of stock of

goods. The entire addition as made in a sum of Rs. 96,99,500/- for cash recovered from Locker No. 122 merits to be deleted - so it is prayed.

5.3 Other amount of cash recovered from Locker No. 125 in a sum of Rs. 1,72,00,000/- it is submitted that the same is an integral and indivisible part of the business transactions of the Appellant. This deposit was out of cash sales. That occurred with a pro tanto diminution in the value of stock of goods held in hand by the Appellant at the relevant time. Same had not been incorporated in the books of accounts due to pending clarifications. The entire amount, as was found in the locker therefore, could not have been put to tax. The cash represented sales collection. Those sales had been made at the cost of the diminution in the quantity and value of stock of inventory at hand. The inventory was paid for through the regular books of accounts. Therefore, at worst it could only be the net profit from those transaction which could have been brought to tax, No evidence was recovered in the search to suggest anything to the contrary. Reliance was placed on following decisions of different High Courts as under:

- Shri Sorabh Kumar vs. ITO dated 24.06.2021
- Dhani ram vs. ITO dated 07.10.2021
- Ramesh Kochar vs. ITO dated 26.04.2022
- Narendra Kumar Gupta vs. DCIT dated 11.10.2023

5.4 Learned Authorized Representative for the assessee/appellant relied upon the following judgments are as under:

- DCIT vs. Tapesh Tayagi, ITA No.1344/Del/2021 dated 27.10.2023 (Del-Trib.)
- Shri Pawan Jajoo vs. ITO, ITA No.2984 to 2990/Mum/2023 dated 22.02.2024 (Mum-Trib.)
- Neeraj Jain vs. DCIT, ITA No.1591/Del/2023 dated 25.07.2024 (Del-Trib.)

6. Learned Departmental Representative for the Revenue submitted that the appellant failed to produce any stock register, orders of learned AO and CIT(A) rightly applied section 69A r.w.s 115BBE of the Act.

7. From examination of record in light of aforesaid rival contentions, it is crystal clear that the learned AO treated cash of Rs.96,99,500/- and Rs.1,72,00,000/- recovered from assessee's Locker Nos.122 to 125 in Faquir Chand Lockers and Vaults Pvt. Ltd. and thereafter, made addition of Rs.2,68,99,500/- under section 69A r.w.s 115BBE of the Act. Rs.96,99,500/- recovered from Locker No.122 claimed to be part of books of accounts of the appellant/assessee for the year. The profit from which had been reported in the return of income, supporting evidence regarding the sale entries in the shape of cash book, ledger, sales invoice, sales register, stock register, sales tax returns etc. were submitted. Amount of Rs.1,72,00,000/- claimed to be sale proceedings was not

incorporated in the books of accounts due to pending clarification. The assessee claimed that the entire amount recovered from the two lockers was business income and could not be taxed under section 115BBE of the Act. Reliance was placed on the order of ITAT Delhi Benches in ITA No.1344/Del/2021 for A.Y. 2017-18; relevant portion of the same is reproduced hereunder :

“7. As discussed earlier, in course of search and seizure operation carried out in case of the assessee, a loose paper/document was found from the possession of the assessee, wherein, amount of Rs.30,20,00,000 was mentioned with the description “Com Trade”. In the statement recorded under Section 132(4) of the Act in course of search and seizure operation, when the assessee was confronted with the said loose paper/document, the assessee submitted that it indicates profit earned by him from “Commodity Trade”. It is a fact that in the statement recorded under Section 132(4), assessee surrendered the amount as income. It is also a fact on record that in the return of income filed for the assessment year under dispute, assessee offered the amount of Rs.30.20 crores as income. Thus, the aforesaid facts clearly establish that at the time of search and seizure operation itself, assessee has explained the source of the amount offered as income to be the profit derived from “commodity trade”, which is in the nature of business income. It also appears that the departmental authorities have no dispute with regard to the explanation of the assessee regarding the source of the surrendered income.

8. As rightly observed by the learned First Appellate Authority, section 69A uses word “may”, which implies that if explanation offered by the assessee regarding source of money, bullion, jewellery or other valuable articles is satisfactory, it cannot be treated as unexplained money under Section 69A of the Act. In the facts of the present appeal, there is nothing on record to suggest that assessee’s explanation regarding the source of the income offered has either been doubted or disputed at the time of search and seizure operation or even during the assessment proceedings. Therefore, in our view, the income offered by the assessee cannot be treated as unexplained

money under Section 69A of the Act. Therefore, as a natural corollary, section 115BBE of the Act would not be applicable.

9. Having held so, we may further add that a reading of section 115BBE of the Act makes it clear that the special rate of tax provided under the said provisions shall be applicable under two conditions. Firstly, where the total income includes any income referred to in sections 68, 69A, 69B, 69C or 69D and reflected in the return of income under Section 139 of the Act. Secondly, if the income determined by the Assessing Officer includes any income referred to, in sections 68, 69, 69A, 69B, 69C or 69D, if such income is not covered under the first condition. In the facts of the present appeal, admittedly, assessee has not offered the income under Section 69A of the Act. Even, the Assessing Officer has not made any separate addition under Section 69A of the Act. He has merely re-characterized the nature of income offered by the assessee. Thus, in our considered opinion, the provisions of sections 115BBE would not be applicable to the facts of the present appeal.

10. In view of the aforesaid, we uphold the decision of learned First Appellate Authority and dismiss the grounds.”

8. In view of the above material facts and well settled principle of law, it is evident that Rs.96,99,500/- recovered from Locker No.122 was mentioned in books of account. Rs.1,72,00,000/- recovered from Locker No.125 was not mentioned in books of account. Both the amounts of Rs.96,99,500/- and Rs.1,72,00,000/- total Rs.2,68,99,500/- was claimed by appellant/assessee as business income. There is nothing on record to suggest that the assessee's explanation regarding source of income offered was doubted or disputed. As such the same cannot be subjected to tax under section 115BBE of the Act. So, application under section 115BBE of the Act is not legal. Therefore, amount of Rs.2,68,99,500/- shall be

treated as business income of the assessee and not under section 69A of the Act. Resultantly, the grounds of appeal nos. 1 & 2 are partly allowed.

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

Order pronounced on this day 13th December, 2024

**Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 13.12.2024

Priti Yadav, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI