

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 342/JPR/2024
निर्धारणवर्ष / Assessment Year : 2017-18

Sh. Taiyab Khan 248-249, Neb Housing Board, Subhash Nagar, Alwar.	बनाम Vs.	The Asstt. Commissioner of Income Tax, Alwar.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AHPPK1934K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Tarun Mittal (C.A.)
राजस्व की ओर से / Revenue by: Shri Anup Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 16/10/2024
उदघोषणा की तारीख / Date of Pronouncement: : 13/12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is filed by the assessee and is arising out of the order of the Learned Commissioner of Income Tax (Appeals)-4, Jaipur [here in after "CIT(A)"] dated 29.01.2024 for assessment year 2017-18, which in turn arise from the order dated 28.12.2019 passed under section 143(3) of the Income Tax Act, 1961 (here in after " Act"), by the ACIT, Circle-1, Alwar.

2. In this appeal the assessee has raised following grounds: -

“1. On facts and in circumstances of the case, Id.CIT(A) has erred in making enhancement to income by Rs.49,32,663/- (as against the addition of Rs. 13,07,300/- made by Id.AO by treating the cash found during survey as unverifiable) on allegation that the cash physically found (i.e. Rs. 13,07,300/-) was short in comparison to cash as per audited books of accounts (i.e. Rs.75,47,263/-), arbitrarily.

1.1. That, Id.CIT(A) has erred in enhancing addition made by Id.AO and invoking provisions of section 68/69A solely for the reason that cash physically found during survey was short in comparison to cash balance as per audited books of accounts. Appellant prays that since cash as per books was more than cash physically found, thus entire cash found was duly recorded in books of accounts and neither provisions of section 68 nor that of section 69A become applicable as both the provisions come into play only if cash found is unexplained.

1.2. That, Id.CIT(A) has further erred in invoking provisions of section 115BBE of the Income Tax Act in respect of enhancement made to income u/s 68/69A.

1.3. That, Id. CIT(A) further erred in enhancing assessment by Rs.62,39,963/- without considering the submission of assessee that part of the cash was kept by assessee at his residence for security reasons, which is normal practice, more particularly when assessee is individual and runs business in proprietorship concern.

1.4. That, Id. CIT(A) has further erred in enhancing assessment by brushing aside the fact that, no discrepancy was found in audited financial statements and trading results were accepted as declared by assessee, except adhoc disallowances made on the basis of generalised observations,

2.The appellant craves the right to add, delete or amend any of the grounds of appeal either before or at the time of hearing of appeal.”

3. Apropos to the grounds so raised by the assessee the brief fact of the case is that the assessee – appellant filed his ITR on 30.10.2017 declaring total income of Rs.71,07,887/- [Rounded off to Rs.71,07,890/- u/s 288A], after availing deduction of Rs.2,65,276/- under Chapter VIA. The case was selected for compulsory scrutiny in view of the clause 1(ii) of the CBDT

Instruction No.04/2018 dated 20.08.2018 and accordingly, a notice u/s 143(2) dated 07.09.2018, was issued to the assessee, which stands duly served upon the assessee electronically through Email. Subsequently, various notices u/s 142(1), from time to time, were issued requiring the assessee to furnish certain details/documents. In response Ld. AR of the assessee, uploaded the requisite details/documents from time to time, on the e-assessment portal, which were extracted, perused & placed on record by Id. AO. As is evident from the assessment order that the Authorized Representative of the assessee also produced Books of Accounts, comprising of Cash Book, Bank Book, journal, ledger, purchase register, expenses bills/vouchers etc. The books of accounts produced by the Id. AR of the assessee were examined by Id. AO on test check basis & the case was discussed with Id. AR of the assessee by the Id. AO.

3.1 During the relevant year, the assessee runs a Hospital in the name & style of M/s Saniya Hospital & three medical stores, in the names & styles of M/s Saniya Pharma, Saniya Medical & Rehan Medical & derived income therefrom. The assessee had maintained his Books of Account as prescribed u/s 44AA. The Books of Accounts are audited as required u/s

44AB. During the relevant year, there is no change in Accounting Standards / methods followed by the assessee.

3.2 A survey u/s 133A was conducted at the business premises of the assessee on 27.09.2016. During survey proceedings, physical cash was found at Rs.13,07,300/- which was not verifiable from the Books of Accounts whereas as per Cash Book (found during the course of survey proceedings) there was negative cash of Rs.11,26,135/-. In this respect, the assessee replied (during his statement recorded while survey proceedings) that the Books of Accounts were not up to date, therefore, it was not possible to the cash found be verified. While survey proceedings, it is also noticed that the receipts of the hospital business were entered up to 31.08.2016 & expenses were entered up to 31.07.2016 but any expenses made in cash were not written till the date of survey i.e., 27.09.2016. This proves that the assessee manipulates his Cash Books & booked bogus expenses by arranging pre-dated bills/vouchers. In this situation, the cash found, amounting to Rs.13,07,300/-, remained unverifiable & hence considered to be added into the total income of the assessee. In the light of that observations Rs. 13,07,300/- was added into the total income of the

assessee u/s 68 r.w.s. 115BBE & penalty proceedings u/s 271AAC(1) were initiated separately.

3.3 Disallowance out of advertisement expenses & Hospital Expenses.

Ld. AO perused that the assessee had debited various other expenses in his profit & loss account, as detailed below-

Advertisement expenses	17,22,909/-
Hospital expenses	1,18,50,424/-
Total	1,35,73,333/-

During the assessment proceedings, the assessee was required to produce a complete set of Books of Accounts, including expenses bills/vouchers. In response thereto, Authorized Representative of the assessee, produced Books of Accounts, including expenses bills/vouchers. On verification it was revealed that some of the above-mentioned expenses were booked with support in the shape of self-made vouchers or no supporting at all. Further, most of these expenditures are booked in Cash. Therefore, the above-mentioned expenses were not subject to fully verification. In light of that observations the expenditure booked by the assessee on the above heads was not considered in toto by the Id. AO and therefore, 05% of these

expenditures, i.e., Rs.6,78,666/- [13573333 x 05%] were disallowed and added back into the income of the assessee.

3.4 Disallowance out of other various expenses- It is perused that the assessee had debited various other expenses in his profit and loss account, as detailed below-

1. Conveyance expenses	Rs. 5,20,332/-
2. House Keeping expenses	Rs. 1,52,493/-
3. Printing & Stationary expenses	Rs. 7,97,984/-
4. Tea & Refreshment expenses	Rs. 2,28,701/-
5. Telephone expenses	Rs. 1,60,615/-
6. Travelling & petrol expenses	Rs. 6,77,037/-
Total	Rs. 25,37,162/-

During the assessment proceedings, the assessee was required to produce a complete set of Books of Accounts, including expenses bills/vouchers. In response thereto, Authorized Representative of the assessee, produced Books of Accounts, including expenses bills/vouchers. On verification Id. AO revealed that some of the above-mentioned expenses were booked with support in the shape of self-made vouchers or no supporting at all. Further, most of these expenditures are booked in

Cash. Therefore, the above-mentioned expenses were not subjected to full verification. Ld. AO noted that the assessee failed to furnish Call Details Register & Vehicle Running Log Book and in the absence of Call Details Register & Vehicle Running Log Book, purpose of Telephone calls & Vehicle running couldn't be verified. Further, personal uses of the Telephone & Vehicle facility, by the assessee himself and staff of the assessee, cannot be denied. In view of these observations the expenditure booked by the assessee on the above heads can't be allowed in toto and therefore, 10% of these expenditures, i.e., Rs.2,53,716/- (2537162 x 10%) were considered by the Id. AO as disallowable expenses and therefore, the same was added in the income of the assessee.

4. Aggrieved, from the said order of assessment, assessee has filed an appeal before the Id. CIT(A). The Id. CIT(A) after considering the contention of the assessee partly allowed the appeal deleting the addition of expenditure, but while doing the Id. CIT(A) has enhanced the addition on account of unexplained money being the difference of money found and available in the books of account. The finding of the Id. CIT(A) on the issue which is disputed before us reads as under:-

“During the relevant year, the appellant had been running a hospital in the name & style of M/s Saniya Hospital & three medical stores, in the names & styles of M/s Saniya Pharma, Saniya Medical & Rehan Medical & derived income therefrom. During the course of survey proceedings, physical cash was found at Rs. 13,07,300/- which was not verifiable from the Books of Accounts. In this respect, the appellant had replied (during his statement recorded during the course of survey proceedings) that the Books of Accounts were not upto date, therefore, it was not possible to get the cash verified. During the course of survey proceedings, it is noticed that the receipts of the hospital business were entered upto 31.08.2016 & expenses were entered upto 31.07.2016 but any expenses made in cash were not written till the date of survey i.c., 27.09.2016. The Id. AO took note of the negative cash balance of Rs. 11,26,135 in Saniya Pharma. Further the Id. AO held that the appellant manipulates his Cash Books & booked bogus expenses by arranging pre-dated bills/vouchers. In this regard the unexplained cash of Rs. 13,07,300 was added to the income, which has been challenged under Ground of Appeal No.1. Further, it was observed that some of the expenses (advertisement expenses, hospital expenses) were booked with supporting in the shape of self made vouchers or no supporting at all and further, most of these expenditure are booked in Cash and the Id. AO decided to disallow 5% of such expenses and made an addition of Rs. 6,78,666 in this regard, which has been challenged under Ground of Appeal No.2. The total addition on account of unexplained cash and unverifiable expenses in GOA 1 & 2 is Rs. 19,85,966.

As per the submissions filed in appeal, the total net cash balance claimed as per books of accounts of the two proprietorships of the appellant was Rs. 45,08,828 (Rs. 56,34,936 Saniya Hospital and Rs. (-) 11,26,135 Saniya Pharma) as per the appellant himself during the survey whereas the cash balance actually found during the survey is Rs. 13,07,300. However the receipts of the hospital business were entered upto 31.08.2016 & expenses were entered upto 31.07.2016 but any expenses made in cash were not written till the date of survey i.e., 27.09.2016.

The appellant has further submitted that the total cash balance as on 25.09.2016 (date of survey) as per the audited books of accounts was Rs. 67,18,301 (Suniya Hospital) and Rs. 8,28,962 (Saniya Pharma). The total of these is Rs. 75,47,263. Further whereas the total cash balance actually found during the survey is Rs. 13,07,300. Shortfall being Rs. 62,39,963 In this regard notice for enhancement of income was issued providing opportunity to the appellant proposing to enhance the assessment amount from Rs. 13,07,300 to Rs. 62,39,963 on the observation that the payments and cash balance as per year end are audited and is to be treated to be correct as actually existing and hence the source of filling of the

shortfall in the books of accounts (and for payments made during the year) remains unexplained.)

In the response, the appellant has inter-alia submitted that "when the cash balance is already reflecting in the books of accounts and forming part of assets in the Balance Sheet then the same stands verified and explained. The cash balance reflecting in the books of accounts on any date is always available with the assessee, may be a part of cash is placed in the business premises and the balance is placed with the assessee himself. Further, the entire cash book was verified by eth Ld AO during the assessment proceedings and nowhere the Ld. AO could find any discrepancy in the cash balance as well as movement of funds".

The main issue is cash actually found in comparison to the cash balance shown as per the books of accounts on the date of survey. The figures are not in dispute. The appellant has not explained the shortfall and has not accepted the shortfall. In this regard the appellant has stated that "may be a part of cash is placed in the business premises and the balance is placed with the assessee himself. The appellant has not supported this statement with any circumstantial or documentary evidences and the statement remains a self serving statement. During survey it was noticed that the receipts of the hospital business were entered upto 31.08.2016 & expenses were entered upto 31.07.2016 but any expenses made in cash were not written till the date of survey i.e., 27.09.2016. Further, from the perusal of the statement recorded during the survey noticed that nowhere it was stated by the appellant that some cash belonging to the business or as reflected in the books of accounts was kept somewhere else despite of the fact that number of questions were asked regarding the cash balance. Even during the assessment proceedings cash balance and its explanation was the main issue on which even addition has been made however from the perusal of the submissions made during the assessment proceedings as placed on record by the appellant it is noticed that it was never the claim of the appellant that some cash was kept somewhere else with the appellant himself on the date of survey.

The appellant has utilized the cash shown as per books of accounts on the date of survey in further transactions and the same is further reflected in the closing cash balance whereas the actual cash available on the date of survey was much less. The payments and cash balance as per year end are audited and is to be treated to be correct as actually existing and hence the source of filling of the shortfall in the books of accounts (and for payments made during the year) remains unexplained. (Accordingly, the addition on account of unexplained cash should be Rs. 62,39,963 and not only Rs. 13,07,300. The unexplained credits in

books which led to the excess cash balance in books vis-à-vis the actual cash are taxable u/s 68 r.w.s. 115BBE of the Act. Alternatively, the unexplained cash/money used to fill the shortfall is taxable u/s 69A r.w.s. 115BBE of the Act. It is held accordingly. The assessment is accordingly enhanced to Rs. 62,39,963 on the issue hereby.

In the assessment order the penalty has been initiated on this issue under section 271AAC(1) of the Act. The penalty u/s 271AAC(1) of the Act are initiated on the enhancement amount as well. No separate notice is issued. The same shall be included in or clubbed with the penalty proceedings which were initiated by the assessing officer in the assessment order and the id. AO shall decide the levy of penalty w.r.t. the entire addition including the enhancement. Reference in this regard is also made to section 275(1A) of the Act which specifically refers to passing of penalty order before the receipt of appeal/revision order and as per implications in case of passing of penalty order after the receipt of appeal/revision order the Id. AO is to consider such appeal/revision order while deciding the penalty.

Further, regarding the Ground of Appeal No.2, it was observed in the assessment order that some of the above expenses (advertisement expenses, hospital expenses) were booked with supporting in the shape of self made vouchers or no supporting at all and further, most of these expenditure are booked in Cash and the Id. AO decided to disallow 5% of such expenses and made an addition of Rs. 6,78,666 in this regard. As addition on account of unexplained cash credits / unexplained money has already been sustained and enhanced in the pre-paragraphs, the separate addition on account of unverifiable/unexplained cash expenses is not required as conceptually the unaccounted cash out of unverifiable cash expenses would only become part of unexplained money. Accordingly total addition w.r.t. Ground of Appeal No. 1 and 2, is sustained at Rs. 62,39,963 including the enhancement.

Accordingly, Ground of Appeal No. 1 and 2 are dismissed and assessment is enhanced.”

5. As the appeal of the assessee was considered in part by enhancing the assessment by the Id. CIT(A), assessee on being dissatisfied from that order of the Id. CIT(A), he challenges that order before this tribunal on the

grounds as stated herein above. The Id. AR of the assessee relied upon the following written submission to support the grounds so raised:-

“Brief facts of the case are that assessee is an individual and is doctor by profession and runs Hospital in the name and style of M/s Sania Hospital & three medical stores namely (i) Sania Pharma, (ii) Saniya Medical and (iii) Rehan Medical. A Survey action u/s 133A was carried out in the case of assessee on 27.09.2016, wherein cash to the tune of Rs.13,07,300/- was found and statements of assessee were also recorded. It is a matter of fact that books of accounts were not complete at the time of survey. As per such incomplete books, cash balance of Sania Hospital was Rs. (-)11,26,135/- whereas in Sania Pharma it was Rs.56,34,963/-. After completion of such books of accounts, cash balance of various concerns of assessee was as under:

S.No	Particulars	Closing Balance as on 27.09.2016
1	Saniya pharma	8,28,962.23
2	Saniya hospital	67,18,301.45
3	Rehan medical	15,911.00
4	Saniya medicals	1,98,579.04
	Total	77,61,753.72

Return of Income was filed by assessee on 30.10.2017 declaring total income at Rs.71,07,887/-. Case was selected for scrutiny and various details and information as called for by Id.AO were submitted by the assessee. After considering the submission so made and evidences adduced, assessment was completed after making following additions/disallowances:

S. No.	Addition/Disallowance	Amount
1.	Cash found in survey treated as unverifiable	13,07,300/-
2.	Disallowance out of Advertisement and Hospital Expenses (on adhoc basis)	6,78,666/-

3.	Disallowance out of other expenses	2,53,716/-
		22,39,682/-

Aggrieved of the additions/ disallowances so made, assessee preferred an appeal before Id. CIT(A), which was decided vide order dated 29.1.2024, whereby addition made by Id.AO on account of Cash found during Survey was enhanced to Rs. 62,39,963/- (as against Rs.13,07,300/-) and it was held that in view of enhancement, separate addition of Rs.6,78,666/- and Rs.2,53,716/- on account of unverifiable/unexplained cash expenses was not required.

In present appeal, assessee has challenged the addition of Rs.62,39,963/- as confirmed by Id.CIT(A) on account of difference in cash found during survey (i.e. Rs.13,03,700/-) and as recorded in audited books of accounts as on the date of survey (i.e. Rs.75,47,263/-) in respect of cash balance of Sania Hospital and Sania Pharma. At this juncture, it is clarified that total cash balance of all the four proprietary concerns as on the date of survey as per audited books was Rs. 77,61,753.72/-, whereas Id.CIT(A) has computed shortage of cash by considering cash balance of Sania Hospital and Sania Pharma only (and therefore in further submission Rs.75,47,263/- is shown as cash balance as per audited Financial Statements). With this background, groundwise submission is made as under:

Grounds of Appeal No.1 to 1.4

In these grounds of appeal, assessee has challenged the action of Id.CIT(A) in confirming addition to the tune of Rs.13,07,300/- made by Id.AO and further enhancing the same by Rs.49,32,633/-, arbitrarily.

Brief facts pertaining to the grounds of appeal as stated above are that during the course of survey, cash worth Rs.13,07,300/- was found from the premises of assessee as against which cash recorded in books of accounts was as under:

Sl. No.	Name of Firm	Amount
1.	Saniya Hospital	(-)11,26,135/-
2.	Saniya Pharma	56,34,963/-

During the course of survey, it was stated by assessee that since books of accounts were not complete, it was not possible to verify the cash found with

balance as per books. However, in response to Question no. 17, it was stated by assessee that negative cash balance in books of accounts of Sania Hospital was for the reason that cash of Sania Pharma was taken in Sania Hospital. Your honours would appreciate that assessee is individual and all the concerns are his proprietary concerns and cash was used in the business as per requirement, and thus on overall basis, cash balance was positive. Moreover, after completion of survey, assessee completed the books of accounts, duly incorporating all the transaction which took place prior to survey, however were not recorded in books of accounts on the date of survey and got the same audited. During the course of assessment proceedings, assessee furnished Complete books of accounts (as were completed after survey, which included Cash book as well and according to which there was no negative cash balance and rather cash balance of Rs. 75,47,263/- was available with assessee. It is a matter of fact that no discrepancy whatsoever was found by Id.AO in books of accounts so furnished, still Id.AO proceeded to make addition of entire cash found during survey i.e. Rs.13,07,300/- solely on the observation that books of accounts of assessee were not complete on the date of survey and as per such incomplete books, there was negative Cash balance of Rs.11,26,135/- and therefore cash found was not verifiable.

On appeal, Id. CIT(A) further enhanced the addition made by Id.AO on account of Cash found by holding that since cash balance as per audited books of accounts was Rs. 75,47,263 whereas cash actually found was Rs.13,07,300/- and reason for shortfall was not explained nor was shortfall accepted by assessee. In fact, Id. CIT (A) has enhanced assessment by huge sum of Rs. 49,32,663/- in a very casual manner and without even proving specifically as to under which section addition was to be made. Such casual approach of Ld. CIT(A) is evident from his observations at page 17, where it is noted that *“Accordingly, the addition on account of unexplained cash should be Rs.62,39,963/- and not only Rs.13,07,300/-. The Unexplained credits in books which led to the excess cash balance in books vis a vis the actual cash are taxable u/s 68 r.w.s.115BBE of the Act. Alternatively, the unexplained cash/ money used to fill the shortfall is taxable u/s 69A r.w.s.115BBE of the Act. It is held accordingly enhanced to Rs.62,39,963/- on the issue hereby.”*

With this background, it is submitted that Id. CIT(A) has used his vital power of enhancement without even giving any concrete finding as to under which head the sum of Rs. 49,32,663/- is to be added. Ld. CIT(A) has firstly invoked provisions of section 68 and has alternatively invoked provisions of section 69A also. Your honours would appreciate that both section 68 and section 69A operate in different domain. Section 68 is applicable when a credit entry is found recorded in the

books of accounts and assessee is not able to explain source thereof satisfactorily. Whereas provisions of section 69A are applicable when an assessee is found to be owner of any money, bullion, jewellery or other valuable article and source of such money, bullion, jewellery or valuable article is not explained satisfactorily. In the instant case, no credit entry whatsoever has been identified by Id.CIT(A), which could be treated as unexplained, still Id.CIT(A) has observed that *“unexplained credits in books which led to the excess cash balance in books vis a vis the actual cash are taxable u/s 68”*. Since Id. CIT(A) was not sure about the sum being taxed u/s 68, he alternatively invoked provisions of section 69A also, stating that *“the unexplained cash/money used to fill the shortfall is taxable u/s 69A*. Here also, Id.CIT(A) has failed to point out as to which asset was found in possession of assessee, source of which remained unexplained.

Your honours would appreciate that observations of Id.CIT(A) are not based upon any corroborative evidence and are merely based on his own presumptions and can be better termed as a “Make believe theory”. **Hon’ble Special bench of Mumbai ITAT** in the case of **ITO Vs. M/s. GTC Industries Limited Tobacco House, ITA No. 5996/Mum/1993, 1055 & 1056/Bom/94** where the Hon’ble Special Bench of ITAT after considering all the aspects of “preponderance of human probabilities” and other issues has held that:

“46.It is quite a trite law that suspicion how so ever strong may be but cannot be the basis of addition except for some material evidence on record. The theory of ‘preponderance of probability’ is applied to weigh the evidences of either side and draw a conclusion in favour of a party which has more favourable factors in his side. The conclusions have to be drawn on the basis of certain admitted facts and materials and not on the basis of presumption of facts that might go against assessee. Once nothing has been proved against the assessee with aid of any direct material especially when various rounds of investigation have been carried out, then nothing can be implicated against the assessee.”

It is further submitted that Id. CIT(A) has heavily relied upon the statements of assessee as recorded during survey(**APB 87-97**), wherein no query was raised as to whether cash of assessee was lying somewhere else than the premises where survey took place. In fact, in view of such statements, Id. CIT(A) has brushed aside the fact that after completion of books, there remain no discrepancy and books were audited by qualified auditors without any adverse remarks. Id.CIT(A) has observed that *“from perusal of statements recorded during survey it is noticed that nowhere it was stated by the appellant that some cash belonging to the business or as reflected in the books of accounts was kept somewhere else despite of the fact that number of questions were asked regarding the cash balance.”* In this

regard, kind attention of your honours is invited to the statements recorded (**APB 87-97**), wherein in all seventeen questions were asked, of which merely three questions were asked regarding cash, which read as under:

प्रश्न 12 आपकी Books of Accounts आज दिनांक तक पूर्णरूप से लिखी हुई नहीं है इस स्थिति में आज दिनांक को नकद शेष, Stock, Sales, Purchases का मिलान/सत्यापन किस प्रकार करवायेगे।

उत्तर इस स्थिति में सत्यापन करना सम्भव नहीं है, सभी खरीद/बिक्री Receipts, Stock, Cash in hand इंड्राज करने पर ही सत्यापन हाँपायेगा।

प्रश्न 13 आप के परिसर में सर्वे कार्यवाही के दौरान 13,07,800/- रुपये नकद पाया गया है इसका सत्यापन आप अपने बही खातो से करवाए ?

उत्तर मेरे बही खाते आज दिनांक तक नहीं लिखे हुए है इसलिए इसका सत्यापन मैं अपने बही खातों से नहीं करवा सकता।

प्रश्न 17 आप के परिवार के आय सर्वे के दौरान कुल Physical Cash 13,07,300/-पाया गया है जबकि आपने M/s Sania Farma की Books of A/c की हिसाब से Cash Balance 56,34,963/-और Sania Hospital की Book of A/c के हिसाब से Cash Balance (-)11,26,135/-आरहाहै कृपया इस अन्तर को स्पष्ट करें इसके अतिरिक्त यह भी बताए कि Sania Hospital की Books of A/c में Cash Balance Negative क्यों आ रहा हैं?

उत्तर जैसा कि मैंने पूर्व में भी आपको बताया था कि हमारे बही खाते की Entry 31.07.2016 तक की डाली हुई है और उसके बाद की खर्चों की Entry डाली जानी बाकी है। कुल कितने Amount की खर्चों की Entry डाली जानी बाकि है उसका मुझे कोई अनुमान नहीं है। अभी इन खर्चों के Voucher बने हुए नहीं है।जहाँ तक Sania Hospital में Negative Cash Balance as per books of A/c का प्रश्न है इस सम्बन्ध में मैं स्पष्ट करना चाहता हूँकि Sania Farma का Cash, Sania Hospital में लिया गया हैं।

उपरोक्त बयान मैंने पूर्ण होश हवास व बिना किसी दबाव व फोरज बरदस्ती के दिये है तथा कोई तथ्य नहीं छिपाया है। उपरोक्त बयान मैंने पढ़ कर समझ लिया है और वही लिखा गया है जो मैंने बताया है हस्ताक्षर कर रहा हूँ।

From perusal of above, it is evident that there was no specific query to the assessee as to if cash was kept somewhere else than the business premises. It is further submitted that during the course of assessment proceedings also, Id.AO raised a number of queries and sought various details including Unsecured loans, Sundry Creditors, Outstanding liabilities, Cash deposited in bank account, Sundry Debtors, Addition to Fixed Assets, Loans and Advances, Stock Details, details of Purchases, details of other expenses etc.(Query letter dated 15.05.2019 at **APB 32-39**) In response to the same, complete details alongwith supporting evidences were furnished. However, at this stage also, no query was raised as to whether part of the Cash was lying somewhere else also. In fact, during the course of assessment proceedings, assessee furnished relevant extracts of audited cash book (**APB 79-86**), according to which Cash balance as on the date of survey was Rs. 75,47,263/- and there was no negative cash balance as alleged during survey. After furnishing of such documents, no further explanation was sought regarding difference between Cash found during Survey vis a vis recorded in audited books of accounts. Subsequently, during proceedings before Id. CIT(A), notice was issued proposing to enhance the addition on the observation that *"In the assessment order there is addition only w.r.t. Rs. 13,07,300. Whereas as per the appellant's own submissions there is shortfall of actual cash of Rs. 62,39,963 vis-à-vis actual cash found on the date of survey. The payments and cash balance as per year end is audited and if treated to be correct as actually existing and hence the source of filling of the shortfall in the books of accounts (and for payments made during the year) remains unexplained. Hence, in this regard, it is proposed to enhance the assessment amount from Rs. 13,07,300 to Rs. 62,39,963."*

It is evident from above that Id. CIT(A) proposed to enhance addition by presuming that source of filling the shortfall in books (and for payments made during the year) remained unexplained. In response to such notice, detailed written submission was filed by counsel of assessee (**APB 124-127**), wherein it was inter alia clarified that some of the cash was kept at business premises, whereas balance was kept with assessee himself. In fact, it is common practice to keep cash as per requirement at business premises and balance at residence of proprietor/ director for safety reasons. In the case of assessee also, part of the cash was kept by assessee at home, however in absence of specific query, this fact could not be clarified during survey. It is also a common fact that atmosphere during survey is usually charged and an assessee cannot be expected to explain anything without being asked. Also, as stated above, during assessment proceedings, once assessee furnished books of accounts including cash book and no further clarification was sought, assessee presumed that Id.AO was satisfied with the details/explanation furnished w.r.t. Cash found during survey vis a vis recorded in

books. Thus, there was no occasion to state such facts. When, assessee received notice regarding enhancement from Id. CIT(A), it was clarified that cash available as per books was more than the cash found during survey as part of the cash was placed with assessee. Again, Id.CIT(A) also, without raising any further query, proceeded to pass order, wherein it has been held that assessee could not support the statement regarding some of the cash being with kept with assessee with any circumstantial or documentary evidence.

It is submitted that during the course of survey, there was query regarding stock at Question No.11 (**APB 94**) and in response to the same, it was stated by assessee that stock of Sania Hospital as well as all other medical stores was also kept at the same premises, where survey was conducted and such explanation of assessee remained uncontroverted. Similarly, specific queries were made with respect to Source of construction of Hospital premises, construction of residence of assessee, Investments made etc. and explanation furnished by assessee in respect of all such questions was accepted. Your honours would appreciate that neither during survey, nor during assessment/ first appeal stage, any specific query was made as to whether cash was lying anywhere else than the business premises. Moreover, there could not be any circumstantial /documentary evidence of Cash available in books except averment of assessee that where the balance physical cash was kept and it appears that Id. CIT(A) has drawn adverse view as there is no such averment in statements in this regard (in absence of specific query).

Yourhonours would appreciate that the statements as recorded during survey are not the statements capable of giving any credence as the same were recorded on oath without there being any circumstances to record such statements on oath and the Hon'ble Supreme Court time and again affirmed such statements to be of no legal consequence.

It is further submitted that the Id. AO as well as Id.CIT(A) have failed to point out any discrepancy in the audited cash book nor could bring any evidence on record to show any expenditure/ investment being incurred and not recorded in books of accounts.

Your honours would appreciate that section 133A(3)(iii) empowers an IT authority to record the statement of any person which may be useful for or relevant to any proceedings under the Act. However, section does not authorises IT authority to administer oath and therefore such statements do not have evidentiary value and cannot be the solely relied upon for making addition in the absence of any other tangible evidence. Your honours would appreciate that unlike statements

recorded u/s 132(4), during the course of search, which are permitted to be used as evidence in any proceeding under either the 1922 or the present Act, there is no such sanctity conferred on a statement recorded under Section 133A(iii). The utility of a statement recorded in the course of survey is limited to the extent to which it is useful or relevant to any proceeding under the Act. Thus, a statement recorded in the course of survey can, at best, support a proceeding for assessment; that is, where the Assessing Officer has some corroborative material / documentary evidence in his possession, based on which he comes to the conclusion that a particular income/expense has been unaccounted / undisclosed and only when such material evidence is found or brought on record, then for making addition, the same may be given support from the statement recorded in the course of survey. However, in absence of any documentary evidence found during the course of survey, the addition made merely on the basis of statements is not sustainable.

In this regard, reliance is placed on:

1. CIT vs S. Khader Khan Son (Supreme Court) 323 ITR 480
2. Paul Mathews and Sons Vs. CIT (Ker.) 263 ITR 101
3. Shri Anu Milk Products (P) Ltd., ITA No. 122/JP/12 upheld by Hon'ble High Court in Appeal No. 74/2014 dated 18.09.2017.
4. Maverick Share Brokers (P) Ltd., ITA No. 701/JP/12, upheld by Hon'ble High Court in Appeal No. 14/2016.
5. Roshan Lal Lodha, Rajasthan High Court (Appeal No. 185/2014 order dated 03/11/2015)
6. Ratan Textiles (P) Ltd. ITA No.525-528/JP/2016

It is thus submitted that merely because there was no mention of Cash being kept with assessee at his residence in the statements recorded during survey, addition cannot be made.

It is further submitted that the only source of Cash receipts in cash book is Receipts from Hospital and medical stores, which is duly shown in profit & loss account, which were not doubted by Id.AO as well as Id. CIT(A). Thus, availability of cash to the tune of Rs. 75,47,263, i.e. that available in books is proved beyond doubt. Moreover, shortage of cash in comparison to cash recorded in books was not coupled with any adverse circumstantial evidence also such as Excess stock/ unaccounted investments etc. In the scenario, if addition is made on account of difference in Cash as per audited books and as physically found during survey, the same would tantamount to double tax as income from hospital and medical stores,

which has generated cash has already been subjected to tax. It is thus submitted that shortage of physical cash in comparison to that recorded in books cannot be treated as Unexplained Cash Credit u/s 68/Unexplained Money u/s 69A by any stretch of imagination. It is submitted that addition has been enhanced by Id.CIT(A) solely on presumptions and without rebutting the documentary evidences furnished and thus deserves to be deleted.

Reliance is placed on decision of :

Hon'ble Allahabad High Court in the case of **CIT vs KesarwaniSheetalyaAllyd [2019] 110 taxmann.com 415 (Allahabad)** has held as under:

Section 68, read with section 69A , of the Income-tax Act, 1961

- Cash credit (Cash in hand)- Assessment year 2008-09 - Whether where cash in hand in books of account was found to be more than actual cash found during search, at most, Authorities could have presumed that assessee had spent difference of amount somewhere, but that would not be sufficient to make addition to assessee's income - Held, yes [Para 19] [In favour of assessee]

Para 19

19. In the present case, learned Counsel for the Revenue has mainly relied upon the two deletion made by the ITAT of the addition so made by the AO as confirmed by the CIT (A). As to the addition made of Rs.37,30,710/-, which is lesser cash in hand as compared with the books of accounts in which the assess has shown more cash in hand, the Tribunal held that it is neither a case under Section 68 of the IT Act nor Section69-A of the Income Tax Act. The Tribunal further went on to hold that it was not a case where money is not recorded in the books of account of assessee, and in the present case cash in hand in the books of account was found to be more than the actual cash found during the course of search. At the most, authorities could have presumed that assessee has spent the difference of amount in question somewhere as per cash in hand, as per books of account and lesser cash as per seized documents, but that would also not suffice to make addition under any of the above propositions.

Hon'ble Mumbai bench of ITAT in the case of **Almech Enterprises vs ACIT ITA NO.2110/Mum/2023**, relying upon the decision of Hon'ble Allahabad High Court (supra) decided the issue as under:

4. *The question emerge, as to whether on the basis of difference/shortfall between the actual cash found during the course of survey proceedings and the cash shown in the books of account, the addition u/s 69C of the Act is warranted, as*

made in this case. Dr. K. Shivaram Ld. Senior Advocate emphasized that Hon'ble Allahabad High Court of in the case of CIT vs. KesarwaniSheetalaya, Allahabad (2019) 110 taxmann.com 415 (All.) also dealt the identical issue, wherein cash in hand in the books of account was found to be more than the actual cash found during the course of search. The Hon'ble High Court affirmed the decision of the Tribunal in holding that would not suffice to make addition under any of the provision under section 69 or section 69A of the Act. The Hon'ble Co-ordinate Bench of the Tribunal in the case of Sarang & Associates vs. DCIT (ITA No. 1227 to 1229/Mum/2012 decided on 21.03.2018, also dealt with the identical issue and did not approve the making of addition under section 69C of the Act. The Ld. DR Sh. Raghuv eer Madanappa, did not refute the said factual aspect. Hence, respectfully following the judgments referred to above, and considering the peculiar facts and circumstances of the case as the provisions of 69C of the Act are not attracted in this case, in our considered view, the addition is not warranted. Resultantly the same is deleted.

5. *In the result, appeal filed by the Assessee stands allowed.*

Hon'ble Chandigarh bench of ITAT in the case of M/s A.P. Refinery Pvt. Ltd. vs DCIT in ITA No. 1279/Chd./2019, wherein hon'ble bench has held that:

"14. We have heard both the parties. The issue before us relates to addition made to the income of the assessee on account of cash found short with the assessee. Cash short, at the most represents expenses / outgoings out of cash available with the assessee not accounted for in the books of the assessee. Such unaccounted expenses are sourced from cash available with the assessee. How therefore can they be treated or deemed to be income of the assessee u/s 69/69B/69C of the Act when the said sections deem investments/money, the source of which the assessee offers no explanation about, as income of the assessee.

We therefore hold that there is no case for making any addition on account of cash found short with the assessee and the addition so made of Rs.9,06,522/- is directed to be deleted."

In the present case also, Cash was available with assessee out of explained sources of income, which have been duly incorporated in Trading & Profit & loss account and due taxes have been paid on the same, thus addition made of such amount by invoking provisions of section 68/69A is not in accordance with law and deserves to be deleted.

Also, provisions of section 115BBE have been invoked in respect of addition made on account of Shortage of Cash, which being consequential in nature, thus no separate submission is made in this regard.”

6. The Id. AR of the assessee also filed a detailed paper book in support of the contention so raised in the written submission and the index of the document submitted are as under:-

S.No	PARTICULARS	PAGE NO.
1.	Copy of Acknowledgement of Return of Income and Computation of Total Income filed u/s 139(1) of Income Tax Act,1961	1-5
2.	Copy of Audited Financial Statements along with Tax Audit Report	6-31
3.	Copy of Notice dated 15/05/2019 issued under section 142(1) of the I.T. Act, 1961	32-39
4.	Copy of Reply dated 9/9/2019 in response to notice issued under section 142(1) of the I.T. Act, 1961 dated 15/5/2019 with annexures	40-57
5.	Copy of Reply dated 11.10.2019 issued under section 142(1) of the I.T. Act, 1961 of date 5/10/2019 with annexure	58-60
6.	Copy of Notice dated 16/10/2019 issued under section 142(1) of the I.T. Act, 1961	61-62
7.	Copy of Reply dated 11.10.2019 issued under section 142(1) of the I.T. Act, 1961 of date 18/9/2019	63-65
8.	Copy of Reply dated 22.10.2019 issued under section 142(1) of the I.T. Act, 1961 of date 18/9/2019	66-69
9.	Copy of Notice dated 2/11/2019 issued under section 142(1) of the I.T. Act, 1961	70-72
10.	Copy of Reply dated 28/11/2019	73-77
11.	Copy of Reply dated 10.12.2019 issued under section 142(1) of the I.T. Act, 1961	78

S.No	PARTICULARS	PAGE NO.
12.	Copy of Cash book of Saniya pharma ,Saniya Hospital, Saniya medical and Rehan medical	79-86
13.	Copy of Statement Recorded	87-97
14.	Copy of submission dated 16.02.2023 filed before Id.CIT(A)	98-108
15.	Copy of submission dated 05/12/2023 filed before Id. CIT (A)-4	109-119
16.	Copy of submission dated 10/01/2024 filed before Id. CIT (A)-4	120
17.	Copy of Notice dated 17/01/2024 issued under section 250 of the I.T. Act, 1961	121-123
18.	Copy of submission dated 23/01/2024 filed before Id. CIT (A)-4	124-127

7. The Id. AR of the assessee in addition to what has been said in the written submission, he vehemently argued that all has provided all the details during the assessment proceeding. Ld. AO vide questionnaire dated 15.05.2019 in question no. 12 asked the assessee to furnish the details of cash deposited into the books of account and was also asked to explain the source thereof. The assessee duly replied no defects whatsoever was found in the books of accounts which are audited. That books of accounts were not rejected and the assessment has been completed u/s. 143(3) of the Act. Therefore, the addition made without rejecting the books of accounts by the lower authorities are not in accordance with the law and is required to be deleted. The cash on hand found in the books is duly offered

as sales or professional receipt of the assessee again making the addition separately is taxing the same income twice. There is no allegation of the revenue that the assessee has deposited in SBN in the bank account. Even the Id. AO vide para 4 merely stated that the as on date of survey books were not complete but the same was audited and completed in the assessment proceeding and no defects were pointed out in those books so produced. Therefore, making of the addition of cash found and the enhancement made by the Id. CIT(A) between the cash found and cash in the books which is more than found the difference of addition made is making the same income twice as taxable income and the same is not permitted. The Id. AR of the assessee to explain the overall reconciliation of the cash has filed the following chart:

Sh. Taiyab Khan
A.Y. 2017-18

Particulars	Rehan Medical Amount		Saniya Medical Amount		Saniya Pharma Amount		Saniya Hospital Amount		Total
Opening Cash in hand as on 01.04.2016	-	-	1,90,787.14	-	1,82,096.23	-	80,109.45	-	4,52,992.82
Add: (i) Cash sales from 01.04.2016 to 27.09.2016	15,911.00	31,84,381.90	32,84,381.90	1,10,30,856.00	-	3,61,49,159.00	68,90,000.00	-	5,74,60,307.90
(ii) Inter Branch Receipt	-	1,00,000.00	-	90,000.00	1,11,20,856.00	-	4,30,39,159.00	-	-
Less: (i) Cash expenses from 01.04.2016 to 27.09.2016	-	3,47,435.00	-	3,99,082.00	-	91,62,901.00	-	-	-
(ii) Cash Deposit in Bank	-	12,29,155.00	-	48,84,908.00	-	2,70,48,066.00	-	-	-
(iii) Inter Branch Payments	-	17,00,000.00	32,76,590.00	51,90,000.00	1,04,73,990.00	1,50,000.00	3,64,00,967.00	-	5,01,51,547.00
Closing Cash in hand as on 27.09.2016	15,911.00	1,98,579.04	1,98,579.04	8,28,962.23	8,28,962.23	67,18,301.45	67,18,301.45	-	77,61,753.72
Add: (i) Cash sales from 28.09.2016 to 31.03.2017	56,40,088.00	27,03,736.17	27,03,736.17	58,42,414.00	58,42,414.00	3,28,95,723.00	3,57,45,723.00	-	4,99,31,961.17
(ii) Receipt from Debtors/Branch	-	56,40,088.00	-	3,70,485.00	-	1,64,08,551.48	-	-	-
Less: (i) Cash expenses from 28.09.2016 to 31.03.2017	1,56,999.00	3,36,949.00	-	26,95,940.00	-	2,52,00,050.00	-	-	-
(ii) Cash Deposit in Bank	21,30,630.00	16,04,130.00	-	28,50,000.00	59,16,425.00	4,16,08,601.48	-	-	5,17,53,734.48
(iii) Inter Branch Payments	-	22,87,629.00	19,41,079.00	7,54,951.23	7,54,951.23	8,55,422.97	8,55,422.97	-	59,39,980.41
Closing Cash as on 31.03.2017	33,68,370.00	9,61,236.21	9,61,236.21	-	-	-	-	-	-

8. Per contra, the Id. DR supported the orders of the lower authorities. The cash reconciliation chart submitted by the Id. AR of the assessee was not disputed by the Id. DR, but at the same time heavily relied upon the finding that the cash recorded in the books were not physically found and therefore, the addition is correctly made in the hands of the assessee by enhancing the income by the Id. CIT(A) is based on the facts of the case and is required to be sustained. The Id. CIT(A) is passed very speaking order after considering all the relevant material available on record.

9. We have heard the rival contention and perused the material available on record. All the grounds no. 1 to 1.4 raised by the assessee deals with the same issue of making the addition in the hands of the assessee being the difference between the cash found physically at the time of survey and cash found recorded in the books of accounts of the different concerns of the assessee. Thus, effectively the assessee has challenged the action of Id.CIT(A) in confirming addition to the tune of Rs.13,07,300/- made by Id.AO and further enhancing the same by Rs.49,32,633/-. The brief facts related to the disputes are that during the relevant year, the assessee runs a hospital in the name & style of M/s Saniya Hospital & three medical stores, in the names & styles of M/s Saniya

Pharma, Saniya Medical & Rehan Medical & derived income therefrom. The assessee had maintained his Books of Account as prescribed u/s 44AA. The Books of Accounts are audited as required u/s 44AB. During the relevant year, there is no change in Accounting Standards / methods followed by the assessee. A survey u/s 133A was conducted at the business premises of the assessee on 27.09.2016. During survey proceedings, physical cash was found at Rs.13,07,300/- which was not verifiable from the Books of Accounts whereas as per Cash Book (found during survey proceedings) there was negative cash of Rs.11,26,135/-. In this respect, the assessee replied (during his statement recorded while survey proceedings) that the Books of Accounts were not up to date, therefore, it was not possible for the cash found be verified. While survey proceedings, it is also noticed that the **receipts of the hospital business were entered up to 31.08.2016 & expenses were entered up to 31.07.2016 but any expenses made in cash were not written till the date of survey i.e., 27.09.2016**. This proves that the assessee manipulates his Cash Books & booked bogus expenses by arranging pre-dated bills/vouchers. In this situation, the cash found, amounting to Rs.13,07,300/-, remained unverifiable & hence considered to be added into the total income of the assessee by the Id. AO. When this matter was disputed

before the Id. CIT(A) he enhanced the addition made by Id.AO on account of Cash found by holding that since cash balance as per audited books of accounts was Rs. 75,47,263 whereas cash found was Rs.13,07,300/- and reason for shortfall was not explained nor was shortfall accepted by assessee. We note that he made further addition of Rs. 49,32,663/- in a very casual manner and without even proving specifically as to under provision of law he makes the addition. The cash found recorded in the books of accounts emanates from the said records and therefore, when the cash found have been recorded in the books but were physically found less does not empower the revenue authority to make the addition and that without pinpointing the defects in the regular of accounts maintain by the assessee. That books of accounts were audited and were very well accepted to produced before them and without pointing out any defects in those books of accounts no addition can be sustained. The bench noted that the finding of the Id. CIT(A) is very general and it says that *“Accordingly, the addition on account of unexplained cash should be Rs.62,39,963/- and not only Rs.13,07,300/-. The Unexplained credits in books which led to the excess cash balance in books vis a vis the actual cash are taxable u/s 68 r.w.s.115BBE of the Act. Alternatively, the unexplained cash/ money used to fill the shortfall is taxable u/s 69A*

r.w.s.115BBE of the Act. It is held accordingly enhanced to Rs.62,39,963/- on the issue hereby.” Here we note from the records that Id. CIT(A) while doing so issued notice for enhancement of income providing opportunity to the assessee-appellant proposing to enhance the assessment amount from Rs. 13,07,300 to Rs. 62,39,963 on the observation that the payments and cash balance as per year end are audited and is to be treated to be correct as actually existing and hence the source of filling of the shortfall in the books of accounts (and for payments made during the year) remains unexplained.). While submitting the reply the assessee-appellant has already submitted that "when the cash balance is already reflecting in the books of accounts and forming part of assets in the Balance Sheet then the same stands verified and explained. The cash balance reflecting in the books of accounts on any date is always available with the assessee, may be a part of cash is placed in the business premises and the balance is placed with the assessee himself. Further, the entire cash book was verified by the Id AO during the assessment proceedings and nowhere the Id. AO could find any discrepancy in the cash balance as well as movement of funds". This contention of the assessee-appellant was not dealt with while deciding the issue on hand by the Id. CIT(A). Thus, from the overall facts of the case and issue on hand we note that in this case the cash found was

less and the cash found recorded in the books are higher thus, the income so generated from that cash is already reflected and making the addition of the cash found with that of the cash found is making the same income taxed twice and that does not empower the revenue to tax the same income twice once recorded in the books and found less than the books. The bench also consider the fact that the Id. CIT(A) has used his vital power of enhancement without even giving any concrete finding as to under which head the sum of Rs. 49,32,663/- is to be added and taking shelter of which provision of the Act empower to do. Ld. CIT(A) has firstly invoked provisions of section 68 and has alternatively invoked provisions of section 69A also. We note that both section 68 and section 69A operate in different domain. Section 68 is applicable when a credit entry is found recorded in the books of accounts and assessee is not able to explain source thereof satisfactorily and that is not fact of the case the credit is already stands explained from the cash found in the books. Whereas provisions of section 69A are applicable when an assessee is found to be owner of any money, bullion, jewellery or other valuable article and source of such money, bullion, jewellery or valuable article is not explained satisfactorily. Thus, here on this aspect also the cash found is not more than the same recorded in the books therefore, the same is also not applicable. In the instant case, no

credit entry whatsoever has been identified by Id.CIT(A), which could be treated as unexplained, still Id.CIT(A) has observed that *“unexplained credits in books which led to the excess cash balance in books vis a vis the actual cash are taxable u/s 68”*. Since Id. CIT(A) was not sure about the sum being taxed u/s 68, he alternatively invoked provisions of section 69A also, stating that *“the unexplained cash/money used to fill the shortfall is taxable u/s 69A*. Here also, Id.CIT(A) has failed to point out as to which asset was found in possession of the assessee, source of which remained unexplained. Thus, it seems that the addition was enhanced was merely based on the surmises and conjecture and the same cannot be sustained. Thus, we note that observations of Id.CIT(A) are not based upon any corroborative evidence and are merely based on his own presumptions and assumptions and rightly be termed as a “Make believe theory”.

On perusal of the statement recorded at the time of survey we note that there was no specific query to the assessee as to if cash was kept somewhere else than the business premises. It is further submitted that during the course of assessment proceedings also, Id.AO raised a number of queries and sought various details including Unsecured loans, Sundry Creditors, Outstanding liabilities, Cash deposited in bank account, Sundry

Debtors, Addition to Fixed Assets, Loans and Advances, Stock Details, details of Purchases, details of other expenses etc.(Query letter dated 15.05.2019 at **APB 32-39**) In response to the same, complete details along with supporting evidences were furnished. However, at this stage also, no query was raised as to whether part of the Cash was lying somewhere else also. In fact, during assessment proceedings, assessee furnished relevant extracts of audited cash book (**APB 79-86**), according to which Cash balance as on the date of survey was Rs. 75,47,263/- and there was no negative cash balance as alleged during the survey. After furnishing such documents, no further explanation was sought regarding difference between Cash found during Survey vis a vis recorded in audited books of accounts. As is evident from the above discussion that Id. CIT(A) proposed to enhance addition by presuming that source of filling the shortfall in books (and for payments made during the year) remained unexplained. In response to such notice, detailed written submission was filed by counsel of assessee (**APB 124-127**), wherein it was inter alia clarified that some of the cash was kept at business premises, whereas balance was kept with assessee himself. In fact, it is common practice to keep cash as per requirement at business premises and balance at residence of proprietor/ director for safety reasons. In the case of the assessee also, part of the

cash was kept by assessee at home, however in absence of specific query, this fact could not be clarified during survey. Also, as discussed above, during assessment proceedings, once assessee furnished books of accounts including cash book and no further clarification was sought, assessee presumed that Id.AO was satisfied with the details/explanation furnished w.r.t. Cash found during survey vis a vis recorded in books. Thus, there was no occasion to state such facts. When, assessee received notice regarding enhancement from Id. CIT(A), it was clarified that cash available as per books was more than the cash found during survey as part of the cash was placed with assessee. Again, Id.CIT(A) also, without raising any further query, proceeded to pass order, wherein it has been held that assessee could not support the statement regarding some of the cash being with kept with assessee with any circumstantial or documentary evidence. We also note that during the course of survey, there was query regarding stock at Question No.11 (**APB 94**) and in response to the same, it was stated by assessee that stock of Sania Hospital as well as all other medical stores was also kept at the same premises, where survey was conducted and such explanation of assessee remained uncontroverted. Similarly, specific queries were made with respect to Source of construction of Hospital premises, construction of residence of assessee, Investments

made etc. and explanation furnished by assessee in respect of all such questions was accepted. Thus, it is clear that neither during survey, nor during assessment/ first appeal stage, any specific query was made as to whether cash was lying anywhere else than the business premises. Thus, we note that when the cash found in books are more than physically found no further addition is required to be made in the hands of the assessee. We get strength of our view from the decision of **Hon'ble Allahabad High Court** in the case of **CIT vs KesarwaniSheetalyaAllyd [2019] 110 taxmann.com 415 (Allahabad)** has held as under:

“19. In the present case, learned Counsel for the Revenue has mainly relied upon the two deletion made by the ITAT of the addition so made by the AO as confirmed by the CIT (A). As to the addition made of Rs.37,30,710/-, which is lesser cash in hand as compared with the books of accounts in which the assess has shown more cash in hand, the Tribunal held that it is neither a case under Section 68 of the IT Act nor Section 69-A of the Income Tax Act. The Tribunal further went on to hold that it was not a case where money is not recorded in the books of account of assessee, and in the present case cash in hand in the books of account was found to be more than the actual cash found during the course of search. At the most, authorities could have presumed that assessee has spent the difference of amount in question somewhere as per cash in hand, as per books of account and lesser cash as per seized documents, but that would also not suffice to make addition under any of the above propositions.”

In the light of the discussion so made and the facts are not disputed before us by the Id. DR and he also demonstrate any other contrary view that of the decision relied we considered the grounds no. 1 to 1.4 raised by the assessee.

In terms of this observation the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 13/12/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 13/12/2024

*Santosh

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

1. The Appellant- Sh. Taiyab Khan, Alwar.
2. प्रत्यर्थी / The Respondent- Asstt. Commissioner of Income Tax, Alwar.
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त (अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File ITA No. 342/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar