

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.382/Nag./2023
(Assessment Year : 2019-20)

Dy. Commissioner of Income Tax
Circle-2(1), Nagpur

..... Appellant

v/s

Makarand Madhusudan Joshi
S-64, Bharat Nagar, Nagpur 440 033
PAN - AANPJ7621H

..... Respondent

Assessee by : Smt. Veena Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing - 18/11/2024

Date of Order - 14/02/2025

ORDER

PER V. DURGA RAO, J.M.

This appeal by the Revenue is directed against the impugned order dated 28/09/2023, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2019-20.

2. In its appeal, the Revenue has raised following grounds:-

"1. The Ld. CIT(A) has erred in deleting the addition of Rs.93,000/- as unexplained money u/ 69A, made by the AO ignoring the fact that the assessee during the course of assessment proceedings failed to provide any supporting documentary evidence in support of his claim that the said amount was the tuition fees received from the students.

2. The Ld.CIT(A) has erred in deleting the addition of Rs.1,60,11,817/- as unexplained expenditure u/s 69C, ignoring the fact that the AO in the para 5.2.1 to 5.2.9 of the assessment order has clearly demonstrated the fact that the cash book submitted by the assessee in respect of M/s Krishi Seva Kendra is fabricated and has been prepared just to save the assessee.

3. The Ld.CIT(A) has erred, in deleting the addition of Rs 1,60,11,817/- as unexplained expenditure u/s 69C by holding that the excel sheet on the basis of which addition was made does not belong to the assessee, ignoring the fact that the excel sheet was recovered from the PC_3 belonging to the assessee which was found at office premises of assessee during the course of survey proceedings.

4. The Ld.CIT(A) has erred in deleting the addition of Rs.7,70,000/- as unexplained cash credit u/s 68, ignoring the fact that the assessee during the course of assessment proceedings failed to explain as to why he had withdrawn money from an account maintained exclusively for making statutory payments on behalf of his clients."

3. Facts in Brief:– 1. The assessee is an individual and partner of firm Jodh Joshi & Co. For the year under consideration, the assessee filed his original return of income under section 139(1) of the Income Tax Act, 1961 ("the Act") on 25/10/2019, declaring total income at ₹ 7,22,520. On 11/09/2020, a survey action under section 133A of the Act was conducted at the office premises of the assessee situated at 1st Floor, J.P. House, Amravati Road, Ravinagar Square, Nagpur. Accordingly, assessee's case was reopened under section 147 of the Act. A notice under section 148 of the Act was issued to the assessee on 05/01/2021. In response to notice dated 05/01/2021, under section 148 of the Act, the assessee filed return of income on 01/02/2021 by declaring total income of ₹ 7,22,500. Subsequently, on 09/02/2021, notices under section 143(2) and under section 142(1) along with questionnaire were also issued to the assessee. the Assessing Officer, the assessee filed its replies from time to time which were considered. The Assessing Officer concluded the assessment proceedings by making following additions:–

1.	₹ 93,000	On account of unexplained money u/s 69A
2.	₹ 1,60,11,817	On account of unexplained Expenditure u/s 69C
3.	₹ 7,70,000	On account of unexplained cash credits u/s 68

4. Insofar as addition of ₹ 93,000, on account of unexplained money under section 69A of the Act is concerned, the learned CIT(A) deleted the addition by holding as under:-

"Ground No. 3: This ground of appeal is regarding whether the Ld. AO is correct in law and fact in passing an order making an addition to the tune of Rs 93,000/- as unexplained Money u/s 69A for deposit of sum in State Bank of India.

The Ld. AR stated that the cash deposited in the SBI a/c bearing a/c No. 10199487740 amounting to Rs. 93,000/- is deposited out of income generated in cash from tuition classes and rental income. The Ld. AR bringing bank statement on record took me through the entries.

The Ld. AR argued that a deposit of Rs. 93,000/- which is received in cash and deposited in bank account are tuition fees and rental income of the appellant that the appellant has duly shown in his return and discharged his tax liability onto same.

On contrary the AO has stated in the assessment order at para 5.1.1 that appellant has provided a list of students and amount of tuition fees received by him from them. However, mere providing a list containing names of students does not substantiate the claim of the appellant that tuition classes has actually been provided to them. The appellant has failed to provide any documentary evidence in support of his claim. Therefore, the explanation given by the appellant in respect of cash deposits of Rs. 93,000/- is not acceptable.

The Ld. AR submitted that the appellant is an old age Chartered Accountant and has an inclination towards teaching the young generation and was therefore teaching small batch of students. Owing to the fact that the students were in limited numbers there was not a need of rented premise. The appellant has provided list of students along with the fees charged. Further, the Ld. AR corroborated this fact by travelling through Income Tax return and computation and underscoring the amount shown as "INCOME FROM CLASSES" of Rs. 2,00,000/- and rental income of Rs. 3,60,000/-.

I am convinced and inclined towards the argument of Ld. AR that the appellant was engaged in imparting tuition. The tuition fees are also part of computation of the appellant and the Ld. AR has also produced list of students. I also find force in the argument of the Ld. AR that there have been no adverse evidences brought on record by the AO to state that the cash deposit is not from tuition fees. Furthermore, a small batch of students does not require a highly specialised classroom. Therefore, I am convinced with the argument advanced by the Ld. AR. Further, computation shows Income from house property which is rental income of the appellant.

Therefore, in view of the arguments advanced by the Ld. AR and documents placed on record, I am of the considered view that the addition made of Rs. 93,000/- as unexplained Money u/s 69A is incorrect and hence addition made under Sec 69A as unexplained money of Rs. 93,000/- is deleted and the Ground No. 3 of the appeal is 'allowed'.

5. The next addition of ₹ 1,60,11,817, which the Assessing Officer made under section 69C of the Act on account of unexplained expenditure, the learned CIT(A) deleted the addition while observing as under:—

"Ground No. 4: This ground of appeal is regarding whether the Ld. AO is correct in law and fact in passing an order making an addition to the tune of Rs. 1,60,11,817/- as unexplained expenditure u/s 69C recorded in the excel sheet.

The Ld. AR submitted that during the survey proceeding at the office premises of the appellant a PC (Personal Computer) identified as "PC_3" was found. On seeing the data stored in PC_3, three excel sheets named EXPENSES IN CASH ABOVE 10K.xlsx, EXPENSES IN CASH ABOVE 10K 2.xlsx, and EXPENSES IN CASH ABOVE 10K 3.xlsx with last date modified as 09.09.2019 was found. These sheets mentioned, cash expenditure above Rs. 10000/- as well as cash receipts made during FY 2018-19.

The Ld. AR vehemently argued that the survey proceeding was carried out at the business premise of the Jodh Joshi and Co. which is a CA firm. There are multiple computer system at the premise and the major work associated with a CA firm is to finalisation of data. The Ld. AR submitted that the excel sheet was saved by an Article Assistant and the Excel sheet belongs to one of the client named 'Krishi Seva Kendra' and not to the appellant. Further, the Excel Sheet was saved in the sub-folder standing in the name of 'Krishi Seva Kendra'.

The Ld. AR earnestly stated that the Excel Sheet belongs to the client named 'Krishi Seva Kendra' and not to the appellant. The Ld. AR submitted that there is no name, PAN, address, phone number, signature is written of the appellant on the Excel Sheet. Furthermore, the nature of expenses so mentioned on the excel sheet that in sales promotion expenses and others does not have any relation with the nature of profession that is CA professional consultancy.

The Ld. AR produced an excel sheet printout of containing around 6985 rows. The Ld. AR explained with through the excel sheets that these 6985 rows are filtered out in 140 rows for the better understanding of the article assistant. The Ld. AR stated that the excel sheet is the cash and bank book of the client which contains the total payments made by the client during the FY 2018-19 out of which which were done in cash were filtered out with the column Particulars. expenditure mentioned in the column particulars.

Further, the Ld. AR stated that the excel sheet where the particular rows wherein no narration is given particulars are the sub-total values of various different ledgers and has no relation with cash expenditure. On perusal of the excel sheet it is seen that the figure of Rs. 1,60,11,817/- includes Rs. 1,52,14,660/- which is a sum of sub-totals in the excel sheet. It is further contended that a filter was applied to the column Payment (Dr) with amount greater than 10K and the corresponding sub-total values which were above 10K were filtered out in the excel extract, It was contended by the Ld. AR that it is not at all expenditure incurred in ens, Further, the narration like "BOI CC AC", "IDBI BANK LTD" etc. doesn't have any relation to the appellant.

Further, the Ld. AR brought on record and appreciated the reply of M/s Krishi Seva Kendra under Sec 133(6) dated 25.02.2022 wherein M/s Krishi Seva Kendra has accepted that the excel sheet belongs to them and the expenses stands in their name in cash.

I have carefully considered the reply of the Ld. AR and have gone through documents produced on record. I find that the Excel Sheet is a filtered Excel Sheet and only 140 rows out of total 6985 rows. Going through the unfiltered Excel Sheet comprising 6985 rows shows that there are various heads which are collected at a place. From the form and structure of the Excel Sheet it is clearly seen that the Excel Sheet is non-finalised Excel Sheet as figures are not matching and dates are not in chronological manner.

I also find force in the submission of the Ld. AR that the content of Excel Sheet like sales promotion expenses and staff salary expenses does not belong to the appellant as the appellant is a CA and has no expenses as such in name of promotion expenses. Further, the confirmation certificate brought on record issued in pursuance of Sec 133(6) notice by M/s Krishi Seva Kendra further act as a final nail in the coffin and hence, there is no doubt left that the Excel Sheet does not belong to the appellant."

I also find force in the submission of the Ld. AR that the content of Excel Sheet like sales promotion expenses and staff salary expenses does not belong to the appellant as the appellant is a CA and has no expenses as such in name of promotion expenses. Further, the confirmation certificate brought on record issued in pursuance of Sec 133(6) notice by M/s Krishi Seva Kendra further act as a final nail in the coffin and hence, there is no doubt left that the Excel Sheet does not belong to the appellant."

6. The next addition of ₹ 7,70,000, which was made by the Assessing Officer on account of unexplained cash credits under section 68 of the Act is concerned, the learned CIT(A) deleted the said addition by holding as under:—

"Ground No. 5: This ground of appeal pertains to whether the Ld. AO is correct in law and fact in passing an order making an addition to the tune of Rs. 7,70,000/- as unexplained cash credit u/s 68 for withdrawal of cash from Indian Overseas Bank.

The Ld. AR submitted that the appellant is a Chartered Accountant by profession and has to make various statutory payments on behalf of the clients of appellant. Therefore, the appellant maintained a current bank account in the Indian account Overseas Bank, Ramnagar Nagpur baring no. 08750200000837. The Ld. AR stated that the popellant had received a sum of Rs. 60,17,705/- in cash in his bank account from various clients to make payment on their behalf.

The AO observed in para 5.2.1 of the order that the appellant has withdrawn a sum of Rs. 7,70,000/- from the bank necount for his personal use. The Ld. AR rebutted it by stating that there are various challans and payments Taxe various departments part from Income Tax department which accepts that has to be made in cash because of non-availability of online payment facility or sometimes because of non-functioning of websites etc. Further, there ath challans like VAT, PF, PT etc.

Further the Ld. AR vehemently argued that in fact cash withdrawals (debit) from the said account and not cash deposit (credit). The nature of transaction is misunderstood per se and, therefore, addition under Sec. 68 is incorrect.

It is undisputed fact that the appellant is a Chartered Accountant and has a current account with tee in Owe tank for making payment on behalf of the appellant. In year 2018-19 there we not much banking facilities available and payments were made in cash. Further, there is no evidence on record to state that the all personal usage. It in the cannot be any addition mad the amount withdrawn for corroborative evidence there cannot be any addition made.

In view of the above argument of the Id. AR and documents produced on record, I am of the considered view that cash of ₹ 70,000 as unexplained cash credit under Sec 68 is very well explained by the appellant and hence addition made under Sec 68 as unexplained cash credit of Rs. 7,70,000/-is deleted and the Ground No. 5 of the appeal is allowed'."

The Revenue being aggrieved challenged the aforesaid three additions before the Tribunal.

7. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. As far as addition of ₹ 93,500 is concerned, we find that the Assessing Officer has not given any cogent reason for making this addition. The learned Departmental Representative also could not adduce any evidence to buttress the stand taken by the learned CIT(A). Here, the assessee is a teacher and the amount

in question was deposited in the Bank Account which were received by the assessee from the taking tuition of the students and the fees so received from the students was even offered for taxation also. The assessee had duly disclosed such income in his return of income. Explanation regarding the same was also furnished by the assessee before the Assessing Officer and a list of students from whom the tuition fees were received was also furnished during the assessment proceedings. Thus, in our considered opinion, the learned CIT(A) is indeed justified in directing the Assessing Officer to delete the said addition. We find no infirmity which warrants us to take a view other than the view taken by the learned CIT(A). Accordingly, the impugned order passed by the learned CIT(A) is hereby upheld by dismissing ground no.1, raised by the Revenue.

8. Regarding the addition of ₹ 1,60,11,817, on account of unexplained expenditure under section 69C of the Act is concerned, the learned Departmental Representative strongly supported the assessment order passed by the Assessing Officer and on the other hand the learned Authorised Representative for the assessee vehemently supported the impugned order passed by the learned CIT(A). We have gone through the order passed by the Assessing Officer and the learned CIT(A) as well. We find that the learned CIT(A) gave a categorical finding that the Excel Sheet is a filtered Excel Sheet and 140 rows out of total 6985 rows. Going through the unfiltered Excel Sheet comprising of 6,985 rows shows that there are various heads which are collected at a place. From the form and structure of the Excel Sheet, it is clearly visible that the Excel Sheet is a non-finalized Excel Sheet, as the

figures are not matching and the dates are not in chronological manner. The learned CIT(A) gave further finding that accepting the submissions of the assessee, the contents of Excel Sheet like sales promotion expenses and staff salary expenses do not belong to the assessee as the assessee is a Chartered Accountant and no expenditure as such in the name of promotion expenses. He gave further categorical finding that as per the confirmation certificate brought on record issued in pursuance of section 136, noticed by M/s. Krishi Sewa Kendra, is further act as a final nail in the coffin and hence there is no doubt left that the Excel Sheet does not belong to the assessee. From the above, we find that the Assessing Officer without making proper enquiry, simply made the addition. Consequently, we hesitate to tinker with the order passed by the learned CIT(A) which is hereby upheld by dismissing the grounds no.2 & 3, raised by the Revenue.

9. Regarding the addition of ₹ 7,70,000, made by the Assessing Officer on account of unexplained cash credit under section 68 of the Act for withdrawal of cash from IOB Account is concerned, during the course of assessment proceedings, the Assessing Officer had questioned the reasons for cash deposit of ₹ 60,17,705, in the Indian Overseas Bank Account maintained in the name of the assessee. The assessee had duly explained the source of such cash deposit in the IOB Account being the amount received from his various clients for the purpose of making the Statutory Payments on behalf of the clients. The assessee had submitted a detailed list of all the clients from whom such cash was received along with their confirmation certificates regarding the same. Nothing emanates from the record which shows that the

assessee was ever asked about the purpose of cash withdrawal during the course of assessment proceedings. The withdrawal of cash was added to the total income of the assessee as unexplained cash credit under section 68. In support of this, the assessee contended that the withdrawal of cash is a "DEBIT" transaction and not a "CREDIT" transaction, hence addition cannot be made on account unexplained cash credit under section 68. Accordingly, we find no reason to disturb the impugned order passed by the learned CIT(A) which is hereby upheld by dismissing the ground no.4, raised by the Revenue.

10. In the result, appeal by the Revenue stands dismissed.

Order pronounced in the open Court on 14/02/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 14/02/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur