

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, BANGALORE**

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No. 1984/Bang/2024
Assessment Year: 2011-12

Rajagopal Upadhyaya, Sri Hari, 1 st Main, 2 nd Link Road, Basaveshwara Nagar, Bellary – 583 104. PAN – AAJPU 9639 G	Vs.	The Dy. Commissioner of Income Tax, Circle – 1, Bellary. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Dan D'Silva, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Dept. (DR)

Date of hearing	:	08.04.2025
Date of Pronouncement	:	08.05.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Addl./JCIT(A)-7, Kolkata dated 30/09/2024 in DIN No. ITBA/APL /S/250/2024-25/1069269619(1) for the assessment year 2011-12.

2. The 1st issue raised by the assessee is general in nature and therefore, I do not find relevant to adjudicate the same.

3. The 2nd issue raised by the assessee is that the search proceedings and other subsequent proceedings are invalid/without jurisdiction which will be discussed along with the subsequent issues.

4. The only remaining issue raised by the assessee is that the Ld. CIT-A erred in confirming the addition to the tune of Rs. 10,00,000/- as unexplained money u/s 69A of the Act, though the same is taxed in the hands of real owner Mr. Dinesh Kumar Singhi.

5. The facts in brief are that the assessee is an individual and derives salary as an accountant from M/s Bharat Mines & Minerals (a partnership Firm). Search proceeding u/s 132 of the Act was carried out at M/s Bharat Mines & Minerals on 19-07-2010 and in the impugned search proceeding, the residence of assessee was also covered. In consequence to the notice under section 142(1) of the Act issued as on 10-07-2012 to the assessee to file return for the year under consideration (A.Y. 2011-12 i.e. search year), the assessee in protest filed return declaring income of Rs. 3,86,590/- as on 27-20-2013 which was selected for scrutiny under section 143(2) of the Act.

6. The AO noticed that during the course of search at the residence of the assessee, the cash amounting to Rs. 10,55,710/- was found out of which cash amounting to Rs. 10,00,000/- was seized. Further, at the time of search, the statement of the assessee was recorded under section 132(4) of the Act in which he admitted that the cash found belongs to him and represents his income from undisclosed sources. Accordingly, the AO treated the seized cash of Rs. 10,00,000/- as unexplained money u/s 69A of the Act and added to the total income of

the assessee. Thereby the income of the assessee was assessed at Rs. 13,86,590/- vide order dated 19-03-2013 by the AO.

7. On appeal by the assessee, the learned CIT(A)-VI Bangalore confirmed the addition made by the AO vide order dated 15-03-2018.

8. On further appeal by the assessee before the Tribunal in ITA No. 1274 & 1275/Bang/2018, the ITAT bench found that the assessment order was passed in summary manner, and the assessment was completed within a month. Therefore, the assessee was not provided with an adequate opportunity of being heard. Likewise, the learned CIT(A) confirmed the addition in an ex-parte order without giving speaking and reasoned finding on the merit. Hence the ITAT vide order dated 24-08-2018, remanded back the issue to the file of the AO for de novo assessment.

9. The assessee in the set aside proceeding before the AO submitted that the cash, seized from his residence, belongs to Mr. Dinesh Kumar Singhi (Partner of M/s Bharat Mines & Minerals) and same has been offered for tax by him in his income tax return. The assessee also submitted that total cash amounting to Rs. 52,50,000/- was found and seized including the cash seized from his residence during the course of search in the case of M/s Bharat Mines & Minerals and Mr. Dinesh Kumar Singhi, as evident from punchnama, and all such cash seized has been admitted and offered for tax by Mr. Dinesh Kumar Singhi.

10. The assessee in support of his claim furnished the statement of Mr. Dinesh Kumar Singhi recorded u/s 132(4) of the Act and return of

income filed by him and his assessment order where sum of Rs. 2 crores were offered for tax to cover all sundry aspects of seized materials.

11. The assessee with respect to his statement recorded u/s 132(4) of the Act relied on CBDT instruction dated 10-03-2003 where it was instructed not to make assessment solely based on statement recorded during the search.

12. The AO however, disregarded the submission of the assessee by observing that the assessee was granted sufficient opportunity to explain the source of cash found during the search, however he could not explain the source of cash with any documentary evidence. That the assessee himself admitted and accepted the seized cash as undisclosed income in his hands.

12.1 The AO on perusal of the letter submitted by Mr. Dinesh Kumar Singhi to the investigation unit for disclosure of income, found that Mr. Dinesh Kumar Singhi has nowhere admitted cash found and seized from the residence of the assessee as his income and offered for taxation. Likewise, the assessment order of Mr. Dinesh Kumar Singhi has also not specified about the cash found and seized from the residence of the assessee.

12.2 The AO also was of the view that the provision of section 132(4A) of the Act clearly applies to the assessee and therefore cash seized from the residence of the assessee belongs to him which is further evident by the statement where he admitted.

12.3 The AO also was of the view that the investigation wing has not violated the instruction provided under the CBDT Instructions dated 10-03-2003 as the statement was recorded based on credible evidence found and seized during the course of search which pertains to the assessee. Thus, the AO in view of the above again treated the sum of Rs. 10,00,000/- as unexplained money in the hands of the assessee and added to the total income of the assessee.

13. The aggrieved assessee preferred an appeal before the Ld. CIT-A and submitted the details of undisclosed income admitted and offered for tax by Mr. Dinesh Kumar Singhi for the A.Y. 2011-12 through letter filed during the assessment proceedings.

14. The assessee also submits the chart explaining the details of the undisclosed income accepted by Mr. Dinesh Kumar Singhi in his assessment order.

Warrant in the name of /Annexure Premises		Cash seized (Rs.)
Dinesh Kumar Singhi (Residence: Norris Road, Shantinagar, Bangalore)	3	31,00,000
Bharat Mines and Minerals (Office: Pride Elite, Museum Road, Bangalore)	3	11,50,000
Bharat Mines and Minerals (Residence of Rajagopal Upadyaya: Accountant of Bharat Mines and Minerals: Sri Hari, I Main, II Link road, Basaveshwarnagar, Bellary)	1	10,00,000
Total		52,50,000

The declaration u/s 132(4) given by Mr. Dinesh Kumar Singhi dt.09.09.2010 and also the return of income filed for AY 2011-12 wherein a sum of Rs.20.10 crores has been offered to cover all seized materials and all sundry aspects is enclosed as Annexure 4. The said facts stand covered in the assessment order passed u/s 143(3) rws 153D of the Act dt.27.03.2013 in the case of Dinesh Kr. Singhi. Relevant portion is extracted hereunder for ready reference :

"6. Unaccounted cash:

6.1 At the time of search cash of Rs.52,00,970% was found at the premises of Sri Dinesh Kumar Singhi and M/s Bharat Mines and Minerals. The assessee did not offer satisfactory explanation for the source for the same.

The assessee was asked to explain the amount of Rs. 52, 00, 970%. In this regard, the assessee filed a declaration of disclosure on 9.9.2010 admitting a total sum of Rs.20.10 crores including the above amount.

The break up of declaration for Rs.20.10 crore is given by the assessee in the following way:

- i. Income arising from the entries with seized materials AY 11-12 Rs.18.10 crores
ii. Miscellaneous issues AY 2011-12 Rs.2 crore

	Total	Rs. 20.10
crores		

6.2 To sum up, as discussed above the following unaccounted items were noticed and also accepted by the assessee:

Unexplained investment in land		Rs.1,86,04,875/-
Unaccounted payment for purchase of ironore		Rs.1,40,00,000/-
Unaccounted receipts		Rs.18,00,00,000/-
Unaccounted cash		Rs.52,00,970/-
Total		Rs.21,78,05,845/- "

15. The Ld. CIT-A on the other hand noted that the disclosure statement of Mr. Dinesh Kumar Singhi dated 20-02-2013 submitted before the AO during the assessment proceedings did not mention the name of the assessee and cash seized from the residence of the assessee. The Ld. CIT-A further noted that the addition of unaccounted cash of Rs. 52,00,970/- in the assessment order of Mr. Dinesh Kumar Singhi has not included the sum of cash seized from the residence of assessee. Thus, the learned CIT(A) confirmed the addition made by the AO.

16. Being aggrieved with the order of the Ld. CIT-A, the assessee is in appeal before me.

17. The Ld. AR before me submits that the sum of ₹ 10 lakhs has already been suffered to tax in the hands of Mr. Dinesh Kumar Singhi. The learned AR in support of his contention drew our attention on the inventory of the cash seized from the premises of Shri Mr. Dinesh Kumar Singhi.

18. The Ld. DR, on the other hand, vehemently supported the authorities below.

19. I have heard the rival contentions of both the parties and perused the material available on record. The facts are that a search under section 132 was conducted on 19-07-2010 at the premises of M/s Bharat Mines & Minerals and associated individuals, including the residence of the assessee, who was employed as an accountant in the firm. During the search, cash amounting to ₹10,55,710 was found at the assessee's premises, out of which ₹10,00,000 was seized. The assessee initially admitted in his statement recorded under section 132(4) that the cash belonged to him. However, during the assessment proceedings, the assessee clarified that the said cash did not belong to him but to Shri Dinesh Kumar Singhi, a partner in M/s Bharat Mines & Minerals, and that it was already offered as part of a larger voluntary disclosure of income by Shri Dinesh Kumar Singhi.

19.1 It is noted that the search panchnama and the inventory record clearly indicate that a total cash amount of ₹52.5 lakh was found during the search, which includes the ₹10 lakh found at the assessee's residence. Further, Shri Dinesh Kumar Singhi, in his statement and subsequent return, offered a total of ₹2 crore, which includes ₹52.5 lakh

in cash, as income to cover all undisclosed assets and irregularities arising out of the search. Though Shri Singhi did not categorically mention in his statement that the cash found at the residence of the appellant assessee (Shri Rajagopal) belonged to him, but the quantum of disclosure matches the total cash found, implying that the cash from the assessee's premises was subsumed within the admitted undisclosed income by the Shri Dinesh Kumar Singhi.

19.2 Crucially, the Revenue has not brought any material on record to rebut the claim that the ₹10 lakh cash was not included in Shri Dinesh Kumar Singhi's disclosure. The learned DR also failed to produce any contrary evidence that would disprove the assessee's contention or indicate that the ₹10 lakh was independently and exclusively assessable in the hands of the assessee.

19.3 Additionally, the reliance placed by the AO on the initial admission made under section 132(4) of the Act by the assessee must be evaluated in light of the CBDT Instruction dated 10.03.2003, which advises that no addition should be made merely on the basis of a statement unless it is corroborated by evidence. The assessee's admission alone, particularly when retracted and explained with plausible and substantiated justification, cannot form the sole basis for an adverse inference.

19.4 In view of the above, and considering that Shri Dinesh Kumar Singhi has already offered the entire cash found during the search as part of his undisclosed income and paid tax thereon, taxing the same amount again in the hands of the assessee would amount to double

taxation of the same income without justification. The balance of probabilities and the absence of contrary evidence support the conclusion that the cash found at the assessee's premises was indeed part of the total cash disclosed and offered by Shri Dinesh Kumar Singhi. Accordingly, we hold that the addition of ₹10,00,000 under section 69A of the Act in the hands of the assessee is unsustainable and is directed to be deleted. Hence, the ground of appeal of the assessee is hereby allowed.

20. In the result, the appeal of the assessee is allowed.

Order pronounced in court on 8th day of May, 2025

Sd/-
(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 8th May, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore