

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI JASON P. BOAZ (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No 7126/MUM/2010  
Assessment Year: 2008-09**

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| Late Shri. Sudeshkumar Devraj Mehta.<br>Shree Mandev Jewellers,<br>575/9, Madan Mansion,<br>Sheikh Memon Street,<br>Mumbai- 400002.<br>PAN : AFZPM05725M | <b>Vs.</b> | The ACIT Central Circle-10,<br>Mumbai. |
| <b>(Appellant)</b>   |            | <b>(Respondent)</b>                    |

Appellant by : Shri. Kundanmal J. Bafna  
Respondent by : Smt. Manjunatha Swamy

Date of Hearing: 06/01/2016  
Date of Pronouncement: 22/01/2016

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been preferred by the appellant/assessee against order dt. 22/07/2010 passed by the Ld. CIT(Appeals)-37, Mumbai, for Asst. Year 2008-2009.

2. Brief facts of the case which need necessary mention for disposal of this appeal are that the appellant is engaged in bullion trading and trading in gold & silver jewellery in the name & style of M/s Mandev Jewellers. There was search & seizure action u/s 132 on the Income Tax Act, 1961 (in short 'the Act') was conducted at the business premises of Shree. Sudhesh Kumar D Mehta on 04/03/2008. During the search 5990.890 gms of gold was found against the entry of 4975

gms in stock register. The excess stock of 1025.890 gms of gold was offered to tax by the appellant during the course of search & seizure and the same was also incorporated in the return of income.

2.1 Similarly, an amount of Rs. 12,83,000/- was found in a bag of Shri. Navin Mody present in the premises and an amount of Rs. 15,81,650/- was found in brief case of the appellant. The cash balance of the books of the appellant was recorded as Rs. 15,13,696/- therefore, the unexplained excess cash of Rs. 13,48,000/- was seized under section 132(1) of the Act.

2.2 The appellant/assessee filed its return of income for the relevant Asst. year on 06/10/2008 declaring the total of income of Rs. 16,87,140/-.

2.3. During the course of assessment proceedings, the appellant was asked to disclose the nature, mode and source of possession of the aforesaid unexplained sum of Rs. 13,48,000/-. After hearing the contention of the assessee, the AO charge to tax the entire amount u/s 69A of the Act, as unexplained income of the appellant. The AO also added of Rs. 25,801/- paid as donation by the assessee for the reasons that the same was not incurred for the purpose of business.

3. Aggrieved by the impugned Assessment Order the assessee filed an appeal before the Ld. CIT(A). During proceedings before the Ld. CIT(A), the assessee modified ground No. 1 of the appeal in view of appellant's letter dated 20/07/2010, relevant para of which read as under:-

*Sir, I repeat that I am accepting the cash seized of Rs. 12,83,000/- by the department as my income just to avoid the litigation, mental harassment & for buying peace of mind as I am widow. I also request your honor and assessing officer not to levy penalty u/s 271(1)(c) of the Income Tax Act, 1961 as special case in view of above circumstances which is normally leviable in ordinary course.”*

3.1 The Ld. CIT(A) after hearing the appellant held the excess amount of Rs. 65,000/- (Rs. 13,48,000 – 12,83,000 = 65,000/-) found during search to be an unexplained money within the meaning of section 69A of the Act. Regarding disallowance of Rs. 25,801/-, the Ld. CIT(A) issued direction to Assessing Officer to reduce the addition of Rs. 11,000/- on the ground that the assessee has produced certificates u/s 80G in respect of donations given to Seth Shree Motisha Sadharmik Bhati Kendra.

4. Still aggrieved, the appellant is in appeal before us as against the impugned order passed by the Ld. CIT(A). The appellant has challenged the impugned order on following effective grounds:-

*1. The learned CIT(A) erred in confirming the addition made by learned ACIT CC-(10), Mumbai of Rs. 65,000/- (Rupees Sixty Five Thousand Only.) without an jurisdiction & basis. The learned ACIT as well as learned CIT(A), Mumbai failed to appreciate/understand that appellant has established, beyond the doubt, that cash amount seized by the department was amount of his savings & was duly reflected in personal Balance Sheet & hence, required to be deleted.*

*2. The Learned CIT(A), Mumbai erred in confirming the addition of Rs. 14,801/- (Rs. 25801- Rs. 11,000) without any justification & basis. They failed to appreciate that the amount were petty sums full details of which along with enclosures was filed before them & was incurred wholly & exclusively for business purpose only through oversight it was claimed under the head "Donation" by mistake, hence, in the interest of natural justice the addition should be deleted.*

4.1. Before us the Ld. AR has submitted that the assessee as already offered to Rs. 12,83,000/- seized during the such operation to tax. As regards the excess of Rs. 65,000/- Ld. Counsel of the assessee stated that the amount was kept out of personal savings of earlier years of the assessee which has been reflected in books of accounts. The assessee has filed the personal capital account and balance sheet along with the return of income. Therefore, the amount has wrongly been added to the income of the assessee as unexplained income.

4.2. Regarding disallowance of Rs. 25,801/-. The Ld. Counsel inviting our attention to page 19 of the paper book, containing the details of donation to M/s Mandev jewelers and submitted that of Rs. 10,000/- was paid to Jain International Trade Organization towards the subscription of patron members because through seminars, exhibitions and other means this organization helped the members in promoting and diversifying the business activities. Other expenses of Rs. 1500+2000+201+1100 amounting to Rs. 4,801/- are small amounts which were spent for business purpose only.

4.3 The Ld. DR on the other hand relied upon the concurrent orders passed by the Assessing Officer and the Ld. CIT(A) submitted that the appeal is not devoid of merit and the same may be dismissed.

4.4. We have heard the rival contention and also perused the material place before us in the light of the contentions of the parties.

4.5. A bare reading of section 69A of the Act makes it clear that where the assessee is found in possession of any money which is not recorded in the books of account and he fails to explain about the nature and source of the same to the satisfaction of the concerned authority, the money may be deemed to be income of the assessee.

The Section reads as under:-

*“ Whether in any financial year the assessee is found to be the owner of any bullion, jewellery, or other valuable article and such money, any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullions, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed t be the income of the assessee for such financial year.”*

4.6. In the present case the assessee was found to be the owner of excess money in question which was not recorded in the books of account and the explanation offered by him was not found to be satisfactory by AO as well as the Ld. CIT(A). As pointed out by the AO during search action Shri. Navin Mody disclosed that he being

employee of M/s Aarti Jewellers, a proprietary concern of Shri. Mithalal G. Jain got the cash in question from Shri. Sudesh Kumar Mehta on sale of 1 Kg gold bar. However, he did not produce any document to substantiate the alleged deal. During post search enquiry Shri. Mithalal G. Jain and others corroborated the version of Shri. Navin Mody. Shri. Mithalal G. Jain also furnished a copy of affidavit dated 12/05/2008, submitted to the DIT(Inv) Mumbai confirming transaction of gold with the assessee through his employee Shri. Navin Mody and broker Shri. Bansilal Motilal Bohra. He also furnished the affidavits of Shri. Navin Mody and broker Shri. Bansilal Motilal Bohra in support of his version. The assessee was given opportunity to cross examine the said persons, however, the assessee did not avail the same. The assessee vide letter dated 09/11/2009 claimed that the amount in question had been kept out of his personal savings of the earlier years and the same has been reflected in the books of account. From the aforesaid facts it can safely be inferred that the money in question belonged to the assessee particularly in the light of the fact that the same had not been recorded in the books of accounts at the time of search. Under these circumstances, benefit of entries made subsequently in Capital Account Statement as on 31/03/2008 cannot be extended to hold that the assessee has discharged the burden of explaining the nature and source of acquisition of money in question to the satisfaction of the authorities concerned within the meaning of section 69A of the Act. Therefore, in our considered opinion, the findings of the Ld. CIT(A) is based on the evidence on record and as per the provisions of the law. Hence, we do not find any reason to interfere with the findings of the Ld. CIT(A).

Accordingly, the findings of the Ld. CIT(A) is upheld and this ground of the appeal of the assessee is dismissed.

4.7 As regards the second grounds of appeal of the Ld. CIT(A) has already directed the AO to reduce the addition to the extent of amount donated to Seth Shree Motisha Sadharmik Bhakti Kendra, Mumbai, i.e. Rs. 11,000/- in respect of which the assessee has produced copies of certificates u/s 80G of the Act. On the other hand explanation given by the assessee in respect of payment allegedly made to Jain International trade Organization and other donations in question are not supported by any documentary evidence, therefore, there is no reason to interfere with the findings of the Ld. CIT(A). In our considered opinion the appellant has failed to establish that the remaining amount of Rs. 14,801/- was either spent exclusively for the purpose of business or given as donations within the meaning of 80G and is not entitled for claim deduction thereof. The Ld.CIT has, therefore, rightly confirmed the disallowance to the extent of Rs. 14,801/-. We, therefore, uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal of the assessee

5. In the result appeal filed by the assessee is dismissed.

Order pronounced in the open court on 22<sup>nd</sup> January, 2016

Sd/-  
(JASON P. BOAZ)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 22/01/2016

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

Pramila