

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

ITA NO. 3628/MUM/2013 : **(A.Y : 2009-10)**

M/s. Urban Transportation Infrastructure Private Limited 1 st floor, Jai Centre, 34, P D Mello Road, Opp. Red Gate, Masjid, Mumbai 400 009. PAN : AAACS7249C (Appellant)	Vs. DCIT, CC-39, Mumbai (Respondent)
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Assessee by : **Shri Vijay Mehta**
Revenue by : **Shri S. Senthil Kumaran**

Date of Hearing : **07/06/2016**
Date of Pronouncement : **30/06/2016**

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-41, Mumbai dated 13.02.2013, pertaining to the Assessment Year 2009-10, which in turn has arisen from the order passed by the Assessing Officer dated 29.12.2010 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the solitary dispute raised by the assessee is with respect to an addition of Rs.83,00,000/- sustained by the CIT(A) on account of undisclosed/unexplained cash u/s 69A of the Act.

3. In brief, the relevant facts are that a search and seizure action u/s 132(1) of the Act was carried out on 15.3.2009 in the case of the assessee and its associates. The relevant facts for our purpose is that in the course of search cash to the extent of Rs.83,00,000/- was found and seized, which was admitted by the assessee to be unexplained. In the course of search assessee admitted that the aforesaid sum was unexplained additional income in excess of the income shown in the regular books of account and accordingly the same was to be offered for taxation. In the return of income filed subsequent to the search on 29.9.2009 for assessment year under consideration, assessee claimed that such additional income of Rs.83,00,000/- was offered for taxation. The Assessing Officer, however, concluded that the unexplained cash of Rs.83,00,000/- found at the time of search has not been offered by the assessee as its undisclosed income and, therefore, he made an addition of Rs.83,00,000/- u/s 69A of the Act on account of undisclosed/unexplained cash. On this aspect even CIT(A) has concurred with the Assessing Officer and accordingly assessee is in further appeal before us.

4. The stand of the assessee has been that it had duly declared the income of Rs.83,00,000/- in its return of income which represented unexplained cash found at the time of search. The stand of the assessee was that the entries in the books of account have been made on account of sale of agricultural produce and after netting-off the expenses, the net income of Rs.83,00,000/- has been declared, which represented the cash seized during the search. Before us as well as

before the lower authorities, the assessee referred to Note no. 5 forming part of the notes attached to Balance-sheet and Profit & Loss account which reads as under :-

“5. Income of Rs.92,01,200 from sale of agricultural produce in profit and loss account represents the amount realized on sale of standing crop etc. on the land acquired on behalf of others. The above sale proceeds as well as incidental expenses for it amounting to Rs.9,01,200 were recorded in manual cash book maintained by the Company. The net proceeds of Rs.83,00,000/- were seized during the search proceedings initiated by Income Tax authorities and deposited in the Government Treasury. This has been accounted as “Advances Recoverable in cash or in kind or for value to be received” in schedule “F” of the Balance Sheet as on 31st March 2009.”

5. The aforesaid explanation of the assessee has not been accepted by the Income-tax authorities on the ground that the said entries do not reflect unexplained/unaccounted cash of Rs.83,00,000/- found during the course of search. One of the points raised by the assessee was that the aforesaid entries on account of sale of agricultural produce was not recorded in the regular books of account but were recorded in the manual cash book maintained and it is only on the date of search, i.e. on 5.3.2009, that assessee-company made formal entries in the regular books of account declaring it as agricultural income in order to cover up the unexplained cash of Rs.83,00,000/- found during the course of search. Before us, the Id. DR has vehemently pointed out that at the time of search no explanation was rendered by the assessee of having carried out any agricultural activity and, therefore, the stated entries in the books of account cannot be said to represent unexplained cash of

Rs.83,00,000/- admitted in the course of search. In this manner, the orders of lower authorities have been sought to be defended.

6. *Per contra*, the claim of learned representative for the assessee is that the notes to account reproduced above clearly points out that the entries passed in the books of account are relatable to the cash of Rs.83,00,000/- found and seized during the course of search. In fact, it is pointed out that neither in the past and nor in the future any agricultural activity been carried out and even in the course of search there was no evidence found to suggest that any agricultural activity was carried out. Be that as it may, the learned representative contended that the methodology of passing the entries in order to incorporate the unexplained cash of Rs.83,00,000/- may not be most appropriate, but it certainly does not justify an inference that a further addition of Rs.83,00,000/- is required to be made. The learned representative pointed out that in fact in the course of search when cash of Rs.83,00,000/- was admitted as unexplained, no particular source was admitted and that the entries in question have been made only for the purposes of bringing on record such unexplained cash. It has been contended that though the entries have been made as sale of agricultural produce but no exemption has been claimed as agricultural income.

7. We have carefully considered the rival submissions. After having perused the orders of the authorities below as also the relevant portion of the statement deposed by Director of the assessee at the time of search, it clearly emerges that the assessee admitted that the cash of

Rs.83,00,000/- was unexplained and that additional income to the aforesaid extent over and above the income shown in the regular books of account would be declared. The difference between the assessee and the Revenue primarily arises as to whether the assessee has indeed offered for taxation the amount of Rs.83,00,000/- found as unexplained cash. The assessee has chosen a particular manner to declare such income in its books of account by incorporating it as net proceeds of the activity of sale of agricultural produce. In fact, the aforesaid declaration, as explained in the notes to account reproduced above, is bland and is not supported by any relevant documents, viz., agricultural land or any other evidence of agricultural activity. There is no material found in search or otherwise to show that assessee has carried out any agricultural activity. Ostensibly, the assessee claims that the said net amount of Rs.83,00,000/- represents unexplained cash seized during the course of search. The notes of account, which we reproduced above, if considered in totality, supports the stand of the assessee that apart from the amount of Rs.83,00,000/-, there is no further requirement of the assessee to declare income corresponding to the unexplained cash found during the search. If the stand of the Revenue was to be approved, then, it would be imperative to establish that assessee had earned Rs.83,00,000/- over and above the unexplained cash found during the course of search. For that matter, there is no material or evidence on record which could show that other than the cash seized of Rs.83,00,000/-, there was any other unexplained income to that extent. Though the manner in which assessee-company has offered the unexplained cash of Rs.83,00,000/- to tax in the return of

income is not in the best of the terms, yet it cannot be negated by merely cherry-picking the facts. In fact, the notes of account has to be understood *in toto* and, accordingly there cannot be any doubt that the sum of Rs.83,00,000/- declared in the return of income corresponded to the amount of cash seized during the search operation. Therefore, in our view, the lower authorities fell in error in making a further addition of Rs.83,00,000/- by invoking Sec. 69A of the Act on account of unexplained/undisclosed cash found during the search.

8. In the result, we set-aside the order of CIT(A) and direct the Assessing Officer to delete the impugned addition.

9. Resultantly, appeal of assessee is allowed, as above.

Order pronounced in the open court on 30th June, 2016.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 30th June, 2016

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai