

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "E" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Aby T. Varkey (JM)

I.T.A. No. 2977/Mum/2023 (A.Y. 2015-16)  
I.T.A. No. 2978/Mum/2023 (A.Y. 2016-17)  
I.T.A. No. 2979/Mum/2023 (A.Y. 2017-18)  
I.T.A. No. 2980/Mum/2023 (A.Y. 2018-19)  
I.T.A. No. 2981/Mum/2023 (A.Y. 2019-20)  
I.T.A. No. 2982/Mum/2023 (A.Y. 2020-21)

Shri Hasmukhlal Inderchand Ranawat 32/33 Dagina Bazar Mumbadevi Road Mumbai-400 002.  PAN : AACPR2952E (Appellant)	Vs.	DCIT, Central Circle-8(3) Mumbai.  (Respondent)
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Assessee by	Shri Rajiv Khandelwal
Department by	Shri Biswanath Das
Date of Hearing	05.02.2024
Date of Pronouncement	01.04.2024

O R D E R

PER BENCH:-

All these appeals filed by the assessee are directed against the orders passed by Ld CIT(A)-50, Mumbai and they relate to the assessment years 2015-16 to 2020-21. All these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The facts relating to the case are set out in brief. The assessee is an individual and is partner in few partnership firms and also director in few private limited companies. The revenue carried out survey operations u/s 133A of the Act on 18-10-2019 at 32/33, Dagina Bazar, Mumbai dev Road, Mumbai, where the assessee usually sits to look after business activities of his partnership firms/ Private limited companies. During the course of survey operations, physical cash of Rs.1,38,40,000/- was found with the

assessee. Since the assessee did not properly explain the sources of the same, the survey operations were converted into search action u/s 132 of the Act and the above said cash was seized. Accordingly, the AO issued notices for AY 2015-16 to 2019-20 u/s 153A of the Act and completed the assessments u/s 143(3) r.w.s 153A of the Act, wherein the AO made addition towards deemed rent in respect of a commercial property let out to M/s Avalanche Food and Beverages P Ltd, in which the assessee was a director. The assessment of AY 2020-21 was completed u/s 143(3) of the Act by making addition of seized cash balance of Rs.1.38,40,000/- as unexplained money. In the appellate proceedings, the Ld CIT(A) confirmed the additions and hence the assessee has filed these appeals.

3. We shall first take the appeals relating to AY 2015-16 to 2018-19. The Ld A.R submitted that the above said assessment years 2015-16 to 2018-19 would fall under the category of “unabated assessment years” and the only addition made in these years relates to the “deemed rent” in respect of a property held by the assessee. He submitted that the case of the assessee is that he has used that premises for his business and hence deemed rent is not assessable. However, the AO took the view that the said premises is not used by the assessee for his own business and it was used by a private limited company, in which the assessee is a director. Accordingly, the AO has proceeded to assess the deemed rent. He submitted that the said view taken by the AO is a debatable one. In any case, the said addition is not based on any seized material found during the course of search and hence the same is not sustainable. Accordingly, placing his reliance on the decision rendered by Hon’ble Supreme Court in the case of Abhishir Buildwell Pvt Ltd (Civil Appeal No.6580 of 2021 dated 24.4.2023), the Ld A.R submitted that the AO could not have made the addition. Accordingly, he submitted that the additions made in AY 2015-16 to 2018-19 is liable to be deleted on this legal ground alone.

4. We heard the Ld D.R on this legal issue. We notice that the AO has made the addition of “deemed rent”, on the basis of assessment order passed for AY 2014-15, i.e., the addition of deemed rent is not based on any incriminating material found during the course of search. It is well settled proposition of law that the addition in unabated assessments made u/s 153A of the Act could be made only on the basis of incriminating material found during the course of search. In this regard, we may refer to the decision rendered by Hon’ble Supreme Court in the case of Abhishir Buildwell Pvt Ltd (supra), wherein the Hon’ble Apex Court has summarized the legal position in respect of assessments carried u/s 153A of the Act as under:-

“13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:-

i) to iii).....

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Section 147/148 of the Act, subject to fulfillment of the conditions as envisaged/mentioned under section 147/148 of the Act and those powers are saved.”

Since the AO himself has stated that the said addition is being made on the basis of assessment order passed for AY 2014-15, it is proved shows that the said addition is not based on any incriminating material found during the course of search proceedings. Accordingly, the AO could not have made the said addition as per the decision rendered by Hon’ble Supreme Court in the above said case. Accordingly, we set aside the orders passed by Ld CIT(A) in

AY 2015-16 to 2018-19 and direct the AO to delete the addition relating to deemed rent made in these years.

6. We shall take up the appeal filed by the assessee for AY 2019-20, which falls under the category of abated assessment year. The only addition made in this year relates to the “deemed rent” in respect of a commercial property. The case of the assessee is that the above said property is used for the purpose of his business, i.e., by a company in which the assessee is a director. Hence the provisions of sec. 23(4)(b) relating to deemed rent shall not apply to it. The AO did not accept the above said contentions and accordingly determined the deemed rent at Rs.1,74,208/- calculated @ 7% of the value of building. After giving deduction of 30% u/s 24 of the Act, the AO assessed the deemed rent of Rs.1,21,946/- in the hands of the assessee. The Id CIT(A) also confirmed the same.

7. We heard the parties on this issue and perused the record. The fact remains that the assessee is holding two house properties and the assessee has not declared rent in respect of both the properties. One property is exempt as self occupied property. In respect of second property, the case of the assessee is that the same is being used for the purpose of his business and hence it cannot be taxed under the head Income from House Property. However, the AO has found that the said property is being used by a private limited company, in which the assessee is a director. In our view, the usage of property by a private limited company cannot be considered as the use of the same for the purposes of own business of the assessee. This is for the reason that the private limited company is a separate legal person and hence use of property by a legal person cannot be considered as usage by the assessee himself for his own business. Accordingly, we affirm the order passed by tax authorities on this issue.

8. We shall now take up the appeal filed by the assessee for AY 2020-21. Only dispute relates to the addition of unexplained money of Rs.1,38,40,000/- made by the AO. We noticed earlier that the survey/search officials seized physical cash of Rs.1,38,40,000/- from the premises of Shop No.33, Dagina Bazar, Mumbadevi Road, Mumbai during the course of search conducted on 18.10.2019. In the statement taken u/s 132(4) of the Act as on the date of search, the assessee stated that the above said cash belongs to him and further stated that he is not able to explain the sources of the same. Another statement was taken from the assessee u/s 132(4) of the Act on 25.11.2019, wherein also, he admitted that the above said cash belongs to him only and not to any other concerns in which he is director or partner. He also submitted in the statement that he is unable to explain the sources and his books of accounts are not updated.

9. Thereafter, the assessee retracted his statement by filing an affidavit on 26-11-2019, wherein he stated that he was forced to admit that the cash belongs to him only. He further stated in the affidavit that the above said cash actually belongs to three concerns, which are operating from the very same premises. The name of the concerns was mentioned as M/s Sanghvi Dhanrupji Devaji & Co; M/s Dhanrupji Devaji & Co and M/s Sanghvi Dhanrupji Devaji Money Changers (P) Ltd. However, the AO did not accept the retraction on the reasoning that the same is being done after expiry of one month from the date of search. In this regard, the AO placed his reliance on the decision rendered by Hon'ble Supreme Court in the case of Bannalal Jat Construction P Ltd vs. ACIT (2019)(106 taxmann.com 128)(SC). Accordingly, the AO added the above said cash of Rs.1,38,40,000/- as unexplained money in the hands of the assessee. The Ld CIT(A) also confirmed the same.

10. We heard the parties on this issue. We notice that the assessee had initially stated in the sworn statement taken u/s 132(4) of the Act that the

above said cash balance belongs to him only. The sworn statements were taken on the date of search, i.e., on 18-10-2019 and also on 25.11.2019. The assessee also stated that his books of accounts were not updated and hence he could not explain the sources. Subsequently, on 26-11-2019, the assessee retracted his statement by filing an affidavit and in that affidavit, he has stated that three more business concerns are operating from the very same premises and the cash balance belong to them only. The AO rejected the retraction on the reasoning that the assessee had admitted in the sworn statements that the cash balance belongs to him only. In this regard, the AO has taken support of the decision rendered by Hon'ble Supreme Court in the case of Bannalal Jat Construction P Ltd (supra).

11. We notice from the affidavit that the assessee has averred that he was forced by the search officials to confess that the physical cash balance found belong to him. However, the assessee did not lodge any complaint in this regard with any of the officials. Be that as it may, we notice that the assessee does not carry on any business in his individual capacity. From the copy of return of income filed by the assessee for AY 2020-11 (which is placed at pages 17 to 23 of the paper book), we notice that the assessee is a partner in the following partnership firms:-

- (a) Sanghvi Dhanrupji Devaji & Co
- (b) Shree Mumbadevi Safe Deposit Vaults
- (c) Kiran Agrico
- (d) Dev Darshan Enterprises
- (e) Diamond Destiny Enterprises.

Besides the above, the assessee is also a director in the following Private Limited Companies:-

- (a) Avalanche Food & Beverages P Ltd
- (b) Sanghvi Dhanrupji Devaji Money Changers P Ltd
- (c) Deesons Investment & Finance Pvt Ltd.

The question that arises is that, when the assessee does not carry on any business activity in his personal capacity and hence there is no scope for

generation of cash outside the books, then how the AO could presume that the assessee has generated cash outside the books of accounts?.

12. We noticed earlier that the assessee has stated that the following business concerns also carry on business from the very same premises from which the cash was seized:-

- (a) Sanghvi Dhanrupji Devaji & Co (assessee is a partner)
- (b) Dhanrupji Devaji & Co (assessee's spouse is a partner)
- (c) Sanghvi Dhanrupji Devaji Money Changers P Ltd (assessee is a director)

It is the submission of the assessee that the cash balance seized from the premises actually belongs to the above said three concerns. The assessee has also furnished the details of cash balance available with the above said three concerns as on the date of search as under:-

Name of Concern	Relationship	Cash balance as on 18.10.2019	Cash seized
Sanghvi Dhanrupji Devaji & Co	Partner	1,22,01,917	1,20,00,000
Dhanrupji Devaji & Co	Spouse is a Partner	4,55,932	3,40,000
Sanghvi Dhanrupji Devaji Money Changers P Ltd	Director	15,84,048	15,00,000
	<b>TOTAL</b>	<b>1,42,41,897</b>	<b>1,38,40,000</b>

We notice that the sworn statements were taken from the assessee on 18.10.2019 and 25.11.2019. The assessee has retracted his statement on 26.11.2019. The settled law is that the assessee is required to retract the statement at the earliest possible opportunity. On the date of search as well as on 25.11.2019, the assessee has stated that the books of accounts were not updated. Though he may be referring to his personal books, yet the fact remains that there was no scope for the assessee to generate cash outside the books of account, since the assessee does not carry on any business

activity outside the books. Since the business activities were carried on by the above said three concerns from the very same premises, the natural inference would be that the cash balance belongs to the above said three concerns only. It appears that the assessee has retracted the statement after updating the books of accounts of above said three concerns, i.e., after ascertaining correct facts about the source of cash found as on the date of search. Hence we are of the view that the assessee has retracted his statement at the earliest opportunity.

13. The settled law is that when an assessee retracts from the statement given on oath earlier, the same should be substantiated with credible evidence and materials. In the instant case, the glaring facts are that

- (a) the assessee does not carry on any business activity in his individual name and hence the possibility of generation of huge cash, which was also not commensurate with his total income could only be a distant remote possibility.
- (b) the business activities were carried on by three concerns from the very same premises.
- (c) these three concerns were having cash balance in their respective books as on the date of search.

We notice that neither the search officials nor the assessing officer could bring any material on record to show that the assessee was carrying on any activity outside the books, which could have generated cash balance. We have gone through the decision rendered by Hon'ble Supreme Court in the case of Bannalal Jat Construction (P) Ltd (supra) and we notice that the facts prevailing in that case were totally different and hence the AO was not right in placing reliance on the above said decision. In the instant case, the explanations furnished by the assessee were not at all examined by the AO, but he has arrived at his decision fully placing reliance on the statement given by the assessee u/s 132(4) of the Act. In the case of Pullangode Rubber Produce Co Ltd vs. State of Kerala (91 ITR 18)(SC), the Hon'ble



Supreme Court held that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect. In the instant case, the assessee has furnished credible evidences in order to show that his admission was not correct. In our view, the AO has rejected them without any justification.

14. In the instant case, the AO has made addition of Rs.1.38 crores as unexplained money u/s 69A of the Act. Section 69A reads as under:-

**“69A.** Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if 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, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.”

The first condition stated for invoking the provisions of sec. 69A is that **the assessee should be found to be owner of any money** etc. The second condition is that the same should not have been recorded in the books of account. The third condition is that the assessee either offers no explanation about the nature and source thereof or the explanation so offered is satisfactory in the opinion of the assessing officer. In the instant case, the assessee was found to be in possession of money at the time of search. However, the assessee could be presumed to be the owner thereof as per the legal fiction placed in sec. 132(4A) of the Act. However, the said legal presumption is a rebuttable presumption.

15. Hence the assessee is required to rebut the presumption placed u/s 132(4A) of the Act as well as u/s 69A of the Act. In our view, the assessee has rebutted the presumption under both the sections by placing evidences

to prove that the cash balances actually belong to three concerns, which were operating in the very same premises.

(a) The very fact that the above mentioned three concerns are operating from the very same premises were not rebutted by the AO.

(b) The very fact that these business concerns maintain books of account and the cash balances were available with them as on the date of search was not rebutted by the AO.

(c) The cash balances so available with these concerns were more than the cash seized from the above said premises.

All these facts combined together with the fact that the assessee did not carry on any business in his personal capacity would show that the claim of the assessee with regard to the nature and source of the cash found with him during the course of search. Hence, we are of the view that the assessee has discharged the burden placed upon his shoulders by sec.69A of the Act, whereas the AO has failed to discharge the burden shifted to his shoulder. Hence the addition of Rs.1,38,40,000/- made by the u/s 69A of the Act in AY 2020-21 is liable to be deleted. We order accordingly.

16 In the result, the appeals of the assessee for AY 2015-16 to 2018-19 and 2020-21 are allowed and the appeal of the assessee for AY 2019-20 is dismissed.

Pronounced accordingly on 1.4.2024.

Sd/-

(Aby T. Varkey)  
Judicial Member

Sd/-

(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 01/04/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT

5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

*PS*

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai