

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE,
SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1786/Del/2022
(ASSESSMENT YEAR-2018-19)**

Shri Mool Chand Aggarwal 4/654, Bomanji Road Saharanpur Uttar Pradesh-247 001 PAN-AAMPA 4753E	Vs.	Asst. CIT Central Circle-29 New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Salil Aggarwal, Sr. Adv. Sh. Madhur Aggarwal, Adv.
Respondent by	Sh. Subhra Jyoti Chakraborty, CIT- DR

Date of Hearing	17/01/2024
Date of Pronouncement	13/02/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), 23, New Delhi ["Ld. CIT(A)", for short], dated 08/06/2022 for Assessment Year 2018-19. The Grounds taken by the Assessee are as under:

“1. That having regard to the facts and circumstances of the case and in law the addition of Rs.10,68,100/- confirmed by Ld. Commissioner of Income Tax (A) is arbitrary, against law and facts on record and is not sustainable on various legal and factual grounds.

2. That on the facts and circumstances of the case and in law the learned Ld. Commissioner of Income Tax (A) while confirming the above addition arbitrarily and, mechanically rejected the explanation and evidence tendered by the appellant and made the addition by drawing subjective, premeditated and preconceived inferences therefore the same is not sustainable.

3. That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.”

2. The brief facts of the case are that, a search and seizure action u/s 132 of the Income Tax Act, 1961 ('Act' for short) was carried out in the 'SMC Group' of cases on 21/11/2017 in Financial Year 2017-18. A search warrant of authorization u/s 132 of the Act was issued and the search in the case was initiated on 21/11/2017. The assessee furnished original return of income filed u/s 139(1) of the Act before the AO declaring total income of Rs.3,18,43,450/-, the same was processed u/s 143(1) of the Act as the search was initiated in the case of the assessee. The case was picked up for 'compulsory scrutiny' and notice under section 143(2) of the Act was issued. The assessment order came to be passed u/s 143(3) r.w.s 153A of the Act by computing the income of the of the assessee at Rs.3,32,61,550/- as against the return income of the

assessee at Rs.3,18,43,450/- by making an addition of Rs.14,18,100/- u/s 69A of the Act in respect of the cash found during the search.

3. Aggrieved by the assessment order dated 30/12/2019, the assessee preferred the appeal before the Ld. CIT(A) and the Ld. CIT(A) vide order dated 08/06/2022 confirmed the partial addition of Rs.10,68,100/-. As against the order of the Ld. CIT(A) dated 08/06/2022, the assessee preferred the present appeal on the ground mentioned above.

4. The Ld. Counsel for the submitted that, the panchnama has been drawn in respect of the alleged cash found during the search in the name of the assessee, Sh. Mool Chand Aggarwal and the family members of the Aggarwal family. The location of the cash found seized at B-42, G K -I, New Delhi which is the residential address of the Assessee's family members. The above cash found during the search amounting to Rs.14,18,110/- belongs to assessee and his family members and the cash found during the course of search was available in the cash book of the assessee and his family

members which has been made available to the AO. The AO while passing the assessment order erroneously made the addition observing that the assessee failed to reconcile the cash found during the search and the Ld. Counsel submitted that the addition has been made with the erroneous findings without considering the cash book produced by the assessee and other details. Therefore, submitted that the order of the Ld. CIT(A) confirming the assessment order is bad in law.

5. Per contra, the Ld. DR submitted that the cash book produced by the assessee is an afterthought and maintaining of cash book is not mandatory for the individual, therefore, the assessee cannot rely on such document. Ld. DR relying on the findings and conclusion of the lower authorities sought for dismissal of the appeal.

6. We have heard the parties and perused the materials on record. It is not in disputed that during the course of search and seizure operation, cash of Rs.14,18,100/- was found at B-42, G.K. Part-1, New Delhi. On the panchnama placed at page No. 68, the Assessee's name along with Subhash Chand Aggarwal and other

family member's name written but the addition has been made only in the name of the assessee. During the assessment proceedings, the assessee has produced cash book and contended that the cash found during search and seizure action was belongs to his 24 family members which is reproduced as under:

S. No.	Party Name	Address	Cash in hand
1	Poonam Garg	New Delhi	6495
2	Mithlesh Aggarwal	Saharanpur	32677
3	Shelly Aggarwal	Saharanpur	103223
4	Amit Aggarwal & Sons	Saharanpur	3054
5	Anuraq Aggarwal & Sons	Saharanpur	484
6	Anurao Aggarwal	Saharanpur	75868
7	MC Aggarwal	Saharanpur	175202
8	Sandeep Aggarwal	Saharanpur	30159
9	Shweta Aggarwal	Saharanpur	252005
10	Chander Prakash Aggarwal	Saharanpur	57464
11	Laxmi Rani	Saharanpur	32538
12	C.P Aggarwal & Sons	Saharanpur	16981
13	Sarita Aggarwal	Saharanpur	12369
14	Siddharth Aggarwal	Saharanpur	16112
15	Akshay Aggarwal	Saharanpur	99416
16	Ankita Aggarwal	New Delhi	4064
17	Sushila Rani	Saharanpur	4405
18	Vrinda Aggarwal	Saharanpur	673
19	S.C Aggarwal	Saharanpur	76190
20	S.C Aggarwal & Sons	Saharanpur	22573
21	Saniay Aggarwal	Saharanpur	71114
22	Saniay Aggarwal & Sons	Saharanpur	32669
23	Shubhra Aggarwal	Saharanpur	3608
24	Konark Ispat Ltd.	New Delhi	302462

The said cash book has not been disputed or controverted by the AO. The AO has not even doubted that the names reflected in the cash book are not the family members of the assessee or who are not residing under the same roof. Further, the Ld. CIT(A) has

disbelieved the cash book only on the ground that 'generally individuals do not maintain cash book and it is not mandatory to maintain cash book for the individual'. The Ld. CIT(A) without any basis observed that the cash book was created to explain the unaccounted cash found and seized during the course of the search. But the Ld. CIT(A) treated that the amount of Rs.3,50,000/- as explained on the estimated basis and confirmed the rest of the addition of Rs.10,68,100/-. In our considered opinion, the findings given by the CIT(A) on the cash book is baseless and perverse. The assessee having been produced the cash book and explained the cash found during the search and seizure operation contending that the cash found during the search are belongs to family members and considering the fact that even the Panchnama drawn during the search proceedings containing the names of the Assessee and other family members and the A.O. who has examined the cash book has not found fault on the same on the merit of it, in our considered opinion, the authorities have committed error in making/sustaining the addition. Accordingly,

the Ground No.1 of the assessee is allowed and the addition made by the A.O. which was sustained by the CIT(A) is hereby deleted.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in open Court on 13th February, 2024.

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Dated: 13/02/2024

Pk/R.N Sr.ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI