

**IN THE INCOME TAX APPELLATE TRIBUNAL “PATNA” BENCH: PATNA
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

**I.T.A. No. 50/PAT/2020
Assessment Year: 2017-18**

ACIT, CC-2, Patna	Vs.	Shri Nitesh Kumar (PAN: ANWPK 0340 C)
Appellant (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	31.07.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri Giridhar Dheliya, CA
For the Respondent/ राजस्व की ओर से	Smt. Rinku Singh, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the revenue against the order of the Ld. Ld. Commissioner of Income Tax (Appeal)-3, Patna (hereinafter referred to as the Ld. CIT(A)”) dated 19.03.2020 for the AY 2017-18.

2. The only issue raised by the revenue in the various grounds of appeal is against the deletion of addition of Rs. 1,05,58,500/- by the Ld. CIT(A) as made by the AO u/s 69A of the Act on account of unexplained money.

3. Facts in brief are that Shri Nitesh Kumar, proprietor of Hari Om Textiles was intercepted by RPF post, ECR, Danapur, Patna on 13.11.2016 along with three other persons namely Shri Santosh Kumar Saw, s/o Shri Shiv Kumar Saw, Smt. Malti Devi, W/o Shri Santosh Kumar Saw and Smt. Soni Kumari w/o Shri Vijay Kumar with money amounting to Rs. 1,05,58,500/-. The warrant of requisition u/s 132A of the Act dated 16.11.2017 was executed. Shri Santosh Kumar Saw was working as a salesman in the shop of Shri Nitesh Kumar situated at 2nd Floor, Rajdhani Market, Dariyapur, Patna which runs in the name and style of M/s Hari Om Textiles. The assessee filed return of income on 30.03.2018 u/s 139(4) of the Act declaring income of Rs. 13,86,480/- which has taken up for compulsory scrutiny in accordance with CBDT instruction no. 4/2016 by issuing notice u/s 143(2) of the Act. The AO observed that that cash was seized from these three individuals in the denomination of Rs. 500/- and Rs. 1000/- notes which could not be explained by them in their statement recorded in the police station at Patna. Shri Sontosh Kumar Saw stated the cash seized of Rs. 1,05,58,000/- belonged to his employer Shri Nitesh Kumar proprietor of M/s Hari Om Textiles which was also accepted by Shri Nitesh Kumar that the cash seized belonged to him. Accordingly during the assessment proceedings, the assessee was asked to explain the source of demonetized currency notes with supporting evidences which was replied by the assessee by furnishing documents before the AO. The reply of the assessee did not find favour with the AO and he added the entire amount of cash seized u/s 69A of the Act to the income of the assessee in the assessment framed u/s 143(3) of the Act dated 28.12.2018.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee after taking into account the contentions and evidences furnished by the assessee by observing and holding as under:

"I have carefully considered the findings of the AO and the submission of the appellant alongwith paper book placed on record. The undisputed fact is that the appellant is, engaged in the business of retail trading of sarees through- his proprietary concern M/s.Hari Om Textiles. The appellant is maintaining regular books of accounts and the same are audited u/s.44AB of the Act and the assessee is regularly assessed to tax. The appellant alongwith three of his staff namely Shri Santosh Kumar Saw, Smt. Malti Devi and Smt Soni Kumari who

were carrying demonetized currency notes amounting to Rs. 1,05,58,500/- and about to board a Surat bound train were intercepted by RPF Post, ECR, Danapur, Patna on 13.11.2016. The , said cash was subsequently requisitioned and seized U/s.132A/ 132 .of the Act. Accordingly, during the course of assessment proceeding, the AO asked the assessee to explain the source of demonetized currency of Rs. 1,05,58,500/- found and seized along with supporting evidence. However, the AO having not satisfied with the explanation of the assessee treated Rs. 1,05,58,500/-as unexplained money u/s.69A of the Act and also taxed the same u/s. 115BBE of the Act.

4.3.2 On the other hand the appellant submitted that the seized cash belongs to the appellant's business and duly recorded in its books of account which fact was also admitted during the search and post search proceeding / statement. The appellant also drew my attention to the fact that sales bills supporting the cash on hand were also seized during the search vide annexure to panchnama marked as HO-'12 to HO 18. The appellant submitted that the cash on hand as on 13.11.2016 was stood at Rs. 1,09,33,806/-. The appellant also submitted that having substantial cash on hand is not unusual to his line of business and accordingly by filing paper book demonstrated that the cash on hand as per audited books of account as on 13.11.2014 was Rs.1,58,71,231/-; as on 13.11.2015 was Rs.88,54,668/- and as on 13.11.2016 was Rs. 1,09,33,806/-. The appellant also brought to my notice that the AO passed assessment orders u/s. 153A/143(3) for A.Y.2011-12 to 2016-17 accepting the returned incomes and has not pointed out any defect in the audited books of account. The appellant further submitted that during the assessment proceeding, he has submitted all the ledger account of purchase and sales alongwith cash book & bank book and the AO without pointing out any defect or rejecting the books of account has arbitrarily treated the seized cash as unexplained money u/s.69A even though sec.69A is not applicable to the facts of the appellant's case. The appellant further brought to my notice that as per the standard operating procedures for 'Operation Clean money' issued by CBDT, the AO has not found any discrepancies or brought the same on record. Accordingly , the appellant prayed for deletion of the addition.

4.3.3. On a careful consideration I find considerable force in the submission of the appellant. It is a fact that the appellant made total sales of Rs. 3,59,78,841/- during the period 23.09.2016 to 09.11.2016 and the said sale bills were seized by the department vide annexure marked as HO-12 to HO-18. Further on perusal of cash books as on 13.11.2016 the appellant is having a cash balance of Rs. 1,09,33,806/- and having cash balance is not unusual for the year under consideration as the appellant had also had sufficient cash balances in earlier years. Further it is also a fact that in spite of producing audited books of accounts along with underlying bills the AO neither pointed out any defects nor rejected the books nor cast any doubts with regard to purchase and sales. It is further seen that the AO has not found any discrepancy or deviation as set out in the standard operating procedures for 'Operation Clean money' issued by CBDT and instead arbitrarily rejected the claim/submission of the appellant. Further, the AO erred in treating cash found as unexplained money u/s 69A of the Act. On a plain reading of Section 69A following conditions must be fulfilled for invoking section 69A of the Act.

1. Assessee is found to be owner of any money, bullion, jewellery etc.
2. Such money is not recorded in the books of accounts, if any maintained by him for any source of income, And
3. Assessee offers no explanation is found not satisfactory by AO.

Hence, Section 69A can be invoked only when the assessee has not recorded such money in his books of accounts then no explanation is required to be offered for the purpose of Section

69A. Addition u/s 69A can be made only when such money is not recorded in the books of account and not offered satisfactory reply. In the instant case the appellant is maintaining regular books of account as per Section 44AA and the money found and seized is recorded in the books of account and therefore there is no applicability of Section 69A in the case of the appellant. Further under similar circumstances of cash found and/or deposited during demonetization period the Hon'ble ITAT, Delhi in the case of Agson Global Pvt. Ltd. vs. ACIT arising out of ITA No. 3741 to 3746/DEL/2019 has observed at page 119 that "On analysis of sales..... thus in the year of demonetization, percentage increase in sales was less than earlier year. Growth in sales compared to earlier two years in case of the assessee showed similar trend. Thus, it cannot be said that assessee had booked non-existing sales in its books post demonetization." Further the Hon'ble Bench in para vii at page no. 121 has observed that "..... Such books of accounts are audited, quantitative records produced before the tax auditor, such quantitative records are certified by tax audit and no questions have been raised by the assessing officer. Thus, it cannot be said that the figures of sales and purchases are not supported by the quantity details."

4.3.4. In view of the above discussion I hold that the cash found and seized is properly accounted in the books of account and accordingly the AO is directed to delete the addition made of Rs. 1,05,58,500/- u/s 69A of the Act."

5. The ld. D.R while arguing the case before us submitted that the order passed by the Ld. CIT(A) is devoid of any rationale and justification in deletion the addition made by the AO in respect of cash seized during the course of interception by RPF post, ECR, Danapur, Patna on 13.11.2016 from the assessee along with three other persons namely Shri Santosh Kumar Saw, Smt. Malti Devi, and Smt. Soni Kumari as stated hereinabove. The Ld. D.R submitted that during the course of recording of statement u/s 131(IA) of the Act on 15.11.2016 the assessee could not explain the source and nature of the cash. The Ld. D.R submitted that the cash flow statement prepared is not in reconciliation with the seized documents, copies of which are placed at page 7 to 71 of PB. The Ld. D.R also submitted that though the assessee has furnished a cash flow produced before the first appellate authority but as a matter of fact the same was never produced before the AO although ledger copy of bank account and bank book were placed on record. The Ld. CIT(A) has allowed the appeal of the assessee without examination and verification of sales bills seized during the search and seizure action and even no assessment records were called for from the AO for reconciliation of sale bills with the cash book. The Ld. D.R referred to the cash book filed at page 15 to 19 which showed that cash of Rs. 16,47,835/-only but the cash memos seized on 13.11.2016 showed cash sales of Rs. 34,85,170/-. The ld DR

submitted that only 16,47,835/- was accounted for in the books of account of assessee which showed that the cash book as relied by the Ld. CIT(A) was full of defects, anomalies and infirmities. The Ld. D.R also submitted that in some cases the excess cash has been shown on three dates namely on 04.11.2016 of Rs. 1,10,363/-, on 05.11.2016 of Rs. 1,20,369/- and 07.11.2016 of Rs. 1,14,613/- but the cash accounted for sans reference of any voucher date or reference of the seized cash memos etc. The Ld. CIT DR therefore submitted that the documents relied by the Ld. CIT(A) in the form of cash book was not examined properly and the Ld. CIT(A) has accepted the new documents/evidences without calling for the remand report from the AO which is again in violation of natural justice and therefore even on this ground the appeal needs to be restored to the file of AO.

6. The Ld. A. R strongly refuted charged leveled by the Ld. CIT DR and submitted that the books and documents were submitted before the AO in the assessment proceedings. The Ld. A.R drew our attention to the Bench to the written submissions dated 14.09.2018 filed before the AO a copy of which is available at page 30 which is a true copy certified by the office of ACIT who framed the assessment order which stated that the assessee has produced the statement of bank account, audited financial accounts, books of account before the AO. It was also stated that the documents and records seized by the Investigation Wing were available with the department and all these transactions as shown in the seized documents were found duly reflected in the audited financial accounts of the assessee. Therefore, the allegation of the Ld. CIT DR that the cash books was not before the AO is a presumption which is against the facts on record. The Ld. A.R stated that the AO has passed a very cryptic order without looking into the details/evidences available and furnished by the assessee. The Ld. A.R further submitted by referring to page 19 which is the CBDT circular vide No. F. No. 286/98/2013-IT(INV.II) dated 18.12.2014 wherein the CBDT has dealt with the cases of undisclosed income during the course of survey/search when no corroborating materials are available or disclosure made during search/survey are retracted for the want of corroborating materials. The Ld. A.R

further contended that the AO has not disputed that Shri Nitesh Kumar was not carrying on any business of textile trading. Whereas while referring page 20 of PB submitted that the comparative details for four assessment years i.e. AY 2015-16 to 2019-20 wherein the gross profit, cash at bank, closing stocks, GP ratio and NP ratio were mentioned. The Ld. A.R also drew our attention to the cash in hand at various dates during the financial year which were Rs. 1,58,71,231.64 on 13.11.2014, Rs. 88,54,668.00 on 13.11.2015, Rs. 1,09,33,806.00 on 13.11.2016, Rs. 8,51,397.32 on 13.11.2017 and Rs. 10,85,140.74 on 13.11.2018. The Ld. A.R further submitted that the cash carried by the assessee along with three persons was in fact belonged to the assessee and it is because of the nature of business the assessee used to carry sufficient balance in hand. Similarly the Ld. A.R drew the attention to the Bench to the sales made by the assessee during these respective financial years which were in crores and during AY 2016-17 the sales were Rs. 7,47,39,511.00/- whereas the last assessment year i.e. AY 2018-19 the sales were Rs. 3,04,59,994.50. Besides the GP rate was also consistent and therefore claim of the Ld. CIT DR that books were not audited is wrong because books of accounts of the assessee were duly audited and thus the arguments of the Ld CIT DR were wrong and against the facts on record. The Ld. A.R stated that the cases of the assessee during the said assessment years were selected for scrutiny and assessments were framed u/s 153C read with Section 153A/143(3) of the Act which are available and filed at page 23 to 31 of PB for AY 2011-12 to 2015-16. Therefore to say that the assessee's cases were not done under scrutiny was purely a guess of the Ld CIT DR . The Ld. A.R further argued that if at all there is any difference in the sales bills which were recovered and seized during the search vis a vis cash book, the differential amount could have been added but instead of doing any meaningful verification the AO straightaway added the entire amount on the basis of statement given by the person u/s 131(IA) of the Act carrying the cash which is in violation of Circular vide No. F. No. 286/98/2013-IT(INV.II) dated 18.12.2014 . The Ld. A.R therefore prayed that the Ld. CIT(A) has considered all these evidences and only after appreciating these evidences have allowed the appeal of the assessee by

directing the AO to delete the addition by recording a specific finding that the assessee has duly maintained cash book accounting for all the bills.

7. We have heard the rival contentions and perused the material on record. The undisputed facts are that Shri Nitesh Kumar, proprietor of Hari Om Textiles was intercepted by RPF post, ECR, Danapur, Patna on 13.11.2016 along with three other persons namely Shri Santosh Kumar Saw, s/o Shri Shiv Kumar Saw, Smt. Malti Devi, W/o Shri Santosh Kumar Saw and Smt. Soni Kumari w/o Shri Vijay Kumar with money amounting to Rs. 1,05,58,500/-. Thereafter the team of income tax requisitioned the cash along with the documents and warrant of requisition u/s 132A of the Act dated 16.11.2017 was executed which are available at page 7 to 71 in the revenue's paper book. The statements of assessee were also recorded on three occasion and copies are available at page 72 to 75, 76 to 78 and 79 to 90. In the statements recorded the assessee stated the cash belonged to the business of the assessee representing the sales of goods/textiles by the assessee in the normal course of business and this cash was deposited in the bank and utilized to repay the creditors and suppliers. Pertinent to note that the assessee was engaged in the business of dealing in textiles/sarrees in the proprietary concern namely M/S Hari Om Textiles and the books of accounts were subjected to audits u/s 44AB of the Act in all the preceding assessment years. We note that as per written submission dated 14.09.2018 the assessee has filed before the AO all the details, evidences comprising books of account, statement of bank account, audited financial accounts, audited report etc. The said reply of the assessee is certified by ACIT, Central Circle-2, Patna meaning thereby that the reply of the assessee was obtained from the departmental assessment folder. Though the Ld. CIT DR has noted that there was some discrepancies while accounting for the sale bills as recovered from Shri Nitesh Kumar during the interception but the fact remains that the substantial part of the cash was also stated to be recorded by assessing books of account that there was certain mistakes and anomalies only. In our opinion, it is not justified mere on the basis that there was some defects in the books of accounts of the assessee the AO should be given second round

when Id CIT(A) has given a clearcut findings in the appellate order. The Ld. CIT(A) has also examined that the cash book as well as seized documents in the form of sales bills in the alleged book, the written submissions and explanation of assessee and only thereafter passed a very detailed, speaking and reasoned order directing the AO to delete the addition. We do not find any reasons or occasion to deviate from the conclusion recorded by the Ld. CIT(A). Consequently, we are inclined to uphold the order passed by the Ld. CIT(A) by dismissing the appeal of the revenue.

8. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 9th October, 2024

Sd/-
 (Pradip Kumar Choubey / प्रदीप कुमार चौबे)
 Judicial Member/न्यायिक सदस्य

Sd/-
 (Rajesh Kumar/राजेश कुमार)
 Accountant Member/लेखा सदस्य

Dated: 9th October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, Central Circle-2, Patna
2. Respondent – Shri Nitesh Kumar, Prop. Hari Om Textiles, Rajdhani Market, Dariyapur, Patna, Bihar.
3. Ld. CIT(A)-3, Patna
4. Pr. CIT- , Patna
5. DR, Patna Bench, Patna

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata