

**IN THE INCOME TAX APPELLATE TRIBUNAL, ‘D’ BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS. PADMAVATHY S., ACCOUNTANT MEMBER**

**ITA No.163/Mum/2023
(Assessment Year :2019-20)**

Ramchandra Kanu Mendadkar 38/A OM Vedant, Kamgar Nagar, S.G. Barve Marg, Kulra, Mumbai.	Vs.	CIT(Appeals) Mumbai.
PAN/GIR No. AGAPM 6825 B		
(Appellant)	..	(Respondent)

Assessee by	Shri Dipesh Poptani
Revenue by	Smt. Mahita Nair, (Sr. AR-CIT)
Date of Hearing	04/05/2023
Date of Pronouncement	12 /05/2023

आदेश / ORDER

PER PADMAVATHY S. (A.M):

This appeal is against the order of learned Commissioner of Income Tax (Appeals)-48, Mumbai [hereinafter referred to ‘CIT(A)’] dated 08.12.2022 for the assessment year 2019-20.

2. The assessee has raised following grounds of appeal:-

- “1. Ld. CIT(A) has decided appeal with a closed mind & without considering facts and circumstances of the case.*
- 2. Ld. CIT(A) has erred to disbelieve the confirmation of Appellants’ client, Mr. Sagun Naik having deposited cash of Rs. 6,00,000/- with Appellant for his matter in Supreme Court.*
- 3. Ld. CIT(A) cannot demand explanation of source of the amount received from Mr. Sagun Naik.*

4. *Ld. CIT(A) has disbelieved receipt of Rs. 16,90,000/- during July, 2018 in comparison to total receipts of Rs. 50,40,000/- during FY 2018-19 only on the basis of surmises.*
5. *Ld. CIT(A) has erred to disbelieve the possession of Cash of Rs. 16,00,000/- in July 2018 in cash summary & raised objections of not transferring it digitally only due to assumptions and surmises.*
6. *Appellant's explanation for possessing cash and evidences in support of attending matters in Supreme Court have been ignored and glossed over without considering the merit in the case.*
7. *The amount received by the Appellant from Mr. Biren Limbachiya Rs. 140 Lacs was duly accounted for in the audited books of account and hence, section 69A cannot be invoked for the same.*
8. *Appellant craves leave to add, order and delete any or all the grounds of Appeal."*

3. The assessee is a practicing Advocate appearing in various Courts in and around Mumbai representing his clients in various streams of litigation for more than 35 years. The assessee has maintained regular books of accounts which are audited u/s 44AB of the Income Tax Act ('Act'). The assessee filed the return of income for assessment year 2019-20 on 30.09.2019 declaring income of Rs. 41,26,500/-. The assessee on 16.07.2018 was travelling by Vistara Airlines from Mumbai to Delhi to attend two matters in Hon'ble Supreme Court listed on 17.07.2018. At the airport, the assessee was intercepted and was searched. During the search proceedings the Officer found currency of note of Rs. 16,00,000/- and the same was recorded punchnamma. The summons U/s 131(A) of the Act was issued to the assessee for recording statement in respect of seizure of cash of Rs. 16,00,000/-. The assessee submitted that on instruction from his client Shri Biren Limbachiya and Shri Sagun Naik the assessee was to engage the senior counsel with the help of Advocate on records of the Hon'ble Supreme Court Mr. Sudhanshu Choudhari. There was a requirement by above mentioned Advocate on record that the assessee shall pay a fees of Rs. 16,00,000/- in cash to him to engage the Senior Counsel

to argue the cases of the assessee client. The assessee further submitted that the amount of Rs. 16,00,000/- included fees of Rs. 10,00,000/- paid by his client Mr. Biren Limbachiya through various cheques from time to time and Rs. 6,00,000/- fees were paid by Shri Sagun Naik of which Rs. 25,000/- Is through cheque and Rs. 5,75,000/- by cash on various dates. The assessee submitted before the authorities that all these transactions were properly recorded in his books of accounts regularly maintained which are subject to statutory audited u/s 44AB of the Act. It was further submitted that the amounts were received during the course of his profession and see relate to any undisclosed income. A notice u/s 143(2) of the Act was issued and the assessee reiterated the submission made before the ADIT-Investigation to the Assessing Officer.

4. Before the Assessing Officer the assessee filed the confirmation letter from Mr. Sagan Naik. The assessee also filed statement of clients register with details of fees paid by them during the year under consideration. The assessee also filed statement of profession fee received from Shri Biren Limbachiya and also the statement of cash withdrawals. The assessing officer after considering the various details filed by the assessee held that:-

“7.19 Regarding the confirmation letter stating that Shri Sagun Naik had given a cash of Rs. 6,00,000 from 03.04.2018 to 15.07.2018 to the assessee, on various dates, it is stated that there is no justification as to why Shri Sagun Naik had given such a big amount of cash of Rs. 5,10,000 to the assessee in the month of July, 2018. However, no details regarding the income of Shri Sagun Naik, his ITR, cash in hand available as on date have been filed. It is also stated that under the normal circumstances, the assessee had admitted that the cash received by him as professional fees is deposited in the bank account immediately, either on the same day or the day after. There is no logic in keeping the cash received by the assessee till 16.07.2018 and that the amount of Rs. 16,00,000 found in possession of the assessee, is an amount other than the Cash given by Shri Sagun Naik. Hence, this contention of the assessee is kindly not accepted.

7.20 It is also seen that out of the total cash of Rs. 50,40,000 received in the FY 2018-19 pertaining to the AY 2019-20, an amount of Rs. 16,90,000 alone has been received in the month of July, 2018, which is not justifiable. It is also stated that under the normal circumstances, the assessee had admitted that the cash received by him as professional fees is deposited in the bank account immediately, either on the same day or the day after. There is no logic in keeping the cash received by the assessee till 16.07.2018 and that the amount of Rs. 16,00,000 found in possession of the assessee, is an amount other than the Total Cash received. Hence, this contention of the assessee is kindly not accepted.

7.21 Regarding statement of Cash Withdrawals for the period 16.04.2018 to 16.07.2018 of Rs. 12,75,000, it is stated that it is highly improbable for the assessee to have kept this total cash with him just to use it in the month of July, 2018 without incurring any other expenditure out of this cash and that the amount of Rs. 16,00,000 found in possession of the assessee, is an amount other than the Cash Withdrawals. Hence, this contention of the assessee is kindly not accepted.

7.22 It is also stated that there is no logic in carrying a big amount of cash of Rs. 16,00,000 to New Delhi just to engage the Senior Counsel in the cases of his clients. If all of the assessee's income is accounted for, a transaction involving an amount of Rs. 16,00,000 could easily have been carried out through the banking channel such as NEFT/RTGS or even through a Cheque or a DD. Thus, there is no justification to give such an amount of cash to the Senior Advocate Shri Sudhanshu S Choudhary to enable him to engage the Senior Counsel for appearing in the matters of his clients and that the amount of Rs. 16,00,000 found in possession of the assessee, is unexplained. In the light of the above the contention of the assessee is also not accepted.

Conclusion and Addition

7.23 Thus, had the Search not been conducted, this amount of Rs. 16,00,000 would not have been brought to tax and would surely have escaped assessment.

7.24 In the light of the above mentioned facts, it is clear that the assessee is found to be the owner of money of Rs. 16,00,000 which has not been recorded in the books of accounts and that the explanation offered by the

assessee is not satisfactory and hence the cash carried by the assessee is unexplained and is therefore added u/s 69 A of the Act as Unexplained Money.”

5. Aggrieved the assessee filed further appeal before the Id. CIT(A). The Id. CIT(A) upheld the addition stated that the statement of the assessee is dissatisfactory as in this return digital world no one would transact such a huge amount in cash when the transaction of funds through banking channel is very easy Smooth and time saving.

6. Aggrieved the assessee is in appeal before the Tribunal.

7. The Id. AR submitted that with regard to amount received from Shri Sagun Naik the assessee has given the date wise breakup of receipt of fees in cash which would tie up with the cash book and the ledger accounts of professional fees. The Id. AR further submitted that Mr. Sagun Naik has confirmed having made this payment and the same along with his PAN Number and other details were already submitted before the lower authorities. With regard to amount received from Shri Biren Limbachiya the Id. AR submitted entire amount of fees is received in cheque and has been properly accountants in the books of accounts. The Id. AR further submitted that the assessee had withdrawn cash on various dates prior to travel Delhi which can be evidenced from the bank statement and the cash books that are submitted before the lower authorities. The Id. AR also submitted that both these amounts have been included in the professional fee income of the assessee and have been included in the taxable income. It is therefore, submitted that the same cannot be treated as undisclosed income.

8. The Id. DR on the other hand submitted that the assessee has carried the cash balance of Rs. 16,00,000/- which could not be reconciled with the cash withdrawals and receipt of professional fee in cash book and therefore the lower authorities are correct in treating the same undisclosed.

9. We have heard both the parties and perused the material available on record. To recapitulate the fact that the submission of the assessee is that he carried a cash balance of Rs. 16,00,000/- in order to pay the Senior Counsel in Delhi where the case of his clients are listed before the Hon'ble Supreme Court. The assessee further submitted that the source for the cash is from the professional fees which have been counted in the books of accounts. On perusal of records we notice that the assessee has submitted the cash book, bank statement and ledger copy of professional fees etc. before the lower authorities. It is also noticed the date wise breakup of fee received in cash from Mr. Sagun Naik and the receipt of professional fee in cheque from Mr. Biren Limbachiya have also been submitted before the lower authorities. The details submitted by the assessee before the lower authorities is extracted herein below:-

Fees from Mr. Sagun Naik

Date	Cash receipt
03-Apr-18	65,000
05-Jun-18	1,00,000
02-Jul-18	50,000
05-Jul-18	1,00,000
08-Jul-18	1,00,000
10-Jul-18	50,000
14-Jul-18	1,00,000
15-Jul-18	10,000
Total	5,75,000

Fees from Mr.Biren Limbachiya

Date	Cheque receipt
10-Apr-18	2,00,000
13-Apr-18	2,00,000
16-Apr-18	2,00,000
18-Apr-18	2,00,000
19-Apr-18	2,00,000
26-Apr-18	2,00,000
26-Apr-18	2,00,000
26-Apr-18	2,00,000
26-Apr-18	1,00,000
Total	17,00,000

10. On perusal of the ledger account of the professional fees (page 68 to 76 of paper book), we notice that the above amounts have been accounted in the ledger as income. During the course of hearing, the Id. DR submitted that the cash book is not reliable and drew our attention to certain pages in the cash book (page 57 of the paper book) where while recording the transactions on 02.07.2018 it is mentioned as “professional fee received in cash deposited into Bank received from Sagun Naik”. The Id. DR argued that there is no subsequent deposit in the bank and the Id. DR further drew our attention to couple of more entries such entries to submit that the cash book is not reliable. The Id. AR argued that the narration cannot be taken as the deciding factor, The Id AR submitted that these entries towards professional fees have been disclosed as received in cash and have been offered to tax as income. The Id. AR in this regard drew out attention to the ledger account of professional fees received (page 68 to 76 in the paper book) to submit that the impugned in transactions are reconciling to the

entries in the professional fees ledger account which would substantiate that the same is already forming part of the taxable income of the assessee. We also notice on perusal of records that the cash balance of the assessee as on the date of confiscation was Rs. 19,81,403/- (page 58 in the paper book). Further the submission that assessee has been periodically withdrawing money from the bank account in cash is also substantiated from the entries in the bank statement (page 59 to 66 of paper book). From the perusal of these facts we see merit in the submissions of the Id. AR that the source for Rs. 16,00,000/- confirmed from the assessee is from his professional income and therefore cannot be treated as unexplained. Before the proceeding further we look at the provisions of Section 69A is extracted as under:-

“ 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.”

From the plain reading of the above provisions it is clear that the addition under section 69A could be made if the assessee is found to be the owner of money that is not recorded in the books of account and the assessee is not offering explanation about the source of money. In assessee's case we notice that the assessee has recorded the impugned amount in the books of account and has also offered the same to tax by including the it as professional fees. In view of these discussions and considering the facts of

the present case, we are of the view that the amount cannot be treated as unexplained and therefore we delete the addition u/s 69A of the Act.

11. In the result, the appeal of the assessee is allowed.

Order pronounced on 12/05 /2023 in the open court.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PADMAVATHY S.)
ACCOUNTANT MEMBER

Mumbai; Dated 12/05/2023
Santosh, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar)

(Sr. Private Secretary /

ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	08/05/2022		Sr.PS
2.	Draft placed before author	09/05/2023		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM

4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on	12.05.23		Sr.PS
7.	File sent to the Bench Clerk	12.05.2023		Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		