

\$~12

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision : 28.10.2024

+

ITA 798/2023

ANUJ SOOD

.....Petitioner

Through: Mr Prakash Shah, Mr Mihir
Deshmukh, Mr Rajat Mittal and Mr
Suprateek Neogi, Advocates.

versus

PCIT (CENTRAL-1), NEW DELHI & ANR.

.....Respondents

Through: Mr. Aseem Chawla, SSC with Ms.
Pratishtha Chaudhary, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

1. The appellant (hereafter *the assessee*) has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 24.07.2023 passed by the learned Income Tax Appellate Tribunal (hereafter *the learned ITAT*) in I.T.A. No.288/Del/2021 in respect of assessment year (AY) 2018-19. In terms of the impugned order, the learned ITAT had rejected the assessee's appeal against an order passed by the Commissioner of Income Tax (Appeals)-24 [hereafter *the learned CIT(A)*] on 02.02.2021 whereby the assessee's appeal under

Section 246 of the Act impugning the assessment order dated 31.12.2019 was rejected.

2. The assessee had furnished his original return of income under Section 139 of the Act on 05.11.2018, declaring total income of ₹4,72,07,120/-. A search and seizure action under Section 132 of the Act was conducted in respect of Jagat/Sood group on 31.01.2018. Pursuant thereto, an authorization for search under Section 132 of the Act was issued with respect to the assessee. It is contended that during the course of search, cash amount of ₹73,10,000/- was seized from the premises of the assessee. A show cause notice under Section 153C read with Section 143(3) of the Act, dated 13.12.2019, was served upon the assessee to explain as to why cash seized should not be considered as his undisclosed income for the AY 2018-19. In response to the notice, the assessee filed a reply explaining the source of cash, as is indicated below:

S.No.	Name	Amounts	Source of cash
1	Sh. Anuj Sood	4,04,269/-	Cash saving
		₹35,89,900/-	Income of the current year

3. The Assessing Officer (hereafter *the* AO) passed the order dated 31.12.2019 under Section 143(3) of the Act holding that the assessee has disclosed only ₹35,89,900/- as cash income in the income tax return for the AY 2018-19 and the source of rest amount of cash of ₹37,20,100/- was not substantiated by any supporting documents despite the assessee having been given sufficient opportunities. Therefore, it was concluded by the AO

that the assessee has failed to discharge his onus to justify the source of cash seized from the premises. Accordingly, the cash amount of ₹37,20,100/- seized from the premises of the assessee was considered to be the unexplained income of the assessee under Section 69A read with Section 115BBE of the Act. Therefore, the income was assessed at ₹5,09,27,220/- after making addition of ₹37,20,100/-.

4. The order of the AO was impugned vide appeal filed under Section 250 of the Act, before learned CIT(A), *inter-alia*, on the following ground:

“2. That the learned Assessing Officer has grossly erred in making an addition of Rs. 37,20,100/- on account of unexplained money u/s 69A rws 115BBE of the Income Tax Act, 1961 without any proper reasoning, in a arbitrary manner.”

5. During the proceedings before the learned CIT(A), the assessee submitted that out of the total cash seized, ₹39,94,196/- belonged to him, whereas ₹19,36,000/- belonged to his mother and ₹15,84,000/- belonged to his wife. The said contentions were rejected by the learned CIT(A) and the appeal was dismissed *vide* order dated 02.02.2021 by the CIT(A), *inter-alia*, holding as under:

“4.2.5 I have considered facts of the case as well as written submissions of the appellant. I have perused copy of Income Tax Return filed by Smt. Neelam Sood for AY 2018-19 as well as her order w/s 143(3) of Income Tax Act. The return of income was filed on 30.10.2018 i.e. after the search on 31.01.2018. In the return of income, the appellant has declared income from salary of Rs. 12,00,000/- and income from other sources of Rs. 1,92,788/-. The return of income does not in any way

justify that the source of cash found during search belonged to Smt. Neelam Sood. The Assessing Officer of the appellant as well as Smt. Neelam Sood was same. After considering all the facts, he concluded that the cash belonged to the appellant and made addition in his hands accordingly. Not adding cash in the hands of Smt. Neelam Sood does not mean that the cash stands explained in her hands. On the date of search, statement on oath of the appellant was recorded in which he failed to explain the source of cash. Filing of confirmation or affidavit from family members are self serving documents which do not explain the source of cash in the hands of these family members. It is held that the appellant failed to explain the source of cash of Rs. 37,20,100/-. Hence, addition of Rs. 37,20,100/- is confirmed and **Ground No. 2 is dismissed.**”

6. The assessee thereafter preferred the appeal being ITA No.288/Del/2021 before the learned ITAT, on the following grounds:

“1. On the facts and circumstances of the case, the order passed by the Id. CIT(A) is bad in law and against the principles of natural justice.

2. That the Id. CIT(A)-24, New Delhi has grossly erred both on facts and in circumstances of the case and in law, dismissing the appeal of the appellant assessee fact by not allowing and confirming the addition- made by the Id. AO to the tune of Rs.37,20,100/- on account of unexplained money u/s 69A r.w.s. 115BBE of the Income Tax Act, 1961 without any proper reasoning in an arbitrary manner.

3. That the Id. CIT(A)-24, New Delhi has erred on the facts and in circumstances of the case and in law by not allowing assessee's appeal by dismissing the ground that the AO has not provided proper opportunity of being heard and violated the principle of natural justice by either rejecting or ignoring the submission made by appellant assessee.”

7. The said appeal was dismissed by the learned ITAT observing as under:

“5. Before us, the Id. AR reiterated the documents file before the authorities below and the Id. DR supported the order of the Id. CIT(A). It is a fact on record that an amount of Rs. 73,10,000/- has been found and seized during the search. The assessee has disclosed the return of income an amount of Rs. 35,89,900/-. It was submitted that an amount of Rs. 19,36,000/- belongs to Smt. Neelam Sood and the remaining amount belongs to wife of the assessee Smt. Noor Preet Domeli. It is also a fact on record that Smt. Neelam Sood has declared income from salary of Rs. 12,00,000/-. The source of the cash has not been proved by any cogent evidence such as withdrawal from the bank or any other earnings which have been duly disclosed to tax.

6. Hence, in the absence of any forceful, convincing, tangible, persuasive evidence on record, we decline to interfere with the order of the Id. CIT(A)”

8. Aggrieved by the aforesaid findings, the assessee has preferred the present appeal, projecting the following substantial questions of law for consideration of this Court:

a. Whether the Hon’ble ITAT has erred both in law and facts for not considering that the Assessment Order is void ab initio as the same is issued without the Document Identification Number, which is a clear contravention to CBDT Circular No. 12/2019 dated 14th August, 2019?

b. Whether the Hon’ble ITAT has erred in law and facts for confirming the addition of Rs. 37,20,100/- without noticing that no independent inquiry has been conducted by the lower authorities despite filing the confirmations of the assessed persons and Affidavit filed by the Appellant?

c. Whether the Hon'ble ITAT erred in law as well on facts in confirming the addition of Rs. 37,20,100/- without noticing that the Assessing Officer failed to intimate the Appellant that an additional issue would be considered during the course of assessment proceeding, which is in violation of CBDT Circular F. No. 225/169/2019/ITA-II dated 5th September, 2019 read with CBDT Circular F.NO. 225/402/2018/ITA.II dated 28-11-2018?

9. It is material to note that this Court has passed order dated 07.03.2024, which is set out below:

"1. Prima facie we find no merit in the contention that the issue of a Document Identification Number ["DIN"] being borne on the Assessment Order would give rise to a substantial question of law, since whether a DIN was transcribed or not is essentially a question of fact. Additionally, this issue does not appear to have been raised either before the Commissioner of Income Tax (Appeals) ["CIT(A)"] or the Income Tax Appellate Tribunal ["ITAT"].

2. Insofar as the seizure of cash is concerned, we note that the ITAT in its order dated 24 July 2023 in paragraph 5 has observed as follows:

"5. Before us, the Id. AR reiterated the documents filed before the authorities below and the Id. DR supported the order of the Id. CIT(A). It is a fact on record that an amount of Rs.73,10,000/- has been found and seized during the search. The assessee has disclosed in the return of income an amount of Rs. 35,89,900/-. It u was submitted that an amount of Rs. 19,36,000/- belongs to Smt. Neelam Sood and the remaining amount belongs to wife of the assessee Smt. Noor Preet Domeli. It is also a fact on record that Smt. Neelam Sood has declared income from salary of Rs. 12,00,000/-. The source of the cash has not been proved by any cogent evidence such as

withdrawal from the bank or any other earnings which have been duly disclosed to tax."

3. Learned counsel appearing in support of the appeal would contend that both Ms. Neelam Sood as well as the wife of the assessee had declared the cash in their individual Return of Incomes.

4. In order to make that statement good, let an additional affidavit be filed."

10. The learned counsel for assessee submits that the cash amount recovered during the raid, which he does not dispute, was duly accounted for. He drew this Court's attention to the petitioner's reply to the show cause notice issued by the AO under Section 153C read with Section 143(3) of the Act, wherein he had disclosed the source and ownership of the cash. The assessee has also filed before this Court, an additional affidavit in compliance of orders of this Court along with the statements of bank accounts, which he states should be taken into consideration by this Court. He contends that the AO had failed to take into account the explanation given regarding the source and ownership of the cash amount recovered during the raid.

11. The learned counsel appearing for the Revenue has drawn this Court's attention to the orders of the learned CIT(A) as well as learned ITAT. We have gone through the orders. The learned CIT(A) as well as the learned ITAT have given similar findings, which have already been set out in the preceding paragraphs.

12. The assessee contends that the finding of the learned ITAT that the

source of cash seized during the search operations had not been proved, is perverse. It is contended on behalf of the assessee that the source of cash was duly established by the material placed on record.

13. As noted above, the learned ITAT had rejected the explanation furnished by the assessee that the amounts seized included cash belonging to his mother and his wife on the ground that it was not supported by evidence and withdrawal from bank or other earnings.

14. According to the assessee, a sum of ₹39,94,196/- belonged to him; ₹19,36,000/- belonged to his mother; and the balance ₹15,84,000/- belonged to his wife. He claimed that the same was duly disclosed. Insofar as the assessee's wife is concerned, there is no dispute that her declared income was only ₹12,00,000/- by way of salary. There was, thus, no credible explanation as to the source of ₹15,84,000/- which according to the assessee belonged to his wife. As noted hereinbefore, the assessee had sought time to file an additional affidavit to reflect that his mother and his wife had disclosed the cash of ₹19,36,000/- and ₹15,84,000/- in their returns and the same was supported by withdrawals from the bank.

15. The additional affidavit filed by the assessee encloses bank statements of his mother for the period from Financial Year (FY) 2012-13 to FY 2017-2018. The same reflect that the first two entries in the bank account are deposits including the deposit of ₹1,50,000/- on 23.05.2012, which has been made in cash. The first withdrawal is on 24.05.2012 for an amount of ₹2,50,000/-. According to the assessee, his mother Smt. Neelam

Sood held ₹27,000/- in cash as on 01.04.2012 and had withdrawn cash amounting to ₹32,00,000/- during the financial year 2012-13 and had also deposited ₹9,50,000/- in cash during the said period. He claimed that she had used ₹2,40,000/- on account of household drawings and thus, held a cash balance of ₹20,37,000/- as on 31.03.2013. The explanation that the cash in hand had been withdrawn from bank, appears unmerited. First of all, the bank account does not clearly indicate cash withdrawals of the quantum as claimed by the assessee. Second, the initial deposit is in cash and therefore, the source of that cash cannot be withdrawal from the bank account. The assessee has sought to adopt a simplistic approach by simply totalling of cash deposits and cash withdrawals. However, if the initial deposit itself is in cash, the source of the same would require to be explained. Obviously, the source of the same cannot be subsequent withdrawals.

16. More importantly, there is no explanation why the assessee's mother has retained such high balance of cash in hand when household drawings are only ₹2,40,000/- for each year during the first two financial years (FY) 2012-13 and 2013-14; ₹2,60,000/- during the FY 2014-15; ₹2,20,000/- during the FY 2015-16 and ₹4,60,000/- during the FY 2016-17.

17. The cash flow statement as set out in the additional affidavit is reproduced below:

Mrs. Neelam Sood – Cash Flow Statement	
Financial Year 2012-2013	
Particulars	Amount

Opening Balance as on 1-4-2012	Rs.27,000/-
(+) Cash Withdrawals from Bank	Rs.32,00,000/-
(-) Cash deposited in Bank	Rs.9,50,000/-
(-) Household Drawings	Rs.2,40,000/-
Closing Balance of Cash as on 31-3-2013	Rs.20,37,000/-

Mrs. Neelam Sood – Cash Flow Statement	
Financial Year 2013-2014	
Particulars	Amount
Opening Balance as on 1-4-2013	Rs.20,37,000/-
(+) Cash Withdrawals from Bank	Rs.13,50,000/-
(-) Cash deposited in Bank	Rs.10,000/-
(-) Household Drawings	Rs.2,40,000/-
Closing Balance of Cash as on 31-3-2014	Rs.31,37,000/-

Mrs. Neelam Sood – Cash Flow Statement	
Financial Year 2014-2015	
Particulars	Amount
Opening Balance as on 1-4-2014	Rs.31,37,000/-
(+) Cash Withdrawals from Bank	Rs.1,10,000/-
(-) Cash deposited in Bank	-
(-) Household Drawings	Rs.2,60,000/-
Closing Balance of Cash as on 31-3-2015	Rs.29,87,000/-

Mrs. Neelam Sood – Cash Flow Statement	
Financial Year 2015-2016	
Particulars	Amount
Opening Balance as on 1-4-2015	Rs.29,87,000/-
(+) Cash Withdrawals from Bank	-
(-) Cash deposited in Bank	-
(-) Household Drawings	Rs.2,20,000/-
Closing Balance of Cash as on 31-3-2016	Rs.27,67,000/-

Mrs. Neelam Sood – Cash Flow Statement	
Financial Year 2016-2017	
Particulars	Amount
Opening Balance as on 1-4-2016	Rs.27,67,000/-
(+) Cash Withdrawals from Bank	-

(-) Cash deposited in Bank	-
(-) Household Drawings	Rs.4,60,000/-
Closing Balance of Cash as on 31-3-2017	Rs.23,07,000/-

Note: The Appellant had got married on 21.10.2016, thus the household drawings were escalated in comparison to other years.

Mrs. Neelam Sood – Cash Flow Statement	
Financial Year 2017-2018	
Particulars	Amount
Opening Balance as on 1-4-2017	Rs.23,07,000/-
(+) Cash Withdrawals from Bank	-
(-) Cash deposited in Bank	-
(-) Household Drawings	Rs.3,00,000/-
Closing Balance of Cash as on 31-3-2018	Rs.20,07,000/-

18. It is apparent from the above that the assessee's explanation for the cash in hand is far fetched. There is no credible explanation as to the cash found on the date of the search. According to the assessee, part of the cash found in the premises during the search operation conducted on 31.01.2018 was, in fact, withdrawn five to six years earlier during the FYs 2012-13 and 2013-14.

19. It is also relevant to note that during FY 2014-15, the household drawing (expenses) was ₹2,60,000/- and the opening cash in hand as on 01.04.2014 is reflected as ₹31,37,000/-. Yet, ₹1,10,000/- was withdrawn from the bank during the said period. Clearly, there would have been no reason to withdraw this amount if the assessee's mother had ₹31,37,000/- in her possession as claimed.

20. It is apparent from the above that the cash found in the premises

cannot be traced to the bank accounts. The assessee has to travel six years prior to the date of the search for explaining cash withdrawal, without any credible explanation for the same.

21. Insofar as the petitioner's wife is concerned, the petitioner has not produced her bank accounts to establish the source of the said funds (₹15,84,000/-), which the assessee claimed belonged to his wife.

22. As observed above, the question whether the source of the cash has been explained is, essentially, a question of fact. In the given facts, we are also unable to accept that the findings of the learned ITAT are perverse. No such question of law has been projected by the assessee as well.

23. In view of the above, we find that no substantial question of law arises for consideration of this Court in this appeal.

24. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 28, 2024

at/A/RK

Click here to check corrigendum, if any