

**IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH,
MUMBAI
BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.2830/MUM/2025
(निर्धारण वर्ष/Assessment Year :2019-20)**

Deputy Commissioner of Income Tax- Central Circle 8(3), Mumbai Room No. 656, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai 400020	v/s. बनाम	Mehta Emporium Jewellers 101, Mehta Arch, S.V. Road, Opp. Natraj Market, Malad (West), Mumbai 400064
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AALFM2962N		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri. Devendra Jain
राजस्व की ओर से /Revenue by:	Shri. R.A. Dhyani, CIT DR

सुनवाई की तारीख / Date of Hearing	25.06.2025
घोषणा की तारीख/Date of Pronouncement	21.07.2025

आदेश / O R D E R

PER RENU JAUHRI [A.M.]:-

This appeal is filed by the revenue against the order of the Commissioner of Income Tax Appeal -50, Mumbai [hereinafter referred to as “CIT(A)”] dated 20/02/2025 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2019-20.

2. The revenue has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 30,01,923/- made by the Assessing Officer under Section 69A of the Income Tax Act, 1961, on account of unexplained cash found during the course of search proceedings without appreciating the facts & circumstances of the case”.

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 75,00,000/- made by the Assessing Officer under Section 69A of the Income-tax Act, 1961, based on the loose paper found during the course of search and seizure proceeding and the Ld. CIT(A) failed to appreciate that the document, though unsigned, was found at the assessee's premises during a valid search operation under Section 132 and indicated unaccounted cash transactions. The decision to disregard the evidence solely on the ground that it was a loose sheet, without considering the surrounding circumstances and the presumption under Section 132(4A) and Section 292C of the Act, is erroneous and contrary to law".

3. "The appellant craves leave to amend, alter, or add any ground of appeal as may be necessary".

3. Brief facts of the case are that the assessee filed original return declaring income of Rs. 45,65,490/- on 30.10.2019. A search had been carried out on the assessee on 11.01.2019 by the Investigation wing, Mumbai on the assessee. The assessee is a partnership firm engaged in trading of gold and diamond jewellery. The assessment was completed u/s. 143(3) of the Act, at the income of Rs. 1,50,67,413/- vide order dated 01.09.2021. Ld. AO made additions of Rs. 30,01,923/- on account of unaccounted sales and Rs. 75,00,000/- on account of unexplained cash u/s. 69A of the Act. Aggrieved with order the assessee preferred an appeal before Ld. CIT(A). Vide order dated 20.02.2025 Ld. CIT(A) allowed the assessee's appeal with the following observations:

"10. I have considered the assessment order, submission of the appellant, and facts available on record. During the search conducted on the appellant, certain cash was found from the business premises. During the search statement of Shri Nakshatra Mehta one of the partners of the appellant firm was recorded wherein he was asked to explain the source of this cash. The relevant part of his statement is reproduced by the AO in the assessment order. In the answer to Q.24, Shri Nakshatra Mehta has stated that the physical cash found in the business premises includes the cash in hand of M/s Rare Heritage Pvt. Ltd. and M/s Mehta Emporium Jewellers as on that date. However, it is possible that the above difference in the physical cash found and cash in hand as per books of account might be due to some invoices and advances pending to enter in the system. In the answer to Q.28, he reiterated the fact that the excess cash found is generated through unaccounted cash sales. In the answer to Q.29, he further submitted that the sales are done during the exhibitions held in Delhi, Chandigarh and Hyderabad. During the exhibition cash sales are made on the spot. Further, in certain cases various repairing works are done on the old jewellery and apparels and they receive cash. He has further submitted that the reconciliation of this cash found will be submitted within 10 days.

11. It is observed from the assessment order and submission of the appellant that the appellant has submitted before the investigation wing the reconciliation of cash found during the search along with the concerned sale invoices. During the assessment proceedings also the appellant has furnished the reconciliation along with the cash invoices, reconciliation of the stock found on the date of the search and stock as per the date of the account and item-wise stock register. It is also a fact that the appellant has disclosed these sales in the books of accounts and offered the income on the same in the I.T return filed.

12. The AO has not pointed out any discrepancy in the invoices submitted by the appellant and details of stock reconciliation statement. The addition was made only on the basis of the statement of Shri Nakshatra Mehta wherein he has stated that the cash is from unaccounted cash sales. However, as discussed above there is no dispute on the fact that the cash is from the sales made by the appellant which as per the AO were not accounted in the books of accounts. It was stated by Shri Nakshatra Mehta that some sale bills have not been entered into the books of accounts and hence the cash is not tallying with the cash in hand as per the books of accounts. After entering these bills in the books, the appellant has furnished the details before the AO and explained the cash found during the search. It is not a case of the AO that there is any discrepancy in the stock book. It is also a fact that the purchases are accounted in the books of account. As the appellant has disclosed these cash sales in the books of account further adding the same as income of the appellant will result in a double addition. Further, as contended by the appellant, since the source of the cash found during the search has been explained the same cannot be treated as unexplained cash u/s 69A of the I.T Act. Therefore, the addition made by the AO of Rs.30,01,923/- cannot be sustained, and hence the same is deleted. Accordingly, the appeal on this ground is **ALLOWED**.

16. I have considered the assessment order, submission of the appellant and facts available on record. During the course of the search, a loose paper sheet was found and seized from the appellant's business premises. A scanned copy of this loose paper is reproduced in Para 6.1 of the assessment order. It is seen that on this loose paper, amount of Rs.75 lakhs is noted as cash received. The date of noting is 30.11.2018 and the name of the person noted is Kishan Singh. During the search proceedings, a statement of Shri Nakshatra Mehta, partner of the appellant was recorded wherein in the answer to Q.47, it is stated that he does not recollect or recognize the handwriting or the signature on this paper. Before the AO, the appellant has submitted that they do not know the person named Kishan Singh and have no transactions with such person.

17. On perusal of the loose sheet, it is seen that there is a noting of Rs.75 lakhs as cash received. This sheet is dated 30.11.2018 and seems to be signed by the person Vishal Singh. It is also a fact that no other corroborative evidence was found during the search which indicates that the appellant has any transactions with any person named Kishan Singh. There is no reference of Shri Kishan Singh in the books of accounts of the appellant. From the noting, it is also not clear who has received the cash of Rs.75 lakhs. Therefore, it is difficult to correlate from this noting that this cash pertains to the appellant and represents unaccounted income of the appellant. No conclusion can be drawn from this alleged entry. Considering the business of the appellant, the contention that they receive gold jewellery wrapped in loose papers from the customers as well from the Karigars cannot be brushed aside when there is not a single corroborative evidence to support the loose paper noting found during

the search. Therefore, in my considered view this document lacks the evidentiary value.

18. It is also worthwhile to note that the Courts have time and again examined the authenticity of such documents and have also examined whether addition could be made on the basis of such sheets. The ruling of Hon'ble Supreme court in the case of *CBI Vs. V. C. Shukla* (1998) 3 SCC 410/ 1998 Taxmann.com 2155 (SC); wherein the apex court of the country held that in order to constitute an evidence within the meaning of section 34 of Indian Evidence Act, it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. Further, it has to be supported with independent evidence of their trustworthiness to fix a liability upon a person.

Thus, the court held that in order to fix a liability upon a person; the entries have to be in regular books of accounts or it should be supported with independent evidence of trustworthiness.

19. I find that here both the ingredients are missing; (1) the above page sheet is neither the part of regular books of accounts, nor there is any single positive evidence about its authenticity; (2) There is absolutely no independent evidence. Thus, this loose paper cannot be an admissible evidence and hence cannot be used against the appellant. Similar views were expressed by Hon'ble Supreme Court in the case of *Common Cause (A registered Society) Vs. UOI* 77 Taxmann.com 245(SC) and by the Karnataka High court in the case of *DCIT Vs. Sunil Kumar Sharma* (2024) 159 Taxmann.com 179.

20. On the basis of above, I hold that the loose paper is a "dumb" document due to following reasons:

- i. It is a random sheet not part of regular books of accounts;
- ii. It is not corroborated with transactions carried out with the appellant.
- iii. There is not even a single positive evidence against the appellant.
- iv. The loose paper is not signed by the appellant.

21. The Assessing Officer has invoked the provisions of Section 69A of the Act to make aforesaid addition, which is reproduced below:

Unexplained money, etc,

"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 [Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the incomes of the assessee for such financial year."

21.2 On a plain reading of above section, it is apparent that following conditions must be satisfied for making addition under this section: -

- The assessee is found to be the owner of any money and The assessee either offers no explanation, or the explanation offered by assessee is not satisfactory in the opinion of the Assessing Officer.

21.3 In present case, there is no evidence against the Appellant that he has made payment of cash or received cash outside the books. As there is no evidence of cash payment/receipts, the addition made u/s 69A cannot be sustained.

22. In view of the above discussion I am of the view that the loose papers found and seized from the business premises of the appellant is nothing but a dumb document without having any evidentiary value which can be used against the appellant for making an addition u/s 69A of the I.T Act. The addition made by the AO u/s 69A of the I.T Act of Rs.75,00,000/- cannot be sustained. Therefore, the AO is directed to delete the same. Accordingly appeal on ground no 2 is ALLOWED.”

Aggrieved with the order of Ld. CIT(A) the department has filed an appeal before the Tribunal.

4. **Ground No.1: Addition on account of unaccounted cash sales - Rs. 30,01,923/-.**

In this regard Ld. DR has made the following written submissions:

“1. During the course of search and seizure proceedings in the case of Mehta Emporium Jewellers, certain amount of cash was found at their premises. Out of the total cash found assessee was unable to explain/provide documentary evidences of cash of Rs. 30,24,730/-.

2. In view of this an amount of Rs. 30,00,000/- was seized during the search proceedings.

3. Further during the search Shri. Nakshatra Mehta (one of the partners of the Mehta Emporium) offered this unaccounted cash of Rs. 30,24,730/- generated through unaccounted sales to M/s. Rare Heritage Private Ltd. and M/s. Mehta Emporium for taxation for AY 2019-20. (para 5.1 page 2 of AO) Shri Nakshatra Mehta confirmed during the search that his accountant Shri. Hiralal Mohta had updated all the sales invoices in Tally system and their books of accounts were up to date. (Extract of statements recorded in para 5.4. page 3 to 5 of AO).

4. However, while offering the unaccounted cash generated through sales, assessee has reduced stock in trade on that extent which is not allowable. Also, the assessee firm has already offered Rs. 22,807/- as income from repairing charges in its return of income. Hence the balance amount of Rs. 30,01,923/- cash generated through unaccounted sales and services added to the total income of the assessee. (para 5.5 page 5 page of AO).

CIT(A) has deleted the addition based on: (Para 10 to 12 page 11 and 12 of CIT(A) order)

- 1. Appellant has submitted reconciliation of cash before the Investigation Wing along with concerned sales invoices.*
- 2. During the assessment proceedings appellant has furnished the reconciliation along with cash invoices, reconciliation of stock found on the date of search and stock as per accounts and item-wise stock register.*

3. *All the sales disclosed in books of accounts and offered for taxation in the IT Return filed.*
4. *AO has not pointed out any discrepancy in the invoices submitted and stock reconciliation statement.*
5. *Cash found duly recorded in books and offered for tax an addition would lead to double taxation.*
6. *Source of cash along with necessary reconciliation and explanation done by the appellant. Hence addition deleted.”*

5. Ld. DR has argued that the addition has rightly made by the Ld. AO and deserves to be upheld. On the other hand, Ld. AR has argued that the decision of Ld. CIT(A) is correct as the same is based on due verification of the reconciliation submitted by the assessee along with cash invoices and item wise stock register. As all the sales have been disclosed in the books of accounts, no further addition is required to be sustained.

6. We have heard the rival submissions and perused the material available on record. Admittedly, requisite details were submitted before the investigation wing along with reconciliation of cash with concerned sale invoices. During the appellate proceedings, the assessee has furnished details sought in this regard along with supporting evidences. In the light of above, we are of the view that the decision of Ld. CIT(A) to delete the addition on account of cash sales amounting to Rs. 30,01,923/- is justified and no interference is called for on this issue. This ground of appeal is, therefore dismissed.

7. **Ground No.2: Addition on account of unexplained cash u/s. 69A – Rs. 75,00,000/-.**

An addition of Rs. 75,00,000/- was made by the Ld. AO on the basis of a loose paper found during the course of search proceedings from the assessee's premises. Ld. DR has made the following written submissions on these issues:

"1. During the course of the search, incriminating documents was found in the form of a sheet on which it was stated that assessee had received Rs. 75,00,000/- cash from one 'Kishan Singh' the same being counter signed by the latter as confirmation for the same. (para 6.1 page 6 of AO).

2. Evasive reply given by Shri Nakshatra Mehta partner of M/s. Mehta Emporium (Refer extra statement recorded on page 6 and 7 of AO).

3. According to section 132 read with 292C if any books of accounts or other documents are found in the possession of any person in the course of search it is presumed that such books or documents belong to such person. Mere denial by the assessee does not discharge the burden cast upon it with respect to the above presumption under section 132 read with section 292C. (para 6.3 page 8 of AO).

4. All the ingredient to invoke section 69A are satisfied. AO has also relied on various judicial precedents to invoke the aforesaid section in light of the facts enumerated. (para 6.5 6.6 page 9 to 11 of AO).

5. Hence in absence of any satisfactory explanation provided by the assessee addition made by AO to the tune of Rs. 75,00,000/- (para 6.7 page 11 of AO).

CIT(A) has deleted the additions based on: (Paras 16 onwards page 28 of CIT(A) order)

- 1. No corroborative evidence to support the contents of the loose sheet. Also, the name of Kishan Singh from whom alleged cash is received is not found in the book of accounts.*
- 2. The loose sheet found is neither part of books of accounts nor there is any evidence about its authenticity. Therefore, loose sheet found is not admissible as evidence and cannot be used against the assessee.*
- 3. Loose sheet is therefor considered as 'dumb document' (Reasons specified in para 20 page 29 of CIT(A) order).*
- 4. No evidence of actual cash receipt hence AO has wrongly section 69A of the Act.*
- 5. Hence loose sheets found are nothing but dumb documents with no evidentiary value hence addition made deleted. (Para 22 page 30)."*

8. Ld. DR has argued that the provisions of section 292C have been rightly invoked by the Ld. AO and the subsequent explanation given by it is merely an afterthought. He therefore vehemently argued that the addition of Rs. 75,00,000/- deserves to be upheld. On the other hand, Ld. AR has relied upon the order of Ld. CIT(A) wherein the loose sheet is considered as "dumb

document”. He has held that a loose sheet is not admissible as evidence and therefore, Ld. AO had wrongly invoked section 69A of the Act. Accordingly, Ld. AR argued that the decision of Ld. CIT(A) deserves to be up held.

9. We have heard the rival submissions and perused the material placed on record. It is seen that the document in question relates to a cash transaction of Rs. 75 lacs which bears the dated signatures of two persons. Above said documents reveals receipt of an amount of Rs. 75 lacs against the name of “Kishan Singh”. The assessee’s partner was questioned during the course of search proceedings to explain the nature of the transaction recorded in the seized documents. However, it was stated by Shri. Nakshatra Mehta, partner of the assessee firm that he could not recollect and recognize the handwriting or signature on the paper for which he sought to file the requisite explanation within 10 days. During the course of proceedings, the assessee firm with regard to a specific query relating to the impugned document, submitted the following explanation:

- *“The assessee firm or partners do not know anyone named Kisan Singh & had no transaction with the said person in any time. To substantiate this, we have already submitted details of all the employees, Debtors & Creditors of the assessee firm. We are herewith attaching the letter submitted regarding the same on 4th April 2019 for your kind perusal.*
- *Since the explanation is already provided along with all the documents as requested by the then authorities, plea of the assessee is that kindly consider the same and allows us due relief. Assessee has no idea about that loose paper, who is Kisan Singh and what does that means. We would also like to state that we do not know the person to whom this paper belongs.*
- *Further, the above piece of paper was found from the rough papers kept at the assessee’s premises / showroom. The assessee craves before your kind self that he does not recognize this chit and is no way related to him.*
- *The assessee further highlights in there nature of business when good inwards are received from suppliers or gold laborers they are packed in papers or other covers. Further, the customers when give the jewellery for repair the*

same are wrapped in papers. All this loose papers are accumulated at one place and from the same this chit was obtained.

- *Moreover, without prejudice to above, assessee would like to request that addition cannot be made solely on the ground that one incriminating paper was found & seized during the search proceedings. Though that paper can be considered as supportive evidence, it cannot be considered as conclusive evidence to make any addition to the returned income of the assessee.”*

10. Ld. AO after examining the impugned document as well as the assessee's submissions, invoked the provisions of section 292C of the Act, which is reproduced below:

“292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed –

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested”.

Therefore, by virtue of deeming provision of section 292C of the Act, the afore-mentioned incriminating document seized from the assessee-firm's business premises is presumed to belong to the assessee-firm, and thus the onus is on the assessee-firm to explain the transaction referred to in the afore-mentioned seized document. However, the assessee has failed to provide any explanation with respect to the afore-mentioned seized document. It has simply stated that it has no relation whatsoever to the afore-mentioned seized document, and thus had failed to discharge its onus.”

Accordingly, Ld. AO held that since onus is on the assessee firm to explain the transaction referred to in the impugned seized document and no credible explanation has been furnished, therefore, he proceeded to make the addition u/s. 69A of the Act by treating the same as unexplained.

11. We have considered the rival submissions and the material avoluted on record. The assessee's explanation that the document may have been received from some customer while giving the jewellery for repair which is wrapped in paper does not appear convincing. The screenshot of the documents reproduced in the assessment order does not look like that of a crumpled paper used for wrapping of jewellery received for repair. We are, therefore, of the view that Ld. CIT(A) has erroneously accepted the explanation of the assessee which is prima facia not convincing. Since the document has been found from the premises of the assessee and at the time of the recording of statement, no such claim was made by the partner, this explanation of the assessee clearly is an afterthought. Moreover, in the statement recorded u/s. 132(4) of the Act, Shri. Nakshatra Singh, partner of the assessee firm had agreed that paper had been found in his premises in respect of which he offered to give explanation in 10 days on he could not recollect the details at that time.

12. In our view, Ld. AO has rightly invoked the provisions of section 292C of the Act to hold that the onus to explain the document is on the assessee which has not been adequately discharged. In the interest of justice, we, therefore, deem it appropriate to restore this issue to the file of Ld. CIT(A) for fresh adjudication after giving due opportunity to the assessee to explain the same. Needless to add, a report may be called from the Ld. AO along with forensic examination report, in case required, after the assessee submits his explanation. Appeal on this issue is, accordingly, allowed for statistical purposes.

13. In the result, appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 21.07.2025.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 21.07.2025

दिव्या रमेश नांदगावकर/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

**सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,**

सहायक पंजीकार (Asstt. Registrar)

**आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.**