

Sec. 69A additions upheld as assessee failed to prove that bedroom from where cash was seized belonged to his sister

Summary – The High Court of Gujarat in a recent case of Ashokbhai H. Jariwala., (the Assessee) held that where there was nothing on record to show that sister of assessee was in exclusive possession of bedroom in assessee's house from where cash was seized and further, there was contradiction in statements of assessee and his sister with respect of ownership of actual amount in cash, seized cash would be included as unexplained under section 69A in hands of assessee

Facts

- Search action was carried out at the residence of the appellant-assessee and survey action was carried out at the business premises of the assessee on the same day. At the time of search Rs. 9.48 lakhs was found in cash at his residence, out of which Rs. 3.09 lakhs was seized and balance was returned. It was the case of the assessee that cash of Rs. 6.38 lakhs received from the bedroom of her sister was belonging to his sister who came to stay with him few days back and, therefore, the same could not be included as unexplained cash in the hands of the assessee.
- The Assessing Officer did not accept the case of the assessee and added entire amount of cash found as unexplained under section 69A in the hands of the assessee.
- On appeal, the Commissioner (Appeals) confirmed the addition made by the Assessing Officer.
- On second appeal, the Tribunal upheld the order of the Assessing Officer.
- On appeal before the High Court:

Held

- It is true that Rs. 6.38 lakh was found in cash from the bedroom of the sister of the assessee. However, it is required to be noted that entire residence belonged to the assessee. Even according to the assessee and her sister, her sister had come there to stay voluntarily. As rightly observed by the Tribunal, as such nothing is on record that the bedroom was in exclusive possession of the sister. Even otherwise, there are contradiction in the statement of assessee recorded under section 132(4) and the affidavit of the sister which as such is after three weeks from the date of search and seizure. In answer the assessee has stated that out of amount of Rs. 7 to 8 lakh found to be in cash, Rs. 2.5 lakh belonged to his sister. He has not stated that the amount in cash is found from the bedroom of the sister, entire amount belonged to her sister. The sister in her affidavit has stated that the amount of Rs. 6.38 lakhs found in cash from the bedroom belonging to his brother i.e., assessee where she was sleeping and the amount was received by her from in-laws, out of the aforesaid amount, some amount is of Stridhan received from her in-laws and the parental house and towards the savings from the labour work by her and her husband. However, it is required to be noted that

no further evidence is produced with respect to any share received from her in laws. As observed herein above, even the said affidavit after a period of three weeks. As observed hereinabove assessee has stated that out of Rs. 7 to 8 lakh found to be in cash, Rs. 2.25 lakh belonged to her sister; thus there are material contradiction in the statement of assessee and even the affidavit of her sister. Under the circumstances, however on appreciation of the evidence the Assessing Officer made addition of Rs. 9.48 lakh as unexplained cash, it cannot be said that he has committed an error.

- So far as the submission on behalf of the assessee that at the time of search and seizure out of Rs. 9.48 lakh, Rs. 6.38 lakh which was recovered from the bedroom of the sister of the assessee was returned and not seized and, therefore, the aforesaid amount of Rs. 6.38 lakh could not have been added in the hands of the assessee as unexplained cash of the assessee is concerned, the aforesaid cannot be accepted. Merely because, at the relevant time aforesaid amount was not seized and returned, it cannot be said that subsequently during the course of assessment, the aforesaid amount which was found in cash from the premises of the assessee could not have been added as unexplained income in the hands of the assessee. As such, no question of law arise.