

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

**BEFORE
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

(ITA No. 2565/DEL/2018)
Assessment Year: 2009-10

Mr. Goldy Gupta A-2/83, Safdarjung Enclave, New Delhi -110 029	Vs.	DCIT, Central Circle Meerut PAN AAHPG6643E
(Appellant)		(Respondent)

(ITA No. 2566/DEL/2018)
Assessment Year : 2009-10

Mr. Nitin Kumar Gupta, A-2/83, Safdarjung Enclave, New Delhi- 110 029	Vs.	DCIT, Central Circle Meerut PAN AEEPG7895K
(Appellant)		(Respondent)

ITA No. 2567/Del/2018
Assessment year 2009-10

Mr. Arun Kumar Gupta, A-2/83, Safdarjung Enclave, New Delhi - 110 029	Vs.	DCIT, Central Circle Meerut PAN AADPG9781F
(Appellant)		(Respondent)

Assessee by :	Shri Rohit Tiwari, Advocate Shri Shobhit Tiwari, Advocate		
Respondent by:	Shri S.P. Singh, Sr. DR		
Date of hearing:	13	09	2018
Date of pronouncement:	30	11	2018

ORDER**PER AMIT SHUKLA, J.M.:**

The aforesaid appeals have been filed by the above named assessee against separate impugned orders of even date, 30.1.2018 passed by Ld. CIT(Appeals) –IV Kanpur for the quantum of assessment u/s 143 (3) for the assessment year 2009-10. Since the issues involved in all the appeals are common arising out of identical set of facts, therefore, same were heard together and are being disposed of by way of this consolidated order.

2. In the grounds of appeal, assessee has challenged addition on account of cash seized during the course search treated as unexplained money u/s 69A ;

i) Goldi Gupta	Rs. 6,57,620/-
ii) Nitin Kumar Gupta	Rs. 3,75,272/-
	Rs. 3,00,000/-
iii) Arun Kumar Gupta	Rs. 3,98,799/-
	Rs. 1,57,654/-

3. The facts in brief are that search and seizure action u/s 132 was conducted on 6.2.2009 in the premises of M/s. Supertech & Crossing Infrastructure group of Ghaziabad at the head offices/ site offices and the residence of Directors of promoter companies of M/s. Crossing Infrastructure (P) Ltd, M/s. Surya Merchants Ltd. Which are the sisters concerns of M/s. Surya Merchant Ltd. All the three assesses were directors in M/s. Surya Merchants Ltd.

Search was also carried out at the residential places. Addition was made in all the three cases on account of cash found and seized during the course of search proceedings from their premises. The assessee's explanation was that the cash aggregating to Rs. 20,57,056/- belonged to the company, Star Realcon Pvt. Ltd. and others; and in support, affidavit of the cashier of Star Realcon Pvt. Ltd. and CA certifying that cash of Rs. 20,57,056/- was available as per books of Star Realcom Pvt. Ltd was filed. Alternatively, it was also submitted that the cash may be considered out of cash on money received in respect of sale of flats/shops in the case of M/s. Surya Merchants for which already huge income of Rs. 5,81,42,294/- has been offered to tax in the case of M/s. Surya Merchant Ltd. and out of the said cash, money of Rs. 16,50,000/- was in respect of sale during the month just preceding the month of search. In the first round, these additions stood confirmed by CIT(A) and the Tribunal had set aside the matter to the file of the AO that the cash found was duly verifiable from the books to decide the issue afresh and also take into account the assessee's claim and certificate of Chartered Accountant certifying that the cash amount of Rs. 21,00,073/- was available in the books of Star Realcon Pvt. Ltd. As on 5.2.2009. Ld. AO during the set aside proceedings and made the addition once again in the case of Shri Goldi Gupta, the relevant finding and observation reads as under:-

“Cash of Rs. 40,44,820/- (Rs. 20,57,050/- + 19,87,770/- were found in the custody of Mr. Arun Gupta, Goldy Gupta and Nitin Gupta. If the amount of cash of Rs. 19,35,450/- deducted from cash Rs. 19,87,770/- found during the search there remain cash balance Rs. 42,320/- which is unexplained. As regards cash Rs.20,57,050/- found during

the search at the residence, explanation offered by the assessee is not satisfactory in my opinion in view of the evidence furnished. In view of these facts cash Rs. 20,99,370/- (20,57,050/- + 42,320) is unexplained found during the search belonging to Shri Arun Gupta, Goldy Gupta and Nitin Gupta. Since this amount of Rs. 20,99,370/- belongs to these three persons, 1/3rd of cash Rs. 20,99,370/- amounting to Rs. 6,99,790/- belongs to the assessee. There was cash balance of Rs, 42,170/- as on 5.2.2009 in the books of assessee Shri Goldy Gupta. If this amount is deducted from unexplained cash there remains cash of Rs. 6,57,620/- which is unexplained in the hands of the assessee. Therefore, amount of cash Rs. 6,57,620/- is deemed to be the income of the assessee u/s 69A of the Income Tax Act, 1961 and the same is added to the total income of the assessee under the head income from other sources.”

4. Ld. CIT (A) has confirmed the said addition after observing and holding as under :-

“5.4 Undersigned has carefully considered the submission filed by the appellant during the appellate proceedings and found no force in it. The appellant has raised objection against treating the cash of Rs. 20,99,370/- as belonging to three persons Shri Arun Gupta, Shri Goldy Gupta and Shri Nitin Gupta and not in the hands of the Star Realcon Pvt. Ltd. as claimed by the assessee. From the assessment order it is evident that assessee’s contention was not backed by necessary evidence. Even during the appellate proceeding the

appellant has merely claimed that out of cash found from the bed room of Shri Arun Gupta the same belongs to M/s. Star Realcon Pvt. Ltd. in support of which the appellant has merely filed affidavit of the cashier and C.A. which were not corroborated by convincing evidence as a result of which AO was not agreeable to the contention of the assessee during the assessment proceedings. Even during the appellate proceedings the appellant has not furnished any new evidence or facts so as to establish his contention that the cash belongs to M/s. Star Realcon Pvt. Ltd only. From the material available on record it is apparent that the appellant has failed to furnish any evidence necessary to establish the contention that the impugned cash of Rs. 20,99,370/- belongs to M/s. Star Realcon and not to the three persons namely Shri Arun Gupta, Nitin Gupta and Shri Goldy Gupta. The appellant has also failed to indicate any material seized during the search operation so as to establish his above claim.

Taking all the above into consideration and in the absence of necessary evidence I find no infirmity in AO's action of treating the cash of Rs. 20,99,3701 - as belonging to three individuals namely Shri Arun Gupta, Shri Nitin Gupta and Shri Goidy Gupta and not to M/s. Star Realcon Ltd. as has been claimed by the appellant. Accordingly AO was also justified in treating 1/3rd of total unexplained cash of Rs. 20,99,3701- (i.e. 6,99,7901-) as assessee's share of unexplained cash which was further reduced by Rs. 42,170/- i.e. cash appearing in the books of accounts of Shri Goldy Gupta as on 5/2/2009. In view of the above

addition of Rs. 6,57,620/- made by AO to the total income of the assessee u/s. 69A of the Act by treating the same as unexplained cash in the hands of the assessee is upheld. ”

5. Before us, Ld. Counsel for the assessee after narrating the entire facts and background of the case, submitted that right from the first stage, it has been explained that the cash found from the possession of the three directors was actually duly recorded in the cash book of Star Realcon Pvt. Ltd. which is evident from cash book of the company regularly maintained. Certificate from Chartered Accountant was filed on the first stage itself which has not been at all accepted despite assessee producing all the relevant documents. In support of his contention, he has filed copy of return of income along with computation of income of M/s. Surya Merchants Limited and copy of audited report of M/s. Surya Merchants Limited to show that in the balance sheet, the cash in hand has been shown and he also drew our attention to the notice of the accounts to Schedule XVIII apart from that he also drew our attention to Form No. 3CD wherein this company has been maintaining regular cash book and also shown the relevant entries in the cash book specifically the amount appearing on 1.2.2009 to 6.2.2009. Thus, he submitted that the cash found from the possession of the three persons stood disclosed and nothing can be said to be unexplained in the hands of the directors.

6. Ld. DR on the other hand strongly relied upon the order of the AO and Ld. CIT (A) and submitted that categorical finding has been given for both the authorities that assessee could not substantiate the cash found from the possession.

7. After considering the rival submissions and on perusal of the relevant material placed on record, we find that total cash found from the possession of Shri Goldy Gupta, Shri Nitin Gupta and Shri Arun Gupta aggregating to Rs. 40,44,820/-, out of which cash belonging to M/s. Surya Merchants Ltd. As on the date of search of Rs. 19,45,450/- has been accepted. Some part of amount of cash recorded in the books of respective persons have also been accepted and balance amount has been added as income u/s 69A in the hands of all the assessees. The assessee's case throughout has been that the cash found belong to the M/s. Star Realcon Pvt. Ltd. in which they were directors and such company was maintaining regular cash book and the cash book was also produced before the authorities below. However, both the parties have held that assessee could not substantiate this fact and has gone by the fact that assessee has one more explanation that cash found should be explained from the amount of cash surrendered in the case of M/s. Surya Merchants Limited. From the perusal of the records of M/s Star Realcon Pvt. Ltd., it is seen that this company in its annual report has given a note that amount of Rs. 17 lacs recoverable from the income tax department represents all the cash of the company seized from the income tax authority during the raid found from its directors. Form No. 3CD which is in audit report u/s 44AB mentions that this company is maintaining computerized cash book, bank book, journal book, ledgers etc. along with assessee has also filed cash book for the period 1.4.2008 to 31st March 2009. From the perusal of the same it is seen that opening cash balance as on 1.2.2009 was Rs. 21,50,073/- based on this cash book, Chartered Accountant has given a certificate which was filed before the authorities below right at the stage which certified that cash balance of Rs.

21,00,073/- as on 5.2.2009 in the books of accounts of M/s. Star Realcon Pvt. Ltd. This certificate was based on entry made in the books of accounts maintained by the company. Whereas in the audited account and in the assessment record of M/s. Star Realcon Pvt. Ltd. there is a cash of Rs. 22,00,073/- just before the date of search and out of said cash the same has been found from the possession of the directors who at the first instance has stated that this cash belongs to this company and they are directors of this company, then such a cash cannot be treated as unexplained money in the hands of three persons. Once the source of cash is proved from the cash book of the company no addition can be made u/s 69A in the hands of the directors *qua* the assessee in these appeals. Accordingly, the addition made on account of cash found from the possession of all the above mentioned three assesseees is deleted and resultantly all the appeals of the assessee are allowed.

8. In the result appeals of the assessee are allowed.

Order pronounced in the open Court on 30th November, 2018.

sd/-

[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 30th November, 2018

Veena
Copy forwarded to:

1. Appellant
2. Respondent

3. CIT(A)
4. CIT
5. DR

Assistant Registrar