

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 5593/Del/2014
AY: 2010-11**

**Neelkanth Enterprises, vs Income Tax officer,
G-249, Ward-29(3),
Preet Vihar, New Delhi.
Delhi-110092
(PAN: AADFN2071M)
(Appellant) (Respondent)**

**ITA No. 6203/Del/2014
AY: 2010-11**

**Income Tax officer, vs Neelkanth Enterprises,
Ward-29(3), G-249,
New Delhi. Preet Vihar,
Delhi-110092
(Appellant) (Respondent)**

**Assessee by : Shri Gautam Jain, Adv.
Department by : Ms Rinku Singh Sr. DR**

**Date of hearing: 26.02.2019
Date of Pronouncement: 19.03.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER :

ITA No. 6203/Del/2014 has been preferred by the Department against the order dated 29.8.2014 passed by the Learned CIT (Appeals)-XXV, New Delhi {Ld. CIT (A)} for

Assesment Year (AY) 2010-11, whereas ITA No. 5593/Del/2014 is the cross appeal filed by the assessee for the same year.

2.0 The brief facts of the case are that the assessee is a partnership firm. The partners of the assessee firm are two viz. Shri Vinod Kumar Sharma and Smt. Usha Sharma, (spouse of Shri Vinod Sharma). The assessee firm is stated to be engaged in the business of trading of poultry feed, grains. The two partners and three other independent family members also carried on identical business under their independent proprietorship concerns namely;

- | | | |
|------|----------------------------|-----------------------|
| i) | Usha Sharma | M/s S.J. Traders |
| ii) | Vinod Kumar Sharma | M/s Balaji Traders |
| | Daughters of the partners: | |
| iii) | Neerja Sharma | M/s Ginni Enterprises |
| iv) | Heena Sharma | M/s Heena Traders |
| v) | Preeti Sharma | M/s Geetanjali Feeds |

2.1 The return of income was filed declaring an income of Rs 8,49,646/- . The case was selected for scrutiny and the assessment was completed at an income of Rs. 5,43,83,410/- u/s 143(3) of the Income Tax Act, 1961 (hereinafter called 'the Act') after making the following additions/disallowances:-

1. Financial charges and interest on loan – Rs. 12,97,479/-;
2. Interest charged on debit balance in capital account of the partner Shri Vinod Sharma – Rs. 9,00,000/-;
3. Alleged unexplained cash deposit in bank accounts of the firm – Rs. 2,45,40,167/-;
4. Disallowance out of car and telephone expenses @ 10% – Rs. 24,655/-
5. Disallowance out of other expenses @ 10% - Rs. 56,544/-;
6. Notional interest on interest free loans given – Rs. 33,000/-;
7. Addition on account of loans given to the partners and their daughters which were allegedly not genuine – Rs. 2,66,81,915/-.

2.2 Aggrieved, the assessee approached the Ld. CIT (A) who partly allowed the assessee's appeal and now both the assessee as well as the Department is before us challenging the confirmation and deletion of the additions by the Ld. CIT (A) respectively.

2.3 The assessee in ITA No. 5593/Del/2014 has raised the following grounds of appeal:

"1 That the learned Commissioner of Income Tax (Appeals) XXV, New Delhi has erred both in law and on facts in upholding the disallowance of Rs. 12,50,229/- representing interest paid on loans utilized for the purpose of the business by the appellant.

1.1 That finding of the learned Commissioner of Income Tax (Appeals) that “the loan money on which interest was paid by the appellant was not for the purposes of business as the appellant could not demonstrate with evidence the use of such loan for business purposes of the appellant firm” is factually incorrect, contrary to record and thus unsustainable.

2 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding disallowance of sum of Rs. 47,250/- representing alleged excessive interest paid to Ms. Priyanka Gupta by the appellant firm.

3 That the learned Commissioner of Income Tax (Appeals) has also erred both in making an arbitrary, ad hoc, notional and hypothetical addition by concluding that “however the use of such withdrawn cash for earning income cannot be absolutely ruled out. Accordingly I hold upon consideration interest chargeable @ 12.5% per annum on the amount of such withdrawn cash claimed to have been re-deposited in cash in the bank accounts of which no proofs or finding to the contrary could be brought on record by the AO, for the interregnum period as income from other sources i.e. from the date of withdrawal of cash till its redeposit in cash. The AO shall calculate the interest income as above. To this extent the addition stands confirmed.”

3.1 That the entire addition is based on whimsical and fanciful assumption and that too without granting any opportunity that cash withdrawn has been utilized for earning income. The assumption is entirely unsustainable and thus, untenable.

3.2 That once cash withdrawals from the bank and cash sale supported by cash flow statement had been placed on record alongwith books of accounts which have been accepted as such, the addition confirmed is legally untenable.

4 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the disallowance of Rs. 56,544/- being 10% of the expenses claimed by the appellant.

5 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in

upholding the disallowance of Rs. 24,655/- being 10% of the expenses claimed by the appellant on account of alleged personal use.”

2.4 The revenue in ITA No. 6203/D/2014 has raised the following grounds of appeal:

“1 On the facts and circumstances of the case the ld. CIT (A) was not justified in deleting the interest of Rs. 9,00,000/- on the debit balance of the capital account of the partner Sh. Vinod Sharma”.

2 On the facts and circumstances of the case the ld. CIT(A) has erred in deleting the interest of Rs. 9,00,000/- ignoring the fact that as per the partnership deed interest @ 12% was to be charged.

3 On the facts and circumstances of the case the ld. CIT(A) has erred in deleting the interest of Rs. 9,00,000/- on the ground that the assessee was having interest free loans without the assessee establishing the cash flow of the funds given to Sh. Vinod Sharma.

4 On the facts and circumstances of the case the ld. CIT(A) was not justified in deleting the notional interest of Rs. 33,000/- charged on the interest free loans given to so called suppliers.

5 On the facts and circumstances of the case the ld. CIT(A) violated the provisions of Rule 46A by entertaining the affidavit and the paper book without confronting the Assessing Officer with them

6 On the facts and circumstances of the case the ld. CIT(A) was not justified in deleting the amount of cash of Rs. 2,66,81,915/- deposited in the bank by the close relative of the assessee.

7 On the facts and circumstances of the case the ld. CIT(A) was not justified in accepting the theory of the assessee that the amount of Rs. 2,38,56,526/- deposited in banks is out of cash withdrawals made by the assessee.

8 On the facts and circumstances of the case the order of ld. CIT (A) be modified and the order of the Assessing officer be restored.

9 The appellant's craves for leave reserving the right to amend, modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this special".

3.0 At the outset the learned Counsel for the assessee submitted that the assessee's cross appeal filed is not being pressed. Accordingly, the same is dismissed as withdrawn.

4.0 We now take up the Department's appeal in ITA No. 5593/Del/2014. Grounds 1 to 4 relate to addition of Rs. 9,00,000/- and Rs. 33,000/- by way of interest on the debit balance of the capital account of one of the partners namely Shri Vinod Sharma and on accounts of M/s Nistha Infotech and Shri Sumit Mahajan who were the suppliers of the assessee firm. The Assessing Officer (AO) held that the assessee firm, though, paid interest of Rs. 4,24,823/- to Smt. Usha Sharma but no interest was charged on the debit balance of Shri Vinod Sharma. He, therefore, held that since the debit balance as on 31.3.2010 was Rs. 70,63,646/- and profit of Rs. 4,24,823/- from the firm was credited on 31.3.2010, the total debit balance is taken at Rs. 75,00,000/- and accordingly he calculated addition at Rs. 9,00,000/- by applying the rate of 12% on the aforesaid balance. Likewise, he also made an addition of Rs. 33,000/- by applying interest of 12% on the advance/s to the suppliers M/s Nistha

Infotech and Shri Sumit Mahajan. The Ld. CIT (A) held that these two additions made were notional addition and, therefore, not tenable.

4.0.1 Before us the learned Departmental Representative (Ld. DR) relied on the findings in the order of assessment.

4.0.2 The learned counsel, on the other hand, submitted that the assessee had claimed expenditure on interest of Rs. 12,50,229/- which had been separately disallowed and sustained by the Ld. CIT (A) and that such sustenance was not being pressed. It was further submitted that apart from this, another disallowance made of Rs. 47,250/- u/s 40A (2)(b) of the Act had also been sustained in appeal and is not being challenged by the assessee. It was submitted that in such circumstances these notional additions were uncalled for.

4.1.0 Ground no 5 relates to the contention of the Department that the Ld. CIT (A) violated the provisions of Rule 46A of the Income Tax Rules, 1962 (hereinafter called 'the Rules') by entertaining the affidavit and the paper book without confronting the Assessing officer with them.

4.1.1 The learned DR contended that the Ld. CIT (A) had not confronted the AO with the paper book filed by the assessee and the affidavit filed during the course of first appellate proceedings and, therefore, there was a violation of Rule 46A.

4.1.2 The learned Authorised Representative (Ld. AR), on the other hand, submitted that the assessee had submitted before the Ld. CIT (A) that the assessee was denied a valid and proper opportunity during the course of assessment proceedings and this ground was rejected by the Ld. CIT (A) by observing that the enclosures and annexure consisting of letters of various dates addressed to the AO, with the paper book by the assessee during the appellate proceeding, make it amply clear that the assessee was able to produce various details before the AO in response to several opportunities/notices issued in the course of assessment proceedings. It was, therefore, submitted by the Ld. AR that all documents forming part of paper book were filed along with the replies and no additional/fresh evidence/s had been relied upon by the Ld. CIT (A) to grant relief to the assessee which could be termed as additional evidence.

4.2.0 Ground No. 6 relates to addition of Rs. 2,66,81,915/- being cash deposited in the bank by close relative of the assessee.

The relevant facts are that during the course of assessment proceedings the AO noted that the partners of the assessee firm and their daughters had cash deposits in their independent bank accounts used for carrying on their businesses which sums were, thereafter, transferred to the assessee firm and, therefore, it was held that the sums transferred represented income from undisclosed sources of the assessee firm. The addition/s made comprised of following sums:

Sr. No.	Name of the person	Name of the proprietorship concern	Amount transferred to the assessee firm and deposits in the bank account of the said person (Rs.)
i)	Shri Vinod Kumar Sharma	M/s Balaji Traders	47,69,500
ii)	Smt. Usha Sharma	M/s S.J. Traders	49,75,000
	Sub total (A)		97,44,500
iii)	Ms. Neerja Sharma (daughter of the partners)	M/s Ginni Enterprises	39,96,015
iv)	Ms. Preeti Sharma (daughter of the partners)	M/s Geetanjali Feeds	72,55,950
v)	Ms. Heena Sharma (daughter of the partners)	M/s Heena Traders	56,85,450
	Sub Total (A)		1,69,37,415
		Total	2,66,81,915

4.2.1 The Ld. CIT (A), on appeal, deleted the addition.

4.2.3 The learned Sr. DR contended that the deposits were unexplained deposits and, therefore, legitimately brought to tax as income. It was stated that the partners as well as the

daughters of parties did not have any independent source/s of income and that they all had introduced the firm's cash first in their books through the so called sales of their so called businesses and then the money was transferred back to them. It was also submitted that the sales in all the cases were below Rs. 40,00,000/-. It was submitted that this had been so done so that the books may not be required to get audited. It was stated that the purchases were from the assessee firm while the sales had been made in cash for which no vouchers/bills/cash memos had been produced. It was submitted that as regards the partners, they have, although, claimed to have done business of poultry feeds but the facts of business have not been shown in their returns on the ground that they did not have any income. It was further submitted that it was surprising that the partners who were in this line did not earn any profits from their so called businesses whereas the daughters have earned the profits from the so called business. It was pointed out that the daughters have purchased the goods and sold in cash and then the amount was transferred to the assessee firm.

4.2.4 The Id. AR relied on the findings of the Ld. CIT (A) and submitted that the addition was validly deleted.

4.3.0 Ground No. 7 relates to the deletion of addition of Rs. 2,38,56,526/- being the addition deleted on account of cash deposited by accepting the assessee's explanation that the same were out of cash withdrawals. In this regard the facts in brief are that an addition was made of Rs. 2,45,40,167/- as unexplained cash deposits in the bank accounts bearing account numbers 1399002100040391 and 1399008700001396 with Punjab National Bank, E-19, Vikas Marg, Preet Vihar, Delhi-92. The CIT Ld. (A) deleted the addition to the extent of Rs. 2,38,56,526/- and sustained the addition of Rs. 6,83,641/-.

4.3.1 The Ld. Sr. DR relied on the findings of the order of assessment and contended that mere cash withdrawals alone could not be a basis to support the explanation tendered by the assessee.

4.3.2 The Ld. AR relied on the findings of the Ld. CIT (A) and submitted that the addition was validly deleted.

5.0 We have heard the rival submissions and have also perused the material available on record. With respect to ground nos. 1 to 4, it is seen that the learned CIT (A) has deleted the addition of Rs. 9,00,000/- pertaining to interest charged on the debit balance of the partner Shri Vinod Sharma by holding as under:

“The above narrated facts were duly considered by me. Having bestowed my thoughtful consideration on the entirety of the facts and circumstances of the case and the evidence on record, I am of the firm belief that the AO was altogether unjustified in making the addition of Rs. 9,00,000/- as no interest was paid by the appellant firm to Smt. Usha Sharma @ 12% on her capital balance as alleged by him. The audited P&L account together with the computation of income filed before the concerned AO clearly revealed that the appellant did not pay any interest to any of its partners on its credit balances. At the same times, the over drawal by the partner Sh. Vinod Sharma, from the firm’s capital was not made out of interest bearing funds of the firm. In such circumstances any interest free advances given to its partners by the appellant firm could not be made the subject matter of addition on the ground of notional receipt in the form of interest.

To cap it all it was observed by me that the amount of Rs. 4,24,823/- shown as interest paid to Usha Sharma by the AO in his order in fact represented the share of profit and not interest payable to her as wrongly understood by the AO. As a result of such a mistake in reading the P&L account of the appellant an incorrect inference that the appellant firm ought to have charged interest on the debit balance of Vinod Sharma leading to the addition of Rs. 9,00,000/- in the hands of the firm on account of debit balance of Rs. 75,00,000/- in the books of the appellant firm which was calculated @ 12% on Rs. 75,00,000/- was drawn.”

5.0.1 Likewise, the Ld. CIT (A) deleted the addition of Rs. 33,000/- being notional interest on interest free advances to the suppliers by holding as under:

“Contrary to the above version of the AO the appellant contended that it was not its trade practice to recover interest from advances given to its suppliers. Similarly it did not pay any interest on advances received from its customers or suppliers. Ergo it was vehemently argued

that the addition made by the AO on the basis of its and but was unsustainable in eye of law.

The above facts were given a careful consideration by me. Having weighed the pros and cons, I am of the considered view that the addition so made has no leg to stand on as the facts pointed out by the appellant accorded with the claim pressed by it in the appellate proceedings that it was not liable to receive any interest on advances given to suppliers as it did not pay any such interest to its suppliers. Concurring with the view of the AR for the reasons cited hereinabove the addition of Rs. 33,000/- is deleted holding the same as of notional character. Accordingly, grounds 4 & 5 are allowed.”

5.0.2 The Ld. DR has not been able to establish any factual inaccuracy in the above conclusion. Also, it is well settled law that notional additions are not tenable in law as held by the Hon'ble Apex Court in the case of CIT vs. Excel Industries Ltd reported in 358 ITR 295. It was held therein as under:

“27 Applying the three tests laid down by various decision of this court, namely whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having been made; and the probability or improbability of realization of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports), it is quite clear that in fact no real income but only hypothetical income had accrued to the assessee and section 28(iv) of the Act would be inapplicable to the facts and circumstances of the case. Essentially, the Assessing Officer is required to be pragmatic and not pedantic.”

5.0.3 In view of the aforesaid, we find no reason to interfere with the categorical finding recorded by the Ld. CIT (A) and ground nos. 1 to 4 raised by the revenue are rejected.

5.1.0 With respect to Ground No. 5 pertaining to the contention of the Revenue that the Ld. CIT (A) had violated the provisions of Rule 46A of the Rules, having heard both the parties and also after having perused the material available on record, we find that, admittedly, no evidence has been specifically highlighted by the revenue which could be termed as 'additional evidence' and which was relied upon to grant relief as to the assessee. On the contrary, the Ld. CIT(A) on consideration of the replies filed and examination of the enclosures filed along with the replies filed arrived at the following conclusion:

“Relating to objection raised by the appellant under ground no. 10 it was noticed upon a perusal and analysis of the assessment order that the appellant was considered to be guilty by the AO of not producing the books of account specifically asked for by him vide order sheet note dated 6.3.2013 during the hearing.

In the appellate proceedings it was argued per contra by the appellant that the books of account were produced before the AO which stood corroborated on the strength of the table consisting inter alia the details/information admittedly produced before the AO during the assessment proceedings as reproduced below.

On an analogous consideration of the arguments, I am of the considered view that the impugned assessment order was not

framed without granting adequate opportunities by the AO as agitated by the appellant. On a reference to the submissions and the evidence with relevant enclosures and annexures filed primarily consisting of letters of various dates addressed to the AO, with the paper book by the appellant during the appellate proceedings it was amply clear that the latter was in a position to file the following documents as pointed out by the counsel in his submission only as a result of various opportunities afforded to him by the AO. The table below proves this fact to the hilt:-

<i>Sr. No.</i>	<i>Date of Reply</i>	<i>Page(s) of Paper Book</i>	<i>Enclosure(s) furnished with the Reply(s) (pages of Paper Book)</i>
1	03.10.2012	22	<i>Financial Statement and Tax Audit Report furnished along with return of income (3-21)</i>
2	13.12.2012	23 to 25	<i>i) Copy of Bank Statement along with copy of Bank Book of the Bank of both Overdraft Account and Cash Credit Account maintained with Punjab National Bank. ii) Detailed Ledger Account representing chronological transactions in Partner(s) Capital Account(s) during the year under consideration. Ledger Account of Sales. iii) Ledger Account of various expenses. iv) Ledger account of various unsecured loans and interest on unsecured loans along with confirmations of Parties with PAN No(s) v) Party-wise confirmations of advances made to Suppliers. vi) Party-wise confirmations of Sundry Debtors. vii) Party-wise confirmations of Sundry Debtors.</i>
3	24.12.2012	29 to 30	<i>i) Detailed Capital Account(s) of both the partners along with Ledger Account(s) of drawings (102-106 and 121-124) ii) Personal bank statements of partners. iii) Quantitative and value-wise detail of Opening Stock and Closing Stock. iv) Confirmation of Smt. Preeti Sharma alongwith her PAN No. and Personal Ledger Account. v) Confirmations of Parties with complete address and their PAN No(s).</i>
4	20.01.2013	27 to 28	<i>i) Ledger Account of financial Charges ii) Ledger Account of Purchase of Inverter iii) Ledger Account of Unsecured Loans iv) Ledger Account of Commission Charges v) Ledger Account of Purchase vi) Ledger Account of the following Parties: i) Vinod Sharma (Unsecured Loans) ii) Pankaj Dua (Unsecured Loans) iii) Preeti Sharma (Unsecured Loans) iv) Priyanka Gupta (Unsecured Loans)</i>

			<p>v) Nishta Infotech (Advances to Suppliers) vi) Sumit Mahajan (Advances to Suppliers)</p>
5	28.01.2013	31 – 32	<p>i) Copy of Loan Account from Reliance Capital and from M/s. Bajaj Finance (81-91) ii) Copy of Account with Mohan Traders (194-195) iii) Copy of Accounts of the following Parties: M/s Ginri Enterprises M/s S.J Traders M/s Balaji Overseas M/s. Kumar Poultry M/s. Mukesh Kumar & Sons M/s. Ganga Associates M/s. Ashtha Poultry Feeds M/s. Shyamjee Traders iv) Cash Flow Statement along with Cash Reconciliation of Punjab National Bank</p>
6	06.03.13	33-34	<p>i) Sanction Letter of Unsecured Loan. ii) Sanction Letter of Secured Loan from Punjab National Bank. iii) Details of Bank Account.</p>

The relevant pages of the paper book which bear testimony to the fact that the appellant was able to produce various details before the AO only in response to several opportunities are pages 22 to 34. From the details the following other facts were also clear:-

- i) That the appellant firm complete books of account which were duly produced in the course of assessment proceedings but the appellant as a result of opportunities granted to it.*
- ii) That the ld. AO neither rejected the books of account nor recorded any adverse findings in respect of such books of account.*
- iii) Thus once complete details in respect of books of account as above were produced and accepted, there remained no valid justification for the AO to allege that books of account were not produced by the appellant firm.*
- iv) The affidavit of Sh. Kapil Aggarwal, CA for the appellant, attested the fact that the appellant, who*

maintained books of account which had duly been audited and from which all the ledger accounts were furnished and accepted by the AO in the impugned order of assessment, could not have refrained from producing books of account in the course of assessment proceedings.

v) That the AO framed the impugned assessment order u/s 143(3) of the Act and not in the manner provided u/s 144 of the Act.

vi) The declared net profit in the books of account was accepted in the order of assessment.

vii) Inherent contradictions and assumptions and overlooking of the voluminous evidences placed on record by the appellant.”

5.1.1 No specific error or mistake has been highlighted by the Ld. DR in the aforesaid factual inference other than to suggest that the books of accounts were not produced on 6.3.2013. However, having regard to the voluminous evidence enclosed with the replies and placed as part of paper book, we find no infirmity in the conclusion of the Ld. CIT (A) that once complete details in respect of books of account as above were produced and accepted there remained no valid justification for the AO to allege that books of account were not produced by the assessee firm, particularly when the trading results as declared have been

accepted as such. Accordingly, we are unable to take a view different from that of the Ld. CIT (A) and dismiss ground no. 5.

5.2.0 Ground No. 6 challenges the action of the Ld. CIT (A) in deleting an amount of Rs. 2,66,81,915/- being cash deposited in bank accounts by the relatives of the assessee which had been added to the income of the assessee firm on the ground that it represented unaccounted money of the assessee firm. In this regard, it is noted that the sum brought to tax comprises of sum/s transferred from the bank accounts of the partners of the assessee firm or their daughters. It is not in dispute that all the aforesaid persons, during the course of assessment proceedings, had filed their confirmations, copies of account, statement of affairs of the banks, returns of income and cash flow statements duly supported by the certificates from the banks. It is also not in dispute that the assessee firm had made sales to the proprietary concerns being operated and managed by the members of the family of the assessee which facts stand accepted. Also, the aforesaid persons had deposed that the sums of money/s standing to their credits in the books of the assessee firm at the end of the impugned Financial Year were genuine and

were the product of genuine running transactions. In such circumstances, the Ld. CIT (A) had concluded and held as under:

“The above statements recorded by the AO in the course of assessment proceedings were carefully considered. All the deponents who had given loans and advances or had running transactions to the appellant firm confirmed through their statements the facts of independently running their businesses as discernible from answers 2 to 8 & 17, giving loans and advances to the appellant as evident from answers 11 & 12, their creditworthiness vis-à-vis the cash deposits in their banks’ account with the help of statements of affairs of banks, cash, ledger accounts of the respective proprietorship concerns as appearing in the books of the appellant, copy of ITR-IV & computation of income therewith vide answer no. 13 and having declared their incomes in their returns of income as manifest from answer no. 16 of their statements. None of the above replies of the deponents purportedly extending the loans and advances to the appellant firm by account payee cheques over a period of time in the FY were found by the AO to be false or incorrect. In other words the appellant’s claim that Rs. 2,66,81,915/- was received from explicable sources was not dislodged by the AO in any manner whatsoever. Meaning thereby that the explanation of the appellant was not found to be false but unsatisfactory and unacceptable by the AO.

(i) That the appellant firm received the money transferred to its bank account by account payee cheques from the three daughters of the partners namely Ms Neerja Sharma, Preeti Sharma and Heena Sharma and the two partners of the appellant firm, Sh Vinod Sharma and Usha Sharma;

(ii) That all the above five persons giving the loans were income tax assesseees.

(iii) That all the lenders appearing in response to summons u/s 131 of the Act confirmed the transactions with the appellant firm along with the sources of deposits in cash in their bank account. The relevant evidence produces before the AO by all of them are depicted below:-

S. No.	Name of the partners and their daughters	Amount added as income	Evidence on record (pages of Paper Book)
i)	Shri Vinod Kumar Sharma (Partner)	47,69,500	i) Copy of statements of affairs of PNB as on 31.03.2010 ii) Copy of statement of cash iii) Copy of ledger account of Balaji Traders in the books of appellant iv) Copy of confirmation dated 27.02.2013 from Punjab National Bank v) Copy of statement recorded dated 26.2.2013 vi) Copy of acknowledgement of return of income alongwith computation of income for AY 2010-11
ii)	Smt. Usha Sharma (Partner)	49,75,000	i) Copy of statement of affairs of PNB as on 31.03.2010 ii) Copy of statement of cash iii) Copy of ledger account of S. J. Traders in the books of appellant. iv) Copy of confirmation dated 27.2.2013 from Punjab National Bank v) Copy of statement recorded dated 04.03.2013 vi) Copy of acknowledgement of return of income alongwith computation of income for AY 2010-11
iii)	Ms. Neerja Sharma (daughter)	39,96,015	i) Copy of ledger account of Neerja Sharma in the books of appellant ii) Copy of bank statement of M/s Ginni Enterprises iii) Copy of statement of cash iv) Copy of statement of affairs of PNB as on 31.3.2010 v) Copy of affirmation dated 27.2.2013 from Punjab National Bank vi) Copy of ledger account of Gini Enterprises in the books of appellant vii) Copy of statement recorded dated 11.3.2013 viii) Copy of acknowledgement of return of income alongwith computation of income for AY 2010-11
iv)	Ms. Preeti Sharma (daughter)	72,55,950	i) Copy of ledger account of Preeti Sharma in the books of appellant ii) Copy of bank statement of M/s Geetanjali Feeds iii) Copy of statement of affairs of PNB as on 31.3.2010 iv) Copy of statement of cash v) Copy of confirmation dated 27.2.2013 from Punjab National Bank vi) Copy of ledger account of Geetanjali Feeds in the books of appellant vii) Copy of statement recorded dated 1.3.2013 viii) Copy of acknowledgement of return of income alongwith computation of

			income for AY 2010-11
v)	Ms. Heena Sharma (daughter)	56,85,450	i) Copy of bank statement of M/s Heena Traders ii) Copy of statement of affairs of PNB as on 31.3.2010 iii) Copy of statement of cash iv) Copy of ledger account of Heena Traders in the books of appellant v) Copy of confirmation dated 27.2.2013 from Punjab National Bank vi) Copy of statement recorded dated 4.3.2013 vii) Copy of acknowledgement of return of income alongwith computation of income for the AY 2007-08 to AY 2010-11
	Total	2,66,81,815	

iv) That the AO did not have any basis or concrete, sound and clinching evidence to rebut the claim of the lenders from whose accounts the money was received by account payee cheques by the appellant firm. Thus, the allegation of the AO that cash deposited in the proprietorship concerns of partners and their daughters was the cash of the appellant firm was merely a strong suspicion, emanating from conjectures, surmises, assumptions and extra-polations.

v) That the AO could not establish conclusively that the three daughters of the partners and the partners of the appellant firm were not engaged in the business of poultry seeds. Rather contrary to such an allegation the respective lenders in their statements u/s 131 of the Act convincingly deposed in support of their claim of running their own businesses. The returns furnished by them before the AO not only for the instant assessment year but for the preceding assessment years could not be assailed by the AO in the least.

vi) That business transactions under taken by the appellant firm with all the five concerns established by the partners and their daughters stood accepted as the profit arrived at on the basis of sales made to such concerns were accepted.

vii) That total sales of Rs. 4,14,18,454/- on which profit of Rs. 8,49,646/- was declared by the appellant firm was

accepted (page 19 of the order of assessment) by the AO. Once profit, which was disclosed including sales made by the firm to proprietorship concerns was accepted, any conclusion that such concerns were not engaged in the business was self-contradictory.

In a nutshell the position emerging from the facts and evidence on record is as under:-

a) That all deposits in the bank account of the appellant were by account payee cheques;

b) That each person who advanced such money to the appellant was an income tax assessee;

c) That each person who advanced such money in its statement recorded before the learned Assessing Officer confirmed the source of such advances to the appellant which could not be falsified by the AO on the strength of evidence;

d) That such advances in course of business transaction stood repaid during the year as was evident from copies of accounts reflecting repayments;

e) That there was no evidence to hold that cash deposits in the account of the partners/daughters was the cash of the appellant firm. That such cash was otherwise duly explained by the partners and daughters in their statement and documentary evidence including cash flow statement which could not be contradicted by the AO;

f) That the AO also failed to point out any defect in the books of account produced before him by the appellant in the course of assessment proceedings;

g) That there was no reason for the AO to make the addition as above without rejecting the books of account which only shows that there were inherent contradictions in the order of the AO.

h) The inferences drawn by the AO from the statements of the lenders were only arguments based on logical reasoning but bereft of supporting evidence.

i) If at all any action was warranted in this respect, it was in the case of the source of the source.

Therefore in the aforesaid premises the addition of Rs. 2,66,81,913/- is deleted and the ground no. 7(i) to (iv) are allowed.”

5.2.1 The Ld. Sr. DR has been unable to persuade us to form a different opinion. Once the assessee firm has received money through banking channels from its partners/their daughters who have duly deposed and confirmed the transaction/s and have also supported the same with documentary evidence/s then the addition, without any evidence/s to the contrary, is absolutely without any force of law and unsustainable. It is well settled law that surmises, conjecture and suspicion can never be resorted to make addition u/s 68 of the Act. The AO has proceeded to make the addition on an assumption that the cash deposited in the proprietorship concern of the partners and their daughter is the cash of the assessee. No basis whatsoever has been stated in the order of assessment for such a farfetched assumption. In fact, it is pertinent to note that the Ld. CIT (A) has also observed as under:

“It was noticed that the AO took inconsistent stands in as much as he admitted as well as disputed at the same time that the lenders, all members of the family i.e. Vinod Sharma, Usha Sharma, Neerja Sharma, Heena Sharma and Preeti Sharma had their own sources of Income from independent businesses run by them.

It was also noticed that the assessments in the case of all the lenders had been finalized u/s 143(1) of the Act for the same AY as is in dispute in the case of the appellant firm.

Although the lender were assessed by different AOs in Delhi itself, a case was never made out against any of the lenders on the grounds of bogus returns of income or unexplained cash credits or deposits in their banks account in any of the earlier AYs especially since 2002-03. It was also seen on a perusal of the assessment order that the respective lenders had filed their confirmations, copies of account, statements of affairs of the banks, returns of income and cash flow statements duly supported by the certificate from the banks which clearly demonstrated that the lenders had their own sources of income and thereby their identity, genuineness and creditworthiness were duly proved.

It was also noted with interest that the appellant firm made sales to the proprietary concerns run and managed by the members of the family of the appellant, a fact which was not disputed by the AO also. Similarly their credit balances at the end of the year in the books of appellant firm were also not impugned by the AO. No information adverse to the lenders was also passed on by the concerned AOs of such lenders to the AO of the appellant firm also.

Likewise no information adverse to the lenders according to the AO were passed on to AO's of such lenders for a concerned and focused approach by the appellant's AO. In a nutshell the income tax returns of all such lenders were neither disputed nor assailed under any proceedings of the Act.”

5.2.2 Accordingly, for the reasons stated above, the addition made of Rs. 2,66,81,915/- is held to be validly deleted and, therefore, ground no 6 raised by the revenue is rejected.

5.3.0 Ground No. 7 agitates the action of the Ld. CIT (A) in accepting the assessee's contention that the impugned amount of Rs. 2,38,56,526/- deposited in the two bank accounts was out of the cash withdrawals made by the assessee firm. On this issue, the learned CIT (A), while deleting the addition, has held as under:

“Having considered the submissions, the relevant material evidence on record and various aspects of the matter on this issue, it was noticed that the Ld. AO made the additions merely on the ground:-

“However, the assessee has denied to have made any purchases in cash. The assessee has filed the cash flow statement submitted vide their letter dated 28.01.2013 where in the assessee has claimed benefit of certain expenses amounting to Rs. 11,49,833/- debited to P & L a/c which have been claimed in cash. The claimed put forth by the assessee is accepted and the assessee will be given the benefit of the balance amount of Rs. 2,45,40,167/- (Rs. 2,56,90,000/- - Rs. 11,49,833/-) will be added as income of the assessee u/s 68 of the I.T. Act, 1961 as the assessee has failed to explain the source of cash deposits made their bank accounts.”

Regard was had to submission of the appellant in the above connection. The sole ground behind the addition was the alleged failure of the appellant to prove the sources of cash deposits in the above disclosed regular banks' accounts of the appellant. The appellant refuted the above allegation of the AO during the appellate proceedings stating that Sh Vinod Sharma (Q. No. 18) partner in the appellant firm, deposed during their examination u/s 131 of the Act by the AO that the cash deposits in the

aforesaid bank accounts were made of the same cash withdrawn from the banks for purchase of goods. The withdrawn cash was entered into the firm's cash book first. Thereafter, money whenever required in cash for purchase of goods was withdrawn from the cash book for being paid to the sellers of the poultry feeds. Whenever the deals did not materialize the money lying in cash in the firm's account was re-deposited in bank in cash. The AR for the appellant summed up the whole transaction as a simple case of re-deposit of cash withdrawn from the above bank into the same bank again on there being no need of cash.

The above arguments were considered. It is observed by me that none of the above facts narrated supra were disputed by the AO. Just by a stroke of pen he drew the conclusion that the entire cash deposits were unexplained. The nexus between the debits and the credits in cash in the said banks' accounts as established by the appellant was not at all upset by the AO. Having considered and duly appreciated the facts of the case as presented before the AO, I am of the firm opinion that the entire cash deposits were not unexplained. In this context the route of the cash withdrawn as shown to the AO is worth reproducing:-

3) In other words, even as per the findings of the learned Assessing Officer the cash available was of Rs. 2,50,06,359/- from the following two sources:

a)	Cash withdrawals Evidence: i) Copy of bank statement of current account no. 1399002100040391 ii) Detail of cash withdrawal of current account no. 1399002100040391 iii) Copy of bank statement of overdraft account no. 1399008700001396 iv) Detail of cash withdrawal of overdraft account no. 1399008700001396 v) Copy of cash book vi) Copy of bank book	Rs. 2,18,20,000/-
b)	Cash sales Evidence: i) Copy of ledger account of sales	RS. 31,86,359/- (figure of Rs. 31,90,359/- incorrectly adopted)
c)	Total	Rs. 2,50,06,359/-

..... Moreover, it is submitted that all the cash deposits in the bank account are explained through the cash books which is part of the books of account maintained by the appellant firm. The books of account of the appellant firm have not been rejected under section 145(3) of the Act. In any

case, no defect has been found in the cash book maintained by the appellant. In fact, the profit declared on the basis of such books of account has been accepted as such.

9) Furthermore, the appellant during the case of assessment proceedings had furnished a cash flow statement explaining the deposits in the bank account of the appellant. A copy of the cash flow statement for convenience extracted hereunder:

	Amount (in Rs.)
Opening Balance of cash as on 31.03.2009	3,00,451
Add: Capital Introduced by Shri Vinod Sharma	10,00,000
Add: Amount received from Geetanjali Feeds	2,15,300
Add: Amount received from Ginni Enterprises	2,14,600
Add: Amount received from Heena Traders	4,35,100
Add: Cash withdrawn from PNB 1396	49,10,000
Add: Cash withdrawn from PNB 40391	1,68,40,000
Add: Cash sales	31,86,359
	2,71,01,810
Less: Expenses incurred	
Diwali Expenses	21,600
Electricity Exp.	1,06,520
Loading Unloading	2,59,501
Printing & Stationery	16,520
Repair & Maintenance	95,192
Salary	4,49,000
Purchases	17,450
Staff Welfare	32,541
Telephone Expenses	37,247
Travelling Conveyance	1,05,012
Car Repair	5,250
Less: Cash deposited into PNB 1396	31,35,000
Less: Cash deposited into PNB 40391	2,26,41,000
	1,79,977

The explained amounts which were re-deposited into the bank in cash after being withdrawn in cash from the same bank for purchase of poultry feeds amounting to Rs. 2,18,20,000/- identified by the AO during the assessment proceedings as cash withdrawals out of Rs. 2,56,90,000/- are deleted, being a case of incorrect appreciation of facts.

Regarding the remaining Rs. 38,70,000/- out of Rs. 2,56,90,000/- deposits in cash in the said bank account the AO vide page no. 4 para-3 of the assessment order mentioned that there were cash sales of Rs. 31,86,359/-. Having given such a finding of fact in the body of the order the AO was precluded from adding this amount as unexplained cash

deposits. The appellant therefore upon due consideration as allowed the benefit of telescoping. Under the circumstances, I am of the considered view that Rs. 31,86,359/- deposited in cash were cash sales as admitted by the AO himself are deleted.

Regarding the balance cash deposits of Rs. 6,83,641/-, the appellant's explanation was not found to be sustainable hence confirmed. Thus, grounds 6 to 6.3 are partly allowed. However, the use of such withdrawn cash for earning income cannot be absolutely ruled out. Accordingly, I hold upon consideration interest chargeable @ 2.5 % per annum on the amount of such withdrawn cash claimed to have been re-deposited in cash in the bank accounts of which no proofs or findings to the contrary could be brought on record by the AO, for the interregnum period as income from other sources i.e. from the date of withdrawal of cash till its redeposit in cash. The AO shall calculate the interest income as above. To this extent the addition stand confirmed."

5.3.1 On careful consideration of the aforesaid factual matrix, what is certainly not disputed is that there were cash withdrawals from the bank to the extent of Rs. 2,18,20,000/- and also cash sales to the extent of Rs. 31,86,359/-. Under such circumstances, once the trading results and the cash flow statement filed during the assessment proceedings have been accepted, we find no error in the action of the Ld. CIT (A) in deleting the addition to the extent to the sum withdrawn in cash from the bank and cash sales duly declared and accepted in the order of assessment. Ground No. 7 raised by the revenue is dismissed.

5.4 Grounds 8 and 9 are general and do not require any specific adjudication. They are, therefore, rejected.

6.0 In the result, the appeal of the revenue stands dismissed.

7.0 In the final result, both the appeals are dismissed.

Order pronounced in the open court on 19th March, 2019.

Sd/-

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 19th MARCH, 2019
'GS'

Copy forwarded to: -

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- 1) Appellant
 - 2) Respondent
 - 3) CIT(A)
 - 4) CIT
 - 5) DR

By Order

ASSTT. REGISTRAR

Date of dictation	
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Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	