

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'D': NEW DELHI)**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 942/Del/2015  
(Assessment Year: 2009-10)**

Sh. Jagji Singh Nain, Prop of M/s Nain Manpower Services, D-2/83, Sector 10, Faridabad.	Vs.	ACIT, Circle-II, Faridabad.
<b>PAN No:</b> ABUPN7941E		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Shri. Virat Joneja, Adv. and  
Shri Samrat Joneja, CA

**Revenue by** : Smt. Naina Soin Kapil, SR. DR

**ORDER**

**PER ANADEE NATH MISSHRA, AM**

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals), Faridabad, ["Ld. CIT(A)", for short] dated 02.12.2014 for Assessment Year 2009-10. The grounds of appeal are as under:

*"1. Having come to the conclusion that the affidavit filed by the 5 impugned cash creditors do not match with the contents found mentioned in the returns of income of these 5 impugned cash creditors the Ld. AO erred in law and on facts*

*in not enforcing the attendance of the impugned cash creditors to find out the veracity of the affidavit vis a vis the returns of income.*

*2. Having received the copies of the saving bank accounts of all the five impugned cash creditors from Punjab National Bank, Bass (Hisar), from where the payments into the assessee savings accounts were made, the Ld. AO failed in law and on facts in not investigating the sources and the nature of the credit receipts in the saving account of the impugned cash creditors as all the filing their income tax returns.*

*3. Having come to know the large amount of credits in the savings accounts of the impugned cash creditors the Ld. AO in law and on facts erred in not investigating those credits appearing just before the payments made to the assessee, so that the credits in the bank accounts could be assessed taxed ;under section 69 of the Act in the hands of the account holders, if remained unexplained.*

*4. Having come to know that the 5 impugned cash creditors paid in the account of the assessee for the benefit of Smt. Murti Devi mother of the assessee who purchased residential house with help of these amounts, totaling to 35 lakhs, the Ld. AO erred in law and on facts in not enforcing the attendance of Smt. Murti Devi for the veracity of facts as submitted by the appellant during the assessment proceedings.*

*5. The Ld. AO erred in law and on facts in making additions of Rs. 35 lacs in the returned income of the assessee in a casual and easy manner rather than investigating an enforcing the attendance of impugned cash creditors for taxing credits in their Bank Accounts under section 69 of the Act.*

*6. The saving bank account of the 5 impugned cash creditors show a number of transactions with large amounts therefore the Ld. AO erred in law and on facts in not accepting the impugned cash credits as genuine on the basis of the capacity identity & genuineness brought on record.*

*7. Having taken the possession of the material showing that the sum of Rs. 10 lakhs deposited with M/s Everest Heights came from the bank account of M/s Seven Seas Media, Gurgaon the Ld. AO erred in Law & facts in not framing the assessment after considering this fact.*

*8. The Ld. CIT(A) in passing the order where he opened about the human probability in accepting the advances made by the 5 depositors in the account of the appellant.”*

(1.1) During the appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short) the assessee filed **Paper Book**, containing the following particulars.

1. *Copy of Income tax return of appellant for AY 2009-10*
2. *Copy of bank Statement of the appellant for AY 2009-10 showing receipt of Rs. 35 lacs through banking channel.*
3. *Copy of Sale deed for purchase of house property in the name of mother of the Appellant – Smt. Murti Devi*
4. *Statement from mother of the appellant – Smt. Murti Devi and Income tax return of the mother of Appellant - Smt. Murti Devi for the AY 2010-11*
5. *Copy of confirmation of Account, Copy of ration card, Copy of bank statement, Copy of affidavit, Copy of Income tax return of Sh. Dharamraj.*
6. *Copy of Confirmation of Account, Copy of ration card, Copy of bank statement, Copy of affidavit, Copy of Income tax return of Sh. Narender*
7. *Copy of Confirmation of Account, Copy of ration card, Copy of bank of Statement, Copy if affidavit, Copy of Income tax return of Sh. Bijender*
8. *Copy of Confirmation of Account, Copy of ration card, Copy of bank of Statement, Copy if affidavit, Copy of Income tax return of Sh. Teerath*
9. *Copy of Confirmation of Account, Copy of ration card, Copy of bank of Statement, Copy if affidavit, Copy of Income tax return of Sh. Ranbir*
10. *Copy of letter dated 05.12.2011 from the Bank Manager PNB confirming issue of draft in favour of Sh. Jagjit Singh Nain- appellant and confirmation of ICICI bank for receipt through Banking channels*
11. *Copy of Income Tax return of Brother of Appellant – Sh. Karan Singh along with copy of balance sheet*
12. *Copy of Demand draft submitted with M/s Everest Heights*
13. *Copy of Agreement for sale between M/s Everest Heights and the appellant*
14. *Copy of affidavit from brother of Appellant – Sh. Karan Singh*
15. *Information under section 133(6) from Everest heights*
16. *Copy of DD for booking cancelled by Everest Heights in favour of Appellant"*

**(2)** The appeal filed by assessee is in respect of the additions made by the Assessing Officer ("AO" , in short) amounting to Rs. 35,00,000/- U/s 68 of Income Tax Act, ("I.T. Act", for short) and amount of Rs. 10,00,000/- on account of unexplained investment. The Ld. CIT(A) confirmed these additions in aforesaid impugned order dated 02.12.2014. At the time of hearing before us, the Ld. Authorized Representative ("AR", for short) of the assessee submitted that many relevant facts pertaining to these additions have escaped the consideration of the lower authorities namely AO and Ld. CIT(A) in their respective orders. It was further submitted by him that the assessee was not provided the opportunity to produce the persons from whom amount totaling Rs. 35,00,000/- were received by the assessee, thereby, denying the assessee's opportunity to proof creditworthiness of the persons and genuineness of the transactions. Drawing our attention to the evidences and details as per Paper Book, Ld. AR also submitted that the lower authorities have not fully considered all the relevant facts in respect of the aforesaid additions on account of unexplained investment and addition U/s 68 of I.T. Act. Accordingly, the Ld. AR of the assessee submitted that the disputed issue may be set aside to the file of the AO for verification and fresh order; so, that the assessee has an opportunity to explain all relevant details and evidences to the AO; and so that the assessee can produce the concerned persons before the AO. The Ld. DR appearing for Revenue also agreed that in the fitness of things, the disputed issues may be remanded back to the file of the AO for verification and fresh order. As both sides agree, we set aside the order of the Ld. CIT(A) and remand the disputed

issue to the file of the AO for verification and fresh order in accordance with law. The AO is directed to provide an opportunity to the assessee to submit the relevant details and evidences; and to produce the persons before the AO in support of the assessee's case, before the AO passes fresh order in pursuance of this direction.

**(3)** In the result, appeal of the Assessee is partly allowed.

Order pronounced in the open court on 25<sup>th</sup> day of March, 2019.

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 25 .03.2019

Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	19 /03/19
Date on which the typed draft is placed before the dictating Member	20/3/19
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	25/3/19
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	