

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC' NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

**ITA Nos. 1385 & 1386/Del/2019  
Assessment Year: 2013-14**

Ashutosh Shukla RZF-364/3, 1 Gali No. 10, Near DDA Park, Raj Nagar, Part-II, New Delhi. <b>PAN No. BMDPS6698L</b>	<b>vs</b>	ITO Ward 44(4) New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Shri Amol Sinha, Advocate Shri Ashvini Kumar, Advocate</b>
<b>Revenue by</b>	<b>Shri S.L. Anuragi, Sr. DR</b>

<b>Date of Hearing</b>	<b>06.08.2019</b>
<b>Date of Pronouncement</b>	<b>14.08.2019</b>

**ORDER**

The above two appeals filed by the assessee are directed against the separate orders of the CIT(Appeals)-15, New Delhi relating to AY 2013-14. While ITA No. 1385/Del/2019 is against the quantum addition sustained by the CIT(A), ITA No. 1386/Del/2019 relates to confirmation of penalty levied by the AO u/s 271(1)(c) of the Act. For the sake of convenience, both these appeals were heard together and are being disposed of by this common order.

2. ITA No. 1385/Del/2019:

Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 31.03.2015 declaring total income of Rs. 1,99,770/-. In this case, the AIR information was received according to which the assessee has made cash deposit of Rs. 66,90,100/- in the savings bank account maintained with HDFC Bank. During the course of assessment proceedings, the AO asked the assessee to substantiate the source of such cash deposited in the bank account. It was explained by the assessee that he was working with Rudra Pharmaceuticals on consignment basis who were having wholesale/retail business in the field of medicine/pharmaceuticals business. Since, the firm has trouble with its overdraft facility at Syndicate bank, they asked the assessee to collect the amount from sundry debtors of the firm and deposit in his saving bank account from which cheques were issued to the suppliers of Rudra Pharmaceuticals. In order to verify the claim of the assessee the AO asked the assessee to file confirmation and produce the proprietor/partner of M/s Rudra Pharmaceuticals. Since, the assessee failed to produce the said party summon u/s 131 was issued. M/s Rudra Pharmaceuticals confirmed to have deposited cash of Rs. 41,10,000/- in the bank account of the assessee which the AO allowed. However, the various other parties from whom the assessee has received cash on behalf of M/s Rudra Pharmaceuticals were not accepted by the AO in view of their denial to such transaction or non production of

the same parties before the AO. The AO, accordingly, made addition of Rs. 25,80,100/- by observing as under:

*“Under these circumstances, since M/s Rudra Pharmaceuticals has confirmed the transactions upto Rs. 41,10,000/-, the balance amount of cash deposited at Rs. 25,80,100/- has remained unexplained especially in view of the fact that M/s Bhutani Traders, M/s Zeenat Chemist and M/s Maa Mansa Traders have denied/not confirmed any transactions with the assessee. Therefore, the amount of Rs. 25,80,100/- is hereby added to the total income of the assessee as unexplained cash credits u/s 68 of the I.T. Act.”*

3. In appeal, the Ld. CIT(A) upheld the action of the AO by observing as under:

**“DECISION** : *The contention of the Appellant has been considered and the order of AO has also been perused. It is seen that there was an AIR Information in this case about the total cash deposit of Rs. 66,90,100/- in the bank account of the appellant. During the assessment stage, as per the explanation filed by the assessee, the AO conducted detailed enquiries and issued summons u/s 131 to various parties. Some of the parties denied having done the transactions with the assessee and notices to some of the parties were returned back unserved. From the parties who responded to the notices, however, the transaction amounting to Rs. 41,10,000/- only were confirmed by the parties. The appellant assessee was also given opportunity at the assessment stage to produce various parties, which had failed to confirm the transactions. However, the assessee could not produce those parties in support of his contentions. During the remand proceedings also the AO has submitted that the same position remains, even after making further enquiries from the same very parties. Therefore, considering the facts and circumstances of the case, the action of the AO appears to be reasonable and justified and therefore, the*

*addition of Rs. 25,80,100/- made by the AO is hereby confirmed.”*

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:

1. *“That the order passed by the Ld. CIT(A) u/s 250(6) was incorrect, bad in law and void ab initio*
2. *Whether the Ld. CIT(A) was justified in upholding the addition made by the AO of Rs. 25,80,100/- u/s 68 of the Income Tax Act, 1961 in the absence of books of accounts when it was not credit entry in the account of the assessee.*
3. *That Ld. CIT(A) erred in upholding the AO’s order on facts and circumstances of the case to make an addition of Rs. 25,80,100/- without appreciating the explanation and facts submitted by the assessee for the source of cash deposited.*
4. *That Ld. CIT(A) as well as Assessing Officer erred in law and on facts by not summoning to the debtors of the assessee in reference to the employer instead of assessee who were the entities said to be depositing the cash.*
5. *The appellant craves leave to add, alter, amend or vary any of the above grounds during the pendency of the appeal.”*

5. The ld. Counsel for assessee submitted that since the notices were issued to the parties in the wrong addresses the notices could not be received by those parties. He submitted that given an opportunity the assessee is in a position to produce the parties before the AO to substantiate the claim that the cash deposited by the assessee in the saving bank account maintained with HDFC Bank is in fact the cash received from those parties. He submitted that in the interest of justice, the assessee should be given one

final opportunity to substantiate the source of such cash deposit in the bank account.

6. The ld. DR on the other hand, heavily relied on the order of the CIT(A).

7. I have considered the rival arguments made by both the sides and perused the orders of the AO and the CIT(A). I have also gone through the paper book filed on behalf of the assessee. I find the AO in the instant case made addition of Rs. 25,80,100/- on the ground that the assessee could not explain the source of such cash deposits in the bank account and the parties from whom assessee has shown to have received cash have denied/not confirmed any transaction with the assessee. I find the Ld. CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that given an opportunity the assessee is in a position to produce those parties before the AO to substantiate the transactions by them with the assessee so as to explain the cash deposits in the bank account.

8. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to give one final opportunity to the assessee to substantiate its case by producing the various parties in question to substantiate the cash deposit in the bank account. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. I hold and direct

accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. ITA No. 1386/Del/2019:

After hearing both the sides, I find the AO levied penalty of Rs. 6,83,880/- on account of addition made by him being unverified cash deposit of Rs. 25,80,100/- which has been upheld by the CIT(A). Since, the quantum addition has been restored to the file of the AO, therefore, the penalty so levied by the AO and upheld by the CIT(A) does not survive. Accordingly, the same is cancelled. However, the AO is at liberty to initiate fresh penalty proceedings u/s 271(1)(c) after completion of the assessment in the set aside proceedings. The grounds raised by the assessee in the penalty appeal, vide ITA No. 1386/Del/2019 are accordingly allowed.

10. In the result, ITA No. 1385/Del/2019 is allowed for statistical purposes and ITA No. 1386/Del/2019 is allowed.

Order pronounced in the open Court on 14/08/2019

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Dated: 14/08/2019

\*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	05.08.2019
Date on which the typed draft is placed before the dictating Member	13.08.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	14.08.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	14.08.2019
Date on which the fair order comes back to the Sr. PS/PS	14.08.2019
Date on which the final order is uploaded on the website of ITAT	14.08.2019
Date on which the file goes to the Bench Clerk	14.08.2019
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	