

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 2955/Del/2016
(Assessment Year: 2009-10)**

Mr. Goldy Narula. Flat No. 35, Pocket-01, Sector- 23, Rohini, New Delhi.	Vs.	ITO, Ward 21(1), New Delhi.
PAN No: AAGPN0116Q		
APPELLANT		RESPONDENT

Assessee by : None
Revenue by : Ms. Rakhi Vimal, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM

[A]. This appeal has been filed by the assessee against the impugned appellate order dated 29.03.2016 passed by Learned Commissioner of Income Tax (Appeals)-32, New Delhi [in short, "Ld.CIT(A)"] pertaining to Assessment Year 2009-10. The Assessee has raised following grounds of appeal:-

- "1. That the Ld. CIT(A) has erred in misunderstanding the facts of the case.
2. That the Ld. CIT(A) has further erred in confirming the addition of Rs. 20,51,000/- which pertained cash deposited out of the Advance (bayana) u/s 69 of ITA, 1961 as unexplained cash deposits, by ignoring the explanations, duly supported by documents and records submitted.

3. *Any other ground before or at the time of hearing."*

[B]. Vide Assessment Order dated 14.03.2013 passed u/s 143(3)/ 147 of the Income Tax Act, 1961 (in short "the Act"). In this Assessment Order, cash deposits totaling Rs. 1,01,48,000 in the assessee's Saving Bank Account in Axix bank Ltd. in Rohini, was added to the assessee's returned income. The relevant portion of the Assessment Order is reproduced as under:-

A notice u/s 148 of I.T. Act,1961 was issued on 22-09-2011 which was duly served on the assessee. The reasons recorded for issuance of notice u/s 148 are as under:-

“As per datas available on ITD system, the assessee has not filed return of income for A.Y.2009-10. As per AIR information sheet generated from ITD system, the assessee has made cash deposits of Rs.18,46,000/- and Rs.64,02,000/- in his SB A/c in Indra Prastha Sehkar Bank Ltd. and Axix Bank Ltd., Rohini reflecting during F.Y.2008-09 relevant to A.Y.2009-10. In view of facts stated above, I have reason to believe that income of the assessee to the extent of Rs.82,48,000/- have escaped assessment. Issue notice u/s 148 of I.T. Act 1961 in this case.”

2. In response to above said notice, no return of income for A.Y.2009-10 was filed by the assessee. A statutory notice u/s 142(1) was issued on 06-01-2012 fixing the case for 13-01-2012 but on the fixed date neither anybody attended nor any application for adjournment was filed. Later on, following statutory notices were issued requiring the assessee to furnish requisite details. The details of notices issued to the assessee are as under:-

	<u>DATE OF NOTICE</u>	<u>DATE FOR</u>	<u>REMARKS</u>	
1.	142(1)	06-01-2012	13-01-2012	Non Compliance
2.	142(1)/271(1)(b)	24-01-2012	10-02-2012	Non Compliance
3.	142(1)/271(1)(b)	14-02-2012	27-02-2012	Non Compliance
4.	142(1)/271(1)(b)	29-02-2012	06-03-2012	On request, case adjourned to 09.03.2012, on 09.03.2012, Sh. Goldy Narula, assessee himself attended and he was required to furnish all requisite details as required vide notice u/s 142(1) dt.06.01.2012 which was already duly served on him. On his request, case adjourned to 26.03.2012. But on the fixed date, that is on 23.03.2012, Sh. Goldy Narula, assessee attended, but did not file any requisite details. On his request, case adjourned to 16.04.2012, but on this date, neither anybody attended nor any application for adjournment was filed.
5.	142(1)	23-04-2012	04-05-2012	Non Compliance
6.	142(1)	19-06-2012	29-06-2012	Non Compliance
7.	142(1)/271(1)(b)	23-07-2012	16-08-2012	Non Compliance
8.	142(1)/271(1)(b)	24-08-2012	07-09-2012	On the fixed date, that is 07.09.2012, Sh. Goldy Narula, assessee attended, but did not file any requisite details and he was informed vide note sheet entry dt.07.09.2012 that in case of non furnishing of requisite details, the cash deposited by him in his SB A/c's will be treated as unexplained and same will be added to his returned income on a/c of unexplained cash deposits from undisclosed sources of income. He was further required to furnish all requisite details and explain the nature & source of cash deposits made by him in his SB A/c's. On his request case was adjourned to 11.10.2012. On 11.10.2012 Sh. Goldy Narula, assessee attended but did not file any requisite details. He was again required to furnish all requisite details. On his request case was adjourned to 08.11.2012 but neither anybody attended nor an application for adjournment was filed.
9.	142(1)	24-12-2012	07-01-2013	Non Compliance
10.	142(1)/271(1)(b)	14-01-2013	24-01-2013	Non Compliance
11.	142(1)/271(1)(b)	28-01-2013	22-02-2013	Non Compliance
12.	142(1)	04.03.2013	13.03.2013	Non Compliance

3. In view of non compliance of above cited statutory notices by the assessee, I have no alternative but to complete assessment on merits on the basis of material / details available on file u/s 144 of I.T. Act 1961. As per bank a/c statements of the assessee collected from the concerned banks, the assessee made following cash deposits in his SB A/c's during F.Y.2008-09 relevant A.Y.2009-10:-

(21)

(i) Bank & Complete Address	(ii) A/c No.	(iii) Cash Deposits
1. Axix Bank Ltd. Sector-7, Rohini, Delhi-110085	431010100013493	5,00,000/-
2. Axix Bank Ltd. Sector-7, Rohini, Delhi-110085	431010100058371	77,97,000/-
3. Indra Prastha Sehkari Bank Ltd. 102, Krishna Plaza, Plot No.3, Sector-8, Rohini, Delhi-110085	1000531855	18,51,000/-
	Total	1,01,48,000/-

Despite so many opportunities provided to the assessee, he failed to explain the nature and source of above referred cash deposits along with relevant and reliable documentary evidence. Therefore, cash deposits of Rs.1,01,48,000/- remained unexplained and same are hereby treated as income of the assessee from undisclosed sources.

4. As stated above the assessee failed to explain the nature & source of above referred cash deposits despite the fact that so many opportunities were provided to him for this purpose.

The Hon'ble High Court of Rajasthan in case of C.I.T. vs. R.S. Rathore (1995) 212 ITR 390 (Raj) has held that the nature and source of each and individual entry must be separately explained by assessee. It is each and individual entry on which mind has to be applied by the taxing authority when an explanation is offered by the assessee.

The Hon'ble Apex Court in case of C.I.T. vs. K Chinnathamban (SC) 292 ITR 682 and Hon'ble I.T.A. in case of Manoj Aggarwal vs. DCIT. (ITAT-SB-DELHI) 113 ITD 377 have held that cash deposit in Bank should be explained by the assessee ; otherwise it is unexplained income u/s 69 or 69B.

The Hon'ble Punjab and Haryana High Court in case of C.I.T. vs. Lal Chand Trath Ram (P. & H.) 225 ITR 675 has held that mere offering explanation is not sufficient. The explanation must be substantiated by cogent and reliable evidence.

The Hon'ble Apex Court in case of Roshan Di Hatti vs. C.I.T. (1977) 107 ITR 938 (S.C.) has held that the burden is on the assessee to prove source of receipt.

F. In view of facts stated above and in the light of above cited case law, I am of the considered opinion that assessee failed to explain the nature and source of cash deposits of Rs.1,01,48,000/- despite the fact that a number of opportunities were provided to him for this purpose and same is added to the returned income of the assessee on account of unexplained cash deposits from undisclosed sources of income.

As the assessee did not disclose true particulars of his income in his return of income, penalty proceedings u/s 271(1)(c) are being initiated in r/o this addition separately.

As the assessee failed to comply with statutory notices as stated above penalty proceedings u/s 271(1)(b) is being initiated separately. As the assessee did not file his return of income, penalty proceedings u/s 271F is being initiated separately.

6. The taxable income of the assessee is computed as under:-

	Rs.
Returned Income	Nil-No income tax return was filed.
Added:	
On a/c of unexplained cash deposits from undisclosed sources of income. (As discuss above)	1,01,48,000/-
Taxable Income:	1,01,48,000/-

Assessed at Rs.1,01,48,000/-. Charge interest u/s 234A and 234B of I.T. Act 1961. Penalty proceedings u/s 271F is being initiated separately. Penalty proceedings u/s 271(1)(c) and 271(1)(b) of I.T. Act 1961 are being initiated separately. Issue necessary forms.

[C] Aggrieved by the Assessment Order, the Assessee preferred appeal before the Ld. CIT(A). Vide aforesaid impugned appellate order dated 29.03.2016, the Ld. CIT(A) confirmed addition amounting to Rs. 20,51,000/- and deleted the remaining amount of

Rs. 79,53,000/- out of the aforesaid addition totaling Rs. 1,01,48,000/-. The relevant portion of the order of the Ld. CIT(A) is reproduced as under:-

(All Sections referred to in this order are with reference to the
Income-tax Act, 1961 unless otherwise specified.)

This is an appeal against the assessment order passed u/s 143 (3) r.w.s. 147 dated 14/03/2013 determining total income at Rs. 10148000/- . As per the A.O. the assessee didn't file his return of income either u/s 139 or in response to notice u/s 148. The A.O. had received information from AIR that the assessee had deposited Rs. 1846000/- in cash in his SB Account with Indraprasth Sahakari Bank Ltd. and Rs. 6402000 in SB account with AXIS Bank. In response to the notice u/s 148 dated 22/09/2011 the assessee didn't file any return of income but filed return of income on 06/09/2012. It appears there was total non cooperation by the assessee and 12 notices of the A.O. on different dates were not complied. In view of the non compliance of the assessee the A.O. completed the assessment by adding Rs.10148000/- being the cash deposits in AXIS Bank saving accounts and in Indraprastha Sahakari Bank Ltd.. The assessee is in appeal against this addition.

Grounds of appeal are as under:

1. That the A.O. has misunderstood the facts of the case.
2. That the A.O. has further erred in ignoring the return of income submitted and framing the assessment, without considering the facts.
3. That the A.O has erred in adding Rs.1,01,48,000 u/s. 69 of ITA,1961 as unexplained cash deposits, despite the explanations offered by the assessee.
4. Any other ground before or at the time of hearing.

During the appellate proceedings the A/R of the assessee filed a written submission. Relevant parts of the submissions are reproduced hereunder:

"The assessee continues to derive income from his proprietary business of property sale & purchase and earns brokerage as property consultant and trading in shares. He receives, advance, sales consideration for the property and commission for his services, mostly in cash which he deposits

into the bank. A part, is sometimes, retained for his day today business requirements. He also withdraws from the bank for business purposes which if not used is re deposited.

We now, with your kind permission take up the Grounds of Appeal: Ground No. 1 and 2

The first Ground of appeal is that the A.O. has misunderstood the facts of the case and made disallowances in complete disregard of the return of income submitted and framing the assessment without considering the facts.

It was explained to the AO that the assessee receives mostly cash from parties for sale of property and also as token advance also known as "Bayana" for property purchase on behalf of third parties. The assessee, deposits the same in the bank, if not immediately paid, to the intending seller. Later on when the deal is finalized, the intending seller is paid in cash/ pay order or the Token advance is refunded to the party if deal is not finalized. The Token amount is generally refunded through normal; banking channels.

The assessee had been continuing with this system for several years and in the later years, the assessment has been completed under sec 143(3) by accepting the same system of accounting and business module.

Ground No. 3

The third Ground of appeal is that, the AO has erred in disallowing an amount of Rs.10,148,000/- u/s 69 of the Income Tax Act 1961 as unexplained cash deposits, despite the documents produced and explanations offered by the assessee.

During the hearing, all the documents, including the Income tax return, the AO, for the reasons best known to him has not mentioned any of these, though the assessee had produced, including the details of cash, explaining the source of deposit of cash, into the bank.

During the year under consideration, the assessee had sold properties, received consideration. Token Money (Bayanas) and earned commission on sale of properties, in cash, which were banked. The same was reflected in the P & L account and the return of Income tax which is a part of the assessment records. Photocopies of the same are being enclosed for your records and ready reference.

Also enclosed are the photocopy of the bank statements, with all the deposits duly explained, on a separate sheet with serial numbers marked, to relate each entry. We are also enclosing, the photocopy of the sale deed where cash has been received as consideration, for your records and ready reference. These are all self explanatory and if any further clarification/ documentation is required, the same shall be gladly submitted.

From the above, it is clear beyond doubt that the entire cash deposited was accounted for and the income part out of these, was duly offered for taxation. This may be verified from the P & L account

and the copy of income tax return, copies of which are enclosed. We are also enclosing the entire cash book for the year under consideration from where the deposits into the bank may be further cross verified.

Now coming to the merits of the case, even if hypothetically it is assumed that the assessee could not explain the deposits, if at all, **only profit element could be treated as income and not the entire cash deposit.** We draw your kind attention to **Shri Navin Bhasin vs. Income Tax Officer (ITA No. 4590/Del of 2009)** where the H'ble ITAT held that only profit element @5% of the deposited amount can be treated as income.

In **Man Mohan Sadani vs. CIT (2008) 304 ITR 52 (MP)** the H'ble court held that the entire sale proceeds cannot be regarded as profit or treated as undisclosed income of the assessee only is the net profit rate which has to be adopted in such cases.

Since we have explained the source of the entire deposits we draw your kind attention to **Dy.CIT vs. Vishwanath Prasad Gupta (2011) 139 TTJ (Jab.) (T.M.) 257**, the H'ble ITAT held that " where the assessee had explained that the amount of cash found in his premises had been withdrawn from the company's bank account and there being no material on record to show that the amount of Rs.20 lacs was utilized or invested elsewhere by the assessee, the said amount stands explained and no addition was called for."

Also in **ITO v/s Rajeev Kumar Gupta (ITAT Agra), ITA No. 273/Agra/2013**, Date of pronouncement: 14.02.2014 the Hon'ble Bench of ITAT confirmed the order of the Id. CIT(A) as on looking to the nature of entries of cash deposits and withdrawals found in the bank account of the assessee maintained with ICICI bank, holding that the entire amount of deposit made in the bank account cannot be said to be unexplained because after deposit of the cash amounts, there are withdrawals. Since the assessee is in the business of transportation, the explanation of the assessee could not be refused that such deposits have been made out of transport business income "

In view of the above facts, explanations and clarifications, duly supported with documents and the legal position, we request that the addition of the entire cash deposited into the bank, made by the AO on assumptions and surmises, in complete disregard of the facts and documents, be deleted.

Another Ground

The next Ground of appeal is that, the AO has erred in not allowing the deduction under Chapter VI of Rs. 100,000/- despite the photocopies of the evidence having been furnished. We are enclosing the photocopies of the proof of the payments eligible for deduction u/s 80 C and request that the deduction may please be allowed.

In view of the above facts, documents, explanations and legal position, we request that the additions made by the AO, merely on assumptions and surmises, in complete disregard of the facts and documents, be deleted and relief granted to the assessee."

The assessee was asked to explain the reasons for non compliance during the assessment proceedings. In response to this the A/R claimed that the assessee had appeared before the ITO from time to time. The assessee wanted to furnish the details asked by the A.O. in parts however the A.O. asked him to submit the complete information and not to submit information in parts. The assessee further claimed that on the last date of hearing the assessee had furnished all the details asked by the A.O. however the A.O. didn't acknowledge the same in the assessment order. In support of his claim the assessee filed an affidavit dated 26/08/2015 again claiming the facts mentioned above.

On receipt of additional evidence vide assessee's letter dated 16/03/2015 as mentioned above, a letter was written to ITO, ward 37 (1) asking him to furnish his comments/report under rule 46A and to do necessary inquiry on the additional evidence u/s 250 (4). A reminder dated 31/08/2015 was written to Additional CIT, Range 37 with a copy to ITO requesting him to submit his report within 15 days. After receipt of affidavit from the assessee another letter dated 09/11/2015 was written to ITO, ward 38 (2) (New A.O.) enclosing copy of the affidavit with all the documents submitted by the assessee including return of income filed on 06/09/2012 with the explanation given by the assessee regarding cash deposits. The A.O. was asked to furnish his report within 10 days. Relevant part of this office letter dated 09/11/2015 is reproduced hereunder:

In this case the assessment order was passed u/s 143 (3)/147 vide order dated 14/03/2013. In the assessment order the A.O. has mentioned that in spite of giving more than 10 opportunities the assessee failed to furnish details. There were cash deposits in the assessee's bank accounts amounting to Rs. 9891490/-. In absence of any evidence explaining the cash deposits the A.O. added it to the income of the assessee.

During the appellate proceedings the assessee filed an affidavit claiming that all the documents and information called by the A.O. were filed by the assessee before the Assessing Officer. The affidavit was duly forwarded to you vide this office letter dated 01/09/2015.

Now the assessee has filed a written submission along with supporting documents explaining each and every cash deposit in his bank account. You are hereby directed to go through the evidences/documents filed by the assessee and send your report within ten days of receipt of this letter."

In response to this office letter the A.O. filed her reply vide her letter dated 04/12/2015. Relevant part of the letter is reproduced hereunder:

"On referring to the ITD system of the Income-tax Department, it was noticed that the assessee did not file his return of income for the assessment year 2010-11. Again, a sheet of AIR information was caused generated from the system, which revealed that he had made huge cash deposits in his bank accounts. Thus on being seen that despite huge amount of cash deposits in the bank account coupled with the fact that even no return of income was filed by the assessee, necessary proceedings by under section 147/148 were initiated by way of issue of a notice under section 148 requiring the assessee to furnish a return of income within the stipulated time. In response to the notice u/s 148, the assessee filed no return of income. Consequently, a notice under section 142(1) of the Income-tax Act, 1961 was issued and sent to the assessee for necessary compliance, followed by several notices. The chronological details to this effect are duly mentioned in the body of the assessment order. In spite of all these, In spite of all these, the assessee attended only on 9-3-12, 7-9-12 and 11-10-12 only, but never filed any details. This fact of the case is quite corroborative from the order sheet entries of the assessment proceedings and from the materials placed on the assessment records. All contrary to this, the claim of the assessee through filing of an affidavit that he had attended the office, furnished a set of documents and had explained the contents of the same to the Assessing Officer is absolutely wrong, false and after-thought. It would not be out of place to bring to your kind notice that during the course of the assessment proceedings, the assessee was apprised of the fact that he had deposited cash of Rs. 98,91,490/- in his bank accounts for which he was required to explain the source of the money with supporting evidences, failing which the entire amount of cash deposits would be treated as unexplained cash deposits within the meaning of section 68 of the Income-tax Act, 1961. It is also worthwhile mention that a comprehensive correspondence was made with the bank authorities as well as with the concerned persons in connection with the huge cash deposits, about which the assessee must have known from his own sources, yet the assessee did not bother to take care of the ongoing assessment

proceedings till the last stage of the case; but when he came to know about the heavy amount of income tax demand of Rs. 44 lakh and above having been created against him, he got alerted and thus in order to get benefit, he resorted to filing of an affidavit deposing, his innocence

If the nature of conduct of the assessee were to be examined, it would undoubtedly be clear that right from his obligation to furnishing of his return of income under section 139(1) and even thereafter in response to a notice under section 148, the assessee (iid not at all file his return of income. The assessee is found to have been thoroughly flouting the compliance of law and statutory notices. Again, the assessee is now found to have submitted a sheet of narrations on cash deposits before your good self in the appeal that shows the assessee has prepared his profit and loss account in which almost all entries of cash deposit are shown to have been accounted for in term of source of cash. Now the question arises as to why the assessee did not file such profit and loss account before the Assessing Officer and so also why he did not file his return of income, if he was within his right. The conclusion is that the assessee was totally unprepared, unorganized and recalcitrant in nature. Therefore, it would not be unfair to submit that the instant affidavit of the assessee and all contentions are fabricated and are oriented to anyhow escape from payment of income tax liability.

In the light of the above facts, it is respectfully submitted that the affidavit filed by the assessee is not trustworthy. The assessment order deserves to be confirmed.”

Since the A.O. had not given her report on merits of the additional evidence another letter dated 31/12/2015 was written to the Pr. CIT-13 copy of which was given to ITO, ward 38 (2) also. Relevant part of the letter written to Pr. CIT-13 is reproduced hereunder:

“In this case the both the assessment orders for A.Y. 2009-10 and 2010-11 were passed u/s 143 (3)/147. In the assessment order the A.O. has mentioned that in spite of giving more than 10 opportunities the assessee failed to furnish details. There were cash deposits of Rs. 10148000/- in the bank accounts of the assessee in A.Y. 2009-10 and that of Rs. 9891490/- during A.Y. 2010-11. The A.O. added these amounts to the income of the assessee u/s 68. During the appellate proceedings the assessee claimed that all the details were filed before the A.O. The assessee filed copies of those documents. The assessee filed an affidavit dated 28/08/2015 also claiming that the relevant documents were filed before the A.O. The documents along with the affidavit were forwarded to the ITO, Wd. 38 (2) vide this office letters dated 01/09/2015 with copy to the Addl. Commissioner, Range -38 and to Pr. CIT. Delhi-13,. Thereafter a reminder was sent to ITO, Wd. 38 (2) vide this office letter dated 09/11/2015. Along with this letter the explanation given by the assessee, explaining the source of each

and every cash deposit was also forwarded. The A.O. was asked to submit his report under rule 46A of I.T. Rules.

The A.O. vide his letter dated 04/12/2015 has submitted a report in which he has simply mentioned that the assessee was non co-operative during the assessment proceedings. The ITO has not commented even a word on the merit of the explanation given by the assessee, explaining the cash deposits. In absence of any report from the A.O. it will be very difficult for the undersigned to ignore the explanation given by the assessee. In this case there is a demand of more than Rs one Crore. in the two assessment years. The assessee has claimed that cash was either out of commission income or out of sale proceeds of real estate. Each transaction is of tens of lacs It is therefore requested that the ITO may be directed to furnish the report on merits of the evidence submitted by the assessee regarding the cash credits. Copies of letters/written to the ITO are enclosed.”

In absence of any reply a reminder dated 17/02/2016 was written to Pr. CIT-13, Delhi with a copy to ITO, ward 38 (2) and JCIT, Range-38. In this letter the Pr. CIT was requested to direct the A.O. to submit the report by 29/02/2016. No reply was received from A.O. till 29/02/2016. Thereafter a detailed letter was written to ITO, ward 38(2) vide this office letter dated 04/03/2016 asking the A.O. to send her reply latest by 10/03/2016. In the letter it was also mentioned that if she fails to submit her reply the case will be decided on the merits of the assessee's submission. It was also mentioned that in absence of A.O.'s report the assessee's explanation regarding cash deposits can't be ignored. The letter written to ITO, ward 38 (2) is reproduced hereunder:

“To,

The ITO,

Ward 38(2),

Civic Centre, New Delhi – 02

Sub: Appellate proceedings for assessment year 2009-10 & 2010-11 in the case of Sh. Goldey Narula, Appeal No. 150/2013-14 and 149/2013-14, PAN No. AAGPN0116Q – admission of addl. Evidence under rule 46A and submission of report under section 250 (4) –Reg-

Ref: 1) This office letter F.No. CIT(A)-32/RR/GN/2014-15/01, dated 17/03/2015

2) This office letter F.No. CIT(A)-32/RR/GN/2014-15/01, dated 28/04/2015

- 3) This office letter F.No. CIT(A)-32/RR/GN/2014-15/01, dated 18/05/2015
Addressed to Addl. Commissioner of Income Tax, Range-38, copy was marked to you also
- 4) This office letter F.No. CIT(A)-32/ dated- 01/09/2015 Addressed to Addl. Commissioner of Income Tax, Range-38, copy was marked to you also
- 5) This office letter F.No. CIT(A)-32//A/I/06, dated 19/11/2015
- 6) This office letter F.No. CIT(A)-32//A/I/146, dated 7/12/2015
- 7) This office letter F.No. CIT(A)-32/A/I/015-16/174 dated- 31/12/2015 Addressed to Pr Commissioner of Income Tax, 13 , Delhi, copy was marked to you also .
- 8) This office letter F.No. CIT(A)-32/A/I/015-16/207 dated- 17/02/2016 Addressed to Pr Commissioner of Income Tax, 13 , Delhi, copy was marked to you also
- 9) Your office letter No:ITO/Ward38(2)/2015-16/Remand Reports/101, dated 04/12/2015

Please refer to the above.

In this case the assessment orders were passed u/s 144 r.w.s. 147 by making additions of Rs 10148000 in A.Y 2009-10 and of Rs 102284000 in A.Y 2010-11.

In this case the both the assessment orders for A.Y. 2009-10 and 2010-11 were passed u/s 143 (3)/147. In the assessment order the A.O. has mentioned that in spite of giving more than 10 opportunities the assessee failed to furnish details. There were cash deposits of Rs. 10148000/- in the bank accounts of the assessee in A Y. 2009-10 and that of Rs. 9891490/- during A.Y. 2010-11. The A.O. added these amounts to the income of the assessee u/s 68. During the appellate proceedings the assessee claimed that all the details were filed before the A.O. The assessee filed copies of those documents. The assessee filed an affidavit dated 28/08/2015 also claiming that the relevant documents were filed before the A.O. The documents along with the affidavit were forwarded to you vide this office letters dated 01/09/2015 with copy to the Addl. Commissioner, Range -38 and to Pr. CIT. Delhi-13,

Thereafter a reminder was sent vide this office letter dated 09/11/2015. Along with this letter the explanation given by the assessee, explaining the source of each and every cash deposit was also forwarded. You were asked to submit his report under rule 46A of I.T. Rules and section 250(4) of the Act

You sent a report vide your letter dated 4/12/2015, in which you have simply mentioned that the assessee was non co-operative during the assessment proceedings. You did not comment even a word on the merit of the explanation given by the assessee, explaining the cash deposits.

It was also mentioned in this office letter that in absence of any report from the A.O. it will be very difficult for the undersigned to ignore the explanation given by the assessee.

In this case there is a demand of more than Rs one Crore. in the two assessment years. The assessee has claimed that cash was either out of commission income or out of sale proceeds of real estate. Each transaction is of tens of lacs.

Vide this office letter dated 31/12/2015 you were directed to furnish your report on merit of the assessee's submission u/s 250(4) of the IT Act. You did not bother even to reply.

Another letter dated 17/2/2016 was sent to you again directing you to submit your report on merits of assessee's submission latest by 29/2/2016. Again there is no reply from you.

Please note that if you fail to send your reply by 10/3/2016 the cases will be decided on merits of assessee's submission. As mentioned above it will be difficult to ignore the explanation of the assessee explaining each and every cash deposits."

(Dr. Prabhakant)

**Commissioner of Income Tax
(Appeal) – 32, New Delhi**

Copy to:

- 1. Pr. CIT -13, New Delhi.**
- 2. JCIT, Range -38, New Delhi.**

**Commissioner of Income Tax
(Appeals) - 32, New Delhi "**

Till date no reply has been received from the ITO. In view of this and also in view of the assessee's affidavit the additional evidence furnished by the assessee is admitted.

Findings and Order:

As mentioned above, in view of the assessee's affidavit the additional evidence furnished by the assessee vide letter dated 16/03/2015 are hereby admitted. The assessee had three savings bank accounts, two with AXIS Bank and one with Indraprasth Sahakari Bank Ltd. the cash deposited in those bank accounts during the relevant previous years were as under:

Sl. No.	Name of the bank and Account No.	Account No.	Amount
1.	Axis Bank, Sector 7, Rohini	431010100013493	500000/-
2.	Axis Bank, Sector 7, Rohini	431010100058371	7797000/-
3.	Indraprasth Sahakari Bank Ltd., 102 Krishna Plaza, Sector-8, Rohini	1000531855	1851000/-

The assessee has explained the cash deposited in the bank accounts as under:

Cash deposits In Axis Bank 58371

S.No.	Narration	Amount (in Rs.) deposited in bank	Date of deposit
1	Cash withdrawal from Axis bank A/c 58371	6,25,000.00	28.04.2008
2	Bayana reed from Aprajita Chaerji Rs. 6 lakh on 01.05.2008 which was refunded on 29.05.2008 through the draft from the same bank	2,50,000.00	30.06.2008
3	Cash withdrawal from Axis bank A/c 58371 and out of CIH	5,50,000.00	12.08.2008
4	out of property commission received already included in P & L as income.	2,00,000.00	19.08.2008
5	out of property commission received already included in P & L as income.	5,00,000.00	21.08.2008
6	Cash in hand /property commission reed already included in P & L as income.	1,00,000.00	20.09.2008
7	Cash withdrawal from Axis bank A/c 58371	6,50,000.00	11.10.2008
8	Cash withdrawal from Axis bank A/c 58371	4,00,000.00	13.10.2008
9	Bayana Reed from Ajay Kumar Sethi (sale deed enclosed)	3,50,000.00	14.10.2008
10	Cash withdrawal from Axis bank A/c 58371/Bayana Reed from Ajay Kumar Sethi/ property commission -(sale deed enclosed)	7,50,000.00	17.10.2008
11	out of property commission received already included in P & L as income.	5,50,000.00	23.10.2008
12	Cash in hand /property commission reed already included in P & L as income.	20,000.00	19.11.2008

13	Cash in hand /property commission reed already included in P & L as income.	1,50,000.00	28.11.2008
14	Cash in hand /property commission reed already included In P & L as income.	99,000.00	28.11.2008
15	Cash in hand /property commission reed already included in P & L as income.	1,00,000.00	02.12.2008
16	Cash in hand /property commission reed already included In P & L as income.	30,000.00	14.01.2009
17	Cash in hand /property commission reed already included in P & L as income.	1,00,000.00	30.01.2009
18	Cash withdrawal from Axis bank A/c 58371 and Cash in hand	1,00,000.00	03.02.2009
19	Cash in hand /property commission reed already included in P & L as income.	2,00,000.00	10.02.2009
20	Cash in hand /property commission reed already included in P & L as income.	3,50,000.00	12.02.2009
21	Cash withdrawal from Axis bank A/c 58371 and Cash in hand	2,00,000.00	12.03.2009
22	Cash in hand /property commission reed already included in P & L as income.	28,000.00	20.3.2009
23	Cash in hand /property commission reed already included in P & L as income.	1,00,000.00	20.3.2009
	Total Cash deposits in Axis Bank	64,02,000.00	

Cash deposits In Indraprastha Sehkari Bank ltd.

1	Cash withdrawal from Axis bank A/c 58371	3,00,000.00	30.06.2008
2	Cash withdrawal from Axis bank A/c 58371	2,50,000.00	05.07.2008
3	Bayana Reed from Kamlesh Kumari of Rs. 5 lakh in cash which was refunded through drafts of the same bank on 28.11.2008/1.12.2008/19.03.2008	2,50,000.00	09.07.2008
4	Bayana Reed from Kamlesh Kumari of Rs. 5 lakh in cash which was refunded through drafts of the same bank on 28.11.2008/1.12.2008/19.03.2008	1,00,000.00	21.07.2008
5	Bayana Reed from Kamlesh Kumari of Rs. 5 lakh in cash which was refunded through drafts of the same bank on 28.11.2008/1.12.2008/19.03.2008	1,51,000.00	01.08.2008
6	Out of property commission received already included in P & L as income.	3,00,000.00	06.08.2008
7	Out of property commission received already included in H & L as income.	4,95,000.00	08.08.2008
	Total Cash deposits in Indraprastha Sehkari Bank	18,46,000.00	

Copies of sale deeds and Bayana receipts were forwarded to the A.O. as mentioned above for enquiry and report. Since the A.O. has not submitted her report in spite of repeated reminders, the appeal is being decided on the basis of documents submitted by the assessee.

In the written submission the assessee has explained the source of cash deposits being either the cash in hand or cash receipt from clients in the form of "bayana" or

cash receipt against commission income or cash receipt against sale deed or previous cash withdrawal from the bank.

"Bayana" is advance received in cash from prospective clients for purchase of property. The assessee claimed that bayana was later adjusted once the deal was struck either as omission or as payment for purchase of the property. In case where the deal could not materialize, the assessee claimed that he used to return the money by cheque/demand draft.

If the total cash deposited in the bank account is analyzed in light of above, picture which emerges is as under:

Total commission received in cash (offered as income) = 5026195/-. Assessee filed copy of the sale deed in favour of Ajay kumar Sethi, dated 22/09/2008. As per this sale deed Sh. Ajay Kumar Sethi agreed to purchase property worth Rs. 12 lac from the assessee. Details of payments were as under:

Rs. 3 lac in cash,

Rs. 4.50 lac vide cheque no. 194823 dated 01/10/2008

And Rs. 4.50 lac vide cheque no. 194824 dated 01/10/2008 Both drawn on Punjab National Bank, Shalimar Bagh. In view of this the source of Rs. 3.5 lac deposited by the assessee on 14/10/2008 is explained to the extent of Rs. 3 lac only.

The assessee has received Bayana as under:

Sl. No.	Name of the party	Date	Amount
1.	Aparajita Chattarji	01/08/2008	600000
2.	Ajay Kumar Sethi	01/10/2008	900000
3.	Kamlesh Kumari		501000
			2001000

The assessee has furnished copies of some of the bayana. The bayana is one page receipt issued by the assessee and signed by the buyer also. It doesn't have complete details of the buyer even the complete address of the buyer is not there. Buyer's PAN no. is not there. In view of this the Bayana receipt can't be treated as confirmation o

advance from the buyer. The assessee was asked to file confirmation from the buyers who paid advance as bayana to the assessee. However, the assessee claimed that once the deal was closed either in the form of purchase of the property or in case of no deal by return of money, he had no knowledge of the whereabouts of the buyer and he didn't retain details of the buyer. In view of this the assessee claimed that it will not be possible for him to file confirmation of the bayana received in cash.

The assessee has shown receipt of Rs. 9 lac from Ajay Kumar Sethi in cash as Bayana vide receipt dated 01/10/2008. The assessee has also filed sale deed of the property dated 22/09/2008 for agreement to sale of property located at Plot no. 901, BLK-A, PKT-1, SEC-30, ROHINI, Delhi. Total sale consideration of the property was Rs. 12 lac out of which three lac was paid in cash and rest by two cheques of 4.5 lac each drawn Punjab National Bank, Shalimar Bagh. Thus the bayana receipt doesn't tally with the sale deed. In this case the assessee had the complete address of the purchaser still didn't file the confirmation for receipt of Rs. 9 lac in cash from Sh. Ajay Kumar Sethi.

Section 68 of the I.T. Act reads as under:

“Cash credits.

⁶² 68. ⁷⁰Where any sum is found credited in the books⁷¹ of an assessee maintained for any previous year, and the assessee offers no explanation⁷¹ about the nature and source thereof or the explanation offered by him is not, in the opinion of the ⁷²[Assessing] Officer, satisfactory, the sum so credited may⁷¹ be charged to income-tax as the income of the assessee of that previous year :

⁷³[Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]”

During the appellate proceedings the assessee filed copy of the cash book where all these bayanas were found credited. As per section 68 the onus is on the assessee to prove identity, capacity and genuineness in case of cash credits. The bayana receipt simply contains name, does not have complete address, so even the identity of the creditor is not established. In view of this the cash received against bayana can't be treated as explained cash in the hands of assessee. Here it may also be mentioned that copies of all the bayana receipts have been not furnished by the assessee.

In view of this addition of Rs. 2051000/- is sustained and balance is deleted. Grounds no. 1, 2 and 3 of the appeal are decided accordingly (Only Rs. 3 lac out of cash deposit of Rs. 3.5 lac on 14/10/2008 could be explained against Ajay Kumar Sethi)

[Relief of Rs. 7953000/-]

After filing of the appeal a copy of form 35 was sent to the assessing officer. The assessing officer was also asked to confirm the statutory validity of the appeal filed under section 249 and was also given opportunity of hearing u/s 250 (2)(b) of the I.T. Act. However the A.O. didn't avail the opportunity. Therefore it is presumed that the A.O. confirms the statutory validity of the appeal filed and does not wish to remain present in the appellate proceedings.

Thereby the appeal is partly allowed.

[D] This present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 29.03.2016 of the Ld. CIT(A). At the time of hearing, Revenue was represented by Ms. Rakhi Vimal, the learned Senior Departmental Representative ("Ld. Sr. DR", for short). However, none was present from the assessee's side. In the absence of any representation from assessee's side, at the time of hearing before us, we heard the Ld. Sr. DR; who relied upon the order dated 14.03.2013 of the Assessing Officer and the aforesaid impugned order dated 29.03.2016 of the Ld. CIT(A). After perusal of the materials on record, including the order of the AO and the aforesaid impugned order dated 29.03.2016 of the Ld. CIT(A), we find that the Ld. CIT(A) has passed speaking order on merits. Relevant portion of the impugned order of the Ld. CIT(A) has already been reproduced in foregoing

paragraph [C] of this order. We find that the Ld. CIT(A) has given detailed reasons for his decision on merits in the aforesaid impugned appellate order dated 29.03.2016 of Ld. CIT(A). During appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short) no material has been brought for our consideration to persuade us to take a view different from the view taken by the Ld. CIT(A) in the impugned order on merit. After hearing the Ld. Sr. DR and after perusal of materials on record, and further, in view of the foregoing discussion, we decline to interfere with the aforesaid impugned appellate order dated 29.03.2016 of Ld. CIT(A).

[E] In view of the foregoing discussion, the appeal filed by assessee is dismissed. Before we part; **we explicitly clarify that the assessee will be at liberty to approach ITAT for restoration of the appeal in accordance with Proviso to Rule 24 of Income Tax (Appellate Tribunal), Rules, 1963. If the assessee does approach ITAT for restoration of the appeals in ITAT, the matter will be considered in accordance with law having regard to the facts and circumstances.**

[F] In the result, appeal filed by Assessee is dismissed.

Order pronounced in the open court on 04/10/19.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 04/10/19
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
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	