

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

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER**

**AND**

**SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**I.T.A. Nos. 5511/DEL/2014 (A.Y 2009-10)**

DCIT, Central Circle : 22, New Delhi.	Vs.	Shri Madhur Mittal, C – 691, New Friends Colony, New Delhi – 110 065.  <b>PAN No. ALXPK6596P</b>
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**AND**

**I.T.A. No. 5512/DEL/2014 (A.Y 2010-11)**

DCIT, Central Circle : 22, New Delhi.	Vs.	Shri Madhur Mittal, C – 691, New Friends Colony, New Delhi – 110 065.  <b>PAN No. ALXPK6596P</b>
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**AND**

**I.T.A. Nos. 5513/DEL/2014 (A.Y 2009-10)**

DCIT, Central Circle : 22, New Delhi.  <b>(APPELLANTS)</b>	Vs.	Shri Sumit Mittal, C – 691, New Friends Colony, New Delhi – 110 065.  <b>PAN No. ALXPK6596P</b>  <b>(RESPONDENTS)</b>
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**AND**

**I.T.A. No. 5515/DEL/2014 (A.Y 2011-12)**

DCIT, Central Circle : 22, New Delhi.  <b>(APPELLANTS)</b>	Vs.	Shri Sumit Mittal, C – 691, New Friends Colony, New Delhi – 110 065.  <b>PAN No. ALXPK6596P</b>  <b>(RESPONDENTS)</b>
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<b>Assessee by :</b>	<b>Shri Ramesh Goel, C. A.; &amp; Shri Lakshay Goel, Adv.;</b>
<b>Department by:</b>	<b>Shri Vivek Sharma, [CIT] – D. R.;</b>

<b>Date of Hearing</b>	<b>04.08.2022</b>
<b>Date of Pronouncement</b>	<b>10.08.2022</b>

**ORDER****PER YOGESH KUMAR US, JM**

1. These appeals are filed by the two different assessees for assessment years 2009-10 and 2010-11 in the case of Shri Madhur Mittal and for assessment years 2009-10 and 2011-12 against the order of the Id. Commissioner of Income Tax (Appeals)-III, New Delhi, [hereinafter referred to CIT (Appeals), dated 23.07.2014.

2. The assessee has raised the following substantive grounds of appeal :-

**I.T.A. No. 5511/DEL/2014 – Shri Madhur Mittal :**

“1. On the facts and in the circumstances of the case, the CIT (A) has erred in law and on facts in giving relief to the assessee on the ground that identity and creditworthiness of M/s. TIDCO Ltd. is established.

2. On the facts and in the circumstances of the case, the CIT (A) has erred in law and on facts in giving any finding as to the cash received from Garg Commodities, Mohan Commodities and Radhika Construction, in respect of which he himself has called for remand report and has not discussed the same in his appeal order.

3. The order of the CIT (A) is erroneous and is not tenable on facts and in law.”

**I.T.A. No. 5512/DEL/2014 – Shri Madhur Mittal :**

“1. On the facts and in the circumstances of the case, the CIT (A) has erred in law and on facts in giving relief to the assessee on the ground that identity and creditworthiness of M/s. TIDCO Ltd. is established.

2. The order of the CIT (A) is erroneous and is not tenable on facts and in law.”

3. The assessee has raised the following common substantive grounds of appeal :-

**I.T.A. No. 5513 & 5515/DEL/2014 – Shri Sumit Mittal :**

“1. On the facts and in the circumstances of the case, the CIT (A) has erred in law and on facts in giving relief to the assessee on the ground that identity and creditworthiness of M/s. TIDCO Ltd. is established.

2. The order of the CIT (A) is erroneous and is not tenable on facts and in law.”

4. Since all the above appeals are having similar facts and circumstances and substantial common ground has been raised by the

respective appellants, the appeals were clubbed together and heard. Therefore, we proceed to pass common order.

**I.T.A. No. 5511/DEL/2014 :**

5. Brief facts of the case are that the assessee is an individual, who has not filed return under Section 139 of the Income Tax Act, 1961 (the Act). Search and seizure operation under Section 132 of the Act was carried out in M/s. Triveni Group on 28.09.2010. The assessee belongs to that group. Notice under Section 153A of the Act and notice under Section 142(1) were issued. Assessment order came to be passed on 25.03.2013 by disallowing the deduction claimed under Section 80C of Rs.1,00,000/- and also made addition on account of unexplained cash credit to the tune of Rs.2,43,07,000/-. Accordingly assessment order came to be passed on 25.03.2013 by assessing the income of the assessee at Rs.2,44,13,240/- as against the returned income of Rs.6,240/-. As against the assessment order dated 25.03.2013 the assessee has preferred appeal before the Id. CIT (Appeals). The Id. CIT (Appeals) vide order dated 23.07.2014 partly allowed the appeal by deleting the addition of Rs.2,43,07,000/- which was added by the Id. Assessing Officer on account of un-explained cash credit. Aggrieved by the order dated 23.07.2014 the Revenue-Department has preferred the present appeal on the grounds mentioned above.

6. The Ld. DR vehemently submitted that the Ld. CIT (Appeals) has erred in giving finding as to the cash received from M/s. Garg Commodities, Mohan Commodities and Radhika Constructions in respect of which the Assessing Officer himself has called for the remand report, but the same has not been discussed in the appeal order.

Further the assessee has not proved the burden as contemplated under Section 68 of the Act in so far as the identity, creditworthiness and genuineness of the transaction. Therefore, submitted that the order of the Ld. CIT (Appeals) requires interference.

7. Per contra the ld. AR relying on the order of the ld. CIT (Appeals) submitted that the ld. CIT (Appeals) has considered the material on record and come to the conclusion that the assessee has proved the burden under Section 68 of the Act and the identity and creditworthiness is not in doubt and deleted the addition made by the Assessing Officer. The ld. Counsel for the assessee submitted that the order of the ld. CIT (Appeals) requires no interference by the Tribunal.

8. We have heard the parties, perused the material on record and given our thoughtful consideration. The issue involved in the present appeal is on the addition of Rs.2,43,07,000/- deposited by the assessee in cash in the bank account maintained at Axis and SBI Bank. Though the assessee has produced cash-flow statement, but no proof in support of various cash receipts were submitted before the Assessing Officer. Further though assessee has stated that the opening balance is traced from earlier year, however, no explanation was available for accumulated opening balance. Therefore, the ld. Assessing Officer has made the addition. In the appellate proceedings the ld. CIT (Appeals) has observed that M/s. Triveni Infrastructure Development Company Limited, where the assessee is a promoter-Director, gave the money in cash on various occasions and the said money has been deposited by the assessee to his bank account. The ld. CIT (Appeals) further held that the company is an existing assessee having Permanent Account Number (PAN) and address with the same Assessing Officer to support the creditworthiness of the

company, further noted that the company has share-holder fund of Rs.87.09 crores and the loan fund of Rs.62.85 crores. The ld. CIT (Appeals) further observed that identity and creditworthiness of the cash received from the said company has been established.

9. As per Section 68 of the Act it is the burden on the assessee to establish identity, creditworthiness and genuineness of the transaction for sum credited in the books of accounts to the satisfaction of the Assessing Officer. We do not understand proposition of the assessee that cash of Rs.2.50 crores had changed the hands from the company to its promoter-Director without any reason and there is no reason forthcoming as to why the cash of Rs.3.25 crores was paid in cash by the three parties. There is no document produced before either the Assessing Officer or before the CIT (Appeals) or before us to prove the genuineness of the transaction.

10. While deleting the addition the ld. CIT (Appeals) has not discussed about the proving of genuineness of the transaction by the assessee. The ld. CIT (Appeals) merely relied on the submission made by the assessee and come to the conclusion in favour of the assessee. Therefore, in our opinion, the entire approach of the ld. CIT (Appeals) is erroneous and the matter deserves to be re-looked by the Assessing Officer. Hence, in the interest of justice, we deem it fit to set aside the issue of addition of Rs.2,43,07,000/- under Section 68 of the Act to the file of the ld. Assessing Officer with a direction to the assessee to prove the creditworthiness and genuineness of the above transaction with credible evidence and reasons for travelling such amount of cash from the company to the promoter and parties with whom share purchase agreement has been entered. The assessee should also relate the cash

deposit date-wise with the cash received by the parties. Needless to say the ld. Assessing Officer shall give opportunity of hearing to the assessee as per law.

11. Accordingly, the grounds of appeal filed by the Revenue are allowed for statistical purpose.

12. In the result, appeal filed by the Department in ITA. No. 5511/Del/2014 is allowed for statistical purpose.

**I.T.A. Nos. 5512, 5513 & 5515/DEL/2014 :**

13. In the case of the very same assessee and Shri Sumit Mittal, having identical issue involved relating to deposit of cash to the accounts, as the facts and circumstances are similar in the appeal of Revenue in ITA. No. 5511/Del/2014, we set aside the remaining appeals (ITA. Nos. 5512, 5513 and 5515/Del/2014 also to the file of the Assessing Officer with a similar direction to the Assessing Officer. Accordingly the ITA. Nos. 5512, 5513 and 5515/Del/2014 decided in terms of the order made in ITA. No. 5511/Del/2014.

14. In the result, ITA. Nos. 5512, 5513 and 5515/Del/2014 are allowed for statistical purpose.

Order pronounced in the open court on : **10/08/2022.**

**Sd/-**  
**( N. K. BILLAIYA )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

Dated : 10/08/2022

*\*MEHTA\**

Copy forwarded to :

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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