

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD  
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
AND  
SHRI. RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.572/ALLD/2014  
Assessment Year: 2010-11**

<b>Smt. Parvati Devi L/H Late Kamla Devi, Sahson, Allahabad, U.P. PAN-BFRPD6086G</b>	v.	<b>Joint Commissioner of Income Tax, Central Circle, Allahabad</b>
(Appellant)		(Respondent)
Assessee by:	None (Application)	
Respondent by:	Sh. Rabin Chaudhari, CIT DR	
Date of hearing:	23.01.2023	
Date of pronouncement:	07.03.2023	

**ORDER**

**SHRI VIJAY PAL RAO, J.M.:**

This appeal by the assessee is directed against the order dated 27.06.2014 which was rectified subsequently while passing the order under section 154 dated 30<sup>th</sup> September, 2014 and the correct date of order was stated to be 27.08.2014 for the assessment year 2010-11.

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

*"1. That in any view of the matter the assessment framed u/s 143(3) of the income tax act vide order dated 20.12.2011 by the assessing officer and his actions as confirmed by the Commissioner of Income Tax (Appeals) is unjustified, illegal and bad both on the facts and in law and therefore declared income of the appellant should have been accepted in the facts and circumstances of the case.*

*2. That in any view of the matter the assessing officer had no jurisdiction to pass block assessment order in absence of valid action u/s 132 of the income tax act as well as mandatory requirements were also not complied with for framing a legal and valid assessment therefore the assessment and assessing officer's*

*action as confirmed by the Commissioner of Income Tax (Appeals) are totally unjustified and invalid.*

*3. That in any view of the matter undisclosed income/undisclosed investment was not determined on the basis of any search material and the lower authorities simply proceeded as if it is a normal assessment therefore the assessment so framed and confirmed is unjustified and illegal.*

*4. That in any view of the matter the Commissioner of Income Tax (Appeals) has erred in confirming a part sum of Rs. 1,80,000.00 out of the addition of Rs. 3,00,000.00 on account of low withdrawal for house hold expenditure made by the assessing officer by ignoring the correct facts of the case, which is highly unjustified and illegal, hence part of the addition as maintained deserves to be deleted.*

*5. That in any view of the matter the addition of Rs. 6,70,000.00 out of the cash found at the time of search made by the assessing officer by alleging unexplained and his action as confirmed by the Commissioner of Income Tax (Appeals) is highly unjustified and illegal as necessary explanations and evidences were furnished regarding source of acquisition of the said cash at the time of search, hence the addition is unwarranted and liable to be deleted.*

*6. That in any view of the matter the Commissioner of Income Tax (Appeals) has erred in enhancing the appellant's income by Rs. 5,70,000.00 u/s 69 of the income tax act as per Para (vi) at page 24 to 26 of his order because such enhancement is arbitrary and without any positive material brought on record and also without providing proper and reasonable opportunity to the appellant. Therefore the said enhancement is unjustified, incorrect and illegal hence liable to be deleted in interest of justice by considering correct facts and circumstances of the case and the procedure for enhancement was not followed.*

*7. That in any view of the matter observations and findings for making and confirming the additions and also for enhancing the income made by the two lower authorities in their orders are incorrect and contrary to the actual facts of the case hence liable to be deleted in all fairness and justice.*

*8. That in any view of the matter interest charged under different sections of the income tax act is highly unjustified and illegal in the facts and circumstances of the case.*

*9. That in any view of the matter the appellant reserves her right to take any further ground of appeal before hearing of the appeal."*

3. The appeal was initially heard on 15.12.2022 and kept as part heard. At the time of hearing on 15.12.2022, the learned AR of the assessee has stated at Bar that the assessee does not press ground no. 1 to 4 of the grounds of appeal

and therefore, same may be dismissed as not pressed. The learned DR did not raise any objection if ground no. 1 to 4 of the assessee's appeal are dismissed as not pressed. Accordingly, the ground no. 1 to 4 of the assessee's appeal are dismissed being not pressed.

4. The appeal of the assessee was then listed as part heard on 23.01.2023 but none has appeared on behalf of the assessee on the said date and consequently, the Bench proceeded to hear and dispose of the appeal by hearing the learned DR.

5. Ground no. 5 is regarding the addition sustained by the learned CIT(A) of Rs. 6,70,000/- on account of unexplained cash found during the course of search and seizure action. There was a search and seizure action under section 132 of the Income Tax Act carried out on 27.08.2009 in the business and residential premises of M/s Kesarwani Zarda Bhandar group cases and its partners. Since, the assessment year under consideration was the year of search therefore, the assessment was completed under section 143(3). The AO has recorded in the assessment order that during the course of search and seizure proceedings cash amounting to Rs. 6,70,000/- was found from the possession of the assessee but was not seized as per annexure 5 of the *panchnama* stated to be belonging to the assessee. In the statement under section 132(4), the assessee explained the source of said cash as withdrawal from M/s Kesarwani Zarda Bhandar from time to time. During the assessment proceedings, the assessee was again asked to explain the source of said money and in reply, the assessee submitted that the assessee gave a sum of Rs. 12 lac to her daughter and son-in-law for purchase of house out of which sum of Rs. 7 lac was given in the month of June, 2008 and Rs. 5 lac was given in the month of January, 2009 without any interest. The said amount was returned back by her son-in-law and daughter in the month of May, 2009. Thereafter, a sum of Rs. 5,75,000/- was deposited in the bank account

with Allahabad Bank, Civil Lines in the month of January, 2009 and remaining amount of Rs. 6 lac was available with the assessee at home which was later found during the course of search and seizure proceedings. The AO did not accept this explanation of the assessee mainly on the ground that no such explanation was given by the assessee during her statement recorded under section 132(4) of the Income Tax Act wherein the assessee has explained the source of cash withdrawal from M/s Kesarwani Zarda Bhandar. The assessee challenged the action of the AO before the CIT(A) but could not succeed.

6. Before the Tribunal, the learned AR of the assessee has submitted that the assessee is a partner in partnership firm M/s Kesarwani Zarda Bhandar and receiving remuneration as well as interest from the partnership firm. He has further submitted that the assessee has duly explained the source of the cash found during the course of search and seizure action and also filed the confirmation of Shri. Amit Shyam, her son-in-law in this regard. However, the AO as well as CIT(A) did not accept the said explanation while making the addition on this account. The learned AR has submitted that the AO as well as CIT(A) has refused to accept the availability of the cash with the assessee from her past savings and earnings on the ground that the assessee has incurred approximately Rs. 19 lac on the occasion of last rituals (*Bhoj-Terahi*) after the death of Late Bhairavnath Kesarwani, the husband of the assessee. The learned AR has submitted that a cash flow chart was submitted by the assessee which was not considered by the authorities below but considered only a cash flow chart submitted for the assessment year 2009-10 which was not showing the correct details and entries of in flow and out flow of cash. The learned AR has also referred to the statement recorded under section 132(4) and submitted that there is no contradiction in the statement of the assessee recorded under section 132(4) as well as the explanation furnished by the assessee during the assessment proceedings. The assessee has explained that the source of money is

withdrawn from M/s Kesarwani Zarda Bhandar however, in between the assessee has given a sum of Rs. 12 lac to her daughter and son-in-law which was later received back. Therefore, it was the money of assessee and not any loan or advance taken from anybody. The learned AR has further submitted that the facts remain that this amount of Rs. 6,70,000/- found at the time of search was out of withdrawal made by the assessee from the bank from time to time which was out of the amount received from M/s Kesarwani Zarda Bhandar. The AO and the CIT(A) has discarded the opening and closing balance and treated the same as nil, despite the assessee has sufficient cash balances. He has referred to the cash flow statement at page no. 22 of the paper book and submitted that the assessee was having sufficient cash even after making the deposits in the bank account. The learned AR contended that the assessee has been regularly filing return of income which were subjected to scrutiny under section 143(3) of the Income Tax Act for last so many years wherein the assessee has been declaring the income ranging from Rs. 18 to 28 lacs. Therefore, the availability of cash of Rs. 6,70,000/- was not abnormal or excess in view of the past income declared by the assessee. He has thus pleaded that the addition sustained by the CIT(A) may be deleted.

7. On the other hand, learned DR has submitted that the assessee is relying upon the cash flow statement showing opening balance of Rs. 15,19,671/- however, for the assessment year 2009-10, the CIT(A) has considered this issue and given a finding that after considering the expenditure incurred on the last rituals of the husband of the assessee, there was nil closing balance as on 31<sup>st</sup> March, 2009 and therefore, there is no opening cash balance as on 1.4.2009. He has referred to the finding of the CIT(A) and submitted that once the assessee has not challenged the order of the CIT(A) for the assessment year 2009-10 wherein the closing cash balance with the assessee was treated as nil then the

claim of the assessee having an opening balance of Rs. 15,19,671/- cannot be accepted.

8. We have considered the rival submissions as well as relevant material on record. It is pertinent to note that the assessee has relied upon the cash flow statement at page no. 22 of the paper book which reads as under:-

<i>Particulars</i>		<i>FY 2009-10</i>	
<i>Opening Balance</i>		<i>Rs.</i>	
<i>Add: Withdrawal from Bank-</i>		-	<i>1,590,671.00</i>
<i>Total Cash Inflow</i>			-
<i>Less: Household Expenses in Cash</i>		<i>180,000.00</i>	
<i>Less: Cash Deposit in Bank</i>		<i>570,000.00</i>	
<i>Total Cash Outflow</i>			<i>750,000.00</i>
<i>Closing Balance</i>			<i>840,671.00</i>

9. Thus, the assessee has shown an opening cash balance of Rs. 15,90,671/- and a closing balance of Rs. 8,40,671/- which is a source of availability of cash of Rs. 6,70,000/- at the time of search and seizure action. We find that for the assessment year 2009-10, the CIT(A), vide order dated 27.06.2014, a copy of which has been placed by the assessee at page no. 98 to 118 of the paper book while considering the issue of addition made by the AO on account of low drawings for household expenditure has held in para (iv) as under:-

*“(iv) The ground of appeal no.4 is against the addition of Rs. 300,000/- on account of low withdrawals for house hold expenses.*

*The size of the family of the appellant consisted of self, his Wife, and two school going children. The appellant was residing in his own house at Sahson, Allahabad which is 20Km away from the city of Allahabad and is the remote and backward area.*

During the year under consideration the appellant had shown no withdrawals for house hold purposes while her husband had also shown no withdrawals for household expenses. The appellant had however furnished a cash flow chart before the AO showing withdrawal for the AO showing withdrawal for household consideration at Rs 150,000/- but the AO did not accept the same.

The cash flow chart submitted by the reveals the opening cash balance of Rs 985,671/-5 withdrawal from bank of Rs 755,000/-. Against this the only outgoing was Appellant for FY 2008-09 on account of house hold expenditure of Rs 150,000/- resulting in closing as on 01-04-2008 and cash balance of Rs 15,90,671/- as on 31-03-2009, However no expenditure on "Terahavin bhoj" performed after the death of Late Bhairo Nath Kesarwani, who died on 29-10-2008, was reflected in the said cash flow chart of the appellant for FY 2008-09.

In the assessment order in the case of the appellant for AY 2010-11, the AO had given the details of expenditure incurred in pages of annexure A-2/25 which total to Rs 16,15,637/-. In the said assessment order in the case of the appellant for AY 2010-11, the AO mentioned that as per the written submission dated 31-10-2011 submitted by Shri Amit Kumar Kesarwani, son of assessee's daughter in his own case, the annexure A-2/25 and A-2/27 found and seized from the residential premises of the appellant pertains to the expenditure incurred by the appellant on the final rights performed on the death of late Bhairo Nath Kesarwani who died on 29-10-2008 and the Bhoj organized by her for Brahamins and others in this connection. Further vide question no. 14 of his statement recorded during assessment proceedings, Shri Amit Kesarwani had stated that the expenditure as per pages of annexures were met by the appellant from the amount withdrawn from her saving bank accounts. In view of the above admission of Shri Amit Kumar Kesarwani, the said seized documents namely annexure A-2/25 and A-2/27 found and seized at the time of search cannot be said to be dumb documents as claimed by the appellant.

Accordingly it was held in my appellate order in the case of the appellant for A Y 10-11 dated 27-06-2014 that the AO was justified in holding that approximately Rs 16,15,637/- was incurred in the said "Terahavin bhoj" by the appellant In view of the explanation given by Shri Amit Kesarwani and the seized documents. After considering the same, the appellant would have no cash balance left as on 31-03-2008 as against Rs 15,90,671/- shown by the appellant in her cash flow statement of F Y 2008-09.

The returned income of the appellant in the year under appeal was to the tune of Rs 29,25,043/- and the AO has doubted that she does not have opening cash balance of Rs 985,671/-. The returned income of the appellant in each of the assessment years from AY 2004-05 to 2010-11 was between Rs 18,47,060/- to Rs 31,19,519/- and totaled to Rs 176,20,242/- in the said period of seven years.

*The cash flow statement was prepared on the basis of personal account of the assessee in the books of the firm / companies as well as withdrawal from the bank. Considering the social and financial status of the appellant and her returned income from AY 2004-05 to 2010-11, it is held as quite normal for the appellant to have cash balance of Rs 985,671/- in hand as on 01/4/2008 particularly when there is no evidence with the department to show where the same was utilized elsewhere and was not available with the appellant in the year under consideration. The amount withdrawn from bank shown at Rs 755,000/- appearing in cash flow statement of the appellant has not been doubted by the AO but the same was not considered by the AO for the purpose of house hold expenses without any reason.*

*Accordingly, the opening cash balance shown in the cash flow chart of the appellant for the year under consideration at Rs 985,671/- is accepted as correct.*

*The family of the appellant owns agriculture land and agriculture produce is consumed by the family members. Further the appellant was living in family owned household for which no rent is required to be paid. The appellant was residing at Phaphamau, Allahabad which is above 20Km from Allahabad city. Further there is no evidence that the appellant had a high standard of living and that her house hold expenditure was high. The appellant also stated that she was not member of any club. The husband of the appellant late Bhairo Nath Kesarwani has already passed away on 29-10-2008 and thereafter her family consisted of herself and her one married daughter. Accordingly I hold that the house hold expenditure shown by the appellant for the year under consideration at Rs 150,000/- in her cash flow statement was reasonable and is upheld, as against Rs 300,000/- estimated by the AO.*

*After considering the expenditure of Rs 16,15,637/- incurred on the "Terahavin bhoj" ceremony of her late husband by the appellant, the amount left with the appellant for meeting house hold expenditure as per cash flow statement of F Y 2008-09 was only Rs (985,671 + 755,000 - 16,15,637) Rs 125,034/-. Therefore the balance expenditure on house hold to the tune of Rs (150,000 - 125,034) = Rs 24,966/- was incurred by the appellant out of undisclosed sources of income. The closing cash balance as on 31-03-2009 as per cash flow statement of the appellant for F Y 2008-09 was therefore Nil.*

*Accordingly the addition of Rs 24,966/- only on account of house hold expenses is confirmed. The appellant gets relief of Rs (300,000-24,966)= Rs 275,034/-."*

10. In the said finding of the CIT(A) for the assessment year 2009-10, it was held that after considering the expenditure of Rs. 16,15,617/- incurred by

assessee on the *terahi bhoj* ceremony of her late husband, the amount left with the assessee for meeting household expenditure as per cash flow statement was only Rs. 1,25,034/- against which an expenditure on household of Rs. 1,50,000/- was considered and the balance amount of Rs. 24,966/- was treated as expenditure out of undisclosed source of income. Thus, the CIT(A) treated the closing cash balance as on 31<sup>st</sup> March, 2009, as per the cash flow statement filed by the assessee at nil. These findings of the CIT(A) has not been challenged by the CIT(A) as no appeal was filed. Therefore, by considering these findings for A.Y. 2009-10 the CIT(A) for the year under consideration has considered this issue in para (v) as under:-

*“(v) The ground of appeal no. 5 & 6 is against the addition of Rs 670,000/- made u/s 69A of the Act on account of cash found at the time of search, Cash amounting to Rs 670,000/- was found but not seized at the time search. The appellant explained at the time of search that the source of cash was out of withdrawals from cheques received from M/s Kesarwani Zarda Bhandar from time to time. However, during the assessment proceedings the assessee explained that some months ago her daughter and son-in-law had asked for money for purchase of house property and she had given Rs 12,00,000/- (viz- Rs 700,000/- was given in the month of June,08 and Rs 500,000/- was given in January, 2009) without any interest. The said amount of Rs 12,00,000/- was returned back in the month of May 2009 by her daughter and son- in- law. Subsequently Rs 570,000/- was deposited in the account in Allahabad bank, Allahabad in June, 2009 and the remaining amount of Rs 600,000/- was available at home which was found during the course of search proceedings. The appellant filed confirmation of Shri Amit Shyam her son-in-law in this regard.*

*The AO however did not accept the above explanation of the appellant because during the course of search proceedings, the statement of the appellant was recorded u/s 132(4) of the Act wherein vide question numbers 15 and 16, the appellant had denied having received or borrowed any cash/jewellery from anybody for business purposes or otherwise. Had the explanation about the source of cash found at the time of search given by the appellant in the assessment proceedings been true, the appellant could have given the same explanation in her statement recorded at the time of search u/s 139(4) of the act. The appellant also failed to furnish the name and address of the owner of the property for which her son-in-law had taken the amount from her and also failed to produce her son-in-law for examination before the AO for examination.*

Further, the AO stated that the cash amounting to Rs 700,000/- was not available with the appellant in the month of June, 08 and the cash amounting to Rs 500,000/- withdrawn by her on 15-12-2008 was not available to the appellant because the same had been already spent on the Terahavin bhoj after the death of Late Bhairo Nath Kesarwani on 29-10-2008. The AO also referred to the written submission dated 31-10-2011 of Shri Amit Kumar Kesarwani, son of assessee's daughter submitted in his case wherein with regard to annexure A-2/25 and A-2/27 found and seized from the residential premises of the appellant, he submitted that the same pertains to the expenditure incurred by the appellant on the final rights performed on the death of late Bhairo Nath Kesarwani who died on 29-10-2008 and the Bhoj organized by her for Brahamins and others in this connection.

From the above the AO concluded that the amount of approximately Rs 19,00,000/- was spent on the Bhoj as accepted by Shri Amit Kumar Kesarwani, son of assessee's daughter. The AO therefore treated the source of Rs 670,000/- as unexplained and made the addition u/s 69A of the Act.

In appeal proceedings the appellant submitted his written submissions wherein with regard to the addition of Rs 670,000/- he only stated that the cash found during search was out of cash in hand during the FY 2009-10 as is evident from the cash flow chart submitted by the assessee.

The cash flow chart submitted by the appellant for F Y 2008-09 reveals the opening cash balance of Rs 985,671/- as on 01-04-2008 and withdrawal from bank of Rs 755,000/-. Against this the only outgoing was on account of house hold expenditure of Rs 150,000/- resulting in closing cash balance of Rs 15,90,671/- as on 31-03-2009. However no expenditure on "Terahavin bhoj" performed after the death of Late Bhairo Nath Kesarwani on 29-10-2008 was reflected in the said cash flow chart of the appellant for FY 2008-09.

In the assessment order the AO had given the details of expenditure incurred in pages of annexure A-2/25 which total to Rs 16,15,637/-. As per the written submission dated 31-10-2011 of Shri Amit Kumar Kesarwani, son of assessee's daughter submitted in his case, the annexure A-2/25 and A-2/27 found and seized from the residential premises of the appellant pertains to the expenditure incurred by the appellant on the final rights performed on the death of late Bhairo Nath Kesarwani who died on 29-10-2008 and the Bhoj organized by her for Brahamins and others in this connection. Further vide question no. 14 of his statement recorded during assessment proceedings, Shri Amit Kesarwani had stated that the expenditure as per pages of annexures were met by the appellant from the amount withdrawn from her saving bank accounts. In view of the above

*admission of Shri Amit Kumar Kesarwani, the said documents namely annexure A-2/25 and A-2/27 found and seized at the time of search cannot be said to be dumb documents as claimed by the appellant.*

*Accordingly in view of the categorical statement of Shri Amit Kumar Kesarwani and the seized document A-2/25 as above, it is held that Rs 16,15,637/- was incurred in the said "Terahavin bhoj" by the appellant. The annexure A-2/27 was the will of late Bhairo Nath as explained by Shri Anup Kumar Kesarwani in his written submissions.*

*Also, the appellant had not disclosed any expenditure incurred on the said "Terahavin bhoj" in her cash flow statement of FY 2008-09 submitted before the AO.*

*The appellant had also not shown the money given by her to her son-in-law in the said cash flow statement of FY 2008-09 submitted by the appellant herself before the AO, and therefore the said explanation is rejected. Moreover had the said explanation about the return of cash from her daughter & Son-in-law in May 2009 been true, the appellant could have furnished the said explanation to explain the source of cash found at the time of search in her statement recorded at the time of search u/s 139(4) of the act. Hence the said explanation is rejected. Further I am in agreement with the AO that if the explanation about the source of cash of Rs 670,000/- found at the time of search given by the appellant before the AO in assessment proceedings as discussed above been true, the appellant could very well have given the same explanation in her statement recorded at the time of search u/s 139(4) of the Act. Therefore in view of the above discussion, I hold that the explanation given by the appellant before the AO in assessment proceedings about the source of cash of Rs 670,000/- found during the course of search was an afterthought and not supported with any evidence, and hence rejected.*

*After including the cash expenditure of Rs 16,15,637/- on "Terahavin bhoj" in the revised cash flow statement of the appellant of FY 2008-09 as above, the resulting cash balance as on 31-03-2009 was Nil as also held in my appellate order in the case of the appellant for AY 2009-10. Therefore the appellant had no cash in hand available as on 01-04-2009.*

*With cash in hand as on 01-04-2009 in the revised cash flow chart of FY 2009-10 being Nil and no withdrawals from bank or any other source of inflow of cash in the said revised cash flow statement for FY 2009-10 as above, the amount of Rs 670,000/- found during the course of search was not explained out of cash in hand during the year under consideration.*

*Accordingly in view of the above discussion, the nature and source of cash of Rs 670,000/- found but not seized at the time of search belonging to the appellant is held to be unexplained and accordingly the addition of Rs 670,000/- u/s 69A of the Act is confirmed."*

11. Thus, the finding of the CIT(A) is based on the facts that the closing cash balance for the assessment year 2009-10 was held as nil and therefore, there is no opening balance as on 1.4.2009. When the assessee has not challenged the order of the CIT(A) for the assessment year 2009-10 then the said finding of the CIT(A) remained unrebutted and consequently the opening balance claimed by the assessee as on 1.4.2009 cannot be accepted. Accordingly, we do not find any error or illegality in the order of the CIT(A) *qua* this issue.

12. Ground no. 6 is regarding enhancement of assessment to the tune of Rs. 05,70,000/- on account of cash deposited by the assessee in the saving bank account with Allahabad Bank. The learned AR of the assessee has submitted that the assessee has been receiving the entire income from M/s Kesarwani Zarda Bhandar in her bank account and the amount which was deposited in the bank account was out of the withdrawals made by the assessee from the bank account from time to time in the earlier years. He has further submitted that the CIT(A) has enhanced the assessment without complying with the mandatory conditions of issuing the notice to the assessee and without giving a sufficient opportunity of hearing to the assessee.

13. On the other hand, learned DR has filed an order of CIT(A) passed under section 154 of the Act dated 30.09.2014 whereby the mistake in the date of original order was rectified and the correct date of the order is stated as 27.08.2014 instead of 27.06.2014 which was a typographical mistake. Thus, the learned DR has submitted that the CIT(A) has duly issued enhancement notice dated 18.07.2014 which is also reproduced in the impugned order but there was no reply on behalf of the assessee till the order was passed on 27.08.2014. He has relied upon the order of the CIT(A).

14. We have considered the rival submissions as well as relevant material on record. Though, the original order of the CIT(A) bears a date of order as 27.06.2014 however, subsequently a rectification order was passed by the CIT(A) dated 30.09.2014 as under:-

**“OFFICE OF THE  
OSD COMMISSIONER OF INCOME TAX (APPELAS)  
ALLAHABAD**

Date of order	30/09/2014
Name & Designation of the Officer who made the Order Appealed against	OSD CIT(A), Allahabad
Name and Address of the Appellant	Smt. Kamala Devi, 57 Phaphamau, Allahabad, Allahabad
PAN	ABNPD4501F
Assessment Year	2010-11
Section and date of the order which is rectified u/s 154	U/s 250(6) of IT Act, dated 27.06.2014
Present for the Appellant	Sh. Sanjay Gupta, FCA
Present for the Department	None

**APPELLATE ORDER AND GROUNDS OF DECISION**

Appeal filed by Smt. Kamala Devi, 57, Phaphamu, against the assessment order u/s 143(3) of IT Act dated 20.12.2011 for A.Y. 2010-11 passed by Smt. Alka Singh, JCIT, Central Circle, Allahabad was decided by the undersigned vide order dated 27.06.2014 in appeal no. 428/JCIT/CC/ALLD/2011-12, whereby the appeal was partly allowed.

In the said appellate order passed by the undersigned, the date of order was erroneously mentioned as 27.06.2014 due to typographical error in place of 27.08.2014.

The mistake is apparent from record, as evident from the fact that the notice of enhancement of income by Rs. 570,000/- was issued by the undersigned vide notice dated 18.07.2014 which reproduced in the appellate order itself. The reply to the said enhancement notice was sought by 30.07.2014, but the reply was not received till the date of passing of the said appellate order on 27.08.2014.

Accordingly, the said appellate order is being rectified suo-moto u/s 154 of IT Act. the appellant was given an opportunity of being heard when the authorized representative of the appellant Sh. Sanjay Gupta FCA attended and gave his no objection to the proposed rectification of the date of the appellate order.

It is accordingly directed that the date of the said appellate order in appeal no. 428/JCIT/CC/ALLD/2011-12 in the case of the appellant for AY 2010-11 may be read as 27.08.2014 in place of 27.06.2014.

Sd/-  
(Sandeep Chauhan)  
OSD Commissioner of Income Tax (Appeals)  
Allahabad

Copy forwarded to the-  
CIT/Addl. CIT/JCIT Range/AO/Appellant

Sd/-  
(Sandeep Chauhan)  
OSD Commissioner of Income Tax (Appeals)  
Allahabad”

15. Therefore, so far as the ambiguity in date of order and the show cause notice issued by the CIT(A) is concerned, the same is now clear by way of this rectification order whereby the typographical error in respect of the date of order was rectified and correct date is mentioned as 27.08.2014. The CIT(A) duly issued a show cause notice for enhancement of assessment which is reproduced in the impugned order and thereafter, the enhancement was made in para (vi) of the impugned order as under:-

*“(vi) It has been held above, that the cash in hand of the appellant as on 01-04-2009 as per the revised cash flow chart of FY 2009-10 as above was Nil. Accordingly, the appellant had no cash available to make a cash deposit of Rs 570,000/- in her Bank account in Allahabad Bank S/B account No. 109238 as reflected in the cash flow chart of FY 2009-10 submitted by the appellant before the AO.*

*Accordingly, vide letter dated 18-07-2014, the undersigned issued a notice of enhancement of income of the appellant by Rs 570,000/- and sought the reply by 30-07-2014. The said notice of enhancement of income dated 18-07-2014 is reproduced hereunder:-*

***“Sub:- Appeal proceedings in your case for AY 2010-11, notice for enhancement of income by Rs 570,000/-,Reg:-***

*While deciding your appeal for AY 2009-10 it was noticed that you had not disclosed in the cash flow statement of FY 2008-09, the expenditure incurred by you on the "Terahavin Bhoj" of Late Bhairo Nath Kesarwani in the month of Dec, 2008. The said expenditure on "Terahavin Bhoj" amounting to Rs 16,15,637/- was reflected in the annexure A-2/25 found*

and seized during the search and seizure proceedings conducted on the Kesarwani Zarda Bhandar group on 27-08-09. This fact was confirmed by Sh Amit Kesarwani in his written submissions dated 31-10-2011 filed by him in his own case, as mentioned in the assessment order in your case for AY 2010-11.

Therefore after including the expenditure of Rs 16,15,637/- in the cash flow statement filed by you before the AO for FY 2008-09 in view of the above facts, no cash balance remained as on 31-03-09. Therefore the opening cash balance as on 01-04-2009 was also Nil. As no withdrawal was shown by you from the firm in which you are partner or from your bank accounts in the financial year 2009-10 as per cash flow statement of FY 2009-10, you had no source of income for financing the house hold expenditure of Rs 180,000/- and the cash deposit in Allahabad bank SB A/c no. 109238.

Please explain why the claim of house hold expenditure of Rs 180,000/- and of cash deposit of Rs 570,000/- in your bank account no.

109238 in Allahabad bank should not treated as unexplained expenditure u/s 69C and unexplained investment u/s 698 of IT Act respectively and added back to your income.

You should furnish your reply on the date fixed for hearing on 30-07-2014."

However no reply has been received from the appellant till date. Therefore I have no option but to decide the appeal on the basis of material available on record.

The unexplained cash found during the course of search operation u/s 132 of the Act amounted to Rs 670,000/- and was therefore not available for making the deposit of Rs 570,000/- in Allahabad Bank S B a/c no. 109238 of the appellant. The addition of Rs 670,000/- on account of the said unaccounted cash found during the course of search has already been confirmed as above.

Further, as per the revised cash flow statement of the appellant for F Y 2009-10 drawn above, the appellant had no cash in hand available for making the cash deposit of Rs 570,000/- in Allahabad Bank S B a/c no. 109238 and therefore the same is held to have been made out of undisclosed sources of income of the appellant. Accordingly the income of the appellant is enhanced by Rs 570,000/- and the AO is directed to make the addition of Rs 570,000/- as unexplained investment u/s 69 of the Act. The income of the appellant is enhanced by Rs 570,000/-."

16. Thus, the enhancement is also based on the same fact and logic when the closing balance for the financial year 2008-09 was treated by the CIT(A) at nil then the opening cash balance claimed by the assessee cannot be accepted and the same was also treated as nil and consequently, there was no source of cash of Rs. 5,70,000/- deposited in the bank account of the assessee. We find that the assessee has deposited a cash of Rs. 5,70,000/- in three tranches as under:-

<i>i.</i>	<i>28<sup>th</sup> June, 2009</i>	<i>Rs. 2,00,000/-</i>
<i>ii.</i>	<i>24<sup>th</sup> June, 2009</i>	<i>Rs. 1,10,000/-</i>
<i>iii.</i>	<i>29<sup>th</sup> June, 2009</i>	<i>Rs. 2,60,000/-</i>
<i>Total</i>		<i>5,70,000/-</i>

17. From the bank statement of the assessee, it transpires that there is no cash withdrawal by the assessee during the financial year under consideration. Therefore, the assessee has not produced any record showing the withdrawal of cash from the bank either during the year under consideration or in the preceding year which could be available with the assessee for making the deposit of Rs. 5,70,000/- in the bank account. Accordingly, in the facts and circumstances of the case as discussed above, we do not find any error or illegality in the impugned order of the CIT(A) *qua* this issue.

18. In the result, the appeal of the assessee is dismissed.

Order pronounced on 07.03.2023 at Allahabad, U.P.

*Sd/-*  
**[RAMIT KOCHAR]**  
**ACCOUNTANT MEMBER**

Dated: 07/03/2023  
Allahabad  
sh

*Sd/-*  
**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

*ITA No. 572/ALLD/2014  
Smt. Parvati Devi L/H  
Late Kamla Devi*

Copy forwarded to:

1. Appellant-Smt. Parvati Devi L/H Late Kamla Devi, Sahson, Allahabad
2. Respondent-JCIT, Central Circle, Allahabad
3. CIT(A), Allahabad
4. CIT
5. DR

By order  
Sr. P.S.