

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI
BEFORE,
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.344/Del/2019
(ASSESSMENT YEAR 2010-11)**

**ITA No.345/Del/2019
(ASSESSMENT YEAR 2011-12)**

**ITA No.346/Del/2019
(ASSESSMENT YEAR 2015-16)**

**ITA No.347/Del/2019
(ASSESSMENT YEAR 2016-17)**

Smt. Munesh Devi B-30, Gamma-1 Surajpur Greater Noida-201 301 PAN-AIHPM 7193B (Appellant)	Vs.	Dy.CIT Central Circle Noida (Respondent)
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Appellant by	Sh. Sandeep Jain, CA
Respondent by	Sh. Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing	30/10/2023
Date of Pronouncement	12/12/2023

ORDER

PER YOGESH KUMAR U.S., JM:

The above captioned four appeals by Assessee are filed against the orders of Learned Commissioner of Income Tax (Appeals)-IV, Kanpur ["Ld. CIT", for short], dated 12/07/2018 for Assessment Years 2010-11, 2011-12, 2015-16 & 2016-17.

2. The brief facts of the case emerges out of order of the Ld. CIT(A) which are that, a search & seizure operation u/s 132 of the Act, 1961 was conducted on 30/09/2015 in Airwill group of cases where certain documents were found and seized belong to the assessee. Accordingly, notice u/s 153C of the Act was issued. In compliance, assessee filed her return declaring total income of Rs.2,69,480/-, Rs.2,68,050/-, Rs.4,46,280/- for A.Y.2010-11, A.Y.2011-12 & A.Y.2014-15 respectively and notice u/s 142(1) of the Act was issued for A.Y.2016-17 and in compliance, assessee filed her return. Subsequently, notices u/s 143(2) & 142(1) were issued to the Assessee and A.O. completed the assessment by making addition of Rs.3,90,000/-, Rs.4,30,000/-, Rs.3,00,000/-, Rs.23,60,000/- for A.Y.2010-11, A.Y.2011-12, A.Y.2014-15 & A.Y.2016-17 respectively on account of unexplained cash deposits in bank account.

3. Aggrieved by the assessment orders for Assessment Years 2010-11, 2011-12, 2014-15 & 2016-17, the assessee filed appeals before the Ld. CIT(A), the Ld. CIT(A) passed the combined order for A.Y.2010-11, 2011-12, 2014-15 and 2016-17 and a separate order for AY 2015-16 on 12.07.2018 by dismissing the appeals filed by the assessee. The Assessee preferred the above appeals.

ITA No.344 & 345/Del/2019 for AY 2010-11 & 2011-12
"Revised Grounds.

1. *On the facts and circumstances of the case, the order passed by the learned CIT (A) is bad, both in the eye of law and on the facts.*

2. On the facts and circumstances of the case, the learned assessing officer has erred both on facts and in law in making the addition as no incriminating material was found & seized, hence assessment order u/s 153C is invalid.

3. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making addition without mentioning the precise provision of law.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming addition on account of cash deposit in bank account u/s 68 as pass book is not treated as book of accounts for the purpose of section 68.

5. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming addition by ignoring the detailed cash flow chart submitted during appellate proceedings and failed to point out any defect in that.

6. On the facts and circumstances of the case, the learned assessing officer has erred both on facts and in law in making the addition without providing the proper and reasonable opportunity of being heard and violative of principles of Natural Justice.

7. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

ITA No.346 /Del/2019 for AY 2015-16
Revised Grounds

1. On the facts and circumstances of the case, the order passed by the learned CIT (A) is bad, both in the eye of law and on the facts.

2. On the facts and circumstances of the case, the learned assessing officer has erred both on facts and in law in making the addition as no incriminating material was found & seized, hence assessment order u/s 153C is invalid.

3. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making addition without mentioning the precise provision of law.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming addition on account of cash deposit in bank account u/s 68 as pass book is not treated as book of accounts for the purpose of section 68.

5. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming addition by ignoring the detailed cash flow chart submitted during appellate proceedings and failed to point out any defect in that

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming addition on account of unsecured loan despite assessee fulfilling the burden cast on him u/s 68 of Income Tax Act.

7. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming addition on account of unsecured loan without appreciating the fact that said loan has been returned by assessee in short time.

8. On the facts and circumstances of the case, the learned assessing officer has erred both on facts and in law in making the addition without providing the proper and reasonable opportunity of being heard and violative of principles of Natural Justice.

9. The appellant craves leave to add, amend or alter any of the grounds of appeal.

ITA No. 347/Del/2019 for AY 2016-17

Revised Grounds

1. On the facts and circumstances of the case, the order passed by the learned CIT (A) is bad, 2. both in the eye of law and on the facts.

2. On the facts and circumstances of the case, the learned assessing officer has erred both on facts and in law in making the addition as no incriminating material was found & seized, hence assessment order u/s 153C is invalid.

3. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making addition without mentioning the precise provision of law.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming addition on account of cash

deposit in bank account u/s 68 as pass book is not treated as book of accounts for the purpose of section 68.

5. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming addition by ignoring the detailed cash flow chart submitted during appellate proceedings and failed to point out any defect in that.

6. On the facts and circumstances of the case, the learned assessing officer has erred both on facts and in law in making the addition without providing the proper and reasonable opportunity of being heard and violative of principles of Natural Justice.

7. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

ITA Nos.344 & 345/Del/2019 for AY 2010-11 & 2011-12

4. The Ld. Counsel for the assessee submitted that the search was conducted on 30/09/2015 and the additions made for the Assessment Years 2010-11 & 2011-12 based on no incriminating material found and seized during the said search, hence, the assessment orders passed u/s 153 of the Act for Assessment Year 2010-11 & 2011-12 are invalid. The Ld. Counsel for the Assessee has relied on the judgment of the Hon'ble Supreme Court in the case of Pr. CIT(Central-3) Vs. Abhisar Buildwell Pvt. Ltd. (Civil Appeal No. 6580/2021) dated 24/04/2023 and submitted that the additions made by the AO, which was sustained by the Ld. CIT(A) for Assessment Years 2010-11 & 2011-12 are required to be deleted.

5. The Ld. DR did not dispute the above factual aspects in view of the settled position of law. Considering the fact that the additions have been made

with no incriminating material found and seized during the search, by following the ratio laid down by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra) the addition made by the AO which was sustained by the Ld. CIT(A) are hereby deleted in respect of assessment years 2010-11 and 2011-12 are concerned. In the result, the Appeals in ITA No. 344 & 345/Del/2019 are allowed.

ITA No.346/Del/2019 for AY 2015-16.

6. The Ground No. 1 is general in nature, which requires no adjudication.

7. In Ground No. 2, the assessee contended that the addition made by the A.O. without their being incriminating material found and seized, therefore, the assessment u/s 153C of the Act is invalid.

8. We have heard the parties perused the material available on record and it is found that the addition has been made on examination of seized documents retrieved from the hard disk and found that the seized papers/documents belonging to Smt. Munesh Devi and information contained therein relates to Smt. Munesh Devi, therefore, we find no merit in the Ground No. 2 of the assessee. Accordingly, the Ground No. 2 of the assessee is dismissed as devoid of merits.

9. The Ground No. 3 is regarding non-mentioning precise provisions of law while making the addition. During the assessment proceedings, the assessee

was specifically asked to justify the source of funds given by Sh. Dharminder Singh as the assessee and also asked to explain the source of cash deposits failed to explain the same, accordingly, the additions have been made on account of unaccounted loan and cash deposit in the banks. Merely non-mentioning of the provisions or wrong mentioning of the Section under which the addition has been made will not be fatal to the addition itself; therefore, we find no merit in the Ground No. 3 of the assessee.

10. In Ground Nos. 4, 5 & 8, the assessee contended that the Ld. CIT(A) erred in both facts and law confirming the addition on account of cash deposit in the bank account u/s 68 of the Act as pass book has not been treated as books of accounts for the purpose of Section 68 of the Act and the impugned Order passed in violation of principles of natural justice.

11. During the assessment proceedings on perusal of the bank statement the A.O. observed that the assessee had deposited Rs. 10,00,000/- on 30/12/2014, accordingly, the assessee was asked to explain the source of cash deposit. As the assessee has not provided any explanation with supporting documents, the Ld. A.O. made the addition of Rs. 10,00,000/- considering the fact that the assessee failed to explain the source of the cash deposit.

12. During the appellate proceedings, the assessee filed copies of the cash book and the statement of Bank account for relevant period. It was contended

by the Assessee's Representative before the CIT(A) that there was opening balance of Rs. 1,52,729/- in cash book as on 01/04/2014 and during the year, certain cash amount were withdrawn from bank which were accumulated with the appellant and same were further deposited in the bank which explain the source of cash deposit in the bank. The Ld. CIT(A) was of the opinion that the assessee was required to explain the source of opening cash balance with the cogent explanation or evidence in support of his contention and also required to explain the cash withdrawal from the bank and its further deposit in the bank, having failed to do so, the Ld. CIT(A) confirmed the addition made by the A.O.

13. Considering the fact that the assessee had produced copies of the cash book and the statement of account for the relevant period and in the absence of any material or explanation given by the assessee regarding the source of opening cash balance and the explanation or evidence in support of cash withdrawal from the bank and its further deposit in the bank, the addition has been sustained by the CIT. Therefore, we find it reasonable to provide an opportunity to the assessee to explain before the A.O. regarding the source of opening cash balance and also give explanation or evidence in support of cash withdrawal from the bank and its further deposit in the bank. Accordingly, we restore the issues to the file of A.O. in respect of the addition of Rs. 10,00,000/- made on account of cash deposit for de-novo consideration, accordingly the Ground Nos. 4, 5 & 8 are partly allowed for statistical purpose.

14. The revised Ground Nos. 6 & 7 are regarding confirmation of addition of Rs. 20,00,000/- on account of unsecured loans.

15. The Ld. Counsel for the assessee submitted that the assessee had received unsecured loan of Rs. 20,00,000/- during February & March, 2015 from One Sh. Dharminder Singh which has been repaid within a short duration i.e. on 19/10/2015 itself through banking channels and the Assessee has proved the ingredients of Section 68 of the Act, therefore the addition made by the A.O. which has been confirmed by the CIT(A) deserves to be deleted.

16. Per contra, the Ld. Departmental Representative relying on the order of the Lower Authorities submitted that the Grounds of Appeal of the assessee are devoid of merit and the same are liable to be dismissed.

17. The Assessee had produced the letter of confirmation from Sh. Dharminder Singh and also produced the ITR of the said Sh. Dharminder Singh for AY 2015-16, bank pass book of Sh. Dharminder Singh and also bank statement evidencing receipt and repayment of the said loan. The Ld.DR has not brought any materials contrary to the same. Considering the fact that the Assessee has produced the confirmation from Sh. Dharminder Singh and also the ITR of the said Sh. Dharminder Singh for AY 2015-16, bank pass book of Sh. Dharminder Singh and also bank statement evidencing receipt and repayment of the said

loan, we deem it fit to delete the addition of Rs. 20 lakhs made u/s. 68 of the Act. Accordingly we allow the revised ground No.6 and 7 of the Assessee.

18. The Ground No. 9 is being general which requires no adjudication.

19. In the result, the appeal filed by the Assessee in ITA No., 346/Del/2019 is partly allowed for statistical purpose.

ITA No.347/Del/2019
(ASSESSMENT YEAR 2016-17)

20. In the present Appeal, the only issue involved is regarding cash deposit of Rs. 23,60,000/- for AY 2015-16, the Ld. Counsel for the Assessee submitted that the Ld. CIT(A) committed error in confirming the addition on account of cash deposit in the bank account u/s 68 of the Act as the pass book is not been treated as books of account for the purpose of Section 68 of the Act and also ignored the cash flow chart submitted during the Appellate proceedings.

21. Per contra, the Ld. DR submitted that the Assessee failed to prove the source of the cash deposited in the bank account; therefore there is no error or infirmity in the orders of the lower authorities, thus sought for dismissal of the Appeal filed by the Assessee.

22. During the assessment proceedings, the Assessee has been asked to explain the source of cash deposits, but the Assessee failed to explain the

source of cash deposit with supporting documents, accordingly, the cash deposit of Rs. 23,60,000/- has been added in the hands of the Assessee. During the appeal proceedings the Assessee filed copies of the cash book and statement of accounts for relevant period. It was contended by the Ld. AR before the CIT(A) that the said cash deposits were out of the opening cash available and regular rental income earned by the Assessee in AY 2010-11, 2011-12, 2014-15 & 2016-17, but the in the year under consideration it was differently argued that cash deposits were made out of earlier withdrawal from the bank. The Assessee could not explain the source of opening cash balance and the evidence of rental income as well as purpose of withdrawing cash which again claimed to be deposited in the Bank, the Ld. CIT(A) accordingly confirmed the addition.

23. Considering the fact that the assessee had produced copies of the cash book and the statement of account for the relevant period and in the absence of any material or explanation given by the assessee regarding the source of opening cash balance and the explanation or evidence in support of cash withdrawal from the bank and its further deposit in the bank, the addition has been sustained by the CIT. Therefore, we find it just and reasonable to provide an opportunity to the assessee to explain before the A.O. regarding the source of opening cash balance and also give explanation or evidence in support of cash withdrawal from the bank and its further deposit in the bank and also to prove the rental income. Accordingly, we restore the issues to the file of A.O. in

12.

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respect of the addition of Rs. 23,60,000/- made on account of cash deposit for de-novo consideration, accordingly the Grounds of Appeal of the Assessee are partly allowed for statistical purpose.

24. In the result, the Appeal of the Assessee in ITA No. 347/Del/2019 is partly allowed for statistical purpose.

Order Pronounced in the Open Court on 12th December, 2023.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 12/12/2023

Pk/R.N, Sr.ps

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI