

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “G”: NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1118/DEL/2023  
[Assessment Year: 2014-15]**

Surpreet Singh Suri, 192-B, Sainik Farms, Khanpur, New Delhi-110062.  <b>PAN- AOHPS 9046 K</b>	<u>Vs</u>	DCIT, Central Circle-6, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri Sanjiv Sapra, Adv.	
<b>Department represented by</b>	Shri Javed Akhtar, CIT(DR)	
<b>Date of hearing</b>	08.02.2024	
<b>Date of pronouncement</b>	06.05.2024	

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The assessee has come in appeal against the order dated 28.03.2023 passed by the Commissioner of Income Tax (Appeals)-24, New Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in Appeal no. 53/2016-17, u/s 154 read with Section 250 of the Income Tax Act, 1961 ( the “Act”), for the assessment year 2014-15

2. Heard and perused the record.
3. On hearing both the sides, it comes up that a search and seizure operation was carried on Three C group by the Investigation Wing, on 29.10.2013 and thereupon return by the assessee was filed in pursuance of proceedings initiated u/s 153A of the Act. The assessment order dated 28.03.2016 was passed u/s 143(3), wherein addition of Rs. 2,37,08,076/- was made towards unexplained cash of Rs. 26,75,000/- and jewellery of Rs. 2,10,33,076/-. The assessee preferred appeal before CIT(A) and vide order dated 31.08.2018, CIT(A) had decided the appeal, observing that it be treated as dismissed for statistical purposes.
4. As a matter of fact, before the CIT(A), the assessee had challenged both the additions on account of unexplained cash and jewellery. In para 5.5 while dealing with the ground of addition of unexplained cash, learned CIT(A) had observed as follows:

*“5.5 Looking at the above stated evidences, it is evident that the appellant was given cash of more than Rs. 66 lakhs by the above said two companies and as stated above, cash withdrawals of Rs. 16.70 lakhs were made from ING Bank. It is my considered opinion that this (total) cash amount is sufficient to explain the amount of seized cash and household expenses in the F.Y., till the date of search.*
5. Further, in para 5.6 to 5.9 the learned CIT(A) had discussed the ground of addition of jewellery and subsequently in para 5.10 had made following observations:

*“5.10 In view of the above discussion, this ground (no. 3) of appeal is dismissed and consequently the addition (of Rs. 2,37,08,076/-) is confirmed.”*

6. The assessee had, thereafter, filed rectification application u/s 154 before learned CIT(A), pointing out that in para 5.10 there was a mistake of confirming the addition of Rs. 2,37,08,076/- as a whole inspite of the fact that in para 5.5 the unexplained cash addition of Rs. 26,75,000/- was found to be explained. However, the rectification was not allowed by the learned CIT(A). The assessee preferred appeal before the Tribunal and the Tribunal vide order dated 24.09.2019 had partly allowed the appeal.

7. It comes up that the coordinate Bench while partly allowing the appeal had gone into the question of additions made on account of jewellery and not a word was discussed with regard to the unexplained cash addition of Rs. 26,75,000/-.

8. The assessee thereafter moved a misc. application seeking indulgence of the coordinate Bench for also giving findings with regard to unexplained cash. However, the coordinate Bench had dismissed the misc. application vide order dated 29.08.2022, but the coordinate Bench had giving following findings in para 2:

*“2. In this regard, we hold that since the decision of the Id. CIT(A) has not been disputed in the order dealt only with the jewellery found and its*

*accountability thereof, no specific finding is required. However, in the interest of justice, we clarify that the Bench had not disputed the findings of the Id. CIT(A) on this issue.”*

9. The assessee thereafter approached the learned CIT(A) u/s 154 of the Act.

We consider it appropriate to reproduce the contents of application herein below:

*“15th November, 2022*

*The Commissioner of Income Tax (Appeal-24),  
E-2 ARA Centre, Jhandewalan Extension  
New Delhi-110055*

*Re: Shri Surpreet Singh Suri  
192 - B Sainik Farms, Khanpur  
New Delhi-110062*

*PAN: AOHPS9046K*

*Appeal No. 53/16-17 for Assessment year: 2014-15 against order u/s 143(3)  
of I.T. Act of I.T. Act*

*Sub.: Application u/s 154 of I.T. Act rectification of mistake apparent from  
the record*

*Sir,*

*It is submitted that your honour had decided the above appeal vide order  
dated 31/8 / 2018 as per copy enclosed at pages 1 - 44*

*Ground No. 3 as raised was against an addition of Rs.2,37,08,076/- which  
comprised of unexplained cash found during search of Rs.26,75,000 and  
unexplained excess jewellery found amounting to Rs.2,10,33,076.*

*While deciding such Ground No. 3 vide para 5.1 to 5.10 at pages 38-41 of  
such appellate order, following findings vide para 5.5 on the addition made  
towards unexplained cash of Rs. 26,75,000 were recorded by your honour:*

*"Looking at the above stated evidence, it is evident that the appellant was given cash of more than Rs. 66 lakhs by the above said two companies and as stated above, cash withdrawals of Rs. 16.70 lakhs were made from ING Bank. It is my considered opinion that this (total) cash amount is sufficient to explain the amount of seized cash and household expenses in the FY, till the date of search".*

*However, while confirming the addition with regard to unexplained jewellery vide para 5, 10 inadvertently, the entire addition of Rs.2,37,08,076 including on account of unexplained cash of Rs.26,75,000 was confirmed by dismissing Ground No. 3 of the appeal. In other words, addition of Rs.26,75,000 has been inadvertently confirmed which is contrary to the findings recorded at para 5.5 as reproduced above. This has resulted in a mistake apparent from the record while deciding Ground No. 3 of the appeal.*

*Based on findings at para 5.5 as reproduced above, addition of Rs.26,75,000 as made on account of unexplained cash ought to have been deleted while only addition of Rs.2,10,33,076 on account of unexplained jewellery ought to have been confirmed.*

*Previously, application u/s 154 of I.T. Act dated 03/10/2018 was filed before your honour as per copy enclosed at page 45. However, such rectification was not made since the Assessee had also raised this issue in the appeal as filed before ITAT.*

*ITAT decided the quantum appeal (ITA No.6536/Del/2018) vide its order dated 24/09/2019. ITAT vide its recent order dated 29/8 / 2022 in Misc. Application No. 844/Del/2019 (copy enclosed at pages 46-47) has clarified this issue as under:*

*"The assessee pleaded that the Bench has inadvertently missed out recording of a specific finding with regard to deletion of addition of Rs. 26,75,000/- on account of unexplained cash based on the findings of Id. C / T \* (A) as recorded vide para 5.5, which were final and had not be challenged by the Revenue.*

*In this regard, we hold that since the decision of the Id. CIT(A) has not been disputed in the order dealt only with the jewellery found and*

*its accountability thereof, no specific finding is required. However, in the interest of justice, we clarify that the Bench had not disputed the findings of the Id. CIT(A) on this issue".*

*Hence, the above findings of the Ld. CIT(A) vide para 5.5 as reproduced above are final and therefore, the entire addition of Rs.26,75,000 as made on account of unexplained cash is to be considered as deleted as per the above clarification given by ITAT.*

*Hence, based on such clarification provided by ITAT vide its recent order dated 29/08/2022, the above findings of Ld. CIT(A) regarding sufficient availability of cash to explain addition of seized cash of Rs.26,75,000 are now final.*

*In view of the above, your honour is requested to kindly rectify the mistake of confirming the addition with regard to unexplained jewellery vide para 5.10 at Rs.2,37,08,076 which should be reduced to Rs.2,10,33,076 after excluding the seized cash of Rs.26,75,000 since the same stands duly explained and accepted."*

10. The learned CIT(A) has, however, dismissed the application on the ground that the issue of unexplained cash has been taken up in grounds of appeal by the assessee before the Tribunal and since the Tribunal has decided both the appeals and the misc. application, therefore, CIT(A) cannot rectify its own previous order which has been adjudicated upon by the Tribunal.

11. Learned DR though supported the order of learned CIT(A). Learned AR submitted that after making specific observations in para 5.5 with regard to unexplained cash and that the coordinate Bench has not decided the issue and further clarified in the misc. application order that it has not disputed the findings

of learned CIT(A) on the issue, therefore, learned CIT(A) should have exercised its power of rectification.

12. After giving thoughtful consideration to the aforesaid sequence of events and after going thoroughly through the material before us, we are of the considered view that learned CIT(A) while passing the impugned order seems to have narrowed its vision on the basis of mere fact that since assessee had taken a consolidated ground for challenging the addition of total Rs. 2,37,08,076/- before the Tribunal, therefore, once Tribunal had considered the ground and sustained the same qua jewellery then the unexplained cash, which was part of the same ground, also stood adjudicated. However, learned CIT(A) has failed to take cognizance of the fact that not an iota of word was discussed with regard to the unexplained cash addition of Rs. 26,75,000/-. The doctrine of merger of the first appellate order of learned CIT(A) with the order of the Tribunal would not come into action in the present facts and circumstances as the issue of unexplained cash addition was not at all entered into by the coordinate Bench while deciding the appeal vide order dated 24.09.2019. Then, as observed above, while reproducing the order of coordinate Bench in the misc. application, it comes up that the specific observation was made at the time of disposal of misc. application that the Bench has not disputed the findings of learned CIT(A) on this issue. This observation is categorical finding with regard to the fact that findings of learned CIT(A) qua the

unexplained cash addition of Rs. 26,75,000/- in para 5.5 remains untouched. This finding being not challenged by the Revenue and being not adverse to the assessee, was certainly not required to be determined in the appeal of the assessee. Merely because there was a ground mentioning composite figure of Rs. 2,37,08,076/-, it cannot be said that the coordinate Bench had adjudicated upon the issue of unexplained cash also.

13. Thus, order of learned CIT(A) in dismissing the application u/s 154 of the Act is not justified. Accordingly, the appeal is allowed and the issue on merit is restored to the file of learned CIT(A) to decide the application of the assessee afresh in the light of aforesaid observations of this Bench. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 06.05.2024.

**Sd/-**  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**

