

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI****(DELHI BENCH 'C' NEW DELHI)****BEFORE SHAMIM YAHYA, ACCOUNTANT MEMBER****AND****SH. YOGESH KUMAR U.S., JUDICIAL MEMBER****ITA No. 6394/Del/2018, (A.Y. 2013-14)****ITA No. 6395/Del/2018, (A.Y. 2014-15)**

ACIT Central Circle-8 Room No. 333, ARA Centre, Jhandewalan Extension, New Delhi	Vs.	Nagender Flat No. 16, A-44/45, Jawahar Park, New Delhi <b>PAN: ADEPN5952B</b>
<b>Appellant</b>		<b>Respondent</b>

Assessee by	Sh. Neeraj Mangla, CA
Revenue by	Ms. Rajinder Kaur, CIT DR

Date of Hearing	03/06/2024
Date of Pronouncement	06/06/2024

**ORDER****PER YOGESH KUMAR, U.S. JM:**

Both the above Appeals are pertaining to Assessee in respect of Assessment Year 2013-14, 2014-15 respectively filed by the Department against the order of commissioner of Income Tax (Appeals)-24, ('Ld. CIT(A) ' for short), dated 09/07/2018. As the

above appeals are involved with the identical issues and common grounds of appeal pertaining to Assessment Year 2013-14 and 2014-15, therefore, are heard together and decided in this common order.

2. The Grounds of Appeal are as under:-

**ITA No. 6394/Del/2018, (A.Y. 2013-14)**

*“1. The order of Ld. CIT(A) is not correct in law and facts.*

*2. The Ld. CIT(A) has erred in facts and circumstances of the case in deleting the addition of Rs.56,64,000/- made by the AO on account of cash deposits in bank account.*

*3. The Ld. CIT(A) has erred in facts and circumstances of the case in deleting the addition of Rs.50,00,000/- made by the AO on account of unexplained investment in property.”*

*4. The appellant craves for leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.*

**ITA No. 6395/Del/2018, (A.Y. 2014-15)**

*“1. The order of Ld. CIT(A) is not correct in law and facts.*

*2. The Ld. CIT(A) has erred in facts and circumstances of the case in deleting the addition of Rs.1,01,28,000/-/- made by the AO on account of cash deposits in bank account.*

*3. The Ld. CIT(A) has erred in facts and circumstances of the case in deleting the addition of Rs.80,00,000/- made by the AO on account of unexplained investment in property.”*

*4. The appellant craves for leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.”*

3. Brief facts of the case in Assessment Year 2013-14 are being considered for the sake of convenience. A search and seizure operation u/s 132 of the Income Tax Act, 1961, ('Act' for short) was conducted on Karan Luthra group of assessee on 14/03/2014. During the search operation, some incriminating documents/information related to the assessee were found and seized, therefore, a consequential search and seizure action was conducted on the premises of the assessee on 29/04/2014. An assessment order came to be passed u/s 143A read with Section 144 of the Act on 27/12/2016 by making addition of Rs. 50,00,000/- u/s 69 of the Act on the ground that the assessee could not explain the source of investment on the property. Further made addition of Rs. 56,64,000/- on account of cash deposit in the bank account.

4. In the Assessment Year 2014-15 also similar additions of Rs. 1,01, 28,000/- was made on account of cash deposit in the bank

and Rs. 80,00,000/- made on account of unexplained investment in the property.

5. Aggrieved by the assessment orders dated 27/12/2016 for Assessment Year 2013-14 and 2014-15, the assessee preferred the Appeals before the CIT(A). The Ld. CIT(A) vide common order dated 09/07/2016, deleted the additions made by the A.O. Aggrieved by the deletions made by the CIT(A), the Department of Revenue is on Appeal on the Grounds mentioned above.

5. The Ground No. 1 & 4 of the Revenue in both the Appeals are general in nature which requires no adjudication.

6. Ground No. 2 in both the Appeals is regarding the addition on account of unexplained cash deposits. The Ld. Counsel for the assessee submitted that the issues involved in Ground no. 2 of the above Appeals are covered by the order of the Tribunal in Assessee's own case for ay 2009-10 to 2012-13 in ITA No. 6390/Del/2018 to 6393/Del/2018, thus submitted that the Ground No. 2 of the Revenue deserves to be dismissed.

7. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

8. We have heard both the parties and perused the material available on record. The similar issue came to be considered in Assessee's own case for the Assessment Year 2009-10 to 2012-13 in ITA No. 6390 to 6393/Del/2018 wherein the Coordinate bench of the Tribunal dismissed the Ground of the Revenue. The Ld. CIT(A) while deleting the addition of cash deposits in bank account has relied on the findings made in Assessment Year 2010-11 in Appeal No. 277 (2016-17) wherein partial addition of negative balance as on 13/04/2009 has been confirmed and the Appeal of the Revenue for Assessment Year 2010-11 has been dismissed by the Tribunal, therefore, we find no merit in the Ground No. 2 of the Revenue in both the Appeals. Accordingly Ground No. 2 of the Revenue are dismissed.

9. Ground No. 3 in Assessment Year 2013-14 (ITA No. 6394/Del/2018) is regarding deletion of addition on account of unexplained investment in the property. An addition of Rs. 50,00,000/- was made to the income of the assessee on the ground that the assessee made cash investments in the property and the

source of the cash was not explained. During the appellate proceedings, the assessee contended that the said investment was made out of cash withdrawals from bank account and furnished summary of cash withdrawals, deposits and utilization. The Ld. CIT(A) deleted the addition in following manners:-

*“The arguments of the AR, the version of the AO in the assessment order as well as in the remand report are the same as mentioned in Appeal no. 277/16-17. Adopting the same reasoning, it is seen that it is a matter of fact that the details of cash withdrawals are also in the same bank statement which is having the entries of cash deposits (and) which have been made the basis of the addition by the AO. Therefore, facts of cash withdrawal is considered. At no point of time, the running balance of cash (considering total withdrawal minus total cash deposits till such point of time) was less than Rs. 2,23,000/-. However, this position is emerging only after considering opening balance of Rs. 30,00,000/-. The AR argued that as per the chart submitted during the appellate proceedings of A.Y. 2012-13, there was cash withdrawal from this very bank account of Rs. 64,19,000/- (there was no opening cash balance as per the chart submitted for A.Y. 2012-13) against which the deposits are only Rs. 25,80,000/-. Therefore, the opening cash balance of Rs.*

*30,00,000/- for A.Y. 2013-14 is justifiable. In absence of any material to the contrary, this argument of the appellant cannot be brushed aside. Therefore, the source of cash deposits during the present assessment year is treated as explained. Also, the payment of Rs. 50,00,000/- (against purchase of the property) is treated as from explained sources.”*

10. The Ld. CIT(A) has analysed the facts and held that the opening cash balance of Rs. 30,00,000/- for Assessment Year 2013-14 is justifiable on the basis of the chart submitted during the appellate proceedings and further considering the fact that cash withdrawal from the very bank account of Rs. 64,19,000/- which is much more than the deposit of Rs. 25,80,000/-, deleted the addition. Therefore, in the absence of any contrary material on record, we find no merit in the contention of the Ld. Departmental Representative, accordingly the Ground No. 3 in ITA No. 6394/Del/2018 is dismissed.

11. Ground No. 3 in Appeal No. 6395/Del/2018 (A.Y 2014-15) is regarding the deletion of addition of Rs. 80,00,000/- made by the A.O. on account of unexplained investment in property.

12. Facts in brief are that certain documents bearing Page No. 100-118 of Annexure A1 were seized from the premises of one Sh. Karan Luthra. As per the said document, the assessee along with Sh. Sube Singh has purchased agriculture land bearing Khasra No. 1506/1, (2-60). 1506/2(3-15). 1507/1(1-60) situated at G-Block, Aya Nagar, Hauz Khas, Delhi for a consideration of Rs. 80,00,000/-. The Ld. A.O. has enumerated the statement of Sh. Karan Luthra, wherein he has explained to have received Rs. 55,00,000/- till date of search i.e. 14/03/2014. However, the Ld. A.O. while framing the Assessment, made addition of Rs. 80,00,000/- as unexplained investment u/s 69 of the Act. During the appellate proceedings, the assessee owned up to the transaction and explained that cash of Rs. 50,00,000/- was paid out of cash withdrawals from the bank account and also submitted the chart of cash transaction. The Ld. CIT(A) deleted the addition in following manners:-

*“34.3 The arguments of the AR, the version of the AO in the assessment order 277/16 - 17 in the remand report are the same as mentioned in Appeal no. Adopting the same line of reasoning, it is seen that it is a matter of fact that the details of cash withdrawals are also in the same*

*bank statement which is having the entries of cash deposits (and) which have been made the basis of the addition by the AO. Therefore, facts of cash withdrawal is considered. On 11.07.2013 there was a negative running balance of cash of Rs. 5,13,000/-. At no other point of time, the running cash balance was lower than the (negative) figure of Rs. 5,13,000/-. The running cash balance (considering total withdrawal minus total cash deposits till such point of time) has been prepared only after considering opening balance of Rs. 11,00,000/- The AR argued that as per the chart submitted during the appellate proceedings of AY 2013-14, there was cash withdrawal from this very bank account of Rs. 1,23,57,000/- (there was opening cash balance of Rs. 30,00,000/- for the AY 2013-14, which was held justifiable in the above adjudicated Appeal as no. 280/16 - 17) against which the cash utilization was only Rs. 1,06,64,000/- (Rs. 56,64,000/- as cash deposits in the bank account and cash expense of Rs. 50,00,000/- in terms of property purchase). Therefore, the opening cash balance of Rs. 11,00,000/- for A.Y. 2014-15 is justifiable. In absence of any material to the contrary, this argument of the appellant cannot be brushed aside. Therefore, the source of cash deposits during the assessment year is treated as explained. Also, the source of the amount of Rs.*

*50,00,000/- paid against purchase of the property, is also treated as explained.*

*34.4 As per para 4.2 of the assessment order, reply to question no. 31 of the statement of Sh. Karan Luthra has been reproduced. It is recorded by S Karan Luthra that he had received only Rs. 50,00,000/- (against the said consideration of Rs. 80,00,000/-). The copies of the seized documents attach with the assessment order show that most of the papers are unsigned and there is no material to show that anything beyond Rs. 50,00,000/- have been paid in this respect. The AO has not made any enquiry as to whether the balance (Rs. 30,00,000/-) was paid; if paid, what was the date of such payment and who actually made such payment. It is also a fact that the papers are in joint name of the appellant and Sh. Sube Singh. Therefore, it is difficult to sustain the theory that entire payment of Rs. 80,00,000/- was made by the appellant and that too in the F.Y. 2013-14.*

*34.5 In view of the above facts and circumstances, these grounds (nos. 3 and 4) of appeal are allowed and as a consequence, the additions of Rs. 80,00,000/- and Rs. 56,64,000/- are deleted. However, in the same breath it is to be stated that there is no bar on the AO to make enquiries about the mode, date and source of the balance*

*amount, if at all paid and take necessary action under section 147/148 or any other relevant sections.”*

13. The Ld. CIT(A) after considering the material on record and analyzing the same and also considering the statement of sh. Karan Luthra, deleted the addition. In the absence of any material contrary to the said finding, we find no reason to interfere with the findings of the CIT(A). Accordingly, we find no merit in the Ground No. 3 of the Revenue in ITA No. 6395/Del/2018.

14. In the result, Appeal filed by the Revenue in ITA Nos. 6394/Del/2018 and 6395/Del/2018 are dismissed.

**Order pronounced in the open court on 06th June, 2024**

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Date:- 06.06.2024

*\*R.N, Sr. PS\**

Copy forwarded to:

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

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

