

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. 6387/Del/2018, (A.Y. 2013-14)****ITA No. 6388/Del/2018, (A.Y. 2014-15)****ITA No. 6389/Del/2018, (A.Y. 2015-16)**

ACIT Central Circle-8 Room No. 333, ARA Centre, Jhandewalan Extension, New Delhi	Vs.	Krishan Kumar C-20, Devil Road, Dugal Colony, Khanpur Village, New Delhi PAN: AAEPK8794P
Appellant		Respondent

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 BENCH:**

The above Appeals are pertaining to Assessee in respect of Assessment Years 2013-14, 2014-15 and 2015-16 respectively filed by the Department against the orders of commissioner of Income Tax (Appeals)-24, ('Ld. CIT(A)' for short), dated 18.07.2018. The

above appeals are heard together and disposed in this common order.

2. The Grounds of Appeal are as under:-

ITA No. 6387/Del/2018 (A.Y 2014-15)

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

1. 2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 63,64,000/- made by Assessing Officer on account of unaccounted receipts from Sh. Nagendra.

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

ITA No. 6388/Del/2018 (A.Y 2014-15)

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

2. The Ld. CIT(A) erred in law as well as facts & circumstances of the case in deleting the addition of Rs.80,00,000/- made by the AO on account of unexplained investment in property.

3. The Ld. CIT(A) erred in law as well as facts & circumstances of the case in deleting the addition of Rs. 1,00,00,000/- made by the AO on account of unexplained receipts from sale of property.

4. The Ld. CIT(A) erred in law as well as facts & circumstances of the case in deleting the addition of

Rs.38,91,450/- made by the AO on account of unexplained cash deposits in bank account.

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

ITA No. 6389/Del/2018 (A.Y 2015-16)

- 1. The order of Ld. CIT(A) is not correct in law and facts.*
- 2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 36,96,000/- made by Assessing Officer on account of unexplained cash deposits.*
- 3. The appellant craves leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.*

ITA No. 6387/Del/2018 (A.Y 2013-14)

3. The Ld. Counsel for the assessee at the outset submitted that the additions were made without incriminating material found during the search and the Appeal filed by the Revenue is squarely covered by the Judgment of the Hon'ble Supreme Court in the case of Pr. Commissioner of Income Tax Vs. Abhisar Buildwell in CIVIL Appeal No. 6580 of 2021 dated 24/04/2023 therefore, sought for dismissal of the Appeal.

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

5. Heard and perused the material. In the present case, the return of income filed u/s 139 of the Act on 20/03/2014, no notice u/s 143(2) was issued and notice u/s 153C has been issued on 17/12/2015 and the status of the assessment is unabated, thus applying the ratio laid down by the Hon'ble Supreme Court in the case of Abhisar Buildwell (supra), we find no merit in the Grounds of Appeal of the Revenue. Accordingly the Appeal of the Revenue in ITA No. 6387/Del/2018 for Assessment Year 2013-14 is dismissed.

ITA No. 6388/Del/2018 (A.Y 2014-15)

6. Ground No. 1 is general in nature which requires no adjudication. The Ground No 2 of the Revenue is against deletion of addition of Rs. 80,00,000/- made by the A.O. on account of unexplained investment in property. The Departmental Representative contended that the Ld. CIT(A) has committed error in deleting the above addition.

7. Brief facts are that, certain documents were seized from the premises of Sh. Karan Malhotra which include an unsigned receipt of Rs. 80,00,000/- which was in the joint names of Sh. Nagender and Sube Singh. The said amount has been added in the name of Sh. Nagender and protective addition has been made by the A.O. in the hands of the assessee. The Ld. CIT(A) while deleting the addition held as under:-

“ 25.6 It is noteworthy that on the basis of seized material (page no. 100 to 118 of Annexure A-1 seized from premises of Sh. Karan Luthra), the AO made assessment of Rs. 80,00,000/- (and not 1 crore) in the hands Sh. Nagendra who, on the contrary, owned up the transaction and explained sources of payment of Rs. 50,00,000/-. This issue has been dealt with in the appellate order dated 09.07.2018 passed by this office in Appeal no. 281/17-18. In the said appeal, it has been held that the sources of payment of Rs. 50,00,000/- (owned up by Sh. Nagendra) have been found to be explained. Once the AO has made addition in the hands of Sh. Nagendra who actually owned up the transaction and admitted to have paid a part of it, there is no basis for making the addition in the hands of the appellant, on protective basis. The only material to substantiate the involvement of the appellant is the statement of Sh. Sultan Singh. This statement has not

been believed by the AO because it (the statement) states that the deal was of Rs. 1 crore whereas the addition has been made to the extent of Rs. 80,00,000/- only. Also the seized material (page no. 100 to 118 of Annexure A-1 seized from premises of Sh. Karan Luthra) show that the property has been purchased in joint name of Sh. Nagendra and Sh. Sube Singh. There is no reference of Sh. Sube Singh in the statement of Sh. Sultan Singh. Also, the AO has not thrown any light on this aspect-as to how the property is also in name of Sh. Sube Singh. In conclusion, it can be held that 1) statement of Sh. Sultan Singh is the only material on the basis of which the AO has made this protective addition but AO has herself not believed this statement in toto, and 2) Sh. Nagendra has owned up this transaction and O has accepted the same. Therefore, this addition does not withstand the test of judicial scrutiny and hence this ground (no. 2) is allowed and as a consequence, the addition under consideration is deleted.

8. Since the said Sh. Nagender has owned up the said transaction and the A.O. has accepted the same, we find no error or infirmity in the order of the CIT(A) in deleting the addition. Accordingly the Ground No. 2 of the Revenue is dismissed.

9. Ground No. 3 is regarding unexplained receipt of Rs. 1,00,000/- from sale of the property. The Ld. Departmental Representative contended that the Ld. CIT(A) erred in deleting the addition made by the A.O. on account of unexplained receipts from sale of property.

10. Per contra, the Assessee's Representative relying on the order of the CIT(A), sought for dismissal of the Appeal.

11. The basis for the above addition is an undated and unsigned receipt which was seized from the premises of Sh. Sultan Singh. The said receipts states that the assessee had received Rs. 25,50,000/- out of one crore before the execution of the said seized receipt, the Assessee taken money against sale of thousand square yard piece of land at Aya Nagar, New Delhi, the document further states that balance amount of Rs. 74,50,000/- will be paid on or before one month. The Ld. A.O. made the addition of the entire Rs. 1 Crore in the hands of the assessee. It was the case of the assessee before the CIT(A) that no such transaction was actually during the year under consideration and no such receipt extended

by the Assessee. The Ld. CIT(A) deleted the addition in following manners:-

“26.4 The reasoning of the AO cannot be accepted for the simple reason that the presumption of the clause (ii) of sub-section (4A) of section 132 of the I.T. Act, 1961 is available only against the person from whose premises a particular document is seized. In the present case the document has been seized from the premises of Sh. Sultan Singh (and not from the premises of the appellant).

26.5 It is also important to note that Sh. Sultan Singh was asked to explain content of this seized paper. In reply (to question no. 18), Sh. Sultan Singh did not give any specific answer and stated that this is related to some land and because Sh. Jasbir Jaiswal is partner of Sh. Krishan Kumar (appellant) and works from his (Sh. Sultan Singh's) office and therefore, this document has been recovered from his (Sh. Sultan Singh's) office. The relevant portion of the statement of Sh. Sultan Singh is reproduced below:

पृष्ठ 18. मैं आपकी Annexure A-5 Page 1 to 9 दिखा रहा हूँ जो एक Bunch of loose papers है तथा आपके आपातगार ऑफिस से पाये गये जबरन किये गए हैं। कृपया इन कागजों को देखें तथा बताएं कि किस तरह के कागज हैं तथा इसे किसने लिखा है। साथ ही मैं भी बताए कि इन कागजों में बणित रकमों की प्रकृति तथा इतरणी क्या है?

उत्तर :- Confirm करता हूँ कि ये कागज मेरे जहाँ से मिले हैं। इन कागजों का धरोहर इस प्रकार है :-

- 14 -

739

Page-9 - यह किसी जमीन की रसीद है। चूंकि जसवीर देसवाल Sh. कृष्ण का परिवार और मेरे ऑफिस से ही कार्य करता है अतः यह कागज मेरे ऑफिस मिला होगा।

सुलतानगढ़

12.05.14

अंकिता पाण्डे
आयकर उप निदेशक (अन्व.)
यूनिट-3(3), नई दिल्ली

26.6. In view of the above discussion, it is held that the presumption of the clause (ii) of sub-Section (4A) of Section

132 of the I.T Act, 1961, is not available against the appellant. Without this presumption, an undated and unsigned receipt, recovered from a third party, is not sufficient to make an addition, particularly when exact Khasra no. of the property is not known and there is nothing on record to suggest that the statement of the appellant that such deal did not take place, is incorrect. Therefore, this ground (no. 3) of appeal is allowed and consequently addition of Rs. 1 crore is deleted.”

12. Admittedly, the document has not been seized in Assessee's premises. Thus, the presumption u/s 132(4A) (ii) of the Act is not available to the Department against the assessee. In the present case, documents have been seized from the premises of one Sultan Singh. Therefore, considering the fact that the receipt being undated, unsigned and seized from the third party, the Ld. CIT(A) found that, the same is not sufficient to make addition particularly when exact Khasara Number has not been mentioned in the Receipt, accordingly deleted the addition. In our opinion, the Ld. CIT(A) committed no error in doing so. Thus, the Ground No. 3 of the Revenue is dismissed.

13. In the Ground No. 4, the Revenue contended that the Ld. CIT(A) committed error in deleting the addition of Rs. 38,91,450/- made by the A.O. on account of unexplained cash deposit in the bank. It is the case of the assessee before the CIT(A) that A.O. has not considered the cash withdrawals shown in the statements of the same bank account and the assessee provided the date wise cash receipt and withdrawals from the same bank before the Ld. CIT(A), the Ld. CIT(A) while deleting the additions held as under:-

“27.3. It is a matter of fact that the details of cash withdrawals are also in the same bank statements which are having the entries of cash deposits which have been made the basis of the addition by the AO. Therefore, facts of cash withdrawal in considered. It can be seen that there is a total withdrawal of Re 98,35,000 which is much more than total deposit (of Rs. 39,41,500/-). As far as, the running balance of cash (considering total withdrawal minus total cash deposits up to that point of time) is concerned, there is a negative cash balance of Rs. 50,000/- as on 03.06.2013. At no other point of time, the running balance of cash (considering total withdrawal minus total cash deposits up to that point of time) was less than the said figure of (minus) Rs. 50,000/-

27.4 A similar ground has already been discussed above (while adjusting Appeal no. 57/16-17). The facts and circumstances as well stand of the appellant are same as was in Appeal no. 257/16-17. Therefore, adopting the same line of reasoning, this and (no. 4) is partly allowed and consequently, addition is confirmed to the extent of Rs. 50,000/- and balance amount of addition (38,91,450/) is deleted.”

14. The ld. A.O. while making the above addition has not brought any material on record to show that cash withdrawal were consumed by the Assessee in form of certain payment to any third party. It is settled judicial principal that the addition can be made only on the basis of cogent material. It is not sufficient to simply assume that the cash withdrawal was used somewhere else and not available for deposit. The Ld. CIT(A) after considering the material on record as restricted the addition to the excess amount of the cash deposit over the amount of cash withdrawal which enquires no interference at the hands of the assessee. Thus, we

find no error in the approach of the CIT(A) in deleting the addition, accordingly, the Ground No. 4 of the Revenue is dismissed.

ITA No. 6389/Del/2018 (A.Y 2015-16)

15. The only issue involved in the present Appeal filed by the Revenue is regarding cash deposit in the bank. In the present case, the Ld. CIT(A) has deleted the addition considering the chart of date wise cash deposit produced by the assessee and withdrawals from the bank account maintained by the assessee in following manners:-

“32.2. During the appellate proceedings, the AR contested that AO has not considered the cash withdrawals shown in the statement of the same bank account. The AR submitted a chart showing date-wise cash deposits and withdrawals from the bank accounts maintained by the appellant in UBI and PNB. The said chart is reproduced as under:

Sh. Krishan Kumar
A.Y. 2015-16

A chart showing details of cash transactions

Date	Particulars	Withdrawals	Deposits - UBI	Deposits - PNB	Balance
03-Apr-14	PNB (151400)	3,00,000			3,00,000
07-Apr-14	PNB (151400)	5,00,000			8,00,000
07-Apr-14	United Bank of India	20,000			8,20,000
09-Apr-14	PNB (151400)			67,500	7,52,500
15-Apr-14	PNB (151400)	4,50,000			12,02,500
22-Apr-14	PNB (151400)	3,00,000			15,02,500
24-Apr-14	PNB (151400)	3,50,000			18,52,500
30-Apr-14	PNB (151400)			4,10,000	14,42,500
16-May-14	PNB (151400)			32,000	14,10,500
16-May-14	United Bank of India	24,000			14,34,500
20-May-14	PNB (151400)			22,500	14,12,000
06-Jun-14	PNB (151400)	9,50,000			23,62,000
26-Jun-14	United Bank of India		20,000		23,42,000
30-Jun-14	PNB (151400)	5,00,000			28,42,000
30-Jun-14	PNB (151400)			2,20,000	26,22,000
03-Jul-14	United Bank of India	25,000			26,47,000
02-Aug-14	United Bank of India	30,000			26,77,000
12-Aug-14	United Bank of India	2,00,000			28,77,000
26-Aug-14	United Bank of India		60,000		28,17,000
29-Aug-14	United Bank of India		1,25,000		26,92,000
03-Sep-14	United Bank of India	3,30,000			30,22,000
18-Sep-14	United Bank of India	25,000			30,47,000
23-Sep-14	United Bank of India	8,00,000			38,47,000
27-Sep-14	United Bank of India		50,000		37,97,000
01-Oct-14	United Bank of India	8,500			38,05,500
11-Oct-14	United Bank of India		6,00,000		32,05,500
14-Oct-14	United Bank of India		2,90,000		29,15,500
20-Oct-14	United Bank of India		7,00,000		22,15,500
29-Oct-14	United Bank of India		2,34,000		19,81,500
10-Nov-14	United Bank of India	9,00,000			28,81,500
11-Nov-14	United Bank of India	9,00,000			37,81,500
19-Nov-14	PNB (151400)	5,00,000			42,81,500
25-Nov-14	United Bank of India	33,000			43,14,500
10-Dec-14	United Bank of India	27,000			43,41,500
17-Dec-14	United Bank of India	6,00,000			49,41,500
18-Dec-14	United Bank of India	1,00,000			50,41,500
18-Dec-14	United Bank of India	8,00,000			58,41,500
19-Dec-14	United Bank of India	5,00,000			63,41,500
24-Dec-14	United Bank of India	9,50,000			72,91,500
24-Dec-14	United Bank of India	5,50,000			78,41,500
26-Dec-14	United Bank of India	9,50,000			87,91,500
27-Dec-14	United Bank of India	50,000			88,41,500
31-Dec-14	United Bank of India	5,00,000			93,41,500
08-Jan-15	United Bank of India	3,80,000			97,21,500



Deep Mangal

10-Jan-15	United Bank of India	5,00,000			1,02,21,500
10-Jan-15	United Bank of India	4,00,000			1,06,21,500
12-Jan-15	United Bank of India	9,75,000			1,15,96,500
17-Jan-15	United Bank of India		5,00,000		1,10,96,500
20-Jan-15	United Bank of India	5,00,000			1,15,96,500
21-Jan-15	United Bank of India	4,00,000			1,19,96,500
23-Jan-15	United Bank of India		90,000		1,19,06,500
24-Jan-15	United Bank of India		3,92,000		1,15,14,500
24-Jan-15	United Bank of India	3,90,000			1,19,04,500
30-Jan-15	United Bank of India	8,00,000			1,27,04,500
31-Jan-15	United Bank of India	5,00,000			1,32,04,500
04-Feb-15	United Bank of India	9,50,000			1,41,54,500
05-Feb-15	United Bank of India	9,50,000			1,51,04,500
06-Feb-15	United Bank of India	1,00,000			1,52,04,500
09-Feb-15	United Bank of India	5,00,000			1,57,04,500
12-Feb-15	United Bank of India		10,000		1,56,94,500
12-Feb-15	United Bank of India	5,00,000			1,61,94,500
03-Mar-15	United Bank of India		2,00,000		1,59,94,500
19-Mar-15	United Bank of India		1,50,000		1,58,44,500
23-Mar-15	United Bank of India		2,00,000		1,56,44,500
25-Mar-15	United Bank of India		50,000		1,55,94,500
31-Mar-15	United Bank of India		25,000		1,55,69,500
		2,00,17,500	36,96,000	7,52,000	

albert Mangal

32.3 It is a matter of fact that the details of cash withdrawals are also in the same bank statements which are having the entries of cash deposits which have been made the basis of the addition by the AO. Therefore, facts of cash withdrawal are considered. It can be seen that there is a total withdrawal of Rs. 2,00,17,500/- which is much more than total deposit (of Rs. 44,48,000/- (Rs. 36,96,000/- in UBI and Rs. 7,52,000/- in PNB)). As far as, the running balance of cash (considering total withdrawal minus total cash deposits up to that point of time) is

concerned, there is no negative running cash balance at any point of time (considering total withdrawal minus total cash deposits up to that point of time).

32.4 A similar ground has already been discussed above (while adjudicating Appeal no. 257/16-17). The facts and circumstances as well as stand of the appellant are same as was in Appeal no. 257/16-17. Therefore, adopting the same line of reasoning, this ground (no. 2) is allowed and consequently, addition is (of Rs. 36,96,000/-) is deleted.”

The similar issue has been already decided in favour of the assessee by dismissing the Ground No. 4 in ITA No. 6388/Del/2018 (Supra), thus adopting the same line of reasoning, we find no merit in the Ground No. 2 in ITA No. 6389/Del/2018.

16. In the result Appeal filed by the Revenue in ITA Nos. 6387/Del/2018, 6388/Del/2018 & 6389/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:

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI