

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A': NEW DELHI  
BEFORE  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 3656/Del/2018, A.Y.2014-15)**

Brijesh Kumar S/o, Sh. Virendra Singh, VIII-Mustafabad, P.O. New Mandi, Muzaffarnagar, Uttar Pradesh <b>PAN : DHUPK2847H</b> <b>(Appellant)</b>	Vs.	ITO Ward-1(2) Muzaffarnagar, Uttar Pradesh  <b>(Respondent)</b>
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Appellant by	Sh. Ankit Gupta, Adv
Respondent by	Shri Virendra Singh, Sr. Dr

Date of Hearing	24/10/2024
Date of Pronouncement	18/11/2024

**ORDER**

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

This appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (appeals), Muzaffarnagar, ["Ld. CIT(A)" for short], dated 27/02/2018 for the Assessment Year 2014-15.

2. The grounds of Appeal are as under: -

*"1. That on facts and in the circumstances of the case, the Id. CIT (Appeals) should have accepted the investment made in the property explained before him and before the A.O. with documentary evidences available on record. As such, the sustenance of addition to the extent of Rs. 32,30,000/- is wrong both on facts and in law.*

*2. That the observation of the Id. CIT (A) that the appellant received accounted funds of Rs. 21 lac from his father through drafts and the appellant could explain the source of investment of Rs. 41 lac (including bank loan of Rs. 20 lac) out of Rs. 55 lac made through the banking channels, is factually wrong and incorrect, as the appellant received drafts of Rs. 35 lac from his father. As such, as per the calculation made by the Id. CIT (A) himself, addition of Rs. 14 lac (in addition of Rs. 21 lac) should have been deleted.*

*That the Id CIT (A) is wrong and unjustified in treating the balance funds at Rs. 32,30,000/- (which would remain at Rs.18,30,000/- in case of acceptance of bank drafts of Rs. 35 lac as claimed in Ground No. 2 above) in the form of past savings and income of the appellant and his wife as un-explained. The fact that both the appellant and his wife Smt. Munesh Devi had agriculture income in addition to the business income, and were regularly assessed to tax for past several years, has not been considered in the due perspective it deserved. As such the addition Rs. 32,30,000/- deserves to be set aside.*

*That on facts and circumstances of the case, the Capital Accounts of the appellant and his wife filed during the course of assessment proceedings with sufficient evidences and also before the CIT (Appeals), should have been accepted and as such the addition Rs. 32,30,000/- (which would remain at Rs.18,30,000/- in case of acceptance of bank drafts of Rs. 35 lac as claimed in Ground No. 2 above) deserves to be set aside.*

*5. That any other ground at the time of hearing be allowed to be raised.”*

3. Brief facts of the case are that, the Assessee filed return declaring income at Rs. 1,88,850/- which has been processed u/s 143(1) of the Act at returned income. The case of the Assessee was selected for scrutiny under CASS, accordingly notice u/s 143(2) and 143(1) along with questionnaires were issued to the Assessee. Assessment order came to be passed on 04/11/2016 by making addition of Rs. 86,20,000/- u/s 69 of the

Act of Income Tax Act, 1961 ('Act' for short) as unexplained investment. Aggrieved by the assessment order dated 04/11/2016, the Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 27/02/2018 sustained the addition of Rs. 20,50,000/- which was claimed to have been invested from capital of the Assessee and Rs. 12,00,000/- claimed to have invested by Sh. Munesh Devi wife of the Assessee and deleted the rest of the additions by restricting the addition to Rs. 32,50,000/-. As against the deletion of the additions the Revenue preferred an Appeal before this Tribunal which has been dismissed on account of low tax effect. Further, aggrieved by the order of the Ld. CIT(A) in sustaining the addition of Rs. 32,50,000/- the Assessee preferred the present Appeal on the grounds mentioned above.

4. The Ld. Counsel for the Assessee made following written submission and sought for deletion of the sustained addition

*"1) That, the addition on account of unexplained investment of Rs.32,20,000.00 U/s 69 is highly arbitrary, unjustified and excessive:-*

*That, as explained above, the CIT (A) has only sustained, the addition of the amount mentioned at Sr. No.(d) and (e) of the aforesaid table, in reference to the said investment, it is respectfully submitted as under :-*

*a) Rs.20,50,000,00 withdrawal Capital from the business of the BestCK: That, the assessee has engaged, in the boniness of trading of Straw (Bhus) since long time, accordingly. The income has been shown by the assessee Us 44AD of the ACT. In the year under consideration, the assessee has shown, the turnover of Rs.18, 35,000.00 and declared the income of Rs.2,50,000.00*

*from the aforesaid business, which has been accepted by the assessing officer. The assessee has offered an explanation, that, the investment of Rs.20,50,000.00 out of the withdrawal of his capital, which has been ignored by the assessing officer and CIT (A), in a summary manner without appreciating the capital account and statement of affairs filed by the assessee, during the assessment and appellate proceedings, the same are being enclosed at page no. 43 to 46 of P/B.*

*[Finding of CIT(A) is at Page no. 12 of CIT(A) Order]*

*That, the assessee has done a business of trading of Straw etc., in which the assessee has introduced, his capital, in shape of advance given to the farmers, in the end of financial year i.e. January to March, for the purchase of Wheat Straw from the farmers, in the month of April to June, in which the wheat Crop has been cultivated by the farmers and the same has sold to the other retailers and the payments were received in CASH against the Sale of the Straw, which has been withdrawal as capital by the assessee for the investment in the aforesaid immovable properties.*

*In view of the above, it is clear from the Capital Account and Statement of Affairs, the assessee has done its business in CASH, therefore, it cannot be ruled out the availability of CASH with the assessee, therefore, the assessee has offered an explanation, which has not been disapproved by the assessing officer and CIT (A), the addition sustained by the CIT (A), merely on the presumption drawn, that, the assessee has marginal income without appreciating, that, the assessee is showing the turnover of Rs. 18,35,000.00, and also having accumulated capital from earlier years, therefore, the assessee is having the availability of CASH in hand, as per the capital account & Statement of affairs for three assessment years. Here the assessee wants to rely the following decisions of Hon'ble ITAT, as mentioned below:*

- Mansukh K. Vaghasia vs. Income-tax Officer [2022] 139 taxmann.com 84 (Surat-Trib.) [05-04-2022]*
- Swaran Singh vs. Income-tax Officer [2024] 159 taxmann.com 777 (Amritsar - Trib.) [23-02-2023]*

*Also, Kindly appreciate that the assessee appellant is 52 year old regular working man having business and agriculture income,*

*resides in the village Mustafabad, Muzaffarnagar, should having his savings and capital, which he has utilized to made the investment in the purchase of agriculture land and residential property. In view of the facts and circumstances, the assessee has cash in hand out of the cash withdrawal of capital from his business and his saving, therefore, the addition sustained by CIT(A) is arbitrary and unjustified.*

***b) Rs.12,00,000.00 from the withdrawal capital of Smt. Munesh Devi:-***

*That, as explained, the said amount was invested by wife of the assessee Smt. Munesh Devi and the same has been added in her hand, by the assessing officer vide order dated 14.12.2016 U/s 143(3) substantially and protective basis in the hand of the assessee appellant, The copy of AO order is being enclosed (at page no. 47 to 49).*

*That, the CIT (A), Muzaffarnagar in Appeal No.594873221-*

*180117, vide order dated 21.11.2017 has sustained the said addition in the hands of the wife of the assessee and also sustained in the hands of the assessee and failed to appreciate that the addition was made in hands of the assessee is on protective basis. The copy of CIT (A) order is being enclosed (at page no.50 to 54).*

*In view of the above, the addition made in the hands of the assessee cannot be sustained as its amount to double addition, in the hands of the assessee, as the same has been added and treated as income, in the hands of his wife Smt. Munesh Devi.”*

5. Per contra, the Ld. Departmental Representative submitted that the Ld. CIT(A) has rightly sustained the addition of Rs. 32,50,000/- which requires no interference at the hands of the Tribunal and by relying on the order of the Ld. CIT(A), sought for dismissal of the Appeal of the Assessee.

6. We have heard both the parties and perused the material available on record.

7. In so far as the addition of Rs.20,50,000/- is concerned, it was the case of the Assessee that, the Assessee has withdrawn capital from the business of the Assessee who was engaged in the business of Straw (Bhus) for long time and the Assessee has shown income under Section 44 AD of the Act. The Assessee has made business in cash, therefore, out of the availability of cash of the Assessee, the Assessee has made investment. The Assessee has shown the income under Section 44AD of the Act and in the year under consideration and the Assessee has shown turnover of Rs.18,35,000/- and declared the income of Rs. 2,50,000/- from the aforesaid business which has been accepted by the AO. The explanation given by the Assessee was that out of the withdrawn of his capital, the investment has been made. To substantiate the same, the Assessee has produced capital account and also statement of affairs which has not been considered by the lower authorities. Since, the Assessee has done the business in cash, it cannot be ruled out the availability of cash with the Assessee. Though, the Assessee has shown turnover of Rs.18,35,000/-, the Ld. CIT(A) observed that Assessee has marginal income. Considering the above facts, we are of the opinion that there is every chance of accumulation of cash from the earlier years, therefore, Assessee having

availability of cash in hand which can be corroborated with capital account and statement of affairs for three years.

8. The Co-ordinate Bench of the Tribunal, Surat Bench in the case of Mansukh K. Vaghasia vs. ITO reported in [2022] 139 taxmann.com 84 (Surat-Trib.). In similar set of facts, deleted the addition in the following manner:

*“13. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that assessing officer made addition of Rs.13,87,000/-, (cash deposited in bank account), as the assessee could not furnish satisfactory evidence regarding his income from jobwork and retail trading. We note that assessee is a small trader, having turnover of Rs. 16,02,300/- only, therefore he filed his return of income under section 44AD of the Act. Section 44AD provides that where the assessee is engaged in eligible business as proprietor under that section, a sum equal to 8% of the gross receipts shall be deemed to be the profits and gains of such business. Section 44AD exempts the assessee from maintenance of books of accounts. Once the income of the assessee is accepted u/s 44AD, then in that circumstances the Assessing Officer could make further additions. The provisions of section 44AD of the Act, is reproduced below( to the extent applicable to our analysis):*

*“Special provision for computing profits and gains of business on presumptive basis. 44AD. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession"*

*14. In the light of the provisions of section 44AD of the Act, we note that assessee has filed his return of income under section 44AD of the Act and shown turnover of Rs. 16,02,300/-, which falls in the scope of provisions of section 44AD of the Act. The cash deposit in the bank account is to the tune of Rs.13,87,000/-, as noted by the assessing officer. As per assessee, the said cash deposited in bank account is out of cash turnover of Rs. 16,02,300/-, as declared by the assessee, therefore, we note that such small assessee has proved his bona fide, about the cash so deposited in the bank account. The Id Counsel pleads before us that while filing return of income, the assessee has selected wrong Income Tax Return form (ITR form), that does not mean that assessee is not covered by the provisions of section 44AD of the Act. Moreover, the assessee had disclosed the said bank account while filing the belated return of income for retail job-work and trading income on the basis of estimated profit on turnover of Rs. 16,02,300/-.*

*The Id Counsel submitted that assessee had shown Gross Profit of Rs.2,56,230/- and net profit of Rs.1,58,395/- on his turnover. The net profit ratio comes to 9.88% of the turnover, which is greater than the 8% of profit in cases of section 44AD of the Act. Therefore, we note that based on this factual position, the addition made by the assessing officer should be deleted.*

*15. Moreover, the assessee submitted memorandum Trading and Profit and Loss account and Balance Sheet. We note that assessing officer has not made any adverse finding in any of these documents even, though all the details were furnished by the assessee before him. The assessing officer ought to have examined all these details and refuted / rejected them, with a cogent adverse findings and discernable line of reasoning, in order to arrive at a conclusion and to make the addition. On the contrary, the assessing officer has just brushed aside these evidences without even a word on why they are not acceptable and how these are fabricated documents. It is a well settled Law that when an assessee has all the possible evidence in support of its claim, they cannot be brushed aside based on surmises. Therefore, based on the facts and circumstances, as narrated above, we delete the addition."*

9. Considering the above facts and circumstances and by relying on the order of Surat Bench of the Tribunal in the case of Mansukh K. Vaghasia (supra), we delete the addition of Rs.20,50,000/- made under section 69 of the Act .

10. Further, in so far the addition of Rs.12,00,000/- made on account of unexplained investment under Section 69 of the Act is concerned, the Assessee contended that the said amount was invested by the wife of the Assessee Smt. Munesh Devi and the same has been added in her hand by the AO vide order dated 14.12.2016 under Section 143(3) of the Act substantially and made the present addition on protective basis in the hand of the Assessee. The learned counsel for the Assessee further submitted that the addition made in the hand of the wife of the Assessee has been accepted and the tax has been duly paid by the wife of the Assessee.

11. As the substantial addition made in the hand of the Assessee's wife has been claimed to have been accepted and due tax has been paid, the protective addition made in the hand of the Assessee does not survive. Accordingly, the protective addition of Rs.12,00,000/- made in the hand of the Assessee on protective basis is hereby deleted.

12. In the result, the appeal of the Assessee is allowed.

Order pronounced in open Court on 18<sup>th</sup> November, 2024

Sd/-

**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 18 /11/2024

*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

