

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.950/Del/2020**

**[Assessment Year : 2016-17]**

DCIT, Central Circle-26, New Delhi.	vs	Sham Lal, 3046, Sec-28D, Chandigarh <b>PAN-AAPPL6203R</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

**C.O.No.-37/Del/2021**

**[In ITA No.950/Del/2020]**

**[Assessment Year : 2016-17]**

Sham Lal, 3046, Sec-28D, Chandigarh <b>PAN-AAPPL6203R</b>	vs	DCIT, Central Circle-26, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Ms. Jaya Chaudhary, CIT DR & Shri Sahil Kumar Bansal, Sr.DR	
<b>Respondent by</b>	Shri Prikshit Agarwal, CA	
<b>Date of Hearing</b>	03.02.2025	
<b>Date of Pronouncement</b>	12.02.2025	

**ORDER**

**PER MANISH AGARWAL, AM :**

The present appeal has been filed by the Revenue against the order dated 06.12.2019 passed by Ld. Commissioner of Income Tax (A), -27, New Delhi in Appeal No.-462/18-19 u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 18.12.2018 passed u/s 143(3) of the Act pertaining to assessment year 2016-17. The Revenue has taken following grounds of appeal:-

1. *“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 63,00,000/- on account of unexplained money u/s 69A of the Income-tax Act, 1961.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 12.90 Cr. on account of investment u/s 69A of the Income-tax Act, 1961.*
3. *That the grounds of appeal are without prejudice to each other.*
4. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

2. Apart from this, the assessee has also filed Cross-Objection appeal wherein following grounds raised by the assessee:-

1. *“On facts, circumstances and legal position of the case, the Worthy CIT(A) in Appeal No. 462/18-19 dated 06.12.2019 has erred in passing that order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961, to the extent of not allowing some of the grounds of the appellant.*
2. *That on law, facts and circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the addition of Rs. 17,65,000/- made by the A Ld. AO on account of alleged unexplained cash deposits in the bank a/c even when the same were from explained sources.*
3. *That on law, facts and circumstances and legal position of the case, Worthy CIT(A) has erred in denying the short term capital loss of Rs. 21,00,000/- on sale of property only on the ground that the said loss had not been claimed in the ITR even when the sale consideration as well as cost of acquisition of that property was assessed by the Ld. AO and then adjudicated upon by the Worthy CIT(A) himself.*
4. *That the respondent craves leave for any addition, deletion or amendment in the grounds of cross-objections on or before the same is heard or disposed off.”*

Besides this, during the course of hearing vide letter dated 03.05.2023, the assessee has taken one additional ground *which* reads as under:-

1. *“That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming an addition of Rs. 17,65,000 made by Ld. AO on account of alleged unexplained deposit of cash in bank despite the fact that this issue was not a subject matter selected under limited scrutiny.”*
3. In **Ground No.1**, the Revenue has challenged the action of Ld.CIT(A) in deleting the addition of INR 63,00,000/- made u/s 69A of the Act.
4. Brief facts of the case are that the assessee is an individual and filed his return of income on 05.12.2016 of INR 2,86,880/-. The case of the assessee was taken up for limited scrutiny and assessment was completed at a total income of INR 13,73,51,880/- by making various additions. In first appeal, the Ld.CIT(A) has allowed substantial relief to the assessee against which the Revenue is in appeal before us and the assessee has filed Cross Objection on the additions sustained by the Ld.CIT(A).
5. As per the information available with the AO in Form 26QB, the assessee sold his property at INR 63,00,000/- and the said transaction of sale was offered for the tax in the return of income filed. Further, no explanation was tender before the AO and the AO has made this addition u/s 69A by holding the same as unexplained money. During the course of appellate proceedings, the assessee has filed detailed reply alongwith the additional evidences alongwith prayer under Rule 46A of the Income Tax Rules, 1962. The AO sought Remand Report and after considering the Remand Report, has deleted the additions so made. However, the Ld. CIT(A) has not allowed the loss of INR 21 Lakhs claimed by the assessee being suffered on such transaction. As per assessee, this property was

acquired for Rs.84 Lakhs and was sold for INR 63 Lakhs, thus the assessee has suffered a loss of INR 21 Lakhs.

6. In support of the ground, Ld.CIT DR for the Revenue submits that the assessee has not disclosed this transaction in the return of income filed and he placed reliance on the order of the AO and requested for the confirmation of the addition so made by the AO. With regard to the claim of loss of INR 21,00,000/- on the said property, the Ld.CIT DR supported the order of Ld.CIT(A) on this score and submits that since the said loss is not claimed in the return of income filed and therefore, in terms of section 80 of the Act, the same should not be allowed.

7. It was submitted by the Ld. AR of the assessee that the assessee has sold a property of INR 63,00,000/- which was acquired by him at INR 84,00,000/- and the payment was made during the period from 11.07.2013 to 12.09.2013. The Ld.AR for the assessee submits that the assessee has ultimately suffer the short term loss of INR 21,00,000/- on this transaction which may please be allowed. For this, he submits that it is a claim made before the Ld.CIT(A) and since the Ld.CIT(A) has accepted the fact that the assessee has sold a property and suffered the loss therefore, this loss deserves to be allowed. With regard to addition of INR 63 Lakhs, ld.AR contended that this amount represents the sale consideration and assessee with all plausible evidences has been able to demonstrate this transaction of sales as genuine transaction thus Ld.CIT(A) has rightly deleted addition and he prayed for confirmation of order of Ld.CIT(A) on this score.

8. We have heard the rival submissions and perused the material available on record. From the order of Ld.CIT(A), it is seen that the Ld. CIT(A) has duly

considered the facts that the assessee has sold the property for INR 63,00,000/- which was acquired by him for INR 84,00,000/- and had incurred a loss of INR 21,00,000/-. The evidences filed in respect of the acquisition of the property were also examined by the AO in the remand proceedings and no contrary view was given by the AO and therefore, in our considered opinion, the Ld.CIT(A) has rightly deleted the addition made by AO. Accordingly Ground No.1 of Revenue is dismissed. With regard to the claim of loss, we find that this transaction was not disclosed by the assessee in the return of income nor any details were filed before the AO. It is the fresh claim of short term capital loss which was made before the Ld.CIT(A) for the first time. As this loss was not claimed in the return of income filed, in terms of provision of section 80 of the Act, such loss cannot be allowed to be carried forward to the assessee. Accordingly, the C.O.No.3 of the assessee filed in the Cross-Objection Appeal is dismissed.

9. **Ground No.2** of the Revenue is with regard to the deletion of addition of INR 12,90,00,000/- made u/s 69A as unexplained investment.

10. Brief facts of the case are that the AO has information that the assessee has purchased a property worth of INR 12,90,00,000/- for which it was explained that the assessee is having 10% of the shares however, the assessee has not properly explained the source therefore, the AO has made addition of entire amount of INR 12,90,00,000/-. In first appeal, the assessee has submitted the details of the investment and Remand Report was called for. In the Remand Report, the AO has conclusively stated that the assessee alongwith his brother Sh. Ajay Kumar has acquired 20% share in this property and individual share of

the assessee and his brother has not mentioned in the Sale Deed. The Ld. CIT(A) after considering the facts and the Remand Report, has deleted the addition.

11. Before us, the Ld.CIT DR for the Revenue vehemently supported the orders of the AO and submits that the Ld.CIT(A) without properly appreciating the fact, has deleted the addition made. She further submits that though the assessee has made investment of INR 3.225 crore only out of which INR 1.225 crore were stated to have been made out of the explained source and remaining INR 200 Lakhs remained unexplained which deserves to be upheld. The Ld. CIT DR further submits that the assessee has paid stamp duty charges of INR 32.5 Lakhs in cash. The immediate source which was explained of loss of INR 40 Lakhs taken from his brother Shri Vijay Kumar which was accepted by Ld.CIT(A) without obtaining comments of the AO on this issue. Accordingly, Ld.CIT DR submits that the issue of investment of INR 40 Lakhs deserves to be sent back to the file of the AO for necessary verification.

12. On the other hand, Ld.AR of the assessee vehemently supported the order of Ld.CIT(A) and submits that the entire addition was deleted by the Ld.CIT(A) and considering the Remand Report and the facts of the case that the payments were made by the assessee through explained sources and the necessary details were filed before the AO during the remand proceedings therefore, there is no question remained with respect to the source of all the investment made. Accordingly, he prayed for the confirmation of the order of Ld.CIT(A) on this issue.

13. We have considered the rival submissions and perused the order of the Ld.CIT(A). From the perusal of the order of Ld.CIT(A), it is found that the assessee alongwith his brother has purchased 20% shares in the property and

out of that 20% share, brother Shri Ajay Kumar through an affidavit has affirmed that purchase consideration to the extent of his share of 10% was paid by him out of his own sources. Therefore, out of INR 12.9 crores, only addition of investment of INR 322.50 Lakhs was made by the assessee is subject matter of examination and there is no question of making addition of remaining INR 967.50 Lakhs. With regard to the source of the investment of INR 322.50 Lakhs, the assessee has been able to substantiate its claim of making such investment out of explained funds by filing the necessary evidences before the AO during remand proceedings. The Ld.CIT(A) after considering these evidences, has deleted the addition made. As all the payments were made by the assessee were through banking channels and immediate source of the same were duly substantiated therefore, we are not inclined to interfere with the order of Ld.CIT(A) to this extent. With regard to the issue of payment of Stamp Duty of INR 32.5 Lakhs out of loan taken from one Shri Vijay Kumar, brother of the assessee, we find that the Ld. CIT(A) has accepted the contention of the assessee on the basis of confirmation and bank statement of Shri Vijay Kumar without confronting and obtaining a report from the AO on the same. Under these circumstances, the issue of source of investment of INR 32.5 Lakhs in stamp duty is sent back to the file of the AO for making necessary verification with regard to the source thereof. As a result, the Ground No.2 raised by the Revenue is partly allowed for statistical purposes.

14. Now coming to the Cross Objection filed by the assessee.

15. **Ground No.1** raised in the Cross-Objection Appeal is general in nature.

16. **Ground No.2** is with regard to the addition of INR 17.65 Lakhs made by the AO by treating the cash deposits as unexplained. The assessee vide letter dated 03.05.2023 has also taken an additional ground in cross-objection appeal wherein it is stated by the assessee that the addition of INR 17.65 Lakhs made on account of alleged unexplained deposit in bank accounts is beyond the issue of limited scrutiny and thus without jurisdiction.

17. Brief facts leading this issue are that the AO based on AIR information observed that the assessee has made cash deposits in various accounts of INR 17.65 Lakhs. The AO asked the assessee for necessary explanation of the sources thereof. As the assessee has not offered any explanation, the AO had made the addition of this amount. In first appeal, the assessee has filed the necessary cash flow statement and further claimed that the issue is outside the scope of verification as it is not covered under the limited scrutiny. However, the Ld.CIT(A) has not accepted the claim of the assessee by observing that under limited scrutiny, the AO can examine the investment in property and since the cash deposit was utilized for making investment in properties, the AO was well within the jurisdiction to examine the issue.

18. Before us, the Ld.AR of the assessee drew our attention to Page 1 of the assessment order wherein the reasons for selection of assessee's case in limited scrutiny are reproduced. He submits that all the four issues are in relation to the investment made and none of the issues is pertaining to the examination of cash deposits into bank accounts. He therefore, prayed that the AO has exceeded his jurisdiction of making addition on the issue, not covered under the reasons for limited scrutiny without following due procedure of controverting of limited

scrutiny into complete scrutiny and therefore, no addition could be made. With regard to the merits of the issue, Ld.AR drew our attention to page 12 of the Paper Book filed on 21.10.2024 which is a cash flow statement from period 01.04.2015 to 31.03.2016.

19. From the perusal of the said cash flow statement, it is found that all the deposits were on account of rental income or deposits out of withdrawals made from regular bank accounts and there were sufficient cash balance available with the assessee, on every occasion, cash was deposited in the bank. He therefore, prayed that even on merits, no addition could be made.

20. On the other hand, Ld.CIT DR vehemently supported the order of the lower authorities and submits that the AO has jurisdiction to examine the source of investment as the reason for limited scrutiny under CASS includes the verification of large investment in property which includes the cash deposited in bank account claimed by the assessee as source of such investments.

21. We have heard the rival submissions and perused the material available on record. From the reasons for selection of assessee's case for limited scrutiny, we find that none of the reasons indicate the verification of cash deposited in the bank accounts. The AO has enlarged the scope of verification from the investment in property to examine cash deposits in banks which was not permitted in the eyes of law as the reason for limited scrutiny was not for examination of cash deposit in bank accounts. Further, from the perusal of the cash flow statement, we find that the assessee has sufficient cash balance when cash was deposited in the bank accounts therefore, even on merits also, no addition is required to be made in the hands of the assessee. In view of these

facts, we hereby delete the addition of INR 17.65 Lakhs made on account of cash deposited in bank accounts.

22. In the result, the appeal of the Revenue is partly allowed for statistical purposes and C.O. filed by the assessee is partly allowed.

Order pronounced in the open Court on 12.02.2025.

**Sd/-**

**(VIKAS AWASTHY)  
JUDICIAL MEMBER**

*\*Amit Kumar, Sr.P.S\**

Copy forwarded to:

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

**Sd/-**

**(MANISH AGARWAL)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI