

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI**

**BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 3398/DEL/2018 [A.Y. 2010-11]
ITA No. 3400/DEL/2018 [A.Y. 2012-13]
ITA No. 3401/DEL/2018 [A.Y. 2014-15]

Sunita Chaudhary
Flat No. 1A, Empire Estate
M.G. Road, Sultanpur,
New Delhi
PAN : AOGPS 8139 G

Vs.

The A.C.I.T
Central Circle -8
New Delhi

(Applicant)

(Respondent)

Assessee By : Shri Monalisa, Adv
Department By : Shri Surender Pal, CIT-DR

Date of Hearing : 06.02.2025
Date of Pronouncement : 14.02.2025

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

The above captioned three separate appeals by the assessee are preferred against the order of the Id. CIT(A)-24, New Delhi dated 13.03.2018 pertaining to A.Ys 2010-11, 2012-13 and 2014-15 respectively.

2. Since the above captioned appeals were heard together and pertain to same assessee, they are disposed of by this common order for the sake of convenience and brevity.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

ITA No. 3398/DEL/2018 [A.Y 2010-11]

4. The assessee has raised the following grounds of appeal :

- "1. That under the law, facts and circumstances of the case, the order passed by the Ld. CIT(A) and the Ld. A.O. is bad in law and thus needs to be quashed.
2. That the orders so framed are based in law and against the principles of natural justice and thereby needs to be quashed to uphold the principles of natural justice.
3. That on the facts and circumstances of the case the Ld. A.O. erred in making an addition of Rs. 3,85,594/- on account of unexplained deposit in Muthoot Finance Bank Ltd.
4. That the Ld. CIT(A) have erred both on facts and in law in confirming the addition of Rs. 3,85,594/- (Protective Basis) on account of unexplained deposit in Muthoot Finance Bank Ltd.

5. That the appellant craves leave to add, amend, alter, modify, substitute, delete and/or rescind all or any of the *GROUND*S OF *APPEAL* on or before the final hearing, if necessity so arises."

5. Briefly stated the facts of the case are that the assessee is a resident individual engaged in the business of running a milk dairy. A search and seizure operation u/s 132 of the Income-tax Act, 1961 [the Act, for short] was conducted on Karan Luthra group of assesseees on 14.03.2014. During the search operation some documents/information relating to the assessee were found and seized. Thereafter, consequential search was conducted at the premises of the assessee on 29.04.2014. Based on the seized documents, assessment order u/s 153A r.w.s. 143(3) of the Act was passed on 29.12.2016 with total additions/disallowances of Rs. 34,23,889/- as against the returned income of Rs 1,56,663/-.

6. The AO has made this addition because during the search three cash receipts/paying slips were found vide which amounts of Rs. 3,10,015/-, 4,53,295/- and Rs. 75,579/- were deposited with M/s Muthoot Finance Ltd., in cash.

7. During the course of assessment proceedings, the assessee contended that the entire loan from M/s Muthoot Finance Ltd. was taken by assessee's husband and the same has been entered in the books of her husband. The assessee was only a co- applicant in some of the loans and some of the loans were taken in her name by her husband and her husband only was repaying the said loan and had accounted the same in his books. The assessee relied on the letter dated 13.12.2016 explaining the above said three receipts, saying, this payment paid by her husband to Muthoot Finance Ltd. in which they had a joint loan account which has been reflected in books. Copy of relevant ledger accounts in the books of accounts of her husband where these payments have been accounted have been furnished on record.

8. The assessee also submitted copy of a letter dated 27.12.2016 written by her husband whereby he has acknowledged that the loans from Muthoot Finance Ltd. have been taken by him and he has used the said loan for his business and all the installments have been paid by him. This letter seems to have been submitted after the assessment was over. However, it is seen from the assessment order of Sh. Dheeraj Chaudhary (husband of assessee) that out of the three receipts stated above, only one receipt i.e. of Rs. 4,53,295/- which has been in joint name of

assessee and her husband is considered and has been added in the hands of her husband, substantively. The same amount has been added in hands of the assessee on protective basis.

9. Aggrieved, the assessee went in appeal before the Id. CIT(A) who deleted the protective addition of Rs 4,53,295/- and held that the balance amount of loan of Rs 3,85,594/- should be added in the hands of the husband. However, CIT(A) sustained the balance addition of Rs 3,85,594/- in the hands of the assessee on protective basis.

10. Now the aggrieved assessee is before us.

11. Before us, the rival representatives have reiterated what has been stated before the lower authorities.

12. We have heard the rival submissions and have perused the relevant material on record. We find force in the contentions of the Id. counsel for the assessee. There is no doubt that the loans were taken by the husband of the assessee in her name and he is repaying the said loan. These facts have evidentiary value as the letter of the husband clearly establish the fact that he has taken the loan on behalf of his wife and

has acknowledged the same. As the assessee's husband has owned the loan, the addition of Rs 3,85,954/- confirmed by the CIT(A) on protective basis can not be sustained and is hereby deleted. The grounds of appeal is allowed.

ITA No. 3400/DEL/2018 [A.Y 2012-13]

13. The assessee has raised the following grounds of appeal:

- "1. That under the law, facts and circumstances of the case, the order passed by the Ld. CIT(A) and the Ld. A.O. is bad in law and thus needs to be quashed.
2. That the orders so framed are based in law and against the principles of natural justice and thereby needs to be quashed to uphold the principles of natural justice.
3. That on the facts and circumstances of the case the Ld. A.O. erred in making an addition of Rs. 10,71,000/- on account of unexplained cash deposit in Bank.
4. That the Ld. CIT(A) have erred both on facts and in law in confirming the addition of Rs. 2,80,776/- on account of unexplained cash deposit in Bank.
5. That the appellant craves leave to add, amend, alter, modify, substitute, delete and/or rescind all or any of the *GROUPS OF APPEAL* on or before the final hearing, if necessity so arises."

14. Briefly stated the facts of the case are that the assessee is a resident individual engaged in the business of running a milk dairy. A search and seizure operation u/s 132 of the Act was conducted on Karan Luthra group of assessee on 14.03.2014. During the search operation some documents/ information relating to the assessee were found and seized. Thereafter, consequential search was conducted at the premises of the assessee on 29.04.2014. Based on the seized documents, assessment order u/s 153A r.w.s. 143(3) of the Act was passed on 29.12.2016 with total additions/disallowances of Rs. 13,21,000/- as against the returned income of Rs 3,46,939/-.

15. The AO has made this addition of Rs 10,71,000/- on account of cash deposit on various dates in the bank. The assessee failed to file document/explanation to substantiate that the cash deposits were made from her disclosed source of income. Therefore, the AO added the total cash deposits amounting to Rs.10,71,000/- to the income of the assessee.

16. On appeal before the CIT(A), he found as follows:

"withdrawals of Rs. 9,14,000/- from the bank account is supported by the entries in the bank statement. The reasoning of the AO that it is not taking into account the cash requirements of business, cannot be

said to be very sound because if cash requirements of the business are to be considered, the cash generation from the business would also be considered. Since, there is a net profit (of Rs. 1,96,225/-) in the business, therefore, it is evident that cash generation from business is more than cash requirement of the business. The AO has also reasoned that deposits in the bank account were more than the turnover of the business. This reasoning is also not sound because it is the stand of the appellant that the business is being done in cash and it is not routed through the bank account. There is no material to controvert this position of the appellant. The third reasoning extended by the AO is regarding non-filing of return for A.Y. 2009-10. It is seen from perusal of the assessment order for the A.Y. 2009-10 that initially, ROI was not filed, however, it was filed on 13.12.2016 declaring income of Rs. 1,77,524/-. As stated above, in the A.Y. 2009-10, the AO has made addition of Rs. 7,00,000/- on account of entry in the statement of bank account of Sh. Nagendra but the starting figure has been adopted as returned by the appellant without any modification. Still, in my humble opinion returned income of Rs. 1,77,524/- (for A.Y. 2009-10) does not fully explain the opening cash balance of Rs. 4,48,884/- (for A.Y. 2012-13) and it would be reasonable to accept opening balance at Rs. 1,68,108/- [equal to 1/3 of total of the returned income for A.Ys. 2009-10, 2010-11 and 2011-12 (1/3rd of 1,77,524 + 1,56,663 + 1,70,137 = 1/3rd of 5,04,324/-)]. Therefore, addition to the extent of Rs. 2,80,776/- (4,48,884-1,68,108/-) is confirmed. This ground (no. 3) of appeal is therefore partly allowed and balance addition of Rs. 7,90,224/- (Rs. 10,71,000- 2,80,776) is deleted.

17. Aggrieved with CIT(A) order, the assessee is before us.

18. Before us, the rival representatives have reiterated what has been stated before the lower authorities. We find that the CIT(A) has decided the issue in reasonable manner and we are not inclined to interfere in his reasoning. The addition of Rs 2,80,776/- is hereby sustained. The ground of the appeal is dismissed.

ITA No. 3401/DEL/2018 [A.Y 2014-15]

19. The assessee has raised the following grounds of appeal:

"1. That under the law, facts and circumstances of the case, the order passed by the Ld. CIT(A) and the Ld. A.O. is bad in law and thus needs to be quashed.

2. That the orders so framed are based in law and against the principles of natural justice and thereby needs to be quashed to uphold the principles of natural justice.

3. That on the facts and circumstances of the case the Ld. A.O. erred in making an addition of Rs. 12,759/- on account of unexplained deposit in Muthoot Finance Bank Ltd.

4. That the Ld. CIT(A) have erred both on facts and in law in confirming the addition of Rs. 12,759/- (Protective Basis) on account of unexplained deposit in Muthoot Finance Bank Ltd.

5. That on the facts and circumstances of the case the Ld. A.O. erred in making an addition of Rs. 30,00,000/- on account of unexplained cash deposit in Bank.

6. That on the facts and circumstances of the case the Ld. A.O. erred in making an addition of Rs. 30,00,000/- u/s 68 of the Act without giving an opportunity to prove the creditworthiness of lender and genuineness of transaction.

7. That the appellant craves leave to add, amend, alter, modify, substitute, delete and/or rescind all or any of the *GROUND*S OF APPEAL on or before the final hearing, if necessity so arises."

20. Briefly stated the facts of the case are that the assessee is a resident individual engaged in the business of running a milk dairy. A search and seizure operation u/s 132 of the Act was conducted on Karan Luthra group of assessees on 14.03.2014. During the search operation some documents/ information relating to the assessee were found and seized. Thereafter, consequential search was conducted at the premises of the assessee on 29.04.2014. Based on the seized documents, assessment order u/s 153A r.w.s. 143(3) of the Act was passed on 29.12.2016 with total additions/disallowances of Rs. 32,72,759/- as against the returned income of Rs 4,31,605/-.

21. In the course of assessment, the AO made the following additions:

i. Addition of Rs.12,759/- (protective addition) on account of unexplained deposits in the Muthoot Finance Ltd.

ii. Addition of Rs.30,00,000/- on account of unexplained cash deposits in the bank account.

22. The CIT(A) has confirmed the addition of Rs.12,759/- on protective basis as the amount is to be added in the hands of her husband (Sh. Dheeraj Chaudhary).

23. We find that once the CIT(A) has given a finding that the deposit with Muthoot Finance pertains to the assessee's husband, the addition in the hands of the assessee on protective basis can not be sustained. The addition is accordingly deleted. The ground no 2 and 3 are allowed.

24. The AO in the assessment proceedings noticed that there was a cash deposit of Rs. 30,00,000/- on 25.02.2014 in SBI account no. 00000031496678832. The assessee explained that same is 'advance against sale of B38, Sultanpur'. The AO did not believe the same because the property B38, Sultanpur is shown in her assets for the A.Y. 2015-16. and added it in her hands.

25. During the appellate proceedings, the assessee submitted 'agreement to sell and purchase' dated 24.02.2014 between the appellant (Smt. Sunita Chaudhary) and Sh. Anil Rawat S/o Sh. Anirudh

Rawat resident of village Fatehpur, Bhagwanpur, District Begusarai, Bihar and a receipt of Rs. 30,00,000/- dated 24.02.2014 showing that Rs. 30,00,000/- has been received in cash by the appellant, as additional evidence. This additional evidence was accepted by the CIT(A) who called for a remand report from the AO. The AO noted that the fact of Rs. 30,00,000/- received as 'advance against sale of B38, Sultanpur' has been mentioned in the cash account/cash book which is reproduced in the assessment order itself.

26. The CIT(A), however, held that the agreement to sell and purchase submitted by the appellant does not prove identity of the lender except giving his name. Also, there is no document to prove creditworthiness of the lender. Regarding genuineness of transaction there are serious doubts because i) the heavy amount has been paid without taking possession, ii) no such transaction finally materialized and iii) the appellant was entitled to forfeit the amount in case of non-materialization of the transaction. However, it is not clear as to whether such amount has been forfeited. The CIT(A) finally confirmed the addition.

27. Aggrieved with CIT(A) order, the assessee is before us.

28. Before us, the rival representatives have reiterated what has been stated before the lower authorities. From the factual matrix as narrated above, we find that the assessee initially explained the source of cash deposit of Rs 30,00,000/- in the bank account as advance for sale of property. The assessee, initially submitted a cash account (cash book) where this amount has been shown has received as 'advance against sale of B38, Sultanpur' which was disbelieved by the AO. Subsequently, during the appellate proceedings, the assessee produced an agreement of "sell and purchase" dated 24.02.2014 between the appellant (Smt. Sunita Chaudhary) and Sh. Anil Rawat S/o Sh. Anirudh Rawat resident of village Fatehpur, Bhagwanpur, District Begusarai, Bihar and a receipt of Rs. 30,00,000/- dated 24.02.2014 showing that Rs. 30,00,000/- has been received in cash by the appellant.

29. This "agreement for sell and purchase" was remanded to the AO for examination who did not examine the identity, genuineness of transaction and creditworthiness of the lender u/s 68 of the Act. We find that the CIT(A), however, abruptly raised the issue of identity, genuineness of transaction and creditworthiness of the lender in his order and confirmed the addition.

30. We are of the considered opinion that the CIT(A) ought to have given sufficient opportunities for the assessee to explain the three ingredients required to be proved u/s 68 of the Act. We find that the assessee has given an explanation for the cash deposit before the AO. The assessee submitted further documents as additional evidence before the CIT(A) which was remanded to the AO for further scrutiny. As the assessee had furnished an explanation, the onus was on the AO/CIT(A) to disprove the explanation. It was the duty of the AO to carry out further enquiry with respect to the three ingredients u/s 68. We are therefore of considered view that the CIT(A) abrupt invocation of three ingredients u/s 68 to sustain the cash deposit as unexplained income u/s 68 is legally not permissible. Considering the facts and circumstances in totality, we deem it appropriate to remit this issue to the file of the AO to examine the identity, genuineness of transaction and creditworthiness of the lender before invoking the provisions of section 68 of the Act. Ground No 6 of the appeal is, accordingly, allowed for statistical purposes.

31. In the result, appeals of the assessee in ITA Nos. 3398/Del/2018 is allowed; Appeal in ITA No. 3400/Del/2018 is dismissed and 3401/DEL/2018 is partly allowed.

The order is pronounced in the open court on 14.02.2025.

Sd/-

[SUDHIR KUMAR]
JUDICIAL MEMBER

Sd/-

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 14th FEBRUARY, 2025.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order...</i>	<i>06.02.2025</i>
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	<i>07.02.2025</i>
3.	<i>Date on which the draft Tribunal Order is placed before the other Member</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial</i>	
11.	<i>The date on which the file goes to the Assistant Registrar for endorsement of the order</i>	
12.	<i>Date of Despatch of the Order</i>	