

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No. 495& 494/Agr/2012
Assessment Year: 2002-03 & 2005-06

Sridhar Pandey S/o Late Shri Babu Ram Pandey, Muradganj, Distt. Auraiya (UP)	Vs.	ACIT-2, Agra.
PAN : ALJPP4364J		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Sukesh Kumar Jain, CIT/DR

Date of hearing	24.03.2025
Date of pronouncement	24.04.2025

ORDER

Per Annapurna Gupta, Accountant Member:

The present appeals relate to the same assessee and are against separate orders passed by the Ld. Commissioner of Income Tax Appeals[(CIT(A) in short] under section 250 (6) of the Income Tax Act 1961(hereinafter referred to as"Act") dated 31.03.2012 pertaining to assessment year (A.Y) 2005-06 and 2002-03 respectively.

2. None appeared on behalf of the assessee nor any application filed seeking adjournment. Since it's a very old appeal, filed in 2012,it was proceeded to be adjudicated exparte on the basis of the orders of the authorities below, material on record and the assistance of the Ld. DR.

As transpires from the orders of the authorities below, both the appeals arise in the same backdrop, of search action being undertaken on the assessee u/s 132 of the Act on 03.03 2005 at his residence resulting in assessments being framed u/s 153A of the Act making various additions to the income of the assessee , a few of which were sustained by the Ld.CIT(A).Both the appeals were therefore taken up together for hearing and are being disposed off by this common consolidated order.

3. We shall first be dealing with assessee's appeal for A.Y 2005-06 in ITA No. 495/Agra/2012

ITA number 495/Agra/2012 A.Y 2005-06

4. The grounds of appeal raised by the assessee are as under:

“1. (i) That the addition of Rs. 1670000/- on account of alleged unexplained expenditure on election made on mere suspicion and without any adverse material to support even in remand proceedings as conceded by A.O. in his remand report sustained by the C.I.T. (Appeal) is arbitrary, unjust and illegal.

(ii) Sustained on mere presumption on the basis of inscription made in the diary which does not bear the date, month or year of alleged transaction in arbitrary, illegal and against natural justice.

(iii) That the C.I.T. (Appeal) has erred in law to not follow the ratio laid down by Apex Court that entries in books of account cannot without independent evidence of their trustworthiness fix a liability upon a person as held in the case of CBI vs VC Shukla (1998) 3 SCC 410, 425, 426.

(iv) That the C.I.T. (Appeal) has erred on facts and in-law to not follow the ratio laid down by jurisdictional High Court that seized document cannot take place of proof rather they merely create suspicion - CIT vs Chamanlal Dhingra (1994) 121 Taxman 272, 273.

2. That the CIT (appeal) has erred on facts and in-law to sustain the addition of Rs.151286 out of peak bank account deposits and not allowing the credit for redeposit of surplus business funds in bank account and the addition sustained is arbitrary and against principle of natural justice.”

5. As is evident from a perusal of the grounds raised before us, the assessee has primarily agitated two additions confirmed by the Ld. CIT(A):

1. addition of Rs. 16,70,000/- on account of unexplained expenditure on election.

2. addition of Rs.1,51,286 /- on account of cash deposited in the bank account of the assessee remaining unexplained.

6. With respect to the addition made of Rs 16,70,000/- on account of unexplained expenditure on election, the facts relating to the same are that a diary, BHEL diary-95, was seized from the assessee's residence during search, which contained notings of expenses made in the election of one Shri Pradeep Singh Chauhan amounting to rupees 16,70,000. In the absence of any satisfactory explanation given by the assessee regarding the same, the entire expenses recorded therein were treated by the AO as incurred by the assessee out of unexplained sources and added to his income, which addition was confirmed by the Ld. CIT(A).

We have gone through the contents of the orders of the authorities below on the impugned issue and the facts recorded in relation to the impugned addition is that the diary was in the name of

one Alok Kumar Tiwari. The orders below record the fact of the assessee having pointed out this fact to both the AO and the Ld.CIT(A) and as also stating before them that there was a dispute between the assesses group, i.e. Shridhar Pandey, Santosh Kumar Pandey and Suresh Kumar Pandey, and Harnarayan Tiwari and his sons namely Alok Kumar Tiwari and Vivek Kumar Tiwari. The assessee had given photocopies of the Writ Petitions filed by him before the Hon'ble High Court of Allahabad and the copy of complaint lodged before the district authorities, Auraiya, as evidence of the dispute. The assessee had also pointed out that before the Income Tax Authorities, in his statement recorded during search, the assessee had clearly deposed that the search was organised at the instance of the family members of Har Narayan Tiwari. He had pointed out that at the time of search operation a crowd of 20 to 25 persons had come and entered his house and as such it was possible that somebody had thrown this diary with bad intention, which was subsequently seized by the department. All these facts are recorded at para 4 of the assessment order. Briefly put, the assessee had repeatedly denied having anything to do with the diary seized and pointing out that the name on the diary was that of Alok Kumar Tiwari, necessary enquiries be conducted with him. The name, address and all details of the concerned person was given to the AO. The assessment order also records the fact that on inquiry conducted by the Department with Shri Alok Tiwari, he denied to have maintained this diary.

7. Before the Ld.CIT(A) also the assessee reiterated that he had nothing to do with the diary and that necessary inquiry be conducted with Alok Tiwari. The Ld. CIT(A), we have noted, directed the AO to justify the impugned addition made on the basis of the seized diary. In compliance, the AO submitted that he had tried to make verification from the office of the district election officer about the source of expenditure incurred by Shri Pradeep Singh Chauhan but no reply had been received. The AO stated that the diary being found from the premises of the assessee the addition had been rightly made in his hands in terms of the provisions of section 132(4A) of the Act. The Ld. CIT(A) was convinced with the contention of the AO and held that as per the presumption provided u/s 132(4A) of the Act and section 292C of the Act, the AO had rightly presumed the entries made in the diary to pertain to the affairs of the assessee and on this basis confirmed the addition of the election expenses, noted to have been recorded therein, as from unexplained sources, of ₹16,70,000/- The relevant findings of the Ld. CIT(A) are contained para 8.3 of his order as under;

“8.3 In view of the above arguments that the seized Diary BK-1 is beyond the provisions of section 153A of the Act and the addition has been made by the AO by completely ignoring the explanation / clarification / deposition made by the assessee (appellant) during the assessment proceeding, the AO has been asked to justify the impugned addition made on the basis of the seized Diary BK-1. In compliance to my direction in the remand report dated 02.03.2012, the AO has submitted that though as per the direction of my predecessor, she has tried to make verification from the office of district election officer about the source of the expenditure incurred by Shri Pradeep Singh Chauhan, no reply could be received from the District Election Office. However, it has been argued by her that the addition made on account of Diary BK-1 being seized from the residence of the assessee, such addition has been rightly made in his hand as per the provisions of section 132(4A) of the Income Tax Act, 1961. Against this argument of the AO in the remand report, the I.d. AR in his rejoinder

submitted that on writing letter to District Authorities on the direction of my predecessor, since no adverse material has been brought on record that any of such expenses was incurred by the assessee (appellant) on his behalf, unless he produce necessary evidence (either by producing Shri Pradeep Singh Chauhan or collecting necessary information from the District Election Office to show that these expenditures were not incurred by the assessee or his brother, Suresh Kumar Pandey and in view of the fact that the assessee has denied in his statement recorded during search operation about any relationship with this diary, no addition can be made in the hand of the assessee (appellant) on the basis of entries in the diary but he has not given any comment on the argument of the AO that such addition can be made as per the provisions of section 132(4A) looking to the fact that this diary was found from the possession of the assessee (appellant) and he has not given any satisfactory reply about the entries made in this diary and despite denying his relationship with this diary, he could not give any cogent reason as to how this diary came in his possession, in support of his argument, the Ld. AR has referred to three judicial pronouncement as given below:-

"The Hon'ble Allahabad High Court in the case of CIT Vs. Chaman Lal Dhingra (1994) 121 Taxation 272, 273 has held that the seized document cannot taken place of proof rather they merely create suspicion.

The Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Ltd. Vs. CIT (1954) 26 ITR 775, 782 has held that there must be something more than bare suspicion to support the assessment u/s 143(3).

In the case of CBI Vs. VC Shukla (1998) 3 SCC 410, 425, 426 it has been held by the Hon'ble Supreme Court that it is incumbent upon the person relying upon these entries to prove that they were in accordance with facts. In other words the entries in the books of accounts cannot without Independent evidence of their trustworthiness fix a liability upon a person."

8. *I have considered all the above mentioned decisions cited by the Ld. AR, but in none of the decisions, I have found that the provisions of section 132(4A) have been questioned by the Hon'ble Court for applying it to the seized document found from the possession of the person searched, in case he does not offer any satisfactory explanation explaining all the entries in such seized documents. Mere denial by the (assessee about any seized document as not belonging to him is not sufficient, he has to establish with cogent reasons to show that any particular document found from his possession does not belong to him. In the present case, despite giving sufficient opportunities, I find that the assessee (appellant) has failed to establish that the diary BK-1 does not belong to him and therefore, as per the presumption provided u/s 132(4A) and section 2920, the AO can rightly presume that whatever entries are made in this diary, they pertain to the affairs of the assessee (appellant). As in this diary, expenditure of Rs 16,70,000/- made in connection with the election of Shri Pradeep Singh Chauhan are recorded, this expenditure can be considered as incurred by the assessee (appellant) on his behalf, unless he produce necessary evidence either by producing Shri Pradeep Singh Chauhan or collecting necessary information from the District Election Office to show that these expenditures were not incurred by him but some other person or by Shri Pradeep Singh Chauhan, the natural presumption would be that these expenditure were*

incurred by him. Since the assessee (appellant) has failed to produce any evidence to show that these expenditures were not incurred by him, in my considered opinion, the AO has rightly concluded that these expenditures were incurred by him and hence, I confirm the addition of Rs. 16,70,000/- made in this respect, as unexplained expenditure u/s 69C in the income of the assessee (appellant) and accordingly, Ground No. 4 is dismissed.”

9. It is evident from the above that the entire basis for making the addition in the hands of the assessee and confirming the same, is the presumption provided under section 292C of the Act and section 132(4A) of the Act, which provides that any books of accounts/documents found during search are to be presumed to belong to the searched person and the contents thereof to be true unless rebutted with cogent evidence. But we have noted that both the authorities below have applied the provisions to suit their own purposes of making and confirming the addition in the hands of the assessee. It is settled law that a document has to be read in its entirety and not in parts. The fact of the case is that the diary carried the name of Alok Tiwari. The diary, as a matter of fact, was not in the name of the assessee. Therefore reading the document as a whole, the diary could not be set to belong/relate to the assessee nor its contents said to relate to the assessee, more particularly in the light of the fact that the assessee had in the first instance itself, in his statement recorded during search, denied having anything to do with the diary, and had pointed out his adversarial relationship with Alok Tiwari, duly evidenced with court documents reflecting ongoing dispute between the two. It is also a fact that Alok Tiwari was an identifiable person and not a bogus person. In fact the AO had conducted inquiries from him regarding the diary, which he had completely denied having anything to do with. Reading the contents of the diary as a whole and noting the fact that the diary was in the name of Mr Alok Tiwari, the Ld. CIT(A), we hold, has wrongly applied the presumption provided in section 132(4A) and 292C of the Act to hold that the diary belonged to the assessee and the contents thereof pertained to him. Ld. CIT(A), has wrongly held the onus to rest on the assessee to dislodge the presumption with cogent evidence.

10. Therefore considering the facts on record that the diary found with the assessee was in the name of Mr Alok Tiwari, that it contained details of expenses incurred during election of ₹16,70,000 and the source of these expenses remained unverified by the Department, the only conclusion which can be drawn is that the diary belonged to Mr Alok Tiwari and the said expenses were incurred by him. In the light of the same we do not agree with the Ld. CIT (A) that applying the provisions of section 132(4A) of the Act and section 292C of the Act, the diary is to be attributed to as belonging to the assessee and addition to be confirmed in the hands of the assessee. The addition of ₹16,70,000/- made in the hands of the assessee is therefore directed to be deleted.

11. Ground of appeal No. 1 is accordingly allowed.

12. Ground of appeal no. 2 relates to the addition made on account of cash found deposited in the bank account of the assessee allegedly for the reason that the source of the same remained unexplained. The AO made addition of the peak of the bank deposits amounting to ₹8,77,914, while the Ld. CIT (A) rejected the addition made of the peak balance and on the basis of data available with him, extracted from the Balance Sheet of the assessee, reworked the availability of cash with the assessee and accordingly noted that an amount of ₹1,51,286/- deposited in the

bank account of the assessee remained unexplained and sustained the addition made by the AO to this extent.

13. We have gone through the orders of the authorities below and we do not find any merit in the addition made by the revenue authorities on account of the cash found deposited in the bank account of the assessee remaining unexplained. It is a fact on record that the assessee had maintained Balance Sheet for the impugned year. The Ld. CIT(A), we have noted, has picked up the figures of the cash and bank balance available as at the beginning of the year and as at the end of the year from this balance sheet to work out the availability of cash with the assessee. We have gone through the contents of the Balance Sheet, which was placed before us in a paper book at page number 21-24. The said Balance Sheet, we have noted, records the opening and closing balances of both the bank accounts in which the Revenue authorities have noted cash to be deposited by the assessee. Considering the fact that both the bank accounts are recorded in the balance sheet of the assessee, there can be no case with the Revenue of the cash found deposited therein being from unexplained sources. As long as the cash and bank balances are recorded in the Balance Sheet of the assessee, it is simple accounting, that all the transactions recorded therein are duly accounted for in the books of the assessee and therefore are from accounted sources. The addition therefore made by the Revenue authorities, we hold, is without any basis and is therefore directed to be deleted.

Ground of appeal number 2 is allowed

In effect appeal of assessee is allowed

14. We shall now take up assessee's appeal for **A.Y 2005-06 in ITA No. 494/A/2012**

Ground No.1 raised by the assessee reads as under:

“(i) That the C.I.T. (Appeal) has erred on facts and in-law in sustaining addition of Rs.588053 out of peak deposit in bank account.”

15. Issue raised in the above ground, we find, is identical to that raised in ground number 2 of assessee's appeal in ITA no. 495/A/ 2012, pertaining to addition made to the income of the assessee on account of cash found deposited in the bank account, source of which allegedly remained unexplained. The facts and circumstances in which the addition has been made, in the present case, we find is identical to that in A.Y 2002-03, dealt with us above. The issue therefore stands covered by our decision in the case of the assessee in A.Y 2002-03 wherein we have directed deletion of the impugned addition at para 13 of our order above.

The addition made of ₹5,88,053/- is accordingly deleted.

16. Ground of appeal No.1 is allowed

17. Ground of appeal No.2 reads as under:

(ii) That the C.I.T. (Appeal) has erred on facts and in-law in not allowing credit for redeposit of surplus business funds in bank account and the addition sustained is unjust, arbitrary and against principal of natural justice.”

18. The issue raised relates to addition made to the income of the assessee on account of unsecured loans of ₹1,20,000/- from different persons found to be not genuine .The Ld. CIT(A) has dealt with the issue at add page 21 of his order as under:

“With regard to the issue of establishing the genuineness of loans of Rs. 1,20,000/- from farmers as shown by the assessee (appellant), no further arguments have been offered by the Ld. AR in his rejoinder and he has submitted that in this regard, the submissions have already been made in the written submission filed earlier. After considering, the submission of the Ld. AR on the remand report of the AO as discussed above, It is clear that he has failed to establish the genuineness of the affidavits filed by him along with the written submission in support of claiming the genuineness of the loans of Rs. 1,20,000/- shown by the assessee (appellant) because all the persons in whose names, these affidavits were filed could not be produced to confirm that they have issued these affidavits and therefore, these affidavits remained unsubstantiated. In view of these affidavits being in form of additional evidence and remained unsubstantiated during the inquiry made at remand stage by the AO and also it has not been explained as what was sufficient cause for not producing these affidavits before the AO during the assessment proceeding, these affidavits cannot be admitted as additional evidence in appeal proceeding as the condition stipulated u/r 46A of the Income-tax Rule, 1962 has not been satisfied as well as these affidavits were not got verified by producing the persons in whose names they are made and hence, I find that the assessee (appellant) failed to establish the identity as well as creditworthiness of all the lenders in whose name these loans were shown and hence, genuineness of these loans could also not be established. Therefore, I confirm the amount of Rs. 1,20,000/- for the loans found to be taken by the assessee (appellant) during the year under consideration as income of the assessee from undisclosed sources because the assessee (appellant) failed to establish the genuineness of this amount being unsecured loan as shown by him and hence, I confirm the addition of Rs. 1,20,000/- out of the amount of Rs. 9,70,000/- added by the AO and assessee (appellant) gets a relief of Rs. 8,50,000/- Accordingly, Ground No. 4 is dismissed.”

19. On going through the contents of the same, we find that the assessee had given details of all persons from whom the impugned loans were taken and had also furnished their affidavits. The only reason for holding the loans ingenuine was the fact that the said persons could neither be produced by the assessee for examination nor did they respond to notices issued by the AO with regard to the same.

20. We find that this is not sufficient for treating the impugned loans as not genuine. Undoubtedly the assessee had furnished the names and details of all persons from whom the loans had been taken and had also given their affidavits. In this regard no infirmity has been pointed out as such in the affidavits furnished by the assessee of these persons .Merely because

the said persons did not respond to notices issued by the AO cannot be read adversely against the assessee and neither does it establish that the loans were not genuine .

In the light of the same we do not find any merit in the basis adopted by the Revenue authorities for holding the loans of ₹1,20,000 taken by the assessee as not being genuine. On the contrary we find that the assessee had duly discharged its onus of establishing the genuineness of the loan by furnishing all details of the lenders and also their affidavits. In the light of the same we hold that the addition made by the AO and confirmed by the Ld. CIT(A) of Rs 1,20,000 on account of loans taken by the assessee is not sustainable and direct deletion of the same.

Ground of appeal no. 2 is accordingly allowed

Ground of appeal No.3 raised by the assessee reads as under

“That the C.I.T. (Appeal) has erred on facts and in-law in treating the unsecured loans of Rs. 120000/- from different persons and not genuine. No particular name of lender is identified to be not genuine. That the C.I.T. has erred on facts and in law to sustain the addition of Rs. 1275317 on account of seized document BK-2.”

21. The contents of the CIT (A)'s order dealing with the facts of the issue and his findings on the same are contained in para 13.1 to 13.5 as under

13.1 In Ground nos. 9 & 10, addition of Rs. 20,23,567/- on account of expenses and investments recorded in seized documents BK-2 considering them unexplained has been disputed . With regard to this addition, the AO has discussed as under

“The assessee was required to explain the source of investment / payment / expenses made with regard to different purposes mentioned in papers enclosed vide notice dated 03.11.2006. In the enclosed papers a BK-2 Annexure in which investment and expenses amounting to Rs. 20,23,567/- reflected was enclosed. In compliance to this query the assessee filed submission dated 29.11.2006 stating therein that he has to say nothing more except what he has already stated in the statement on oath. A perusal of the statement recorded shows that the assessee was questioned a few entries out of this Annexure and the assessee could not explain even any of them. In view of the above facts and discussion it is concluded that the assessee has no explanation about the source of investment / payment and expenses totaling to Rs. 20,23,567/- which is added to the disclosed income of the assessee.”

13.2 As against the above decision of the AO, the Ld. AR has filed following

written submission

9. The Ground No. 9 and 10 relates to the addition of Rs. 20,23,567/- as unexplained investment / payment as shown in Annexure BK-2. In this context, it is respectfully submitted that along with the questionnaire notice u/s 142(1) dated 03.11.2006, the Ld. AO had also enclosed an extract of BK-2 Diary – Madhloo Bhaiya – 2005 (20 pages) in which the Ld. AO calculated the figure of investment and expenses at Rs. 20,23,567/- and desired the appellant to give the explanation regarding source of investment / expenses. This query of the Ld. AO was replied with vide appellant's detailed letter dated 29.11.2006 as under:-

"Along with the notice u/s 142(1)(ii) of I.T. Act, your good self has enclosed 05 pages which contained the extract of the seized material. It has been mentioned that the assessee Shreedhar Pandey (alias Makhloo) Raja, Janmejaya Construction Co. Auraiya has made investment / incurred expenses to the tune of Rs. 20,23,567/- (BK-2 Diary Makhloo Bhaiya – 2005) (20 pages) and accordingly, the assessee has been asked to explain the source of investment / expenses. In this context, it is submitted that in the statement on oath of Shreedhar Pandey recorded by your good self on 14.11.2006 made points / issues were covered. It is also submitted that your good self has given the total amount of investment / expenses at Rs. 20,23,567/- which is not acceptable to the assessee. The details of investment / expenses should have been given separately along with the description of the page on which the entry so exist. It is also found that your good self has given the total of so called investment / expenses of Rs. 20,23,567/- which is wrong. Even if we make the total of all the figures given in this seized BK-2, the same comes to Rs. 12,07,897/- as against Rs. 20,23,567/- as shown by you. On scrutiny of this diary it is found that there are main three entries relating to payment of money by Smt. Pushpalata Pandey to her bhanja Ashish Shukia. Rs. 1,00,000/- deposited by the assessee with A. Dubey for purchase of some jewellery and again an entry of Rs. 1,10,000/- which includes return amount of Rs. 1,00,000/- from A. Dubey. In all these entries your good self has recorded the statement on oath of the assessee Shreedhar Pandey and the assessee has to say nothing more except what he has already stated in his statement on oath."

In the assessment order at page 04 (para No. 3), the Ld. AO has mentioned that "the assessee was required to explain the source of investment / payment / expenses made with regard to different purposes mentioned in the papers enclosed vide notice dated 03.11.2006. In the enclosed papers a BK-2 annexure in which investment and expenses amounting to Rs. 20,23,567/- reflected was enclosed. In compliance to this query the assessee filed submissions dated 29.11.2006 stating therein that he has to say nothing more except what he has already stated on statement on oath....."

The observations of the Ld. AO is apparently incorrect and without any basis. Your kind good self will kindly see that the appellant vide his written

reply dt. 29.11.2006 explained in detail about the BK-2 which fact has altogether been ignored by the Ld. AO and he has only picked up last sentence of the reply which says that "In all these entries your good self has recorded statement on oath of the assessee Shreedhar Pandey and the assessee has nothing to say more except what he has already stated in his statement on oath." This last sentence of the appellant's reply is connected with only three entries namely; the payment made by Smt. Pushpalata to her Bhanja Ashish Shukla at Rs. 6,26,250/- through draft from her account (page 13 of BK-2), Rs. 1,00,000/- paid to Mr. A. Dubey for purchase of jewellery (page 13) and receipt of money back from Mr. A. Dubey at Rs. 1,10,000/- on 06.02.2005. On these three issues the appellant's statement on oath was recorded by the Ld. AO and as such it was emphasized in the written reply that all these three issues were covered by the statement on oath of the appellant and the assessee has to say nothing more on these three points except what the appellant stated in the statement on oath. It does not mean that the Ld. AO will ignore the other explanation of this BK-2 as contained in reply dated 29.11.2006 which is rather more important than the issues on three points. In fact the appellant had explained the entire entries page wise of this BK-2 vide letter dated 23.08.2006, a photo copy of which is enclosed for your kind perusal. A perusal of the explanation given by the appellant page wise will show that each and every item of this BK-2 explained fully which has also been altogether ignored by the Ld. AO and no mention of the same has been made in the assessment order. It is very surprising that the Ld. AO has come to the conclusion in very short para that these are the unexplained expenses and investments which are all unexplained and the same to the total income of the appellant without examining the appellant's detailed explanation as well as detailed page wise explanation separately given to him about this BK-2. Thus your honour will kindly see that this is an in fructuous addition which has been made hurriedly without discussing the detailed facts in the assessment order which stands nowhere. Even in the ground of appeal the appellant has submitted before your good self that the main points as per this BK-2 which were covered in the statement of the appellant recorded on oath by the Ld. AO were relating to the following payments.

1. Rs. 6,26,250/- given to Shri Ashish Shukla by the wife of the appellant who is her bhanja for doing some business through account payee cheque draft.
2. Rs. 1,00,000/- deposited by the appellant with Mr. A. Dubey.
3. Rs. 1,10,000/- return of money from A. Dubey including Rs. 10,000/- cash available with the appellant.

On all these points statement on oath of the assessee was recorded by the Ld. AO and as such while submitting the explanation on BK-2 vide written reply dated 29.11.2006 in the last lines, it was made clear that only on these three points the appellant had to say nothing except what he has stated in his statement on oath recorded by the AO. It is worth mentioning that in the questionnaire notice u/d 142(1) dated 03.11.2006 for this Assessment Year, the Ld. AO raised a separate query and desired the appellant to explain the

amount of Rs. 6,26,250/- given to Ashish Shukla which point was replied vide para No. 18 of the reply dated 29.11.2006, in which it was made clear that this amount was given by Smt. Pushpalata Pandey wife of the appellant from her account no. 3786 maintained in Etawah Distt. Co-operative Bank, Etawah on 02.02.2005 and this explanation of the appellant was accepted by the Ld. AO. Thus, the AO was satisfied about this transaction. Thus, the action of the Ld. AO in making the above addition of Rs. 20,23,567/- was without appreciating the facts of the case and without considering the written replies and the factual position was unjust, illegal, uncalled for, arbitrary, without any basis and justification which deserves to be quashed and deleted.

13.3 In the above written submission, the only contention raised by the Ld. AR is that the AO has not considered the reply of the assessee dated 29.11.2006 properly with regard to his explanation on the seized document BK-2 and only relied on the last sentence of the reply which says that "In all these entries your good self has recorded statement on oath of the assessee Shreedhar Pandey and the assessee has nothing to say more except what he has already stated in his statement on oath." It is further clarified by the Ld. AR that this last sentence of the appellant's reply is connected with only three entries namely; the payment made by Smt. Pushpalata to her Bhanja, Ashish Shukla at Rs. 6,26,250/- through draft form her account (page 13 of BK-2), Rs. 1,00,000/- paid to Mr. A. Dubey for purchase of jewellery (page 13) and receipt of money back from Mr. A. Dubey at Rs. 1,10,000/- on 06.02.2005. On these three issues, the appellant's statement on oath was recorded by the Ld. AO and as such, it was emphasized in the written reply that all these three issues were covered by the statement on oath of the appellant and the assessee has to say nothing more on these three points, except what the appellant stated in the statement on oath and it does not mean that the Ld. AO will ignore the other explanation on the seized document BK-2 as contained in reply dated 29.11.2006 which is rather more important than the issues on three points. The Ld. AR further emphasised that in fact the appellant had explained the entire entries page wise of this BK-2 vide letter dated 23.08.2006, a photo copy of which has been also enclosed with the written submission. On perusal of the written submission filed during the appeal proceeding, no such later dated 23.08.2006 has been found enclosed. This particular letter was also not found to be available on the record. Only letter dated 29.11.2006 has been found in which, it is only contended that the total of the entries recorded in the seized documents are Rs.12,07,897/- and not Rs. 20,23,567/- and then it has been discussed that on scrutiny of this diary, it is found that there are mainly three entries relating to

payment of money by Smt. Pushpalata Pandey to her bhanja Ashish Shukla. Rs. 1,00,000/- deposited by the assessee with A. Dubey for purchase of some jewellery and again an entry of Rs. 1,10,000/- which includes return amount of Rs. 1,00,000/- from A. Dubey and then last sentence on which the AO has relied to make the addition is written that in all these entries, your good self has recorded the statement on oath of the assessee Shreedhar Pandey and the assessee has to say nothing more except what he has already stated in his statement on oath. In view of incomplete details available on record with regard to the seized document BK-2, the AO has been asked to provide the complete details of page-wise entries in this seized document. In compliance to my direction, the AO provided the desired details in the remand report dated 02.03.2012 as under:-

S. No.	Date	Details of Entry	Receipt	Expenditure / Payment	Deposit
2.	20.01.05	Advocate	0	50991	
3.	21.01.05		0	5000	
		For Deposit		54050	
4.	22.01.05	Challan	0	20000	
		Donation saifai Mahotsav		11000	
5.	24.01.05		0	5000	
		Challan		20000	
		Donation		11000	
6.	25.01.05	Installment		111000	
		Installment		188182	
		Installment		163625	
		Installment		14000	
		Oil		1200	✓
7.	27.01.05	Draft Expenses		1250	✓
		Pappu		5000	✓
		Govind		5000	✓
8.	28.01.05			200	
				450	
9.	29.01.05			1000	
	31.01.05	Donation		2100	
				251	
10.	31.01.05			4000	
		Shop A/c		68000	
				50	
11.	01.02.05			2000	
				1000	
				2000	
				13000	
12.	02.02.05	Bank Draft		626250	✓
13.	03.02.05	A Dubey		100000	
14.	04.02.05	Car Booking		50000	✓

				500	
15.	05.02.05			15500	
				170	
15.	06.02.05	A Dubey		110000	/
		Oil		1100	
16.	07.02.05			500	
				1148	
				15000	
				200	
18.	10.02.05	Fish A/c		100000	✓
19.	17.02.05	Machine A/c	100000		
			30000		
			14350		
20.			76500		
			220850	1780717	2001567

13.4 The above details were provided to the Ld. AR for offering his comments. In the rejoinder the Ld. AR submitted his comments as under:

“Addition of Rs. 2023567 (seized diary BK-2)

The written submission made before the L.d. CIT(Appeals) were given to the AO also for his report and justification of addition. In the remand report the AO has brought no adverse material on record or rebut the submission made by the appellant. The addition made being arbitrary may kindly be directed to be deleted.”

13.5 I find that the Ld. AR has again given a general reply instead of explaining every entry listed out by the AO in view of the fact that in written submission filed in the appeal proceeding, only three entries were explained and for other entries, it was stated that they were explained in a letter 23.08.2006 submitted to the AO but this letter was neither found in the assessment record, nor found enclosed with the written submission as contended in the written submission filed before me. Therefore, I find that the Ld. AR has been able to explain only three entries before me and they are as under:

1. Rs. 6,26,250/- given to Shri Ashish Shukla by the wife of the appellant who is her bhanja for doing some business through account payee cheque draft.
2. Rs. 1,00,000/- deposited by the appellant with Mr. A.Dubey.
3. Rs. 1,10,000/- return of money from A. Dubey including Rs. 10,000/- cash available with the appellant.

The above explanation of the appellant has not been controverted by the AO and I have also found that Rs. 6,26,250 and Rs. 1,00,000/- has been found to be reflected



as money withdrawn from the bank account on 02.02.2005 from A/c no. 3786 and A/c No. 3783 respectively and hence, these payments can be considered to have been paid from the accounted fund of the assessee. As regards to return of Rs. 1,10,000/- by Shri Dubey, no confirmation has been filed from him that it was the same money returned by him which was earlier given to him and there is contradiction in the explanation of the assessee (appellant) with respect to the amount of Rs. 10,000/- included in the amount of Rs. 1,10,000/- because earlier, it was explained by the assessee (appellant) about Rs. 10,000/- that this amount found during search was out of savings of his wife and now, it is being told that this amount was given by Shri Dubey. Such contradiction in the explanation of the assessee with regard to the amount of Rs. 10,000/- shows that the amount of Rs. 1,10,000/- given by Shri Dubey to the assessee is different than the amount of Rs. 1,00,000/- given to Shri Dubey for purchase of jewellery as explained in the later part of the written submission. Therefore, I find that the receipt of Rs. 1,10,000/- in the hand of the assessee remained unexplained. As regards to totaling of the entries of BK-2 is concerned, the AO has provided full details in the remand report as reproduced in para 13.3 and total of these entries comes to Rs. 20,01,567/- out of which, Rs. 2,20,850/- has been shown as receipt and Rs. 17,80,717/- has been shown as expenditure/payment. On these entries, no explanation has been offered by the Ld. AR during remand stage when remand report was provided to him, however, as discussed above, two entries of payments of Rs. 6,26,250/- and Rs. 1,00,000/- have been found by me as explained. The AO has added sum of both receipts and expenditures shown in the seized document as unexplained investment/payment. Now, with the details given by the AO at remand stage, it is clear that the entire amount is not investment / expenditure but unexplained receipt is Rs. 2,20,850/- and unexplained expenditure is Rs. 17,80,717/-. Out of entries of expenditure of Rs. 17,80,717/-, the entries of Rs. 7,26,250/- (Rs. 6,26,250 + Rs. 1,00,000) has been found to be explained, therefore, entries of expenditures of Rs. 10,54,467 (17,80,717 - Rs. 7,26,250) remained unexplained. As the unexplained receipt of Rs. 2,20,850/- are shown on and after 17.02.2005 after the dates of expenditures as recorded in the seized document and hence, it cannot be said that unexplained expenditures have been met out of unexplained receipt. Therefore, Rs. 2,20,850/- is to be added as unexplained receipt and Rs. 10,54,467/- as unexplained expenditure in the hand of the assessee (appellant) totaling to Rs. 12,75,317/-. Therefore, I confirm the addition of Rs. 12,75,317/- out

of the addition of Rs. 20,23,567/- made by the AO on account of seized document BK-2 and the assessee (appellant) gets a relief of Rs.7,48,250/-. Accordingly, Ground nos.9 & 10 are partly allowed.

22. As per the above the addition of Rs. 12,75,317/- pertains to entries of expenses and investments found recorded in seized document BK 2, treating them to be unexplained. The findings of the Ld. CIT (A), contained at para 13.5 of his order, we have noted, is a detailed finding who has considered all the contentions of the assessee and after dealing with all of them has given part relief to the assessee. The original addition made by the AO was to the tune of Rs.20,23,567 /- which the Ld. CIT(A), after considering each and every argument and contention made before him and corroborating it with the documents on record, has confirmed to the extent of ₹12,75,317/- which he noted to have remained unexplained.

In the absence of any assistance on behalf of the assessee on this factual issue we are left with no option but to confirm the order of the Ld. CIT(A) upholding the addition of ₹12,75,317/-

23. Ground of appeal No. 3 is accordingly dismissed.

24. Ground of appeal No. 4 raised by the assessee reads as under:

“That the CIT (A) has erred on facts and in-law in sustaining addition of Rs. 60000/- as unexplained expenditure incurred through the employee Rajan Dubey for the purchase of fertilizer for agriculture, ignoring the fact that net income from agriculture at Rs. 350000 disallowed by A.O. had been accepted by the CIT (A).”

25. The learned CIT appeal deals with the issue at para 15.1 to 15.3 of his order as under:

15.1. In Ground no. 12, addition of Rs. 60,000/- has been disputed made as unexplained payment to Shri Rajan Dubey. With regard to this addition, the AO has discussed in the assessment order as under:

“The assessee, vide notice dated 03.11.2006, was required to explain the source of payment of Rs. 60,000/- to Shri Rajan Dubey as reflected at page 62 of Annexure BK-3. In compliance to this query the assessee furnished submission dated 29.11.2006 stating therein that “Shri Rajan Dubey is the former employee of our group and a sum of Rs. 60,000/- was paid in cash by the assessee Shridhar Pandey to him for purchase of fertilizers for their own agricultural land. It has already been stated so many times that this

group is owning huge agricultural land for which substantial quantity of fertilizers is always required. It is submitted that expenditure relating to agricultural land are always incurred in cash." The assessee has claimed this sum of Rs. 60,000/- as revenue expenditure. He has not offered any explanation with regard to the source of payment of Rs. 60,000/- in cash to the above named person.

In absence of any explanation, the source of payment of Rs. 60,000/- remained unexplained. Therefore, this amount is treated as the assessee's income from undisclosed sources and is added to his disclosed income."

15.2 Against the above decision of the AO, the Ld. AR has filed following written submission:-

"The Ground No. 12 relates to the addition of Rs. 60,000/- as unexplained payment to Rajan Dubey treating the income from undisclosed sources. In this context it is submitted that from the residence of the appellant once loose paper was found which is bunched as page 62 in BK-3 in which Rajan Dubey has accepted the receipt of Rs. 60,000/- on 09.02.2005. The Ld. AO asked the nature of payment of this sum which was clarified and duly explained in the reply dated 29.11.2006 as under:-

"As regards payment of cash of Rs. 60,000/- to Rajan Dubey (page-62 of BK-3), it is submitted that Rajan Dubey is former employee of our Group and a sum of Rs. 60,000/- was paid in cash by the assessee Shreedhar Pandey to him for the purchase of fertilizers for their own agriculture land. It has already been stated at so many times that this group owns huge agricultural land for which substantial quantity of fertilizer is required. It is submitted that expenditure relating to agricultural land are always incurred in cash. It is also clarified that as per the query given in the questionnaire your good self has treated this amount as receipt, while if you will go through this point you will find that this is a payment not the receipt which is the revenue expenditure and has to be allowed.

The Ld. AO in his assessment order has discussed the above explanation of the appellant, but has rejected the same that no explanation with regard to the source of payment of Rs. 60,000/- in cash to the above named person was given. Hence, the same was being added in the income of the assessee.

The observation of the Ld. AO is completely wrong in as much as it has several time been stated in writing as well as in verbal that all expenses for doing the agriculture such as fertilizer, seeds, labour and tractor etc. are always incurred in cash and these expenses cannot be paid through cheque / draft etc. There was sufficient cash balance with the appellant on the day of payment as per the cash book and this expenses was also incurred through cash book of the appellant for this year as such the Ld. AO has wrongly disallowed the expenditure of Rs. 60,000/- and wrongly added to the total income of the appellant. Thus, the action of the Ld. AO in making the above addition of Rs. 60,000/- was unjust, illegal, uncalled for. Arbitrary, without any basis and justification and the addition made deserves to be quashed and deleted."

15.3 The above addition was made by the AO because the source of the payment of Rs. 60,000/- was not explained but the Ld. AR contended that this payment was made out of cash balance available with the assessee (appellant) and this payment is made through cash book but this contention of the AO could not be substantiated because no cash book could be produced during the appeal proceeding showing any such payment out of cash balance available with the assessee and as per the balance sheet, only nominal cash balance of Rs. 3311.70 was available with the assessee (appellant) at the end of the year and all the cash receipts shown by the assessee (appellant) was deposited in the bank accounts during the year and hence, I find that the AO is correct in his decision that the source of payment of this amount is not explained and hence this amount is to be added as unexplained expenditure and therefore, I confirm the addition of Rs. 60,000/- and Ground no. 12 is dismissed.

26. Contents of the above reveal that a payment of ₹60,000/- to one Sh. Rajan Dubey was reflected at page 62 of Annexure BK- 3, the explanation with regards to which furnished by the assessee was not found to be satisfactory, the assessee having stated that the impugned amount was paid in cash by the him to Shri Rajan Dubey for purchase of fertilizers for his own agricultural land. In the absence of any explanation of the source of the same, the impugned amount was added to the income of the assessee. The Ld. CIT(A), we have noted, has confirmed the addition since the assessee's explanation of having made the payment out of his available cash balance was not substantiated through any cash book and the assessee, as per its Balance Sheet, was found to have only nominal cash balance of 3000 odd rupees.

27. We find no merit in the ground raised by the assessee seeking deletion of the impugned addition in the absence of any assistance from the assessee controverting the findings of the AO and Ld. CIT(A).

28. The addition therefore by the AO and confirmed by the Ld. CIT(A) of Rs.60,000/- is confirmed.

Ground of appeal No. 4 of the assessee is dismissed.

29. In effect appeal of the assessee is partly allowed.

30. ITA No.495/A/2012 is accordingly allowed

31. ITA no.494/A/2012 is partly allowed.

Order pronounced in the open court on 24.04.2025.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Dated: 24.04.2025

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra