

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1138 - 1143/Bang/2024
Assessment Years: 2014-15 to 2019-20

The Dy. Commissioner of Income Tax, Central Circle, Hubballi.	Vs.	Shri Gopal Krishnanatsa Katigar, 103, Bhavani Arcade, Old Bus Stand Road, New Cotton Market, Hubballi. PAN – AHZPK 0023 F
APPELLANT		RESPONDENT

Assessee by	:	Shri MV Sheshachala, Sr. Advocate
Revenue by	:	Shri D.K. Mishra, CIT (DR)

Date of hearing	:	22.04.2025
Date of Pronouncement	:	02.06.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

These are the appeals filed by the Revenue against the order passed by the Id. CIT-A dated 02/11/2020 for the assessment years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 & 2019-2020.

First, we take up ITA No. 1138/Bang/2024, an appeal by the Revenue for AY 2014-15 as the lead case.

2. The interconnected issue raised by the revenue is that the learned CIT(A) erred in deleting the addition made by the AO on account of unexplained cash investment in the form of loan for ₹ 9,59,00,000/- and interest thereon for Rs. 1,63,16,719/- only.

3. The facts in brief are that the assessee is an individual and a partner in the firms namely M/s Thirumala Builders & Developers and M/s Renuka Construction Project. For the year consideration the assessee has declared an income of Rs. 6,59,920/- only in the income tax return.

4. Subsequently, a search under section 132 of the Act dated 17-01-2019 was carried out in the case of M/s Dharwad Mishra Pedha and Food Processing Industry and its group (i.e. Mishra Group). The residential premises of the assessee was also covered under search proceedings. During the search at the residential premises of Manager Accounts and Finance of Mishra Group namely Shri Giridhar Ladhha, certain documents were found which were marked as A/GL/01, A/GL/02, A/GL/05 and A/GL/10. Annexure A/GL/01 contains the information about the loan received in cash and bank by M/s Dharwad Mishra Pedha and Food Processing Industry from various party as well repayment of such loan and interest thereon. The assessee name was also appearing in such documents indicating the loan provided by him to M/s Dharwad Mishra Pedha and Food Processing Industry through banking channel as well through cash.

5. The materials found from the premises of Shri Giridhar Ladhha were confronted to the assessee and his wife, Smt. Anita Katiger while

recording his statement under section 132(4) of the Act to which he (the assessee) shown ignorance about the content of seized materials mentioned above, however he admitted having extended loan to M/s Dhrward Mishra Pedha and Food Processing Industry and others which was transacted through banking channel only. The statement of the assessee was again recorded after search proceeding, under section 131(1) of the Act and the assessee again repeated that he extended loan to the party i.e. M/s Dhrward Mishra Pedha and Food Processing Industry and others, but such transactions were carried through banking channel only.

6. On the other hand, the seized materials were also confronted to the Manager accounts and finance of Mishra Gorup namely Shri Giridhar Ladhha to which he admitted that loan through banking channel as well as through cash were availed from the assessee throughout the period and the total outstanding loan from the assessee and his wife as on 02nd January 2019 is of Rs. 3,18,50,000/- which include outstanding cash loan of Rs. 1,73,54,464/- only. Shri Gridhar Ladha based on seized materials marked on page 264 stated that an amount of Rs. 70 Lakh in cash was paid back to the assessee as on 12th January 2019.

7. Based on the above, the AO during the assessment proceedings under section 153C of the Act noticed that the materials found from the Manager Account and Finance of Mishra Group were well maintained documents containing the list of parties including assessee from whom loan through banking channel as through cash was received as well as interest payment thereon. The assessee has not questioned the authenticity of the seized materials found but only shown ignorance

about the content of the seized materials. Shri Sanjay Ganesh Mishra, the key person of Mishra Group in his statement confirmed the statement of his employee Shri Gridhar Laddha and also admitted that Mishra Group availed loan from the assessee and usually loans were taken through banking channel. However, sometime loan was also availed in cash which were not recorded in the regular books of accounts. Based on the above observation and seized materials, the AO worked out the total amount invested by the assessee in the "Mishra Group" in the form of cash loan for the F.Y. 2013-14 relevant to A.Y. 2014-15 at Rs. 9,59,00,000/- and interest thereon on at the rate of 2% per month at Rs. 1,63,16,719/- only. The detail of the same are available at pages 17 to 18 of the assessment order in tabular form. The AO vide show cause notice dated 08-03-2021 proposed making the impugned addition.

8. The assessee in response to the show cause notice contended that no material in relation to cash transaction with Mishra Group was found in the search. The assessee also contended that Shri Giridhar Laddha was not connected to the business operations of Dharwad Mishra Group and, therefore, had no involvement in any financial transactions related to the group. The assessee claimed that any financial records or transactions appearing in the documents maintained by Shri Giridhar Laddha's were unrelated to their business and did not warrant any tax implications for them. The assertion was that Shri Laddha had no role in managing or handling the financial affairs of the business, thereby dismissing any allegations of undisclosed transactions linked to him.

9. The assessee further requested permission to cross-examine Shri Giridhar Laddha, who was identified as the Manager, Accounts & Finance in the Mishra Group. This request was based on seized materials and statements that admitted cash investments made by the assessee in the Mishra Group. The assessee was shown this evidence during the Search proceedings and later sought an opportunity to question Shri Laddha regarding his role and the financial transactions attributed to him.

10. However, the AO rejected the assessee's claims as incorrect and misleading, establishing that Shri Giridhar Laddha was, in fact, deeply involved in the financial affairs of the Mishra Group. Evidence indicated that Shri Laddha had been working as a Manager, Accounts & Finance for over 30 years, handling the business operations on behalf of Shri Sanjay Mishra. Documentary evidence, including books of accounts, parallel records, and financial documents, was found and seized from both his residence and office, confirming his active role in the group's financial management. Statements from investors and raw material suppliers further corroborated that they had regular financial dealings with Shri Giridhar Laddha. Additionally, in a sworn statement recorded under Section 132(4) on 18.01.2019, Shri Sanjay Ganesh Mishra himself confirmed that Shri Giridhar Laddha was responsible for collecting funds from franchisees, loan repayments, procurement of machinery, and managing all financial matters related to the firm. Based on these findings, the AO concluded that Shri Laddha was actively managing the finances of the Mishra Group, contradicting the assessee's claim of his non-involvement.

11. The AO rejected the assessee's request for cross-examination, for the reason that the assessee was given ample opportunity during the search proceedings to cross-examine Shri Laddha but did not request it at that time.

11.1 The assessee was issued notice under section 153C of the on 30.09.2020, allowing him to respond to the evidence. However, despite filing objections under Sections 153A & 153C, the assessee did not indicate any intent for cross-examination. The AO further rejected the cross-examination request by observing that the prevailing COVID-19 pandemic and the statutory time limits for completing the assessment, hence the AO ruled that the last-minute request for cross-examination was unreasonable.

12. The AO further held that statements recorded under section 132(4) of the Act during search proceedings are considered valid admissions under Section 17 of the Indian Evidence Act, 1872. The AO relied on judicial precedents of Hon'ble Supreme Court in the case of Avadh Kishore Das v. Ram Gopal (1979), Kishori Lal v. Mt. Chaltibai (1959), and Basant Singh v. Janki Singh (1967) to emphasize that admissions are effective proof of facts unless proven otherwise by the assessee. The AO also determined that the admissions made by Shri Sanjay Ganesh Mishra and Shri Giridhar Laddha were corroborated by documentary evidence seized during search proceedings under Section 132 of the Act. These documents, including printed reports, handwritten records, and tally backups, were maintained by the Accounts Manager of Mishra Group and contained clear details of investments made by the assessee through both banking channels and cash transactions.

Additionally, the assessee partially accepted the evidence regarding banking channel transactions but denied or remained silent on transactions related to cash investments. The AO interpreted this selective acceptance as an attempt to evade accountability for the cash transactions.

13. Furthermore, the AO observed that undisclosed incomes, as identified were not included in the assessee's total income computation for the Assessment Year 2014-15. Thereby, the AO determined that the cash investment of ₹9,59,00,000/- was unexplained under Section 69 of the Act and unaccounted interest income of ₹1,63,16,719/- in cash, generated from the unexplained cash investments. This amount was treated as 'income from other sources' and added to the total income of the assessee.

14. The aggrieved assessee preferred an appeal before the learned CIT(A).

15. The assessee before the learned CIT(A) strongly contested the addition of ₹9,59,00,000/- under Section 69 read with section 115BBE and addition of interest income of ₹1,63,16,719/-, arguing that the AO had no valid basis for the addition. The primary contention was that the AO relied on documents seized from the residence of Shri Giridhar Laddha, rather than from the assessee's own premises. Since no incriminating material was found at the assessee's premises, the presumption under Section 132(4A) should not apply to the assessee, as the documents did not belong to him.

16. The assessee further argued that in the scheme of the Income Tax Act, the burden of explaining seized money or documents lies with the person in whose possession they are found. Since the documents were not in the assessee's possession, the onus was on Shri Giridhar Laddha and Shri Sanjay Mishra to explain the nature of the transactions. The assessee emphasized that entries in the books of Mishra Group and Laddha do not automatically implicate him, as they do not contain his signature, handwriting, or authentication. The AO's presumption that "GK" in the records refers to the assessee (Gopal Katigar) was baseless and illogical.

17. Additionally, the assessee denied making any cash investments in Mishra Group, stating that all his investments were routed through banking channels. He highlighted that no evidence of cash transactions was found during the search at his own premises, reinforcing his claim that he had no role in the alleged cash dealings. The assessee also contended that a prudent person making such a large cash investment would secure legal documentation such as promissory notes or guarantees, which were completely absent in this case.

18. Lastly, the assessee pointed out that Shri Giridhar Laddha later retracted his statements made under Section 132(4), stating that he blindly signed the documents without reading them. This, according to the assessee, further weakened the AO's case, as statements that were later retracted could not be relied upon for making substantial additions. Hence, the assessee before the learned CIT(A) challenged the AO's reliance on third-party documents, denied any involvement in cash investments, and emphasized the lack of direct evidence linking him to

the transactions. Based on these arguments, he urged the learned CIT(A) to delete the addition and quash the assessment order.

19. The learned CIT(A) after considering the facts in totality concluded that the addition of ₹9,59,00,000 was unjustified and had to be deleted. The key finding of the learned CIT(A) are summarized in below paragraphs.

20. The learned CIT(A) found that the AO made the addition based on documents seized from the premises of Shri Giridhar Laddha, who was the Accounts & Finance Manager of the Mishra Group. However, no such documents were found at the assessee's premises, nor was there any direct evidence linking the assessee to the alleged cash investment. The learned CIT(A) was of that view that as per the provisions of Section 132(4A) of the Act, the burden of explaining the seized material lies with the person from whose custody it is recovered. Since the documents were recovered from Shri Giridhar Laddha's premises, the responsibility of explaining those entries rested on him or on Shri Sanjay Ganesh Mishra who confirmed his statement and not on the assessee. The AO incorrectly applied the presumption under Section 132(4A) to the assessee without proving that the seized documents belonged to him.

21. The learned CIT(A) further found that the entire case of the AO rested on the assumption that the initials "GK" in the seized documents referred to the assessee (Gopal Krishnanatsa Katigar). However, the seized documents did not bear the assessee's signature, handwriting, or authentication. The AO did not establish how the initials "GK" directly linked to the assessee, apart from relying on the statement of Shri

Giridhar Laddha. No independent corroborative evidence was presented to support the AO's claim that the entries in the documents pertained to the assessee. Without such supporting evidence, the mere presence of entries in a third-party document could not be considered conclusive proof against the assessee.

22. The AO relied heavily on the statement of Shri Giridhar Laddha, who had initially stated that the entries in the seized documents related to the cash investment made by the assessee. However, the Id. CIT(A) noted that Shri Giridhar Laddha later retracted his statements through a written letter dated 25.07.2019. In his retraction, Shri Laddha stated that he had blindly signed the statements without reading them and for him, "cash" does not always mean physical cash and his earlier statements were not given voluntarily or after proper verification.

23. The Id. CIT(A) also found that the AO ignored this retraction and continued to rely on Laddha's initial statement, even though retracted statements carry no evidentiary value unless supported by independent evidence. Since, there was no corroborative material to support Laddha's original claim, the AO's reliance on his statement to make an addition was unsustainable.

24. The assessee had requested an opportunity to cross-examine Shri Giridhar Laddha during the course of assessment proceedings. However, the AO denied this request, citing reasons such as the COVID-19 situation and time limitations for completing the assessment. The Id. CIT(A) strongly criticized this action, stating that cross-examination is a fundamental right under the principles of natural justice. Since, the AO

based on Laddha's statement made the addition, accordingly, denying cross-examination rendered the assessment proceedings unfair. The learned CIT(A) in this regard referred the judgment of The Hon'ble Supreme Court, in the case of Andaman Timber Industries vs. CCE reported in 62 taxmann.com 3, and held that not allowing cross-examination of witnesses relied upon by the tax authorities renders the assessment invalid. Accordingly, the CIT(A) held that the AO's refusal to grant cross-examination made the entire basis of the addition legally unsustainable.

25. The Id. CIT(A) further observed that a search was conducted at the assessee's premises on 17.01.2019, but no evidence of any cash investment was found. This was a crucial point because if the assessee had actually made a cash investment of ₹9,59,00,000, some physical or documentary evidence should have been found at his premises. The absence of such evidence strongly indicates that the AO's assumption was incorrect. The AO ignored this fact and still proceeded with the addition based on third-party documents, which was unjustified.

26. Based on the above findings, the CIT(A) concluded that the AO's addition of ₹9,59,00,000/- under Section 69 r.w.s. 115BBE was completely unjustified and therefore, the addition of ₹ 9,59,00,000/- under Section 69 r.w.s. 115BBE was deleted in full.

27. Since the addition on account of investment itself was deleted the learned CIT(A) accordingly deleted the addition of interest income computed on such alleged investment for Rs. 1,63,16,719/- only.

28. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

29. The learned DR before us filed a paper book running from pages 1 to 191 and contended that search materials marked as annexure-A/GL/01 contained detailed and systematic information regarding loan transaction through bank and cash by the Mishra Group with different parties' including the present assessee. Based on seized materials, the manager account and finance of Mishra Group identified and confirmed loan transaction through bank as well as through cash from various parties including the assessee. The other parties namely Shri Satishchandra S. Shetty, Shri Shridhar S Shetty, Shri Mahesh Kumar C Bhnadari, Shri Mahad Mahadev Ganpathsa Habib and Sri RajendraKumar S Lunker whose name appearing the in seized materials i.e. annexure A/GL/01 accepted cash investment in the Mishra group in the form of loan and offered the same to tax before the settlement commission. As per the Id. DR, the fact about the admission by the 3rd parties for having provided the cash loan to the Mishra group which was offered by them as income before the settlement commission was not considered by the AO and accordingly the Id. DR requested to set aside the issue to the file of the AO for fresh adjudication as per the provisions of law.

30. On the other hand, the learned AR before us filed the details running from pages 1 to 163 and reiterated the contentions made during the assessment proceedings and before the learned CIT(A). As per the learned AR there was no documents found during the search proceedings at the premises of the third-party except the statement recorded of the third-party. In the absence of any incriminating

document, no inference can be drawn against the assessee. Similarly, the assessee was also subject to search proceedings but there was no iota of document found for having provided any loan in cash to the party. Furthermore, the opportunity of cross-examination was not afforded by the AO of the party on whose statement the addition was made.

30.1 Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

31. We have heard the rival contentions of both the parties and carefully considered the facts of the case, the documentary evidence, the statements recorded, the decisions of the AO and the learned CIT(A), and accordingly we proceed to record our findings on the issues raised in the present appeal.

31.1 The entire basis of the AO's addition of ₹9,59,00,000/- as unexplained investment under Section 69 of the Act rests upon documents seized from the residential premises of Shri Giridhar Ladhha, who was the Accounts & Finance Manager of the Mishra Group. It is a settled principle of law that as per the provision of section 132(4A) of the Act, any documents or books of accounts found during a search are presumed to belong to the person from whose possession they are recovered, unless proven otherwise. In this case, the seized documents were found at the premises of Shri Giridhar Ladhha and not at the premises of the assessee. The AO applied the presumption that the entries in the documents, specifically the ones containing the initials "GK," referred to the assessee, without any substantive corroborative

evidence to establish this claim. The Id. CIT(A), after a detailed examination of the facts and legal provisions, correctly held that the presumption under section 132(4A) would apply only to Shri Giridhar Ladhha and not to the assessee.

31.2 Further, the law requires that any presumption under section 132(4A) must be rebutted by the person in whose possession the documents were found, i.e., Shri Giridhar Ladhha or the key managerial personnel of the Mishra Group. Since neither the AO nor the Revenue was able to conclusively demonstrate that the documents actually belonged to the assessee, the burden to prove the correctness of the addition remained unmet. We find no error in the CIT(A)'s view that in the absence of direct evidence linking the assessee to the seized documents, the addition cannot be sustained.

31.3 The AO placed significant reliance on the initials "GK" found in the seized material to conclude that the assessee was involved in cash transactions with the Mishra Group. However, no substantive evidence was presented to establish that these entries unequivocally referred to the assessee (Gopal Krishnanatsa Katigar). The seized documents did not contain the assessee's signature, handwriting, or any other direct evidence linking him to the alleged cash loans. A mere assumption based on entries, without corroborative proof, does not satisfy the standard of evidence required for making an addition under Section 69 of the Act. Further, the AO did not conduct any handwriting analysis or forensic examination to confirm that the noting in the seized documents was authored by or belonged to the assessee. The Id. CIT(A) correctly held that in the absence of such verification, attributing the transactions to

the assessee was speculative. This is particularly relevant in income tax proceedings, where findings must be based on substantive and conclusive evidence rather than mere assumptions.

31.4 We further find that the AO placed heavy reliance on the statement of Shri Giridhar Ladhha, who, in his initial statement under Section 132(4), stated that cash loans were received from the assessee. However, the same, Shri Ladhha later retracted his statement through a written communication dated 25.07.2019, stating that his earlier admissions were made without verification and under pressure. The Id. CIT(A), after evaluating the evidentiary value of such statements, correctly noted that retracted statements have little evidentiary value unless they are supported by independent corroborative evidence.

31.5 It is well settled by the Hon'ble Supreme Court in case of *P. M Aboobacker vs. CIT reported in 81 taxmann.com 299* that a statement made under pressure or coercion cannot be used as sole evidence unless independently corroborated. In the present case, the AO did not produce any additional material evidence apart from the initial statement, which was later retracted. The reliance placed by the AO on a statement that was subsequently withdrawn was misplaced, and therefore, the Id. CIT(A) rightly held that no addition could be made based solely on an uncorroborated and retracted statement.

31.6 It is also pertinent to note that a fundamental principle of natural justice is that an assessee must be allowed to cross-examine any witness whose statements are relied upon for making an addition. In the present case, the AO denied the assessee's request to cross-examine Shri

Giridhar Ladhha, citing reasons such as the COVID-19 pandemic and time limitations for completing the assessment. The Hon'ble Supreme Court, in the case of *Andaman Timber Industries vs. CCE* (2015) 62 taxmann.com 3 (SC), has categorically held that any assessment made without allowing cross-examination of key witnesses relied upon by the tax authorities is invalid.

31.7 We find that the assessee's right to cross-examine Shri Ladhha was unjustifiably denied. Since the AO relied on Shri Ladhha's statement as primary evidence, denying the assessee an opportunity to challenge it vitiates the entire assessment proceedings. The Id. CIT(A) rightly held that the principles of natural justice were violated, and any addition based on an unverified statement without cross-examination is legally unsustainable.

31.8 Another crucial fact noted by the Id. CIT(A) is that a search was conducted at the assessee's premises on 17.01.2019, yet no evidence was found indicating that he had made cash investments in the Mishra Group. If the assessee had indeed invested ₹ 9,59,00,000/- in cash, some form of physical or documentary evidence—such as notes, agreements, or cash receipts—should have been found at his premises. The absence of such evidence casts serious doubt on the correctness of the AO's conclusion.

31.9 Further, it is highly improbable that a prudent businessman would extend such a substantial amount in cash without any supporting documentation. The lack of legally enforceable documents such as loan agreements, notes, or confirmations further weakens the Revenue's

case. The Id. CIT(A) correctly held that an addition of such magnitude cannot be made in the absence of concrete evidence.

31.10 The learned DR before us argued that certain other individuals whose names appeared in the seized documents accepted their cash investments and offered the same for taxation before the Settlement Commission. While this fact may support the general authenticity of the seized documents, but it does not automatically establish that the assessee also engaged in similar cash transactions. Each taxpayer's case must be decided based on specific evidence applicable to them. In our considered opinion merely because other parties chose to settle their disputes does not create an irrefutable presumption against the assessee. Without direct evidence linking the assessee to cash transactions, no adverse inference can be drawn merely based on the actions of third parties.

31.11 Moving ahead, since the primary addition of ₹9,59,00,000/- as unexplained investment under Section 69 was found to be unsustainable, the consequential addition of ₹1,63,16,719/- as interest income on such alleged investment also fails. The AO had calculated interest at a rate of 2% per month on the alleged cash loan. However, as the very basis of the principal addition is discredited, the related interest income addition automatically collapses.

31.12 In view of the detailed findings above, we find no reason to interfere with the well-reasoned order of the Id. CIT(A). The AO's addition of ₹9,59,00,000/- under Section 69 r.w.s. 115BBE and

₹1,63,16,719/- as interest income is legally unsustainable. The CIT(A) has rightly deleted these additions after considering all relevant facts and legal principles. Accordingly, the ground of Revenue's appeal is hereby **dismissed**.

32. In the result, the appeal of the Revenue is dismissed.

Coming to ITA No. 1139 to 1143/Bang/2024 for A.Y. 2015-16 to 2019-20

33. At the outset, we note that the issues raised by the Revenue in the captioned appeals for the AY 2015-16 to 2019-20 are identical to the issue raised by the Revenue in ITA No. 1138/Bang/2024 for the assessment year 2014-15. Therefore, the findings given in ITA No. 1138/Bang/2024 shall also be applicable for the assessment years 2015-16 to 2019-20. The appeal of the Revenue for the A.Y. 2014-15 has been decided by us vide paragraph No. 31-32 of this order against the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2014-15 shall also be applied for the assessment years 2015-16 to 2019-20. Hence, the grounds of appeals filed by the Revenue for A.Ys. 2015-16 to 2019-20 are hereby dismissed.

34. In the result, the appeals filed by the Revenue for A.Ys. 2015-16 to 2019-20 are hereby dismissed.

35. In the combined result, all the appeals filed by the Revenue for A.Ys. 2014-15 to 2019-20 are hereby dismissed.

Order pronounced in court on 2nd day of June, 2025

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 2nd June, 2025
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore