

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: G : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITAs No.2363 & 2364/Del/2024  
Assessment Years: 2017-18 & 2018-19

Sudhir Kumar Sharma,  
T-3/203, Parsvnath Presitige-II,  
Sector-93A,  
Noida,  
Uttar Pradesh – 201 301.

Vs DCIT,  
Central Circle,  
Ghaziabad.

PAN: AVPPS5253B

(Appellant)

(Respondent)

Assessee by	:	Shri Rajeev Khandelwal, CA
Revenue by	:	Shri Mahesh Kumar, CIT-DR
Date of Hearing	:	04.06.2025
Date of Pronouncement	:	13.06.2025

ORDER

PER ANUBHAV SHARMA, JM:

These are appeals is preferred by the Assessee against the orders dated 16.04.2024 and 29.04.2024 of the Ld. Commissioner of Income-tax (Appeals)-3, Noida (hereinafter referred to as the Ld. First Appellate Authority or ‘the Ld. FAA’, for short) in Appeals No.CIT(A), Kanpur-4/10480/2019-20 and No.CIT(A), Kanpur-4/10485/2019-20, respectively, arising out of the appeals before it against the orders dated 25.12.2019 passed u/s 153A r.w.s. 143(3) of

the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, Central Circle, Meerut (hereinafter referred to as the Ld. AO).

2. Heard and perused the records. A search was conducted in the case of Shri S.K. Sharma and his family on 16.06.2017 along with a search conducted on Shri Ajay Kumar Contractor at his premises at Meerut from where allegedly various incriminating and sensitive documents were found and seized. Some of those documents, namely Annexure D-1, D-6 and LP-4 which are scanned as part of the assessment order were found to be containing information about payment made to the assessee and some other persons. As per the assessment orders, payments made through cheques and mentioned that these documents were verified from bank and were found to be true. Some payments mentioned in these incriminating documents were verified from the firms and the firms have accepted that they have received payments. Therefore, considering that the authenticity of the payments is beyond doubt, they were relied and in AY 2017-18 an addition of Rs.36,51,000/- was made and in AY 2018-19 an addition of Rs.40 lakhs was made u/s 69A of the Act, on the basis of these alleged notings found from the search of Shri Ajay Kumar Sharma, contractor.

Apart from the aforesaid, in AY 2018-19, addition of Rs.12,80,350/- was made on account of cash found from the premises of the assessee for which the assessee had claimed the same were withdrawn from his bank account and his wife Smt. Pushpa Sharma's account, but, for which the AO was not satisfied.

However, that addition has been deleted by the Id.CIT(A) and for which the Revenue is not in appeal.

3. Further, an addition was made in AY 2018-19 on account of jewellery found from the premises of the assessee at Noida. Jewellery weighing 1651.046 gms valued at Rs.59,94,447/- was found from the premises of the assessee. Jewellery weighing 61.654 gms allegedly belonging to Smt. Shweta Sharma, daughter in law who was staying independently and separately in a rented house was not found connected with the family. The AO gave benefit of the CBDT Circular and out of 1651.046 gms reduced 1450 gms to be jewellery explained and the remaining 201.046 gms valued at Rs.7,29,940 being beyond the permissible limit were disallowed and added. As regards the addition of total addition of Rs.7,29,940/- CIT(A) has sustained Rs.2,76,101/- . Accordingly, the assessee is in appeal and the grounds for both the years involved are reproduced below:-

**A.Y. 2017-18**

*“1. That on the facts and circumstances of the case and under the law, the CIT(A) erred in confirming the addition of Rs. 36,51,000/- to the income of appellant for the alleged unaccounted income received from a contractor namely Ajay Kumar as made by the assessing officer. The addition has been confirmed without appreciating the submissions made and is based on surmises, conjectures and on hypothetical reasonings, the same is bad in law.*

*2. That on the facts and in law and under the circumstances, the CIT(A) erred in confirming the addition of Rs. 36,51,000/- in the absence of any corroborative evidence found and/or seized from the possession of the appellant during search operation on the same day.*

3. That on the facts of the case and in law and under the circumstances, the CIT(A) erred in confirming the action of the assessing officer by using document identified as D-1, D-6 and LP-4 alleged to be found from the premises of Sh. Ajay Kumar Contractor to make addition to the income of appellant. The assessing officer failed to make independent enquiries and failed to appreciate submissions fairly and judiciously. The addition made is illegal and bad in law.

4 That on the facts of the case and in law and under the circumstances, the CIT(A) erred in confirming the addition of Rs. 36,51,000/- to the income of the appellant based on the alleged noting made by a third person if any without proving any live nexus in respect of the alleged money paid to the appellant. The addition made and tax levied by invoking the provisions of section 115BBE is unjustified, unwarranted, illegal and bad in law.

5. That the penalty initiated under section 271AAB(1A) and thus interest charged under section 234A/B/C is thus illegal and bad in law.

6 . That the appellant craves, leave to modify/amend or add any one or more grounds of appeal.”

**A.Y. 2018-19**

“1. That on the facts and circumstances of the case and under the law, the CIT(A) erred in confirming the addition of Rs 40,00,000/- to the income of appellant for the alleged unaccounted income received from a contractor namely Ajay Kumar as made by the assessing officer. The addition has been confirmed without appreciating the submissions made and is based on surmises, conjectures arid on hypothetical reasonings, the same is bad in law.

2. That on the facts and in law and under the circumstances, the CIT(A) erred in confirming the addition of Rs, 40,00,000/- in the absence of any corroborative evidence found and/or seized from the possession of the appellant during search operation on the same day.

3. That on the facts of the case and in law and under the circumstances, the CIT(A) erred in confirming the action of the assessing officer by using document identified as D-1, D- 6 and LP 4 alleged to be found from the premises of Sh. Ajay Kumar Contractor to make addition to the income of appellant. The assessing officer failed to make independent enquiries and failed to appreciate submissions fairly and judiciously The addition made is illegal and bad in law.

4. That on the facts of the case and in law and under the circumstances, the CIT(A) erred in confirming the addition of Rs.

*40,00,000/- to the income of the appellant based on the alleged noting made by a third person if any without proving any live nexus in respect of the alleged money paid to the appellant. The addition made and tax levied by invoking the provisions of section 115BBE is unjustified, unwarranted, illegal and bad in law.*

*5. That on the facts and circumstances of the case and under the law, the CIT(A)- 3 Noida went wrong to sustain the addition of Rs. 2,76,101/- out of the total addition of Rs. 7,29,940/- to the income of appellant for the alleged unexplained gold ornament found at the time of search which were properly explained and reconciled to be belonging to family including daughter to be married and daughter-in-law of appellant.*

*6. That on the facts and circumstances of the case and under the law, the CIT(A)- 3 Noida went wrong to ignore the statement recorded under section 132(4) of the Act at the time of search, that ought to have been considered fairly and judiciously and the addition confirmed is based on surmises, conjectures and on hypothetical reasonings, the same is bad in law.*

*7. That the appellant craves, leave to modify/amend or add any one or more grounds of appeal.”*

4. Both the appeals were heard together and we find that in regard to additions made on account of alleged unaccounted income received by the assessee from the contractor, namely, Ajay Kumar, the very same document have been considered by the coordinate Bench in the case of ***Rajeshwar Singh Yadav vs. DCIT, ITA Nos.1909 & 1910/Del/2022 for AYs 2017-18 & 2018-19*** and the coordinate Bench, vide order dated 11.01.2023, has considered the ledger registers marked as D-1, D-6 and loose paper marked as LP-4 to be documents for which presumption u/s 132(4A) and section 292C of the Act cannot be invoked as no corroborating and incriminating evidence was independently found from the search of the assessee, thus, alleged incriminating documents cannot be relied for making additions in the hands of the assessee

and the documents were found to be dumb documents having no evidentiary value. The facts of the case of the assessee are similar to the case of Rajeshwar Singh Yadav (supra) who was also allegedly receiving money from Ajay Kumar, contractor as he was also employed as Executive Engineer of the Irrigation and Water Department of the Government of UP like the present assessee. Thus, there being no substantial difference in the facts and not entering into the discussion on appreciation on first principles, as there is nothing substantial material to differentiate with the case of the assessee, we find it appropriate to follow the findings of the coordinate Bench in the case of Rajeshwar Singh Yadav (supra) and, therefore, the additions made on that account deserves to be deleted in both the years and corresponding grounds are sustained.

5. As regards the addition of Rs.2,76,101/- sustained by the CIT(A) out of total addition of Rs.7,29,940/-, on account of alleged unexplained jewelry the Id. AR has submitted that the CIT(A) has not appreciated the complete surrounding facts of the case. In this regard, it was submitted that daughter of the assessee Ms Vasudha Sharma was engaged on 10.06.2017 and some gold ornaments were offered by her in laws that are also included while search was conducted on 16.06.2017. Her prospective groom was working in Paris since 2014 and belonged to a well to do family. Thus, at the time of engagement of his daughter, the assessee had received contribution and ceremonial gifts from

friends and relatives. Further, jewellery belonging to daughter in law of the assessee was also kept with the wife of the assessee. Thus, the statement made by Smt. Pushpa Sharma, wife of assessee, showing ignorance with regard to the jewellery of Shweta Sharma was out of stress as Smt. Pushpa Sharma was at home at the time of search and the assessee was not at home and may be it slipped the attention. The Id.CIT(A), however, declined to take into account the statement recorded on 01.08.2017 i.e., 45 days after the date of search. We are of the considered view that there was no justification with the Revenue to make an addition on account of 76.064 gms of Rs.2,76,101/- when out of total 1651.046 gms remaining jewellery is found to be duly explained and justified from the sources of the assessee who is a public servant. It is unreasonable to expect an explanation to the precision with so many family members being given the benefit of their respective holdings as per the CBDT Instruction No.1916 of 1994. A mathematical approach for making an addition of 76.064 is not prudent so as to be sustained. Thus, we are inclined to sustain the explanation given by the assessee. That being so, the ground No.5 in the appeal for AY 2018-19 also deserves to be allowed. As a consequence of the aforesaid, the appeals are allowed and the additions are deleted.

Order pronounced in the open court on 13.06.2025.

Sd/-

(MANISH AGARWAL)  
ACCOUNTANT MEMBER  
Dated: 13<sup>th</sup> June, 2025.

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

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Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi