

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
and
SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.801/DEL/2018
(Assessment Year: 2013-14)**

**ITA No.802/DEL/2018
(Assessment Year: 2014-15)**

Shri Ajay Kumar,
No.8, Prem Vihar,
Jansath Road,
Muzaffarnagar (Uttar Pradesh).

vs.

ITO, Ward 1 (1),
Muzaffarnagar.

(PAN : ATOPK2495C)

**ITA No.665/DEL/2018
(Assessment Year: 2014-15)**

ITO, Ward 1 (1),

vs.

Shri Ajay Kumar,
No.8, Prem Vihar,
Jansath Road,
Muzaffarnagar (Uttar Pradesh).

(PAN : ATOPK2495C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ankit Gupta, Advocate
REVENUE BY : Shri Ashish Tripathi, Sr. DR

Date of Hearing : 23.04.2025
Date of Order : 25.06.2025

ORDER

PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of Id. Commissioner of Income-tax Appeals, Muzaffarnagar [hereinafter referred to as 'Id. CIT (A)'] dated 30.11.2017 for Assessment Year 2013-14. The assessee and Revenue has also filed cross appeal against the order of Id. CIT (A), Muzaffarnagar dated 30.11.2017 for AY 2014-15.
2. Brief facts of the case are, assessee filed its return of income for AY 2013-14 on 17.09.2013 declaring income of Rs.8,39,220/- and agricultural income of Rs.60,000/-. The case was selected for scrutiny through CASS. Accordingly, notices under section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') along with questionnaire were issued and served on the assessee. In response, assessee submitted the relevant information, bank statement, bills and other vouchers on test check basis and filed relevant information as called for.
3. During assessment proceedings, the AO observed that assessee has declared Rs.20.68 crores on which gross profit has been shown at Rs.12,49,238/- which is 0.60% of sales. Similarly, net profit has been shown at Rs.9,39,215/- which is 0.45%. Assessee was asked to justify the above G.P. and net profit. In response, assessee submitted that the business of the assessee is trading of live stock. Further the AO observed that assessee could

not submit any supporting details on comparative basis. On examination of the books of account and details of vouchers, he observed that there is no purchase bill in the record. The gross profit and net profit shown by the assessee are very nominal in view of the turnover of the assessee and no satisfactory explanation in this regard has been submitted by the assessee. Accordingly, he observed that the book results declared by the assessee are not reliable and cannot be accepted and accordingly, he rejected the books of account u/s 145 (3) of the Act. With the above observation, AO proceeded to estimate the gross GP of Rs.20,68,639/- and since assessee has already declared GP of Rs.12,49,238/-. Accordingly, he added the difference of GP to the income of the assessee to the extent of Rs.8,19,401/-.

4. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and filed detailed submissions. Ld. CIT (A), after considering the detailed submissions, issued a separate notice for enhancement and asked the assessee to explain why profit should be not estimated @ 3.5% basis on the comparative cases of the similar business. Assessee, in response, submitted detailed submissions objecting to the above proposal and also explained the reasons for non-maintenance of cash vouchers, for the reason that assessee deals in live stock and all these animals are sourced from rural areas and such farmers are not maintaining any bank accounts in such rural areas. After

considering the detailed submissions, ld. CIT (A) enhanced the GP @ 3.5% with the following observation :-

“10. On consideration of the facts and material on record, it is noted that various facts of this case and that of M/s Nadeem & Sons and M/s Muntzeer & Company are identical, Further, the books of account in the case of Sh. Shamim Ahmad for A Y 2014-15 have been rejected by the undersigned and. GP has been estimated @ 2.75% on total turnover of Rs.69.S crore. Similarly, books of account in the case of Sh, Nazi Mohd. Dilshad have been rejected U/S 145(3) of the Act and OP has been estimated @ 2.75% on total turnover of Rs.82.18 crore for AY 2013-14. In both these cases, purchases were found in cash and non-verifiable as no purchase bills have been maintained by them. If the appellant is claiming that in the preceding years and in the current year, the GP in his case is in the range of 0.6%, but the claim has not been supported with verifiable facts and requisite documentary evidences. No details of the villages from where purchases have been made and where there are no banking facilities available have been furnished. In this case, the appellant could not furnish copies of purchase bills in support of GP rate claimed during assessment proceedings as well as appellate proceedings. Such defects have been pointed out to the AR during the assessment proceedings as well as the appellate proceedings. Therefore, such unverifiable claim cannot be accepted. Further submission of the AR that purchase bills have not been maintained as the purchases have been made from farmers/villagers does not have any justification for not maintaining the same. After considering the peculiar facts of the case, material on record, comparable cases and turnover of the appellant, it would be fair and reasonable to estimate the gross profit in this case @ 3.5% as against 0.6% shown by the appellant. Accordingly the gross profit on this account works out to Rs.72,40,238/- as against Rs.12,49,238/- declared by the appellant which results into addition of Rs.59,91,000/- as against Rs.8,19,401/-. Thus income of the appellant is enhanced by Rs.51,71,599/- u/s 251(1) of the LT. Act. The AO is directed to recompute the total income chargeable to tax, in the light of the above discussion and conclusion and accordingly issue revised notice of demand u/s 156 of the Act. Grounds of appeal Nos.1 to 10 are dismissed.”

5. Aggrieved assessee is in appeal before us raising following grounds of appeal:-

“1. That assessment order passed 143(3) and the addition made are illegal, bad in law and without jurisdiction. The CIT(A) erred in upholding the same.

2. That, the assessing officer has erred in computing the total income at Rs.16,58,620.00 by estimating the Net Profit @1% of the total turnover alongwith Agriculture Income at Rs.60,000.00 as against declared income of Rs.8,39,220.00 alongwith Agriculture Income at Rs.60,000.00. The CIT(A) erred in also sustaining and enhancing the income at Rs.43,52,198.00 on adhoc basis, which is are illegal, unjust, highly excessive and are not based on any material on record.

3. That, the Assessing Officer as well as CIT (A) has erred in rejecting the books of account u/s 145(3) of the Income Tax Act, 1961 without pointing the defects in the books maintained by the assessee company, therefore, the rejection of books u/s 145(3) of the Act is highly presumptive, arbitrary and unjust.

4. That, the Assessing Officer as well as CIT (A) has failed to appreciate, while rejecting the books of accounts, the assessee has produced the complete books of accounts, during the assessment proceedings, which were test checked by the assessing officer and no discrepancy has been pointed out or made any observation, that, there is any impossibility to deduce the correct income from the books maintained by the assessee, therefore, in the absence of alleged observations, the rejection of books VIs 145 (3) of the Income Tax Act, 1961 is illegal, bad in law and unjust.

5. That, the CIT (A) and assessing officer has erred in rejecting the books of accounts on the basis, that, the assessee has not maintained any purchase bills of the Live Stock without appreciating the nature of business of the assessee appellant, that, the assessee appellant use to purchase the animals from the villagers.

6. That, in view of the facts and circumstances, the CIT(A) has erred in law and on facts in making the enhancement of Rs.43,52,198.00 (Rs.51,71,599.00 - 8,19,401.00) to the income of the appellant on account of estimate the Net Profit @ 3.5 % without any basis and purely on presumption, which is purely arbitrary, excessive and unjust.

7. That, the CIT (A) is totally unjustified in estimating G.P. @ 3.5% on Turnover of Rs.49.96 Crores merely on the comparable available with him, which are not applicable to the facts and circumstances of the assessee's case and also ignored the com parables submitted by the assessee, which are comparable to the assessee's case, which is unjustified and purely based on surmises and conjectures.

8. That, The CIT(A) erred in making the enhancement to the income of the assessee appellant without confronting the actual facts and circumstances of the comparable applied by the CIT (A), which shows, that, CIT (A) has not given the proper opportunity to the assessee appellant, which is illegal, bad in law and against the Principle of Natural Justice.

9. The additions confirmed and the observations made by CIT (A) are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.

10. That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.

11. That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

12. That the interest u/s 234A & 234B has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out.”

6. At the time of hearing, ld. AR of the assessee brought to our notice relevant facts on record from the assessment order and submitted that the AO has estimated the GP @ 1 % and he submitted that the assessee is dealing with live stock and purchases the animals from farmers, sell the same to slaughter house. He brought to our notice the relevant turnover and GP. The GP declared by the assessee from page 1 of the assessment order and brought to our notice findings of the ld. CIT(A) who has enhanced the GP from 1% to 3.5%. In this regard, he brought to our notice page 21 of the case law paper book wherein the coordinate Bench in the case of Salauddin Saifi vs. ACIT vide ITA No.1045/Del/2018 dated 24.10.2024 decided the similar issue by

estimating the GP of 0.5%. He submitted that the business of the assessee is exactly similar to the abovesaid case. Accordingly, he prayed that the same may be sustained.

7. On the other hand, Id. DR of the Revenue relied on the orders of the lower authorities and supported the findings of the Id. CIT (A).
8. Considered the rival submissions and material placed on record. We observed that assessee is dealing in the live stock. He purchases the live stock from the farmers and sell the same to slaughter house. Since assessee purchases the live stock from the farmers it is not possible to maintain bills or vouchers and it is fact on record that these kind of transactions are historically done through cash. We observed that similar issue was came up before the coordinate Bench in the case of Salauddin Saifi (supra) and the coordinate Bench has, after considering the facts available on record, sustained the addition of 0.5% as reasonable profit in this line of business. We further observed that Id. CIT (A) also enhanced the GP ratio based on the comparable study of the same assessees i.e. Salauddin Saifi and Shamim Ahmad and cases reached finality. Therefore, we are inclined to follow the same and direct the AO to restrict the GP @ 0.5%. In the given case, assessee has already declared 0.6%, therefore, we direct the AO to retain the

same in the current assessment year. Accordingly, grounds raised by the assessee in AY 2013-14 are allowed.

9. In the result, the appeal filed by the assessee for AY 2013-14 is allowed.
10. The assessee and Revenue has raised the following grounds of appeal for AY 2014-15 :-

ASSESSEE'S APPEAL

1. That assessment order passed 143(3) and the addition made are illegal, bad in law and without jurisdiction. The CIT(A) erred in upholding the same.
2. That, the assessing officer has erred in computing the total income at Rs.6,33,69,989.00 by estimating the Net Profit @8% of the total turnover as against declared income of Rs.11,03,680.00. The CIT(A) erred in also sustaining the income at Rs.1,85,05,470.00 on adhoc estimated basis @3% of total turnover, which is are illegal, unjust, highly excessive and are not based on any material on record.
3. That, the CIT (A) has erred in rejecting the books of accounts without any basis and purposed, the estimation of Net Profit @2.75%, whereas the CIT (A) has sustained the addition an estimation the addition @3%, which is illegal bad in law and without jurisdiction and against the principle of natural justice.
4. That, the CIT (A) has erred in rejecting the books of account D/s 145(3) of the Income Tax Act, 1961 without pointing the defects in the books maintained by the assessee company and never asked to produce the same before him, therefore, the rejection of books u/s 145(3) of the Act is highly presumptive, arbitrary and unjust.
5. That, the CIT (A) has erred in rejecting the books of accounts on the basis, that, the assessee has not maintained any purchase bills of the Live Stock without appreciating the nature of business of the assessee

appellant, that, the assessee appellant use to purchase the animals from the villagers.

6. That, the CIT (A) has erred in estimating G.P. @3% against the estimating @ 0.16% by assessee on Net Sales of Rs.73,17,13,130.00 without any basis and making a addition of Rs.1,96,09,150.00 to the income of the assessee on account of Low Net Profit without appreciating the facts. The assessing officer has not rejected the books of accounts, which is highly arbitrary, unjustified and against the facts of the case.

7. That, the CIT (A) is totally unjustified in estimating G.P. @3.00 % on Turnover of Rs.73,17,13,130.00 merely on the comparable available with him, which are not applicable to the facts and circumstances of the assessee's case and also ignored the comparables submitted by the assessee, which are comparable to the assessee's case, which is unjustified and purely based on surmises and conjectures.

08. That, The assessing officer erred in making the addition of Rs.38,00,000.00 on account of gift received by his mother and Rs.11,00,000.00 on account of capital accretion and treating the Rs.49,00,000.00 as Income from Undisclosed Sources under section 68 of the Act. The CIT(A) erred in confirming the same at Rs.31,21,000.00 without any basis and purely on the basis of wrong presumption and observation.

9. The CIT(A) failed to appreciate that the mother of the assessee appellant has given the gift of Rs.38,00,000.00 to the assessee out of the amount received from LIC claim against the death of her husband through banking channels and Rs.11,00,000.00 is received against the Surrender value of LIC policy in the name of the assessee appellant, which prove source of source.

10. The additions confirmed and the observations made by CIT (A) are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.

11. That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.

12. That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

13. That the interest u/s 234A & 234B has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out.

REVENUE'S APPEAL

1. The CIT(A) has erred in law and on facts in taking the G.P. @ 3% as against taken @ 8% by the A.O. as the assessee has not properly maintained books of his proprietorship firm and no details of sale & purchase of live stock alongwith bills & vouchers for evidence was furnished.

2. The CIT(A) has erred in law & on facts in deleting the addition of Rs.17,78,600/- on account of gift received from Smt. Shimla Devi and received the amount from LIC without furnishing requisite documentary evidences in support of his claim during assessment proceedings.”

11. Coming to AY 2014-15 involving cross appeals filed by the assessee and Revenue raising grounds on assumption of GP in the case of assessee. We observed from the record that AO has estimated the GP @ 8% and ld. CIT (A) has reduced the same to 3% by relying on the findings in AY 2013-14. Since this issue was already considered by us in AY 2013-14 and we already directed the AO to retain the GP ratio of 0.6% as declared by the assessee. In the present assessment year, assessee has declared 0.32% GP and NP of

0.16%. Since we have already directed the AO to retain 0.6% as GP for the Assessment Year 2013-14, we direct the AO to follow the same for the current assessment year also.

12. Ground No.1 of Revenue's appeal and Grounds No.1 to 7 of the assessee's appeal are on the same issue and we dismiss the ground raised by the Revenue and partly allowed the grounds raised by the assessee.
13. Coming to next issue in the current assessment year i.e. 2014-15, the AO has also observed from the capital account submitted by the assessee that assessee has received gift of Rs.38 lakhs from Shimla Devi and Rs.11 lakhs was received from LIC. When the assessee was asked to submit a copy of gift deed of the donor and source of the deposit of the donor, however he observed that assessee has not submitted any evidence in respect of gift received by him. Further assessee was also asked to produce the evidence in respect of the amount received from LIC and no evidence was submitted. Accordingly, an amount of Rs.49 lakhs was added u/s 69A of the Act.
14. Aggrieved assessee preferred an appeal before the ld. CIT (A). Before ld. CIT (A) assessee has submitted documents relevant for gift as well as the amount received from LIC. After considering the same, ld. CIT (A) observed that an amount of Rs.8,10,600/- (19.01.2012) and Rs.9,68,000/- (19.01.2012) could be reconciled with respect to documentary evidences furnished from

bank account of Shimla Devi. Since the assessee has not submitted details of remaining deposits and corroborating the same with the documentary evidences, accordingly he sustained the addition of Rs.31,21,400/- and further the same was confirmed by him u/s 69A of the Act.

15. Aggrieved both assessee and Revenue are in appeal before us.
16. At the time of hearing, ld. AR submitted as under :-

“c) Reg. the addition of Rs.31,21,400.00 on account of Unexplained Cash Credit applying provision of section 68:- That, during the year, the assessee has made an addition of Rs.49,00,000.00 toward his capital. During the assessment proceedings and appellate proceedings, the assessee has explained, that, the assessee has himself contributed Rs.11,00,000.00 from his saving account and Rs.8,00,000.00 has been received from her mother Smt. Shimla Devi and filed the copy of bank statement. The assessee has also explained, that, the said fund; his out of the maturity of the LIC Policy, the details are as under :-

Date	Particulars	Amount	Closing balance
10.01.2014	B/f balance		3,29,753.30
16.01.2014	Amount received form LIC	2,39,000.00	5,68,753.30
16.01.2014	Amount received form LIC	19,500.00	5,88,253.30
16.01.2014	Amount received form LIC	40,000.00	6,28,253.30
16.01.2014	Amount received form LIC	55,000.00	6,83,253.30
16.01.2014	Amount received form LIC	2,94,000.00	9,77,253.30
16.01.2014	Amount received form LIC	72,000.00	10,49,253.30
16.01.2014	Amount received form LIC	1,04,852.00	11,54,105.30

Out of the aforesaid closing balance of Rs.11,54,105.30, the Rs.11,00,000.00 was transfer to his proprietorship firm on 20.01.2014 (Kindly refer Bank Statement at page no.21 to 22).

That, the assessee has also received a Gift from his mother Smt. Shimla Devi at Rs.38,00,000.00, the assessee has explained the source of the funds available with Smt. Shimla Devi i.e. maturity of LIC of Rs.8,10,600.00 and Rs.9,68,000.00, which has been allowed by the CIT(A), whereas, the CIT (A) has failed to give the credit of brought forward balances from earlier years, as well as the interest received from SBI Saving Bank Account as well as the Agriculture Income received, in the bank account of Smt. Shimla Devi, the summary of the credit and debit entry of Account No.10674105253 of State Bank of India (Kindly refer Page No.23 to 27).

In view of the -above facts and circumstances, the addition made by the CIT(A) & Assessing officer is highly unjustifiable, arbitrary and bad in law.

He also submitted bank statement.

17. On the other hand, Id. DR of the Revenue submitted that no details were submitted before the AO. Therefore, AO had no opportunity to verify the same.
18. Considered the rival submissions and material placed on record. We observed that Id. CIT (A) has given relief to the assessee relating to the amount received from LIC on 16.01.2014. The assessee also submitted the relevant bank statement wherein the assessee has received fund from LIC, therefore, the relevant source of receipt is explained by the assessee with regard to funds received from LIC. Therefore, ground no.2 raised by the Revenue is dismissed.
19. With regard to grounds raised by the assessee relating to the gift received from Shimla Devi, we observed that assessee has submitted bank statement which is placed at pages 24, 25 & 27 of the paper book. As per the bank statement, we observed that Shimla Devi has brought forward balance of Rs.13,01,816/- as on 01.02.2012 and she also received LIC maturity of Rs.9,68,000/- and Rs.8,10,600/-. She has maintained the balance of Rs.31,00,000/- throughout the year and paid Rs.30,00,000/- to Ajay Kumar from her bank account. Since sufficient cash was maintained by her in her

bank account, it clearly shows that she has source of LIC maturity as well as other outstanding cash balance which was carried forward from earlier assessment years. Therefore, she has already shown source of source in the given case. We allow ground nos.8 to 12 of assessee's grounds and ground no.2 of Revenue's appeal is dismissed.

20. Ground No.13 of assessee's appeal is consequential in nature.
21. In the result, the appeal filed by the assessee is partly allowed and the appeal filed by the Revenue is dismissed.
22. To sum up : appeal filed by the assessee for AY 2013-14 is allowed and for AY 2014-15 is partly allowed and appeal filed by the Revenue for AY 2014-15 is dismissed.

Order pronounced in the open court on this 25th day of June, 2025.

**SD/-
(VIKAS AWASTHY)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 25.06.2025
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**