

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 4316/Del/2019
(Assessment Year: 2014-15)

Shri Mukesh Kumar Kaushik, 376-A, Vipin Garden, Main Nazafgarh Road, New Delhi	Vs.	Income Tax Officer, Ward-25(3), New Delhi
(Appellant)		(Respondent)
PAN: AAJPK3953B		

ITA No. 2353/Del/2019
(Assessment Year: 2014-15)

Smt Santosh Kumari Kaushik, 376-A, Vipin Garden, Main Nazafgarh Road, New Delhi	Vs.	Income Tax Officer, Ward-25(3), New Delhi
(Appellant)		(Respondent)
PAN: AAJPK3953B		

Assessee by :	Shri Lalit Mohan, Adv Shri Ankit Kumar, Adv
Revenue by:	Shri Manish Gupta, Sr. DR
Date of Hearing	22/05/2025
Date of pronouncement	16/07/2025

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.2353/Del/2019 for AY 2014-15 filed by the assessee (Smt Santosh Kumari Kaushik), arises out of the Id. Commissioner of Income Tax (Appeals)-14, Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 05.02.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.12.2016 by the

Assessing Officer, ITO, Ward-42(5), Delhi (hereinafter referred to as 'Id. AO'). The appeal in ITA No. 4316/Del/2019 filed by the assessee (Shri Mukesh Kumar Kaushik) for AY 2014-15 arises out of the Id. Commissioner of Income Tax (Appeals)-27, Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 28.03.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2016 by the Assessing Officer, ITO, Ward-25(3), Delhi. Identical issues are involved in both these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

2. The only identical issue to be decided in both these appeals of the assessee is that whether addition could be made in the hands of the husband (Shri Mukesh Kumar Kaushik) and wife (Smt Santosh Kumari Kaushik) on substantive basis or protective basis in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the material available on record. Shri Mukesh Kumar Kaushik filed his return of income for AY 2014-15 declaring total income of Rs. 2,26,040/-. Smt Santosh Kumari Kaushik filed her return of income for AY 2014-15 on 31.07.2014 declaring taxable income of Rs. 2,03,580/- . The Id AO on perusal of the bank statement of Smt Santosh Kumari Kaushik and Mr. Mukesh Kumar Kaushik maintained with Axis Bank, Rajouri Garden, Delhi observed that deposits of Rs. 6,25,67,467/- and Rs. 1,70,22,431/- were made respectively. The Id AO directed both the assessees to explain the source of deposits made in the bank account. Both the assessees' replied that the credits in the said bank account belong to Mr. Deepak Kumar Gupta, employer of Shri Mukesh Kumar Kaushik. It was submitted that Mr. Deepak

Kumar Gupta also had maintained his bank account with the same bank branch. Both the assessee's replied that the transactions in the bank account were managed and controlled by Shri Deepak Kumar Gupta and that they are not owner of the monies lying thereon and they are mere name lenders for using the bank account of Shri Deepak Kumar Gupta. Mr. Deepak Kumar Gupta was summoned by the Id AO u/s 131 of the Act. In his statement he mentioned that he had not used the bank accounts of either Shri Mukesh Kumar Kaushik and Smt Santosh Kumari Kaushik. Mr. Deepak Kumar Gupta even denied having employed Shri Mukesh Kumar Kaushik. He also stated that monies in the bank accounts of Shri Mukesh Kumar Kaushik and Smt Santosh Kumari Kaushik belonged to them. Later Smt Santosh Kumari Kaushik was also summoned by the Id AO u/s 131 of the Act and she explained that she had no knowledge how the deposits were made in her bank account. Shri Mukesh Kumar Kaushik also was summoned by the Id AO u/s 131 of the Act and he in his statement stated that he was given driver's job in Deepak Kumar Gupta's company namely Amba Alloy Pvt. Ltd. Both husband and wife stated that the transactions were managed and controlled by Shri Deepak Kumar Gupta. Shri Mukesh Kumar Gupta stated that he used to sign blank cheques in the presence of Shri Deepak Kumar Gupta and hand over the same to him. The Id AO not being convinced with the explanations given by both husband and wife proceeded to treat the total deposits made in their bank account in the sums of Rs. 6,25,67,467/- and Rs. 1,70,22,431/- in the hands of Smt Santosh Kumari Kaushik and Shri Mukesh Kumar Kaushik respectively as unexplained money u/s 69A of the Act and added the same to their total income.

4. Both the husband and wife preferred appeals before the Id CIT(A). The Id CIT(A) issued direction u/s 150 of the Act to issue notice u/s 148 of the Act in

the case of Shri Deepak Kumar Gupta to consider the deposits made in the bank account of both the parties i.e. Shri Mukesh Kumar Kaushik and Smt Santosh Kumari Kaushik. The Id CIT(A) also took cognizance of the FIR filed in the police station on 21.01.2014 by Smt Santosh Kumri Kushik stating that her husband Shri Mukesh Kumar Kaushik was working as driver with Shri Deepak Kumar Gupta Company and that his bank account along with her bank account were misused by Shri Deepak Kumar Gupta. The Id CIT(A) also took further cognizance that Mr. Deepak Kumar Gupta was holding 2 PANs ADVPG0451H & ADEZPG1628C. No compliance was made by Shri Deepak Kumar Gupta for the show cause notice issued to him by the Id CIT(A). It is pertinent to note that the aforesaid directions u/s 150(1) of the Act was issued for proceeding against Shri Deepak Kumar Gupta in view of the fact that if the deposits were made in the bank account of Shri Mukesh Kumar Kaushik and Smt Santosh Kumari Kaushik, the monies eventually got transferred to the bank account of Mr. Deepak Kumar Kaushik. The Id CIT(A) noted in the case of Smt Santosh Kumari Kaushik, that a sum of Rs. 2,73,40,000/- reporting cancellations of 3 demand drafts should be excluded while considering the total credits as it amounts to double addition in view of the fact that initial drafts were taken and the same were cancelled and credited in the bank account of the assessee. The Id AO while considering the total credits had taken even the cancelled drafts which stood credited in the bank account thereby resulting in double addition. Further, a sum of Rs. 1,01,64,300/- was transferred to the bank account of Smt Santoshi Kumari Kaushik from the bank account of her husband Mr. Mukesh Kumar Kaushik. The Id CIT(A) was thoroughly convinced that no substantive addition could survive in the hands of Smt. Santosh Kumari Kaushik and confirmed a sum of Rs. 2,68,31,300/- on protective basis with a direction to consider the entire addition on substantive

basis in the hands of Shri Deepak Kumar Gupta if he is not able to explain the deposits made in the bank account of Smt. Santosh Kumari Kaushik.

5. In the case of Shri Mukesh Kumar Kaushik, the Id CIT(A) noted that assessee had acted as nominal director in some of the companies belonging to Shri Deepak Kumar Gupta and hence, the involvement of assessee in the whole process of introduction of cash and cheque deposits in the bank account cannot be ruled out. The Id CIT(A) noted that it could be inferred from the documents/statements recorded, that assessee (Shri Mukesh Kumar Kaushik) was in the knowledge of things and that he cannot claim innocence. The Id CIT(A) noted that certain monies were even transferred by Shri Mukesh Kumar Kaushik to his wife bank account for which no explanation has been submitted. The Id CIT(A) further noted that Shri Mukesh Kumar Kaushik had not alleged a criminal complaint against alleged misuse of his bank account by Mr. Deepak Kumar Gupta except making a claim that monies eventually were transferred to the bank account of Shri Deepak Kumar Gupta. However, Mr. Deepak Kumar Gupta denied all these allegations levelled against him. Hence, he concluded that the true fact have not come out and since there are cash deposits which were not explained by Shri Mukesh Kumar Kaushik, the allegations of cash deposit belonging to Mr Deepak Kumar Gupta does not get proved by any evidence. Accordingly, he upheld the addition made in the sum of Rs. 1,70,22,431/- in the hands of the assessee Mr. Mukesh Kumar Kaushik on substantive basis with a direction to the Id AO to arrive at the correct calculation of cash deposits made in the bank accounts.

6. On considering the totality of the facts and circumstances together with statement recorded of Mr. Mukesh Kumar Kaushik, Smt Santosh Kumari Kaushik

and Shri Deepak Kumar Gupta which are all part of the records, the following facts and findings emerge:-

a. Mr. Mukesh Kumar Kaushi was working as driver in Amba Alloy which is a company of Shri Deepak Kumar Gupta;

b. The monies stood deposited in the bank account of both Mr Mukesh Kumar Kaushik and Smt Santosh Kumari Kaushik in the form of cash, cheque transfers and RTGS etc ;

c. In response to the query posted to Mr. Deepak Kumar Gupta by the Id AO asking for details of bank accounts held by him, Mr. Deepak Kumar responded by saying that he had two bank accounts with Axis Bank and further proceeded to say that those 2 bank accounts were opened and operated by Mr. Mukesh Kumar Kaushik and that he was not having knowledge of those bank accounts. This reply becomes excruciating evidence to prove that the reply is a doctored reply merely to implead Mr. Mukesh Kumar Kaushik which was not even subject matter of question posted to Mr. Deepak Kumar Gupta while recording the statement. Reference is made to Question No. 4 and reply given thereon by Mr. Deepak Kumar Gupta on 08.12.2016 before the Id AO at 4.30 PM. Hence, no reliance or credibility could be attached to the statement of Mr. Deepak Kumar Gupta ; and

d. On perusal of the bank statement of Shri Mukesh Kumar Kaushik and Smt Santosh Kumari Kaushik, it is noted that even though monies were temporarily used by the parties, the monies eventually were transferred to the account of Mr. Deepak Kumar Gupta, which conclusively

proved that Shri Deepak Kumar Gupta is the ultimate beneficiary of the monies lying through all the transactions carried out in the bank account of Shri Mukesh Kumar Kaushik and Smt Santosh Kumari Kaushik.

7. In view of the above, in our considered opinion, no addition per se could either be made in the hands of the Shri Mukesh Kumar Kaushik on substantive or protective basis and in the hands of the Smt Santosh Kumari Kaushik on protective basis. Accordingly, the grounds raised by both the assesseees' are allowed.

8. In the result, the appeals of the assesseees are allowed.

Order pronounced in the open court on 16/07/2025.

-Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 16/07/2025

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi