

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
DELHI BENCH 'DEHRADUN/' NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 31/DDN/2025 (A.Y. 2019-20)

Bhagwani Devi 04 Krishna Vatika, Doon Divine Society, Dehradun, Uttarakhand PAN: CDXPD6743F	Vs.	Deputy Commissioner of Income Tax, Central Circle, Dehradun, Uttarakhand
Appellant		Respondent
Assessee by	Adv Aditya Gupta and Adv Robin	
Revenue by	Sh. S. K Chatterjee, CIT(DR)	
Date of Hearing	10/07/2025	
Date of Pronouncement	22/08/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The present appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)- Noida-3 ('Ld. CIT(A)' for short), New Delhi dated 05/12/2024 for the Assessment Year 2019-20.

2. The Grounds of appeal are as under:-

"1. That on the facts and circumstances of the case, assessment order passed under Section 147 of the Act as sustained by the Ld. CIT(A) is bad in law, illegal and void ab initio;

2. That without prejudice, considering the facts and circumstances of the case and in law, the Ld. CIT(A) grossly erred in not rendering the notice issued under section 148 and consequent assessment bad in law as the satisfaction note recorded by the Ld. AO is invalid, bad in law and void ab initio

3. That on the facts and circumstances of the case and in law, Ld. CIT(A) grossly erred in sustaining the order of the Ld. AO whereby impugned addition amounting to Rs. 19,00,000/- in terms of the provisions of Section 69B of the Act merely relying on some loose sheet of papers, which are not legible which at the best be termed as a 'dumb document';

4. That on the facts and circumstances of the case and in law, the Ld. AO grossly erred in not show causing the appellant as to the proposed addition amounting to Rs. 19,00,000;

5. That the LO AO failed to deliver the copy of statement given by Krishana Sharma nor he allowed to cross examine him by the appellant

6. That in the facts and circumstances of the case and in law, the order passed by the Ld. CIT(A) and by the Ld. AO is against the principles of natural justice, equity, judicial discipline and fair play;

All of the above grounds of appeal are without prejudice and notwithstanding each other.”

3. Brief facts of the case are that, a search operation conducted u/s 132 of the Income Tax Act, 1961 ('Act' for short) was carried out in the case of one, Shri Krishna Sharma & Smt. Sheetal Sharma on 02.02.2022. As per AO, during the search, several incrimination documents, loose sheets, digital devices were found and seized at residential and business premises of Shri Krishna Sharma & Smt. Sheetal Sharma. The case of the assessee was centralized with DCIT(Central Circle), Dehradun vide order dated 15.03.2023 of the Ld. Principal Commissioner of Income Tax, Dehradun. The assessment proceedings were initiated by issuing notice u/s 148 of the Act on 29.03.2023. In response, the assessee complied with the notice issued u/s 148 of the Act by filing Return of Income electronically for the year under consideration on 22.04.2023 declaring a total income of Rs. 3,23,970/-. The Ld. A.O. based on the incriminating material found during the search in the residence of Shri Krishna Sharma & Smt. Sheetal Sharma, observed that the assessee i.e., Smt. Bagwani Devi had purchased land part of Khasra no 492 KA, measuring 178.90 sq. mtrs., situated at Mauzan Tarla Nagal, Parwadoon, Dehradun from Shri Keshav Soin, on sale consideration of Rs. 24,87,000/- and made a cash payment of Rs. 19,00,000/- over and above the amount of sale deed. Since, the date of sale deed, detail of land /Khasra no., area and the sale

consideration of the said plot as available on the State Government website, exactly matches with the entries in the aforesaid seized documents. Therefore, A.O. made addition of Rs. 19,00,000/- under Section 69B of the Act, 1961 vide Assessment Order dated 02/03/2024.

4. Aggrieved by the assessment order 02/03/2024, the assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 05/12/2024, dismissed the Appeal of the Assessee. As against the order of the Ld. CIT(A) 05/12/2024, the Assessee preferred the present appeal on the grounds mentioned above.

5. The Ld. Counsel for the Assessee addressing on Ground No. 3 and Ground No. 5 submitted that the authorities below committed error in making/sustaining the addition amounting to Rs. 19,00,000/- u/s 69B of the Act relying on the loose sheet of paper which is nothing but 'dumb document'. Further submitted that there is no mentioning of 'cash' payment and the alleged incriminating material being a 'dumb document' which was not corroborated with any of the statement or evidence. Further submitted that though the loose paper was not found from the possession of the Assessee, the Revenue has not provided opportunity for cross-examination. Therefore, submitted that the addition made by the A.O. which has been upheld by the Ld. CIT(A) is liable to be deleted.

6. Per contra, the Ld. Department's Representative submitted that the Assessee admitted the fact of purchase of property and conveniently denied the 'cash payment' for purchase of the said property. Even in the seized document, it is clearly mentioned regarding payment of Rs. 19 lakhs apart from payment made through banking channel of Rs. 24.87 lakhs. Further submitted that the seized document clearly establishes the fact of payment of Rs. 19,00,000/- over and above the amount of sale consideration mentioned in the sale deed. The Ld. Departmental Representative relying on the orders of the Lower Authorities, sought for dismissal of the Appeal.

7. We have heard both the parties and perused the material available on record. The sole basis for making addition was the document seized in the premises of Sh. Krishna Sharma and Smt. Sheela Sharma during the search operation conducted u/s 132 of the Act on 02/02/2022, wherein in-front of Assessee's name two figures have been mentioned. For the sake of ready reference, the seized documents i.e. page No. 74 of Annexure A-4 and Page No. 6 & 7 of Annexure A-2 are reproduced as under:-

Cognate		A	B
16/10/2018 :- (3) Manisha Dhan	$\frac{492.5}{115.34}$	1150000	2500000 ⇒ 3650000/=
15/11/2018 :- (6) Kati Ram	$\frac{492.5}{85.34}$	1386000	714000 ⇒ 2100000/=
20/11/2018 :- (8) Rajesh Rawat	$\frac{492.5}{91.94}$	1400000	700000 ⇒ 2100000/=
6/12/2018 (13) Sushila Chandra	$\frac{492.5}{86.21}$	1300000	760000 ⇒ 2060000/=
10/12/2018 (16) Gourav Kankaria	$\frac{492.5}{104.55}$	1500000	1000000 ⇒ 2500000/=
11/12/2018 (18) Gurha Aswal	$\frac{492.5}{143.120}$	1990000	1100000 ⇒ 3090000/=
11/12/2018 (18) Bhagwani Devi	$\frac{492.5}{178.90}$	2487000	1900000 ⇒ 4387000/=
14/12/2018 (21) Sarojay Vashisti	$\frac{492.5}{127.77}$	2250000	— ⇒ 2250000/=

(7) Date _____ Page No. _____ (7) Date 11/5/2018 Page No. _____

S.No.	Date	Cr. Cr. Debit	Amou	Pa. No.	By. No.	Name of Seller	Name of Purchaser	
1	15/10/2018	7,22,000/-	1895	125-91	Keshav Soni	Dr. Gulip Singh	7.70 B-1	
2	16/10/2018	20,06,000/-	412-04	173-73	Keshav Soni	Kavali Keshi		
3	16/10/2018	11,50,000/-	402-01	125-74	Keshav Soni	Pranjalika Devi	21/5/2018	
4	16/10/2018	19,50,000/-	409-21	130-04	Shalini Devi	Ramesh Bhatnagar		
5	17/10/2018	13,00,000/-	414	95-37	Shalini Devi	Saurabh Jain		
6	18/10/2018	13,06,000/-	424-4	75-63	Keshav Soni	Kali Ram	21/1/18	
7	17/10/2018	80,00,000/-	435	235-03	K.R. Soni	Pranav Singh		
8	20/10/2018	11,00,000/-	491-06	97-07	Keshav Soni	Rajesh Kumar	20/10/18	
9	20/10/2018	19,50,000/-	481-01	126-24	Smt. Shalini Devi	Jai Prakash		
10	20/10/2018	20,00,000/-	489-16	115	Keshav Soni	Smt. Nandini Soni	20/10/18	
11	20/10/2018	8,00,000/-	409-10	116-17	Keshav Soni	Vijay Laxmi Sharma		
12	20/10/2018	20,00,000/-	481-01	115-24	Keshav Soni	Kanchan Verma	20/10/18	
13	16/10/2018	12,00,000/-	492-06	82-23	Keshav Soni	Shubha Chandra	20/10/18	
14	17/10/2018	11,00,000/-	489-17	100-28	Keshav Soni	Nimisha Agarwal	21/10/18	
15	17/10/2018	15,00,000/-	491	117-74	Keshav Soni	Kuldip Singh	20/10/18	
16	18/10/2018	13,00,000/-	492-05	104-53	Keshav Soni	Gaurav Kataria	20/10/18	
17	18/10/2018	19,00,000/-	492-01	103-12	Keshav Soni	Sudha Agarwal	13.3.18/2018	
18	18/10/2018	24,67,000/-	492-05	110-90	Keshav Soni	Bhagwati Devi	13.3.18/2018	
19	18/10/2018	23,60,000/-	491	204-46	Keshav Soni	Chiranjeev Singh		
20	18/10/2018	25,61,000/-	491	204-46	Keshav Soni	Galaxy Singh		
21	18/10/2018	21,50,000/-	492-01	127-73	Keshav Soni	Sagar Vashishtha	14/10/18	
22	18/10/2018	10,00,000/-	491	210-40	Keshav Soni	Kancha Devi		
23	18/10/2018	2,00,000/-	489-10	112-24	Keshav Soni	Ana Kumar Malhotra	18/10/2018	
24	17/10/2018	51,00,000/-	492-05	225-67	Keshav Soni	Alexy Kumar	11/10/18	
25	17/10/2018	23,00,000/-	492-01	152-12	Shalini Devi & Keshav Soni	Smita Kam Singh		
26	17/10/2018	26,09,000/-	489-04	110-24	Shalini Devi	Devendra Singh		
27	17/10/2018	0,90,000/-	491	165-23	Keshav Soni	Anil Kumar Bhatnagar		
28	18/10/2018	30,66,400/-	490	50-26	Smt. Shalini Devi	Purbhi Nandini		
29	18/10/2018	0,21,000/-	492-05	115-24	Keshav Soni	Himanshu Singh	21/10/2018	
30	18/10/2018	17,09,000/-	490	113-93	Shalini Devi	Rashmi		

8. From the plain reading of the above seized document it was found that there is no mentioning of the word 'cash'. Admittedly the documents, have been seized from the third party, however, the Assessee has not been provided with opportunity of cross examination. The Assessee has specifically raised a Ground before the Ld. CIT(A) regarding violation of principals of natural justice on the ground that the Assessee has not been given opportunity of cross examination of the said Krishna Sharma. However, the Ld. CIT(A) held that the opportunity of cross examination is not a compulsory requirement before deciding the matter.

9. The Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central Excise (2015) 62 Taxmann.com (S.C) held as under:-

“not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to

note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above.”

10. As observed earlier, the seized document has no mention of the payment of cash and there is no corroborative statement recorded from the seized person i.e. Krishna Sharma. The assessment order came to be passed without providing opportunity of cross examination of the said Krishna Sharma, which is contrary to the ratio laid down by the Hon'ble Supreme Court in the case of Andaman Timber Industries (supra). Thus, the Ld. CIT(A) has committed error in upholding the impugned addition. In view of the above, we find no reason to uphold the addition sustained by the Ld. CIT(A), finding merits in the Ground No. 3 & 5 of the Assessee, we allow the same.

10. In the result, Appeal of the Assessee is partly allowed.

Order pronounced in the open court on 22nd August, 2025

Sd/-

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Date:- 22.08.2025

R.N, Sr.P.S*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

