

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA No. 4400/DEL/2018
Assessment year: 2012-13**

Income Tax Officer, Ward-30(4), New Delhi.	<u>Vs</u>	Smt. Rashmi Rajiv Mehta, E-52, Raheja Atlantis, Sector-31, NH-8, Gurgaon, Haryana-122002.
		PAN: AKSPM 6239M
APPELLANT		RESPONDENT

**C.O. No. 180/Del/2018
(In ITA No. 4400/DEL/2018)
Assessment year: 2012-13**

Smt. Rashmi Rajiv Mehta, E-52, Raheja Atlantis, Sector- 31, NH-8, Gurgaon, Haryana-122002.	<u>Vs</u>	Income Tax Officer, Ward-30(4), New Delhi.
PAN: AKSPM 6239M		
Cross Objector		RESPONDENT
Assessee represented by	Shri Ved Jain, Adv., & Shri Pawan Garg, Adv.; & Ms. Ishika Dua, CA	
Department represented by	Ms. Harpreet Kaur Hansra, Sr. DR	
Date of hearing	23.07.2025	
Date of pronouncement	19.09.2025	

ORDER

PER AMITABH SHUKLA, A.M:

The captioned appeal, preferred by the Revenue and the cross-objection preferred by the assessee for assessment year 2012-13, are directed against the order of Commissioner of Income-tax (Appeals)-10, New Delhi dated 15.12.2017 in appeal No. 178/16-17 against the order dated 28.03.2016 passed by the ITO, Ward 30(5), New Delhi u/s 147/143(3) of the Income-tax Act (hereinafter referred to as the "Act"). Both the matters were heard together and are being disposed of by a common order for the sake of convenience.

Revenue's Appeal - ITA No.4400 / Del / 2018

2.0 The only issue raised by the Revenue through its grounds of appeal is regarding the deletion, of addition of Rs.2,78,11,000/- made by the Ld.AO vide his order u/s 143(3) r.w.s. 147 dated 28.03.2016, by the Ld.CIT(A). The impugned addition comprises three independent additions of Rs.64,66,000/-, Rs.1,71,95,000/- and Rs.41,50,000/- raised through grounds of appeal nos 1 to 4.

2.1 The ground of appeal no.4 raised by the Revenue has been found to be of general in nature and based upon hypothetical presumptions and hence found bereft of any meritorious consideration. The same is therefore dismissed.

3.0 At the outset the Ld. Counsel for the assessee submitted that the facts of the present case are identical to those for immediately preceding assessment year e.i, 2011- 12 and that all the additions made therein stand deleted by a Hon'ble coordinate bench of this tribunal in ITA number 4399/Del/2018 dated 24/4/2024 and that therefore the order of Ld.CIT(A) deserve to be sustained. The Ld.Counsel submitted that in this case the entire controversy has arisen on account of acrimonious marital dispute between the assessee and her husband namely Rajiv Mehta. Apparently, a tax evasion petition was filed by her husband which lead to invocation of proceedings u/s 147 of the Act against the assessee. Consequently during the course of the assessment proceeding the assessing officer had asked the assessee to submit the source of the deposit in the bank account and also the payment made from her bank account. During the course of the present proceedings, the Ld.Counsel has filed an extensive paper book comprising Returns of Income, Copies of Bank statements, replies given to the lower authorities as well as extracts of relied upon judicial precedents.

3.1 Per contra, the Ld.DR has relied upon the order of the Ld.AO. It has been vehemently argued that the relief accorded by the Ld.CIT(A) is excessive and unwarranted and deserves to be set aside.

3.2 The first addition contested by the Revenue through the ground of appeal No.1 is in respect of Rs.64,66,000/-. The appellant assessee has submitted that the assessing officer had initially made an allegation in the assessment order that the assessee had deposited a cash of Rs 1,20,26,000/- but however the assessee explained to the assessing officer that she has deposited Rs.64,66,000/- in the bank account. The assessing officer has accepted this fact that the amount deposited Rs 64,66,000/- and has made the addition of Rs. 64,66,000/-. It was contended that the assessing officer had made this addition on the allegation that assessee has failed to explain the source of the deposit and on that basis the assessing officer has made an addition of Rs.25,90,000/- on protective basis and the balance amount of Rs.38,76,000/-on substantive basis. The addition made on account of the substantive basis Rs.38,76,000/-, represents an amount which has been deposited by the assessee out of her withdrawal made by the assessee in the preceding year. This fact was evident from the explanation filed by the assessee in the preceding year stating that the assessee had made a total withdrawal of Rs.1,43,43,000/- in the preceding year, out of which Rs.1,06,00,000/- was deposited in the preceding year and the balance amount was the amount which has been deposited during the year. Copy of corresponding bank statement has been

placed at pages 10-13 of the paper book. The details of impugned transactions was shown as under:-

Date	Cash withdrawal
02.03.2010	30,000.00
05.03.2010	30,000.00
22.03.2010	150,000.00
05.04.2010	50,000.00
05.04.2010	30,000.00
06.05.2010	50,000.00
17.05.2010	60,000.00
19.05.2010	25,000.00
04.06.2010	100,000.00
10.06.2010	450,000.00
11.06.2010	26,000.00
11.06.2010	10,000.00
07.07.2010	60,000.00
09.07.2010	42,000.00
10.08.2010	60,000.00
19.08.2010	35,000.00
01.09.2010	50,000.00
18.09.2010	50,000.00
19.10.2010	50,000.00
25.10.2010	12,000.00
03.11.2010	10,000.00
04.12.2010	11,000.00
11.12.2010	50,000.00
18.12.2010	40,000.00
27.12.2010	30,000.00
27.12.2010	122,000.00
29.01.2011	35,000.00
07.02.2011	50,000.00
28.02.2011	20,000.00
28.02.2011	5,000.00
18.03.2011	200,000.00
Total	1,43,43,000.00

The Ld.Counsel accordingly argued that the source of the addition made on substantive basis thus stand explained.

3.3 The Ld.Counsel submitted that as regards the protective addition of Rs.25,90,000/- made in the assessee hand as per its information no such substantive addition has been made by the Revenue in case of any other person and that therefore the addition in the hands of the assessee on legal ground itself is untenable in the eyes of the law. It is a settled law that for a protective addition to be made the first source has to be the substantive addition and in case substantive addition is not made then addition cannot be made in the own protective basis. On the issue, the Ld.Counsel placed reliance upon the decision of Hon'ble coordinate bench of Jodhpur tribunal delivered in the case of Ramesh Chand Premraj Soni HUF vide ITA No.IT(SS) / 51 / Jodh / 2004 and of Hon'ble Delhi tribunal in the case of Kanav Metals vide ITA No.7778 / Del / 2019. It was further argued that the assessee has also filed a confirmation from her husband dated 16th February 2016 wherein he has confirmed having given Rs.25,90,000/- to the assessee and that therefore no addition can be made in the hands of the assessee.

4.0 We have heard rival submissions in the light of material available on records. The bank account statement extracts and other material on

records indicate the veracity of defence taken by the assessee. Further, we have noted that Hon'ble Delhi tribunal in the case of Kanav Metals vide ITA No.7778 / Del / 2019 has while considering the decision of Jodhpur tribunal delivered in the case of Ramesh Chand Premraj Soni HUF vide ITA No.IT(SS) / 51 / Jodh / 2004 has held as under:-

"...7. It is not in dispute that the assessment order has been passed against the assessee on 28/12/2016 by making addition in the hands of the Assessee Firm on protective basis to protect the interest of the Revenue and in the very same assessment order, it is observed that 'since both the partners of the Firm have admitted and owned the introduction of Rs. 67,50,000/- from their own source to the Assessee Firm and in the absence of no plausible explanation furnished by the partners the reassessment proceedings in their hands are being initiated separately for bringing the said amount to tax'. It is brought to our notice that the said reassessment proceedings u/s 147 of the Act against the partners of the Assessee Firm was dropped on account of same becoming time barred as per the provision of Section 153(2) of the Act on 31/03/2023, which was not disputed by the Ld. DR. It is well settled proposition of law that when substantive addition does not survive on account of being time barred, then the protective addition also does not survive. The said view of ours have been fortified by the order of the Tribunal in (Jodhpur Bench) the case of Ramesh Chand Prem Raj Soni (HUF) Vs. ACIT 2006 (10) TMI-197 dated 16/10/2016, where in it is held as under:-

"6. We meticulously traversed through all the evidences and also took the learned Authorized Representative and Departmental Representative, through all the relevant papers placed in the file to which our attention was drawn. There is no dispute with regard to the facts that all the additions, which are the subject-matter of this appeal or for that matter that of assessment order passed under s. 158BD in

the case of the HUF, are made on protective basis. All parallel additions were made in the case of Shri Ramesh Chand Soni individual. The assessment made under s. 158BC in the case of Shri Ramesh Chand Soni does not survive at all, since it has been struck down being time-barred. The addition made on substantive basis have not been decided by deleting the same from assessee's individual hands rather they were thrown along with the block assessment order. meaning thereby, now there is no substantive addition in existence at all; and the protective addition presupposes the existence of substantive additions Let us put it in another words that whenever additions are made, they are only substantive additions. The term protective addition is a misnomer, actually it is a substitutive addition. The 'protective-addition' name has been given to it since it protects the interest of the Revenue Say, if in X's case, addition cannot be ultimately made, it may be considered in the case of Y. Here in such a case there happens to be some doubt as to whom a particular income belongs to when it is not clearly established as to in whose hands a particular income should be added, when there are evidences that it may belong to either of the two, or when scintillating evidences are available from which it is not possible to come to clear-cut conclusion, readily. In the given case the substantive additions have not been declared to not belong to Shri Ramesh Chand Soni. Had that been the case, this protective addition could have been considered and added substantially if it was found to belong to "protective assessee. We don't say that no protective addition can be made under Chapter XIV-B of the Act" 8. In view of the above discussion, since the substantive addition has not been survived on account of being time barred, consequently, the protective addition made in the hands of the assessee herein also will not survive, accordingly, we delete the protective addition by setting aside the order of the Lower Authorities...."

5.0 Thus we have noted that the order of Ld.CIT(A) is based upon correct understanding and interpretation of facts of the case as well as judicial

precedents covering the matter. We have also noted that the facts of the present year are identical to those in immediately preceding assessment year wherein a coordinate bench of this tribunal through ITA No.4399 / Del / 2018 dated 24.04.2024 deleted the addition made by the Ld.AO. Accordingly, we are of the considered view that no case of any intervention to the order of the Ld. CIT(A) qua deletion of addition of Rs.64,66,000/-, contested by the Revenue through ground of appeal No.1, is made out at this stage. **Therefore, ground of appeal No.1 raised by the Revenue is dismissed.**

6.0 The ground of appeal No.2 and 3 raised by the Revenue are regarding two additions of Rs. 1,71,95,000/- and Rs 41,50,000/- made by the assessing officer. The Ld.Counsel for the assessee submitted that at the outset these additions have been made without considering the fact that there is no allegation about the source of deposit from which these payments have been made. It was argued that the allegation about deposit in the bank account was limited to only cash deposit of Rs.64,66,000/-. The Ld. Counsel submitted that as the payments of Rs.1,71,95,000/- and Rs.41,50,000/- are duly accounted for and from the bank account and hence they were untenable in the eyes of law. As regards the ground of appeal number two qua addition of Rs. 1,71,95,000/-, it was pointed that

the actual amount was Rs. 5,00,000/- and not Rs. 50,00,000/-, and that therefore the total payments made by the assessee were Rs.1,26.95,000/- and not Rs. 1,71,95,000/-. The Ld. Counsel vehemently argued that all these payments have been made from the bank account as is evident from the assessment order and the appellate order. Our attention was invited to following details:-

Sr. No.	Amount	Source	Date of payment	Bank A/c placed in paper book (Page No.)
1.	40,00,000/- (on protective basis)	Payment made by the assessee to Mr. Mehul N Parekh on the instructions of Mr. Rajiv Mehta	19.03.2010	26
2.	50,00,000/-	Payment was given to Mr. Rajiv Mehta in his account	19.02.2010	25
3.	30,00,000/-	Payment was given to Mr. Rajiv Mehta in his account	05.04.2011	10
4.	50,00,000/-	Actual amount of Rs. 5,00,000/- as against Rs. 50,00,000/- which has been transferred to the account of Mr. Rajiv Mehta.	08.09.2010	30

5.	1,95,000/-	Payment was given to Mr. Rajiv Mehta in his account.	27.05.2011	10

6.1 Referring to the above details the Ld.Counsel submitted that payment of Rs. 40,00,000/- was made on 19.03.2010, hence the same is out of scope of current assessment year. Besides, this addition was untenable having been made on protective basis. Again the payment of Rs. 50,00,000/- made on 19.02.2010 and of Rs.5,00,000/- (wrongly shown as Rs. 50,00,000/- made on 08.09.2010, are beyond the scope of current assessment year and hence untenable. Further, the payment of Rs. 30,00,000/- made out of the cash deposit of Rs. 60,00,000/- made on 30.03.2011 and the cash deposit of Rs. 60,00,000/- has been examined by the Hon'ble Tribunal in assessee's own case for AY 2011-12, therefore cannot be added back. Similarly, payment of Rs. 1,95,000/- was linked to the cash deposit of Rs. 1,98,000/- made on 28.05.2011 and the source there of stands explained. The Ld. Counsel submitted that as the impugned transactions cannot be considered as unexplained credit given the fact that their sources were duly explained.

6.2 As regards the issue concerning addition of Rs.41,50,000/- the Ld. Counsel drew our attention to the evidences placed on page 10 and 15 of its paper book so as to indicate that the impugned amounts were duly reflected in the bank accounts and represented disclosed transactions.

7.0 We have heard rival submissions in the light of material available on records. From the perusal of bank statements produced by the assessee , we have noted that there is sufficient force in the argument of the assessee regarding the genuineness of sources of deposits in assessee's bank account. Thus we have noted that the order of Ld.CIT(A) is based upon correct understanding and interpretation of facts of the case as well as judicial precedents covering the matter. We have also noted that the facts of the present year are identical to those in immediately preceding assessment year wherein a coordinate bench of this tribunal through ITA No.4399 / Del / 2018 dated 24.04.2024 deleted the addition made by the Ld.AO. Accordingly, we are of the considered view that no case of any intervention to the order of the Ld.CIT(A) qua deletion of addition u/s 68 of Rs.1,71,95,000/-, and Rs.41,50,000/-, contested by the Revenue through ground of appeal Nos. 2 & 3 , is made out at this stage. **Therefore, ground of appeal Nos. 2 & 3 raised by the Revenue are dismissed.**

8.0 In the result, the appeal of the Revenue vide ITA No.4400 is dismissed.

CO No.180 / Del / 2018 of assessee

9.0 During the course of hearing the Ld.Counsel submitted that the appellant assessee would not like to press the impugned CO and requested for liberty to withdraw the same. **Accordingly, the CO of the assessee is dismissed as withdrawn.**

Order pronounced in open court on 19.09.2025

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**Sd/-
(AMITABH SHUKLA)
ACCOUNTANT MEMBER**

Dated: 19.09.2025.

Shri Damodar Kutty, Sr.PS

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**

1.	Date of dictation of Tribunal Order	
2.	Date on which the typed draft Tribunal Order is placed before the Dictating Member	
3.	Date on which the typed draft Tribunal Order is placed before the Other Member	
4.	Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.	
5.	Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement	
6..	Date on which the signed order comes back to the Sr. P.S./P.S.	
7.	Date on which the final Tribunal Order is uploaded by the Sr.P.S./P.S. on official website.	
8.	Date on which the file goes to the Bench Clerk alongwith Tribunal Order	
9.	Date of killing off the disposed off files on the judisis portal of ITAT by the Bench Clerks	
10.	Date on which the file goes to the Supervisor(Judicial)	
11.	Date on which the file goes for Xerox	
12.	Date on which the file goes for endorsement	
13.	Date on which the file goes to the Superintendent for checking	
14.	The date on which the file goes to the Assistant Registrar for signature on the Tribunal order..	
15.	Date on which the file goes to dispatch section	
16	Date of Dispatch of the order.	