



**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH "DB", ALLAHABAD**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.58/ALLD/2025
Assessment Year: 2014-15

Madhu Dubey 657A/1, Jamuna Nagar, Chak Raghunath, Naini-211008.	v.	DC/AC-1(1) MG Marg, Allahabad- 211001.
PAN:ASIPD8489J		
(Appellant)		(Respondent)

Appellant by:	Shri Naman Agrawal, C.A.		
Respondent by:	Shri A. K. Singh, Sr. DR		
Date of hearing:	09	09	2025
Date of pronouncement:	30	09	2025

ORDER

PER SUBHASH MALGURIA, J.M.:

This appeal has been filed by the assessee against the order of the Ld. CIT(A)/National Faceless Appeal Centre (NFAC), Delhi dated 15.09.2023 for the assessment year 2014-15. The grounds of appeal of the assessee are as under: -

"1 Market value as per registration authority of four lands which was purchased by me during FY.2013-14 was Rs 1,76,06,000/- for which I paid purchase price of Rs 1,20,00,000/- which resulted in confusion and an addition of Rs 56,06,000/- by income tax authority was all four disputed land whose dispute is still in court that's why I was able to purchase the same at lower rate than market value. So still have not generated any profit from these four lands and when I had purchased the court cases for these land was going on and seller sold me in value that was appropriate at that time and so addition of income should not be made against these lands.

2. Capital Contribution of Rs 1,56,700/- was made out of earlier years FY 2010-11 and FY 2011-12 withdrawing from business which was later contributed to business in FY 2013-14 which I used as security deposit for liquor applications. So it should not be added to my income in FY 2013-14,

3. Contribution from MD enterprises for Rs 24,50,000/- was mistakenly shown in balance sheet by my auditor Mrs Attaur Rehman as already told him these were amount contributed by my husband Mr Aditya Narayan Mishra who is partner in M/s M D Enterprises by taking advances from various persons against his own land to support my business as my business was suffering huge loss due to fire in my premises of shop which caused heavy loss to me in that year of fy 2013-14. So this contribution form Mrs Aditya Narayan Mishra should not be charged to my income in that year,

4. Capital Contribution from Gift from Relatives Rs 48,63,000/- was made to me from 19 persons whose pan and id was duly submitted to the Assessing officer along with affidavits from all 19 persons as these persons were any and my husband family relatives which supported us in ball times when fire occurred in my shop so that I can run my business and pay the dues of my shop stock and also tender charges for shop . These persons helped in bad times for which had given them 30 percent share in business against there gift but it was accounting term it was actually investment for my business from these 19 persons and my CA auditor Attaur Rehman was first time auditor he mad mistake in balance sheet wordings and quote it as gift whereas it was borrowing from them against share of my business which I explained to income tax authority in writing and provided share amount repatriated to them later which was not considered while adding these borrowing to my income in FY 2013-14.

5. Capital Contribution from Gift from others Rs 32,90,000/- was not gift from others this was advances from 71 persons - whose details was submitted to the income authority at the time of query in 14.12.2016 along with relevant data. These were advances against the same four lands which was purchased by me during FY 2013-14 which | in need of money taken advance from persons after fire in my shop and since the land which purchased was controversial and disputed I wanted to sell 2 at earliest as nobody even the court and local police helped met _ take possession of above for lands, So I took advance of Rs 32,90,000/- against these land and used in business but still these lands are disputed in court and anybody has not got possession of these land and I can submit dispute case summary to verify the same. So later in FY 2014-15 had to returned the amount to all persons as land was disputed. So above addition is wrongfully made to my income in FY 2013-14. Also my books displayed it.

6. License fees expenses Rs 6,23,742/- was added to my income whereas same was license fee paid to abkari vibhaag for liquor license of my shop . I also intimated assessing officer about date of payment of licence fees i.e. dated 06.02.2014 which can same joe verified from treasury of abkari vibhaag as it was genuine expense to obtain liquor license but same was disallowed by income tax authority without verifying the same from treasury and also challan copy was missed by my accountant but same was paid to treasury to obtain liquor licence have a fact that how to obtain liquor without paying the licence fees whose income lam assessed during the year. So expenses against trade of liquour that is license fees must be allowed as expense during the above year.”

2. Vide assessment order dated 29.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 (“Act”, for short) whereby the assessee’s total income was assessed at Rs.2,02,93,002/-

(rounded off to Rs.2,02,93,000/-). In the aforesaid assessment order, the income of the assessee was computed as under: -

The income of the assessee is computed as under:

Income shown in return of income	Rs. 32,98,560/-
Add:	
As discussed in para 2	Rs. 56,06,000/-
As discussed in para 5	Rs. 1,56,700/-
As discussed in para 6	Rs. 24,50,000/-
As discussed in para 7	Rs. 48,68,000/-
As discussed in para 8	Rs. 32,90,000/-
As discussed in para 9	Rs. 6,23,742/-
	<u>Rs. 2,02,93,002/-</u>
Or	Rs. 2,02,93,000/-

The assessee filed appeal in the office of the Ld. CIT(A). Vide impugned appellate order dated 15.09.2023, the Ld. CIT(A) dismissed assessee's appeal. The impugned appellate order dated 15.09.2023 of the Ld. CIT(A) was passed ex parte qua the appellant assessee. The present appeal has been filed by the assessee in Income Tax Appellate Tribunal (ITAT) against the aforesaid impugned appellate order dated 15.09.2023 of the Ld. CIT(A).

3. At the time of hearing before us, the Assessee was represented by Shri Naman Agrawal, Advocate and Revenue was represented by Shri A. K. Singh, Ld. Sr. DR. The Ld. Counsel for the Assessee vehemently argued that the authority below failed to appreciate the facts of the case in right perspective. Further, he contended that in the interest of principles of natural justice, the assessee may be granted one more opportunity to represent his case. It is contended that the assessee is ready to submit all relevant evidences before the Ld. CIT(A) in support of his claim. He further submitted that the Assessing Authority cannot make additions purely on the basis of conjectures and surmises

without bringing any relevant material on record, hence, the additions are liable to be deleted.

4. On the other hand, the Ld. Departmental Representative for the Revenue opposed these submissions and strongly supported the orders of authorities below. He submitted that the Assessing Officer as well as Ld. CIT(A) provided sufficient opportunities to the assessee. He also contended that the assessee has nothing to say except facts of the case and grounds of appeal filed by the assessee. He, therefore, prayed that the finding of the authorities below may be sustained and the grounds raised by the assessee be rejected.

5. We have heard the Ld. Representatives of the parties and perused the material available on record. It is undisputed fact that the Ld. CIT(A) has dismissed the appeal without going into the merits of the case. He has not decided the grounds raised by the assessee which in our view is not an appropriate approach. The Ld. CIT(A) ought to have adverted to the submissions made by the assessee through grounds of appeal and decided the matter by way of a speaking order. But the Ld. CIT(A) has dismissed the appeal by observing as under: -

“5.8. in view of the facts and legal position discussed above, it is seen that appellant is not interested in pursuing the appeal and not having any documents, explanation and evidence in support of grounds of appeal raised and thus has not discharged onus to prove the genuineness of the fact raised in grounds of appeal. it is seen that the appellant has filed Statement of facts/Grounds of appeal along with Form 35, but no written submission has been filed till date. in view of the lack of prosecution by the appellant, appeal of appellant should be dismissed in limine without ‘considering appeal on merit. However, to provide natural justice to appellant, [proceed to decide the appeal based on facts and material available on records.

6. Even on merits, a decision based on material available on record, would go against appellant.

Ld. JAO has opined on the issues as follows in assessment order, which is reproduced

3. The Investment in these lands comes 5 to Rs 1,32,37,080/- [Rs. 1,20,00,000/- (consideration) + Rs. 11,97,000/- (stamp duty) +Rs. 40,080/- (registration fee). The value adopted by registration authority of these properties, purchased by assessee during the year is Rs. 1,76,06,000/-. Without prejudice 16 any the ? addition, the difference of this market value Rs. 1.76.06.000/and purchase price paid Rs 1.20,00,000i e. Rs 56 06.000/ is added to the income of assessee under provision of section 56(2)(vii)(b) (ii) of IT Act,1961. (Addition of Rs.56,06,000/-)

5. The assessee has made capital addition of Rs 2 lacs & Rs 1 lac on 11/10/2013 & 31/10/2013 respectively till this date assessee has made withdrawal of Rs.3,04,800/- but on 19/12/2013 she has made a@ capital contribution of Rs 65000/ but on date she's left with only Rs 4,800/-. Therefore, the assessee has contributed the sum of Rs 60,200/from undisclosed source i.e. being difference of Rs 65000-4800/-, On - 30/01/2013 the assessee has made further contribution a sum of Rs 96,950/ but she has no money in hand out of withdrawal from 'the capital a/c. therefore, this sum Rs 96500/- is also contributed from undisclosed sources. The contribution of Rs 24,892 May be treated as contributed out of withdrawal of R\$ 2,00,000/- on 28/02/2014. Therefore, Rs.1,56,700/- (Rs 60,200/ + Rs 96,500) recorded in her books of @counts as capital contribution for which no explanation has been offered by assessee is being added to the Income of the assessee under provision of section 68 of IT Act.1961,

6. Capital contribution by drawing from firm M/s M.D, Enterprises. 657-A/1, Jamuna Nagar Chak Raghunath, Naini Allahabad of Rs. 24,50,000/(Rs. 26.50.000 reflected in capital account of firm). In this regard, it is important to note here that this firm has no business. Only a contribution has shown by four partners as initial contribution in the firm totaling to Rs 27,00,000/-. Further, no interest has been credited/debited in the capital account of this firm in terms of clause no. 6 of partnership deed. Neither cash book of firm or any other document has been produced before me which may indicate that a sum of Rs 26,50,000/was withdrawn from the firm nor the bank account/details of cheque has been furnished to establish ° the genuineness of this transaction. Moreover, | have perused the 2 bank accounts shown in the balance sheet of the assessee copy of which has been submitted by the assessee during the course of assessment shows no entry of Rs. 24,50,000/or Rs. 26,50,000/- Therefore, the assesses failed to discharge her onus & prove the genuineness of this transaction, therefore, Rs 24,50,000/ {I am not taking as Rs. 26,50,000/as mentioned in capital account of M/s M.D Enterprises) which is recorded in the books of accounts of the assessee is added to the income of the assessee from undisclosed sources under provision of section 68 of the IT. Act, 1961. [Addition of Rs. 24,50,000/-] ~

7, Capital contribution in form of gift in cash from relatives Re. 48,68,000/The assessee was specifically asked vide quarry no 2 of notice dated 11/11/2016 to give proof of identity, RAN, source of income and confirmation of the persons and proof of relation given in section 56(i)(v) who have given these gilts to the assessee. On 14/12/2016 Sif VikarmJeet Singh Bhadauna, Advocate attended and filed a photo copy of a proto type confirmation letter of 19 persons in which they have written some relation with the assessee but not given any of the other Supporting documents which may establish that the donor and the donee has the relation mentioned in section 56(i)(v) of the IT Act. Thus, assessee failed to discharge her onus to prove the identity of the persons, PAN of the persons and Source of income (creditworthiness) of persons donating the money to the assessee. Thus all these so called cash gift cannot be treated as

genuine transactions. Thus assessee failed to give sufficient evidence regarding this cash introduction in her capital account. Therefore, Rs 48,68,000/which is recorded in the books of accounts of the assessee (Capital account) is an income from Undisclosed source of assessee under provision of section 68 of the I T Act,1961. [Addition of Rs 48.68,000/-]

8. Capital contribution in form of gift from others of Rs.32,90,000/-. The assessee was specifically asked vide quarry no 3 of notice dated 11/11/2016 to give proof of identity, PAN source of income and confirmation of the persons, who have given these gifts to the assessee. On 14/12/2016 Sri Vikarm Jeet Singh Bhadauria, Advocate attended and filed a photo copy of a proto type confirmation letter of 74 s, but not given any of the other supporting documents as desired by mentioned query. Thus assessee failed to discharge her onus to prove the identity of the persons, PAN of the persons and source of income (creditworthiness) of persons genuine the money to the assessee. Thus, all these so called cash gifts cannot be treated as genuine transactions. It is pertinent to mention here that even, the assessee furnished these documents, she would not have been given any benefit as section 56(2)(vii)(b) speaks of gift receipt from others up to in aggregate) Rs. 50,000/-. Thus assessee failed to give sufficient evidence regarding this cash introduction in her capital account. Therefore, Rs. 48.68,000/- which is recorded in the books of accounts of the assessee (Capital account) is an income from undisclosed source of assessee under provision of section 68 of the I T Act,1961. Addition of Rs 32.90.000/-]

9, During course of examination of books of accounts, the assessee has submitted copy of ledger of license fee, in which expenses of Rs. 24,61,182/- are recorded, but could not produce copy of challan dated 06.02 2014 of Rs 6,23, 742/-, therefore. Rs. 6,23, 742/- is disallowed in want of supporting voucher of expenses and added to the income of the assessee [Addition of Rs 6,23,742/]

62 Section 68 of the Income Tax Act (ITA) 1964 refers to the treatment of unexplained cash credits. This section places the onus of proof on the taxpayer who has received any sum of money or property, the nature and source of which are not adequately explained during the tax assessment proceedings.

in simple terms, a taxpayer is found to have an unexplained cash credit in their books of accounts or financial statements, the burden of proving the source and legitimacy of that cash credit falls on the taxpayer. It is the responsibility of the taxpayer to provide satisfactory explanations and evidence to establish the source of the money or property.

The taxpayer fails to provide a reasonable explanation or supporting evidence for the unexplained cash credit, the amount may be treated as the taxpayer's income, and income tax may be levied on it accordingly. This provision is in place to prevent tax evasion and ensure that taxpayers can account for all their income and transactions transparently.

6.3 in this case, provisions of Section 68 of IT Act, 1961 are clearly attracted, it would be relevant to illustrate the provisions of section 68 of the Income Tax Act 1961 which are reproduced here as under: -

where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanations about the nature and source or the explanation offered by him is not, in the opinion of the [Assessing] Officer Satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year:

Provided that where the assessee is a company (not being a company in which the substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee not satisfactory, unless

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be Satisfactory:

In the light of the above contention of the assessee it is important to examine the judicial principles laid down by various courts regarding the issue of unexplained credit entries. In this connection, it may be stated that the issue of burden of proof u/s 68 of the Act has been examined by Hon'ble Supreme Court in several cases. The Ratio decidendi as laid down by Hon'ble Apex court may be summarized as under: (2) Burden of Providing source of credit in books of accounts i.e. on the assessee. Hon'ble Supreme Court in case of Sreelekha Banerjee v CIT (1953) 49 ITR 112, 117 examining the burden of proof u/s 68 has held when a credit entry appears by the assessee's books of accounts in an accounting year, the assessee has a legal obligation to explain the nature and source of such credit. Hon'ble Supreme Court in his later judgement in case of Seth Kalekhan Md, Hanif v CIT (1963) 50 ITR 1 has held If the assessee offers an explanation about the "edit, the income-tax department can put the assessee to proof of his explanation,

(if the assessee fails to tender evidence or makes an enquiry, then the Assessing Officer justified in rejecting the explanation and holding that the income is from an undisclosed. Ingredients of the assessee's onus:

Hon'ble Kerala High Court in case of M.A. Unneeri Kutty v CIT (1992) 198 ITR 447, 150 (Ker). SLP dismissed by Hon'ble Supreme Court: (1993) 201 ITR (st.) 23 examining ingredients of assessee's onus has held It is necessary for the assessee to prove prima facie the transactions which results in a credit in his books of account. such proof includes proof of the identity of his creditors, the capacity of such creditors to advance the money and, lastly, the genuineness of the transaction. these things must be proved prima facie by the assessee and only after the assessee has adduced evidence to establish prima facie the aforesaid, the onus shifts on the department. Merely established the identity of the creditor is not enough.

(c) Burden of proof Explanation of the Assessee: Hon'ble Supreme Court examining the Issues of explanation by the assessee as a part of his onus under u/s 68 of the Act in case of Sumati Dayat vs CIT (1995) 214 ITR 801 has held as under: it is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies upon the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within an exemption provided by the Act upon the assessee. (see Panmisetti Seetharamnariima [1965] 57 ITR 532 at page 536). But, in View of section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to Income-tax the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. in such a case there is, prima facie, evidence against the assessee, viz., the receipt of money, and if he fails to

rebut It the said evidence being rebutted, can be used against him by holding that it was a receipt of art income nature, while considering the explanation of the assessee the Department cannot, however, act unreasonably. (See Sreelekha Banerjee' case (1963) 49 (SC) 112 at Hon'ble Supreme Court in Its Judgement in case of CIT v P. Mohankalg 7) 291 ITR 278 has held as under: 16, The question is what Is the true nature and scope of section 68 of the Act? When, Ney in what circumstances would section 68 of the Act come into play? A bare ding of section 68 suggests that there has to be credit of amounts in the books by an assessee; such credit has to be a sum during the previous year, the assessee offer no explanation about the nature and source of such credit in the books; or the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory, It is only, then the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The expression "the assessee offer no explanation" means where the assessee ng proper, reasonable and acceptable explanation as regards the sum found credited in the books maintained by the assessee. It is true the opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record the opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua for forming the opinion."

Hon'ble. Supreme Court in its later judgement in case

Grounds of appeal are decided as follows:

- 1) Dismissed as general in nature,
- 2) Dismissed as nothing adverse has been brought on record about service of 'notices as mentioned in assessment order. All the submissions have been considered by Ld.JAO before arriving at the decision.
- 3) Dismissed as position of ITA 1961 is very clear. The section was bought into IT. Act to prevent tax evasion using undervaluation of immovable property, sub-clause

(b) of section 56 (2){vil) was amended in Finance Act 2014 with effect from 1st April 2014 as:

(vii) where an individual of @ Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009:

(b) any immovable property,

without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(i) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration.

According to sub-clause (ii), if the sale consideration fs less than the stamp duty Valuation of immovable property, then difference more than rupees fifty thousand shall be taxable as Income from Other Sources. Thus section 56 ie applicable to the payer i.e the property which is undervalued as

compared to its stamp duty valuation. further, provision of section 56(2)(vii)(b) was applicable only to the assessee who is individual or HUF. The underlying assumption is that the actual consideration passed on the transfer of immovable property cannot be less than circle rate/ Stamp duty Value and in case the apparent consideration shown in the transaction is less than the stamp duty value, the deeming fiction as envisaged u/s 56(2)(vii)(b) qua transferor & transferee shall come into force.

4) Dismissed — As discussed in ground of appeal three.

5) Dismissed — as and proof/evidence/documentation was provided regarding sources from which the amount was taken to capital account.

6) Dismissed — As no contrary evidence to conclusion as reached by Ld.JAO has been brought on record even in appeal proceedings. Onus in section 68 was on Appellant to prove the genuineness of transaction. it has failed to do so and undersigned finds no lacunae at this stage in the decision taken by Ld. JAO.

7 & 8) Dismissed — as Appellant has not explained the nature and source of the cash credit i.e gift received from relatives by placing on record the documentary evidence qua affidavits revealing identity, PAN, source of such income (of donor), and thus, failed to discharge the primary onus that was cast upon him as regards to proving the gift transaction under consideration.

it may be noted that in the case: of Sunil Thomas vs [TO Hon'ble Kerala HC - 80 taxmann.com 61 vide its order dated 07/03/2027 held that donor (creditor) who was assessee's brother, apart from furnishing his employment particulars and Confirming gift, couldn't explain genuineness of transactions or his creditworthiness by proving his monetary ability to make such gifts of substantial amount, gift amount Was to be treated as undisclosed Income and confirmed addition made by Ld.JAO.

Headnotes are reproduced as below for a ready reference ~

‘Section 68 of the Income-tax Act, 1961 - Cash credits (Gift) - Assessment year 200910 - Assesses claimed to have received gift from his NRI brother - Assessing Officer treated it as assessee's undisclosed income on ground that same was not real and Genuine - assessee's brother, apart from furnishing his employment particulars, confirmed gift that he had made - Details of utilization of gift amounts was also furnished - Assesses brother didn't make any endeavour to explain genuineness of transactions or his creditworthiness by producing necessary documents proving his Monetary ability to make such gift of substantial amount - Whether there was No illegality in order of Assessing Officer treating same as undisclosed income - Held, —

yes [Paras 7 and 10] {In favour of revenue’

9) Dismissed as discussed in ground of appeal 7 & 8.

10) Dismissed as copy of the challan has not been produced before the Ld JAO nor in appeal proceedings. Ld. JAO may allow the same at time of passing OGE, if at all Produced by appellant; after due verification.

11) Dismissed as general in nature.

12) Dismissed as general in nature.

13) *Dismissed as general in nature. No evidences have been submitted during appeal proceeding in support of such aim. Once, the onus is on appellant, the same has to be discharged by way of contemporary documents and evidences in which, it has miserably failed.*

7. *“Thus. the order of LJAO is upheld as onus has remained undischarged on part of appellant. Thus, on merits, the grounds of appeal are rejected and appeal for AY. 2014-15 is dismissed.*

8. *As a result, appeal is Dismissed.”*

6. The above finding of the Ld. CIT(A), under the facts and circumstances of the present case cannot be sustained. Undisputedly, there is no discussion by Ld. CIT(A) on merit of the case. It has been well settled that the Ld. CIT(A) is expected to verify the claim of assessee independently and pass a speaking order on the issues raised by the assessee in his appeal. We, therefore, set aside the impugned order to secure the ends of justice. Therefore, the appeal is remitted back to Ld. CIT(A) for decision on merits. The assessee is hereby directed that he would co-operate in the proceedings before the Ld. CIT(A) and furnish the requisite details as and when called for proper adjudication of the case. Grounds of appeal of the assessee are allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order was pronounced in open court on 30/09/2025

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED: 30/09/2025

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

By order

//True Copy//

Assistant Registrar