

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.75/Lkw/2023
Assessment Year: 2010-11

Rajesh Benara, 24/4, The Mall, Kanpur-208 001 PAN:AAZPB2235K (Appellant)	Vs.	A.C.I.T., Central Circle-1, Kanpur. (Respondent)
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Appellant by	None (Written submissions filed by Shri Ashish Jaiswal, Advocate)
Respondent by	Shri Amit Kumar, Addl. CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) This appeal vide I.T.A. No.128/Lkw/2024 has been filed by the assessee pertaining to assessment year 2017-18 against impugned appellate order dated 15/02/2024 [Din & Order No.ITBA/NFAC/S/250/2023-24/1060980945(1)] passed by learned Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

(B) The facts of the case, in brief, are that the assessee filed his return of income on 10/12/2010 declaring total income of Rs.3,57,490/-. The Assessing Officer completed the assessment and passed assessment order on 08/03/2013 u/s 143(3) of the Income Tax Act, 1961 ("the Act" for short)

determining the total income of the assessee at Rs.4,76,950/- by making addition of Rs.1,19,462/- on account of unexplained cash. Being aggrieved, the assessee filed appeal against the assessment order in the office of learned CIT(A). Vide order dated 27/01/2023, the assessee's appeal was dismissed by the learned CIT(A). Being aggrieved, the assessee has filed the present appeal in Income Tax Appellate Tribunal against the aforesaid impugned appellate order of learned CIT(A).

(C) In the course of appellate proceedings in ITAT, there was no representation from the assessee's side. However, a written submissions was filed by Shri Ashish Jaiswal, Advocate vide which it has been submitted that the family members of the assessee had filed their income tax returns i.e. Sangeeta Jain, wife at total income of Rs.11,60,990/- and Pratham, son at total income of Rs.2,05,190/- apart from assessee's own ITR at Rs.3,57,490/- after deduction under chapter VIA and assessee has made withdrawals for house hold expenses, as appearing in cash flow statement and cash book. It has also been argued through the above written submissions that the opening balance is coming from the preceding year and no addition can be made in the present assessment year out of the balance from preceding year. Learned D.R. supported the orders of the Assessing Officer and the learned CIT(A).

(D) We have heard both parties and have gone through the material placed on record. The written submissions filed from the assessee's side are reproduced below:

That the counsel for the appellant very humbly submits before your honour the ITR of the family members of appellant i.e. Sangeeta Jain, wife at total income of Rs.11,60,990/- and Pratham, Son at total income of Rs.2,05,190/- (enclosed with this letter) apart from appellants own ITR at total income of Rs.3,57,490/- after deduction under chapter VIA appearing at page 1-4 of the paperbook and household withdrawals appearing in cash flow statement and cash book at page no.16 of the paperbook (paperbook already filed). The appellant humbly submits that opening balance is coming from the preceding year and no addition can be made in the present assessment year out of the balance from preceding year. Moreover, the from ITRs of appellant of last three preceding year and the ITR of family member it could be presumed that he had sufficient accumulated fund to explain the opening capital balance of Rs.1,19,462/-.

Further, the appellant places reliance upon the decision of Sumit Gahlot vs. ITO, ITA 176/Jodh/2019 dated 24.03.2023 on the similar issue of addition on account of opening capital balance at Para 3.6 of the order (copy of order enclosed).

The appellant humbly prays before your honour that the appeal may kindly be decided as your honour deem appropriate in the interest of justice to the appellant.

That the appellant humbly submits before your honour that the case is fixed for hearing on 19.01.2026 and the counsel for the appellant is virtual appearing before your honour.

Your honour, the appellant has earlier filed brief submission alongwith enclosure in the form of ITRs of family member of the appellant and case law of Hon'ble Tribunal in the case of Sumit Gahlot vs. ITO, 176/jodh/2019 vide submission dated 29.11.2024.

That the appellant very humbly submits before your honour the ITR of the family members of appellant i.e. Sangeeta Jain, wife at total income of Rs.11,60,990/- and Pratham, Son at total income of Rs.2,05,190/- (filed vide letter dated 29.11.2024) apart from appellants own ITR at total income of Rs.3,57,490/- after deduction under chapter VIA appearing at page 1-4 of the paperbook and household withdrawals appearing in cash flow statement and cash book at page no.16 of the paperbook (paperbook already filed). Further, the appellant humbly submits that opening balance is coming from the preceding year and no addition can be made in the present assessment year out of the balance from preceding year.

Moreover, the from ITRs of appellant of last three preceding year and the ITR of family member it could be presumed that he had sufficient accumulated fund to explain the opening capital balance of Rs.1,19,462/-.

Furthermore, the appellant places reliance upon the decision of Sumit Gahlot vs. ITO, ITA 176/Jodh/2019 dated 24.03.2023 on the similar issue of addition on account of opening capital balance at Para 3.6 of the order (filed and enclosed with the letter 29.11.2014).

In view of above, the appellant humbly prays before your honour that the appeal may kindly be decided as your honour deem appropriate in the interest of justice to the appellant.

(D.1) A paper book containing the following particulars was also filed from the assessee' side:

PAPER BOOK INDEX		
Sl. No.	Particulars	Page No.
1.	Copy of Acknowledgement of ITR for A.Y 2010-11 alongwith computation of income	1-4
2.	Copy of Intimation u/s. 143(1) for A.Y 2009-10 alongwith computation of income	5-8
3.	Copy of Acknowledgement of ITR for A.Y 2008-09 alongwith computation of income	9-12
4.	Copy of Written Submission filed before Ld. CIT(A) alongwith cash flow statement and cash book for A.Y 2007-08 to A.Y 2010-11 with bank statement	13-79
5.	Copy of reply filed before Ld. AO	80-88

(D.2) The opening cash balance is supported by income disclosed by the assessee in earlier years. Further, the assessee's family members have also disclosed income. Based on these supporting materials, the assessee's contention that the opening balance is explained, is on sound footing. Revenue has not made any case for addition of the aforesaid amount of Rs.1,19,462/- on account of opening balance. The Assessing Officer has failed to appreciate that it is not a requirement of law, that a taxpayer should have nil opening balance. The relevant issue is whether, in the facts and circumstances of the case, considering the income of the ase in earlier year(s) and considering various other sources of funds in earlier year(s) the opening balance claimed by the assessee is credible or not. Revenue has failed to prove that the aforesaid amount of Rs.1,19,462/- was not out of disclosed income and other sources of funds in earlier year(s). Even assuming, for the sake of discussion that the opening balance is not explained by income and other sources of funds in earlier years; even then accounting principles and provisions of law do not permit the addition in this year. Opening balance as on 01/04/2009 in this case, is nothing but (and same as) closing balance as on 31/03/2009. Therefore, if closing balance

as on 31/03/2009 on last day of preceding financial year (i.e. opening balance as on the first day of current financial year) is doubted, adverse reference, if any, is to be taken in preceding financial year(s) and not in the current financial year. In view of the foregoing, the addition of Rs.1,19,462/- is hereby deleted.

(E) In the result, the appeal of the assessee is allowed.

(Order pronounced in the open court on 20/01/2026)

Sd/.
(KUL BHARAT)
Vice President

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:20/01/2026
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. D.R. ITAT