IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1934/Del/2015
(Assessment Year: 2011-12)

Roshan Lal Verma A-50, East Uttam Nagar, Near Indira Park, New Delhi. **PAN No. ACAPV2833Q**	vs	DCIT Central Circle – II Faridabad.
APPELLANT		**RESPONDENT**

Appellant/Assessee by	**Sh.Sanjeev Bajaj, CA**
Respondent/Revenue by	**Ms. Meeta Singh, CIT DR**

Date of Hearing	**14.06.2018**
Date of Pronouncement	**27.06.2018**

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 29.01.2015 passed by the CIT(Appeals)-3, Gurgaon for AY 2011-12.

2. The Grounds of appeal are as under:

1. *"That the order passed u/s 153B(1)(b) of the Income Tax Act, 1961 is bad in law and against facts.*
2. *On the facts and circumstances of the case, the order passed u/s 153B(1)(b) of the Income Tax Act, 1961 is bad in law as no proper notices were issued/served. The order passed is without jurisdiction and barred by limitation.*
3. *On the facts & circumstances of the case, the Ld.CIT(A) has erred in sustaining the addition of Rs. 1,07,00,000/- against the facts, law and explanations furnished.*
4. *On the facts and circumstances of the case, the Ld. Assessing Officer erred in charging interest u/s 234A, 234B and 234C of the*

Income Tax Act, 1961.

5. *The appellant may be permitted to add, alter or delete the grounds of appeal."*

3. By virtue of the authorization of the Director of Income-tax (Investigation), Ludhiana, under section 132(A) in the case of the assessee, Satta Operators Group of Cases were subjected to search and seizure operations on 21.06.2010. Assessment jurisdiction over the assessee was transferred to the circle by the Commissioner of Income Tax, Delhi-IX, New Delhi vide order dated 18.11.2010 with immediate effect. The seized documents in the group were received in the circle 19.02.2012. In accordance with the provisions of section 153A of the Income Tax Act, 1961, a notice dated 28.02.2012 u/s 142(1) of the Act was issued and served upon the assessee, requiring him to file return of income in respect of AY 2011-12. In response to the notice, the assessee filed his return of income, duly verified and signed as per the provisions of section 140 of the Act, returning a total income of Rs. 33,48,502/- + Agriculture income of Rs. 3,25,580/- on 14.10.2011. Notices under section 142(1) of the Act along with a questionnaire were issued to the assessee on 28.02.2012, which were duly served upon the assessee. In response to the said notice, Authorized Representative of the assessee attended the assessment proceedings from time to time. The requisite details and written submissions was filed by the assessee. The Assessing Officer rejected the submissions of the assessee made addition of Rs. 1,07,00,000/- u/s 68 of the Income Tax Act.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that notice u/s 143(2) of the Act, was issued on 14.11.2012 which is beyond the stipulated time as per the Proviso of clause (ii) of sub-section (2) of Section 143 of the Act. The notice should have been issued on or before 30.09.2012 as the return was filed on 14.10.2011 u/s 139(1) of the Act. The Ld. AR submitted that it is well settled law that issue of

notice u/s 143(2) within stipulated time is mandatory requirement and is not curable u/s 292BB of the Act. The Ld. AR further submitted that Ground Nos. 1 and 2 are not raised before the CIT(A). The Ld. AR relied upon the following decisions:

i) ACIT & anr. vs. Hotel Blue Moon (2010) 321 ITR 362 (SC)

ii) Pr. CIT vs. Paramount Biotech Ind. Ltd. (2017) 11 TMI 127, (Del. HC)

iii) DIT vs. V. R. Educational Trust 2013 (12) TMI 745 (Del. HC)

iv) Alpine Electronics Asia Pvt. Ltd. vs. DGIT (2012) 341 ITR 247 (Del.)

v) Dalmia (R) vs. CIT (1999) 236 ITR 480 (SC)

vi) CIT vs. Pawan Gupta (2009) 318 ITR 322 (Del)

vii) DCIT vs. M/s Silver Line (2014) 10 TMI 141 (Del.)

viii) CIT vs. Rajeev Sharma (2011) 336 ITR 678 (All.)

ix) UKT Software Technologies P. Ltd. vs. ITO 2013(1)TMI 678 (Del. Tri.)

x) CIT vs. Mukesh Agarwal (2012) 345 ITR 29 (All.)

xi) CIT vs. M/s Parikalpana Estate Development (P) Ltd. 2012(10)TMI 617 (All. HC)

xii) CIT vs. M/s Cebon India Ltd. (2012) 347 ITR 583 (P&H)

xiii) Pr. CIT vs. Shri Jai Shiv Shanker Traders P. Ltd. (2016) 383 ITR 448 (Del.)

xiv) CIT vs. Delhi Kalyan Samiti 2016 (4) TMI 172 (Del.)

As regards to Ground No. 3, the Ld. AR submitted that the Assessing Officer while stating that statement recorded on 17.06.2010 during the course of search u/s 132 whereas in opening paragraphs of the Assessment Order stated that search and seizure operations was carried out on 21.06.2010 by virtue of order u/s 132A of the Act. Thus, the statement recorded on 17.06.2010 was prior to search and seizure operation. The Ld. AR further

submitted that the provision of sub-section (4) of Section 132 of the Act is not applicable for search and seizure authorized u/s 132A of the Act. The Ld. AR submitted that the statement recorded on 17.06.2010 was recorded at CIA(HQ) Police, Ludiana when the assessee was under Police custody. The assessee was in custody from 13.06.2010 till 19.07.2010. The CIT(A) has given the said finding in para 5 of the order observing that no conclusive or substantive findings can be drawn from such statement. The statement given on 17.06.2010 was under duress and also cannot be taken on oath not being statement u/s 132(4) of the Act. The addition cannot be made on the basis of statement not taken on oath without any corroborative material evidences. Hence, the amount of Rs. 1.07 crore earned from satta operation was added without any material corroborative evidences. The Ld. AR further submitted that no credential has been given to statement recorded on 30.08.2010 which was given in response to notice u/s 131(1A) of the Act. The material evidences of source of cash of Rs. 1.07 crores was produced at the time of Assessment proceedings like capital /Drawing A/c of the assessee in the books of M/s Naman Dairy in which the assessee is partner producing thereby the following documents:

i) Copy of cash book of M/s Naman Dairy for the period from 01.04.2010 to 12.06.2010

ii) Copy of capital A/c showing withdrawal of Rs. 1.07 crores from M/s Naman Dairy

iii) Copies of duly audited balance sheet and P& L a/c with audit report u/s 44AB of the Act of A.Y. 2010-11 to 2011-12.

iv) No Books of A/c's were rejected by the Income Tax Authority in case of M/s Naman Dairy

The Ld. AR further submitted that the Assessing Officer has not made any enquiry from his counterpart. The Cash Book could not be produced by the

assessee at the time of statement on 17.06.2010 as the assessee was in police custody. The Ld. AR relied upon the following decisions:

i) CIT vs. Smt. S. Jayalakshmi Ammal (2017) 390 ITR 189 (Mad)

ii) Bansal High Carbons (P) Ltd. (2009) 223 CTR 179 (Del)

iii) Sanjeev Kumar Jain (2009) 310 ITR 178 (P&H)

iv) CIT vs. Uttamchand Jain 320 ITR 554 (Bom)

v) Paul Mathews 263 ITR 101 (Ker) and Kadar Khan 300 ITR 157 (Mad)

vi) Vinod Solanki vs. UOI 233 ELT 157 (SC)

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant records. As relating to Ground No. 1 and 2, it can be seen that in the present case the notice under Section 143(2) was issued to the assessee which is not the mandatory requirement under the provisions of Section 153A of the Act. As per Section 153A, simple notice has to be given to the assessee. Thus, the contention of the Ld. AR that issue of notice u/s 143(2) within stipulated time is mandatory requirement and is not curable u/s 292BB of the Act does not find support. The notice issued to the assessee has mentioned Section 143(2) but that can be treated as simple notice which has to be given under the provisions of Section 153A of the Act. In fact, the Hon'ble Delhi High Court in case of Ashok Chaddha vs. ITO 337 ITR 399 after considering the decision of the Hon'ble Apex Court in case of Hotel Blue Moon (supra) held as under:

> *6. It is against this order of the Tribunal that the assessee has preferred appeal before us. Learned counsel for the assessee contends before us that to examine or verify any return filed under Section 153A, the issuance of notice under section 143 (2) of the Act is a mandatory requirement. He submits that it cannot be construed as an empty formality or a procedural defect which can be cured, but goes to the root of the matter and fatal to the validity of the assessment. He contends that the law laid down by the Hon''ble Supreme Court in Hotel Blue Moon v. DCIT, 321 ITR 362 is equally applicable to the cases where return has been filed under section 153A of*

the Act. He also relies upon the judgments of R. Dalmia v. CIT, 236 ITR 480 (SC), CIT v. Pawan Gupta, 318 ITR 322, CIT v. Lunar Diamond Ltd. 281 ITR 1 (Del), CIT v. Vardhman Estates 287 ITR 368, CIT v. Bhan Textiles 287 ITR 370 and Raj Kumar Chawla v. ITO, 277 ITR (AT) 225.

7. On the other hand, learned counsel for the revenue argues that the assessment being under Section 153A, there is no requirement of issue of notice under section 143(2) of the Act. He submits that in any case, there is no prescribed proforma for issuing the notice. The notice is usually issued in the proforma marked as "ITNS-33". It is a communication by the AO to the assessee giving him the opportunity as required under section 143 (2). Therefore, once the assessee has been put to notice and given opportunity to attend the office, the requirement of section 143 (2) is complete whether notice is issued in proforma "ITNS-33" or in any other format. In the present case, the AO had communicated his intention to scrutinize the return by way of two letters and afforded opportunity to the assessee to produce necessary accounts, documents or evidence. Therefore, the requirement, if any, of section 143(2) has been satisfied.

8. Admittedly, the assessee was issued a notice under section 153A of the Act, in response to which he had filed a return of income. Thereafter, two detailed questionnaires were issued to the assessee before the completion of assessment. Section 153 A of the Act provides procedure for assessment in case where a search is initiated or documents are requisitioned. The relevant portion of Section 153A is reproduced here under:

"Section 153A - Assessment in case of search or requisition [1] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall -

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed3 form and verified in the prescribed manner and setting forth such other particulars as may be prescribed 3 and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 ;

....."

9. There is no specific provision in the Act requiring the assessment made under section 153A to be after issue of notice under section 143(2) of the Act. Learned counsel for the assessee places heavy reliance on the judgment of

the Hon"ble Supreme Court in Hotel Blue Moon v. DCIT, (Supra) wherein it was held that the where an assessment has to be completed under section 143(3) read with section 158BC, notice under section 143 (2) must be issued and omission to do so cannot be a procedural irregularity and the same is not curable. It is to be noted that the above said judgment was in the context of Section 158BC. Clause (b) of Section 158BC expressly provides that "the AO shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of Section 142, sub sections (2) and (3) of Section 143, Section 144 and Section 145shall, so far as may be, apply. This is not the position under section 153A. The law laid down in Hotel Blue Moon, is thus not applicable to the facts of the present case.

10. The decision of Lunar Diamond Ltd. (supra), Vardhman Estates (supra) and Bhan Testiles (supra) relied upon by learned counsel for the assessee related to the requirement of service of notice upon the assessee within a prescribed time and thus not applicable to the present case. The case of Pawan Gupta (supra) related to mandatory issue of notice under Section 143(2) of the Act in the case of regular assessment as also on block assessment. This being not a case of assessment based on search under Section 153(A), the same is not applicable to the present case. In the case of Raj Kumar Chawla (supra) relied upon by learned counsel for the assessee was that of the Tribunal, wherein, a view was taken that if a return filed under Section 148 of the Act is sought to be scrutinized, the compliance of provision contained in proviso under Section 143(2) of the Act is mandatory. The issue of requirement of notice under section 143(2) for an assessment under section 147 came up for consideration before this court recently in CIT v. Madhya Bharat Energy Corpn., ITA No. 950/08 decided on 11-07-2011. In that case also, this court has held that in the absence of any specific provision under Section 147 of the Act, the issuance of notice under Section 143 (2) cannot be held to be a mandatory requirement.

11. It is also to be noted that Section 153A provides for the procedure for assessment in case of search or requisition. Sub section (1) starts with non-obstante clause stating that it was „notwithstanding" anything contained in sections 147, 148 and 149, etc. Clause(a) thereof provides for issuance of notice to the person searched under Section 132 or where documents etc are requisitioned under Section 132(A), to furnish a return of income. This clause nowhere prescribes for issuance of notice under Section 143(2). Learned counsel for the assessee/ appellant sought to contend that the words, "so far as may be applicable" made it mandatory for issuance of notice under Section 143(2) since the return filed in response to notice under Section 153A was to be treated as one under Section 139. Learned counsel relies upon R. Dalmia v CIT (supra) wherein the question of issue of notice under Section 143(2) was examined with reference to Section 148 by

the Supreme Court in the context of Section 147. The Apex Court held as under:

"As to the argument based upon Sections 144-A, 246 and 263, we do not doubt that assessments under Section 143 and assessments and reassessments under Section 147 are different, but in making assessment and re-assessments under Section 147 the procedure laid down in Sections subsequent to Section 139, including that laid down by Section 144B, has to be followed."

12. The case of R. Dalmia v CIT (supra) primarily was with regard to applicability of section 144B and Section 153 (since omitted with effect from 01.04.1989) to the assessment made under section 147 and 148 and thus cannot be said to be the decision laying down the law regarding mandatory issue of notice under Section 143(2).

13. The words "so far as may be" in clause (a) of sub section (1) of Section 153A could not be interpreted that the issue of notice under Section 143(2) was mandatory in case of assessment under Section 153A. The use of the words, "so far as may be" cannot be stretched to the extent of mandatory issue of notice under Section 143(2). As is noted, a specific notice was required to be issued under Clause (a) of sub-section (1) of Section 153A calling upon the persons searched or requisitioned to file return. That being so, no further notice under Section 143(2) could be contemplated for assessment under Section 153A.

14. No specific notice was required under section 143(2) of the Act when the notice in the present case as required under Section 153 (A) (1) (a) of the Act was already given. In addition, the two questionnaires issued to the assessee were sufficient so as to give notice to the assessee, asking him to attend the office of the AO in person or through a representative duly authorized in writing or produce or cause to be produced at the given time any documents, accounts, and any other evidence on which he may rely in support of the return filed by him.

15. Learned counsel for the assessee further assails the order of the Tribunal and contends that it has erroneously upheld the addition of Rs.10,00,000/- found by the Railway police in the possession of Dilbar Singh Rawat despite evidences being filed to demonstrate that the assessee"s nephew has claimed ownership of the monies and filed an application of claim before Railway Magistrate, Bhopal. He contends that the matter is sub-judice before the Railway Magistrate and in the absence of any findings by the Magistrate, the findings given by the Tribunal are un-warranted and unjustified.

16. In this regard, learned counsel for the revenue argues that no doubt an application dated 23.01.2008 has been filed by Shri Sudhir Chadha whereby he has claimed ownership of the seized money. However, it is noted that the amount was seized on 20.04.2003 as seen from the telegram sent by Thana Prabhari, GRP, Bhopal, whereas the claim of ownership was made on 23.01.2008, much after the date of seizure. No steps were taken by the assessee or Shri Sudhir Chadha for almost 5 years. It was only when the assessment order came to be passed on 31.12.2007, that Shri Sudhir Chadha submitted a claim that the money belongs to him. Also, there is no plausible explanation given by the assessee as to why his employee was found in possession of cash. No detail has been filed about the land sought to be purchased by him. In these circumstances, the Tribunal was right in holding that the claim made by Shri Sudhir Chadha is an afterthought to accommodate the assessee. Had the money really belonged to him, he would have made the claim soon after its seizure. Consequently, we are in agreement with the concurrent finding of both CIT (A) and the Tribunal.

17. In view of our above discussion, we decide both the issues in favour of the Revenue and against the assessee. The appeal is hereby dismissed.

This decision has also considered other decision which was relied by the Ld. AR namely, R. Dalmia v. CIT, 236 ITR 480 (SC), CIT v. Pawan Gupta, 318 ITR 322. Thus, the contention of the Ld. AR that no proper notices were issued/served and the order passed is without jurisdiction and barred by limitation does not survive. Thus, Ground No. 1 and 2 are dimssied.

8. As regards ground No. 3 which relates to the merit of the case, it is pertinent to note that the CIT(A) has given a detailed finding and held as under:

"5.3 I have considered the assessee's submission as well as the impugned order. It emerges that the Police seized Rs.1,07,00,000/- from the residence of the assessee. The raid was on 13.06.2010. This was followed by search and seizure operations u/s 132 and in his statement recorded, the assessee had admitted that the cash of Rs. 1,07,00,000/- found from his possession pertained partly to Satta Operators and Rs.35,00,000/- to Shri Jasmer Singh and Shri Sunil Kumar Gupta. Later on, the assessee changed his statement to state that the cash found pertained to his Diary business and that it was lying with him since he was supposed to make a payment on account of purchase of property from Smt. Beermati Devi. It was

submitted that the property was for Rs.1.27 crs of which Rs.10,00,000/- was given as advance. It was also stated that he had to change his statement as he was coerced by the Police. Cash book of Naman Diary and affidavits of Smt. Beermati Devi, Shri Jasmer Singh, Shri Sunil Kumar Gupta and Shri Roshan Lai Verma were filed. However AO emphasised on the admittance by the assessee before the Police authorities. The source of cash explained to be on account of cash sales was not accepted in the absence of supporting documents. The AO also observed that the said cash book now being relied upon was not produced during the course of search when the statement u/s 132(4) was being recorded.

Before me, the assessee has stated that he and his son Lalit were remanded for 8 days, and has contended that statement recorded by the Police had no evidentiary value. The source of the cash was reiterated to be from his dairy business and in support furnished partnership deed of Naman Dairy, ITRs etc. The copy of partnership deed is dated 1.4.2010, wherein a reference has been made to another partnership deed executed on 29.10.2009 and mutually agreeing to reduce in writing the new oral terms of agreement. *The partners are the assessee, his wife and now his son Lalit.*

On the issue of evidentiary nature of statement recorded by the police, it is true that in any civil proceedings including assessment proceedings no conclusive or substantive findings can be drawn on the basis of such statements recorded by the Police. However under the provisions of Cr.P.C. the persons are nonetheless bound to answer truly all questions relating to the issue being put to him by the Police.

In the case at hand, the Punjab Police Ludhiana raided the residence of the assessee on13.6.2010 and seized cash of Rs.1,07,00,000/-. The assessee and his son Lalit admittedly were taken into police custody. The assessee has alleged police torture and that the statement dated 17.6.2010 had been obtained forcefully. However inkling of any police torture has not been brought out. The copy of Court order dated 21.7.2010 (PB page 09), rather illegible, is titled State vs. Amar Nath etc. from which it appears that the accused was further remanded to judicial custody, to be produced on 05.7.2010 and so on. In the statement dated 17.6.2010 (PB-page 06-08) which was after 4 days of remand, the assessee clearly admitted to doing satta business after 2004-05, and even the modus operandi was explained viz. business conducted by phone as well as the manner of collecting/payments. The assessee in response to further query also admitted to having earned about Rs.3 crores in the last 3-4 years from satta

which he invested in dairy and in the businesses of his two sons. Significantly, he also stated that the satta business was not shown in his income tax return. In other words, the source of the cash of Rs. 1.07 crores clearly came from satta business.

Now if one peruses the statement dated 30.8.2010 (copy placed in PB page 10- 13), the assessee claims his business comprised of dairy [since last two years] and property business. This is a complete volte-face. In response to Q.8, he maintains that his admittance to involvement to satta business was under Police pressure, while at the same time he concedes that there was no policeman present at the time of recording of the statement on 17.6.2010 and there was no pressure from the Income tax Department.... The assessee goes on to explain that the cash of Rs.1.07 crores was from sale proceeds of milk of about two and a half months, sold through retail.

Now from the aforesaid discussion, it is rather evident that the assessee is well versed with the nitty-gritty of satta business. The incomings of the satta business were admittedly invested in assessee's business. It is nobody's case that assessee is not running a dairy farm. The issue for consideration is about the source of the cash seized from the residence and whether assessee can be said to have cogently explained his case that he was not involved in satta business. If he was not part of the satta group of operators then on what ground was his residence raided by the Police and why the need for elongated judicial custody.

Under such circumstances as discussed above, I am of the considered opinion that assessee has not been able to satisfactorily explain his position and consequently, the addition of Rs.1,07,00,000/- made by the AO is confirmed. Assessee fails on these grounds of appeal."

From the perusal of records it can be seen that sale proceeds for two and half months are exorbitant and the assessee could not demonstrate as to have the sale proceeds have been more in these two months. We also give our reason for upholding the action of the Assessing Officer in making an addition of Rs. 1.07 crores on account of cash found during the course of search from the residence of the assessee as follows:

01. The assessee has confessed in statement dated 17.06.2010 that he is carrying 'Satta" activities and the cash found from his residence is pertaining to that activity. In answer to Question No. 1, he has categorically and emphatically confessed the above fact. Further, he has also explained the modus operandi that of that business stating that it was carried on phone and the payments are collected by the Munims from Bookies or by himself also, if required. In question No. 2, he submitted that he is earning money from Satta business but is not shown in the income tax return. In answer to Q No. 7 wherein he was asked to explain the cash found of Rs. 1.07 crores on 13.06.2010 from his residence, he submitted that Rs. 36 lacs are form two parties and he does not know the name of one of them and further sum is unaccounted earning from 'Satta business". On reading of his statement, it is apparent that he has given the minutest detail of the source of the money found during the course of search. He did not retract this statement subsequently. On 30.08.2010, in his statement u/s 131 of the act, he changed his version and stated that he is not carrying on any Sata business and the money is from a partnership firm, which is carrying on dairy business. However, he did not produce any evidence then about this version. Assessee was first raided on 26.05.2010, his first statement was recorded on 17.06.2010, and he was in police custody from 13.06.2010 to 19.07.2010. That means he was free immediately after making a statement on 17.06.2010 but he did not retract statement dated 17/6/2010 but changed his version only on 30.08.2010. The inordinate time lag from 19/6/2011 to 30.8.2011 in not retracting the statement, the absence of any evidence such as cash books, audited accounts of earlier years etc. of changed version on 30.8.2011, non allegation of any coercive action or threat by Income Tax department on 17/6/2010, all such circumstantial facts goes against assessee.

Therefore, the lower authorities did correctly as not to believe the statement made by the assessee on 30.8.2011.

02. The assessee has shown source of the above sum of Rs. 1.07 crores as cash withdrawn by him from M/s. Naman Dairy. A partnership firm, wherein, he is a partner. Now to verify the veracity of the money withdrawn from M/s. Naman Dairy it is important to look at the balance sheet of that firm as on 31.03.2010 and 31.03.2011. It is interesting to note as on 01.04.2010 the sundry creditors in the books of the assessee were of Rs. 36.25 lacs whereas, as on 31.03.2011 it reached Rs. 62.10 lacs. That may be because of the increased operation the business. However startling facts have come to the notice that on 31.03.2010 there was no advance from the customers whereas on 31.03.2011 suddenly the advance from the customers have gone to Rs. 1,35,40,000/- and suddenly as on 31.03.2012 these advances from customers have come down to Rs. 15.40 lacs. This is the unusual transaction in the dairy business where the assessee has collected three month's sales as advance against sale as deposit from customers.

03. There is no substantial increase in the profits of the assessee to justify such a huge withdrawal made by the assessee form that firm.

04. Now coming to the explanation that why the assessee has withdrawn the sum from the partnership firm and kept at home. The assessee has explained that he has withdrawn IN CASH Rs. 50 lacs on 16.04.2010 and deposited the same on 17.05.2010 with the firm back in CASH. There is no explanation why asssessee has withdrawn such a huge sum and deposited the same within thirty days. Why the sum was kept for such a long time. Whether it was given to anybody etc. All these questions remained unanswered. Further he withdrew on 31.05.2010 in cash Rs. 50 lacs and once again on 11.06.2010 in cash Rs. 57 lacs from the firm. Therefore, from these accounts, assessee tried to show that RS. 1.07 lacs

found from the residence was this sum withdrawn from the firm. To show the cash in hand the assessee has furnished the cashbook from 01.04.2010 to 12.06.2010. The assessee has shown that it has opening cash in hand on 01.04.2010 of Rs. 4034843/- and subsequently, the assessee has shown the huge sale of milk of Rs. 1.75 lacs per day. It is important to note that the return of income for Assessment Year 2010-11 in which the opening balance was shown to be Rs. 40.34 lacs was also filed after the date of search i.e. 27.09.2010. Further it is interesting to note that in the month of April on 05.04.2010 the assessee has debited in cash staff salary of Rs. 2.70 lacs whereas, labour charges of Rs. 6.35 lacs after that up to June we could not find any such entry of staff salary payable in cash by the assessee.

05. The orders of the assessment passed in case of M/s. Naman Dairy by the Assessing Officer in that firm u/s 143(3) of the Act without disturbing much income offered by the firm does not come to rescue of the firm. We are concerned here with the assessment of the assessee where in cash of Rs 1.07 Cr was found.

06. Further, the Assessing Officer has given reason that the sale of milk shown by the firm in M/s. Naman Dairy has not been substantiated. No such evidences were also produced before the CIT(A) or before us.

07. There is no explanation given by the assessee for unusual withdrawal of Rs. 50 lacs in cash from the firm and then after re depositing in short time.

All these facts do not inspire any confidence in the explanation of the assessee that sum of Rs. 1.07 crores found from the residence of the assessee at the time of search by police alleging him to be a Satta operator is money withdrawn from his dairy business of M/s. Naman Dairy wherein he is a

partner. Thus, there is no need to interfere with the findings of the CIT(A). Ground No. 3 is dismissed.

9. In result, appeal of the assessee is dismissed.

Order pronounced in the open court on 27.06.2018

Sd/-	Sd/-
(PRASHANT MAHARISHI)	**(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 27.06.2018
*Kavita Arora

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	25.6.18
Date on which the typed draft is placed before the dictating Member	25.6.18
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	27.6.18
Date on which the fair order is placed before the Dictating Member for pronouncement	27.6.18
Date on which the fair order comes back to the Sr. PS/PS	27.6.18
Date on which the final order is uploaded on the website of ITAT	27/28.6.18
Date on which the file goes to the Bench Clerk	27/28.6.18
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	