

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.4570/Del/2016  
Assessment Year: 2009-10

Shri Anoop Jain, 11, Babar Lane, Bangali Market, Delhi	<b>Vs.</b>	DCIT, Central Circle-14, New Delhi
<b>PAN : AADPJ2136K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Ashwani Kumar, Adv. & Shri Rahul Kochar, Adv.
Respondent by	Shri Sanjay Goel, CIT(DR)

Date of hearing	17.01.2019
Date of pronouncement	29.01.2019

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal by the assessee is directed against order dated 16/05/2016 passed by Commissioner of Income Tax (Appeals)-XXVI, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2009-10 challenging the addition of Rs.6,92,665/- for unexplained investment in cash. The assessee filed revised

grounds of the appeal on 07/09/2018, which are reproduced as under:

1. *The order passed by the CIT (A)-XXVI is bad in law and is void-ab-initio.*
2. *That on the facts and circumstances of the case the CIT (A) has erred in law and has incorrectly confirmed the addition made by the Assessing officer by adding a sum of Rs. 6,92,665/- without appreciating the explanation and facts submitted by the assessee for the source of cash found.*
3. *Whether the Assessing officer rightly added the cash seized from the locker of the Assessee in the Assessment year 2009-10 whereas the same pertains to the Assessment year 2011-12, therefore the assessment is void ab-initio.*
4. *The appellant craves leave to add, alter, amend or vary any of the above grounds during the pendency of the appeal.*

**2.** In the forwarding letter filed, however, the assessee requested for admission of the above ground as additional grounds, in view of the decision of the Hon'ble Supreme Court in the case of NTPC Vs. CIT, 229 ITR 383 (SC). It is submitted in the letter that all the facts in respect of the additional ground are available on the record and no new investigation of the facts is required and the issue involved is purely question of law.

**3.** On the issue of admission of the additional ground, both the parties were heard. It is settled law that additional ground involving legal issue can be admitted at any stage of the appellate proceedings unless investigation of the new facts is required. As all the facts in respect of the additional ground are available on

record and no investigation of new facts is required, following the decision of the Hon'ble Supreme Court in the case of NTPC (supra), we admit the above grounds raised as additional ground.

**4.** Briefly stated facts of the case as culled out from the records of the lower authorities are that a search and seizure operation under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out on 09/09/2010 at the premises of "Paras" Group. Simultaneously, the search was also conducted at the bank locker of the of the assessee having locker No. 204, State Bank of Patiala, Defence Colony New Delhi. In the search of the locker, cash amounting to Rs. 15 lakh was found and seized. Consequent to the search action on the locker of the assessee, notice under section 153A of the Act was issued on 27/02/2012. In the impugned assessment order, the Assessing Officer has mentioned that the notice under section 153A of the Act was issued in respect of the assessment year 2009-10, i.e., the year under consideration. After taking into account, the explanation of the assessee in respect of the cash found that a sum of Rs. 8 Lacs had been withdrawn from HDFC bank account of Sh. Anoop Jain, HUF and Rs.7,335/-was available in cash with Anoop Jain HUF, the Assessing Officer held the balance sum of rupees found from locker amounting to Rs.6,92,665/-as undisclosed income of the assessee. The Ld. CIT(A) also examined explanation of the assessee of availability of the cash in the hands of the other family members as their savings, however in absence of any evidence to substantiate such savings, he was not convinced with the explanation of the assessee and sustained addition made by the Assessing Officer.

**5.** Before us, supporting the additional ground, the Ld. counsel of the assessee has submitted that the search action on the bank locker of the assessee was carried out on 09/09/2010 and, thus, any addition for cash found in the locker could have been made only in the assessment year 2011-12 corresponding to the previous year 2010-11 i.e. the previous year in which locker was searched. But the Assessing Officer has made addition in the current assessment year, which is assessment year 2009-10, and therefore, the action of the Assessing Officer is not in accordance with law. He, accordingly, submitted that addition made in the year under consideration requires to be deleted.

**6.** The Ld. DR though relied on the order of the lower authorities; he could not controvert the position of law that any addition for the unexplained cash found could be made in the assessment year corresponding to the previous year in, which the locker was searched.

**7.** We have heard the rival submission and perused the relevant material on record including the impugned assessment order dated 26/03/2013 passed under section 153A read with section 143(3) of the Act. There is no dispute as far as date of search on the locker owned by the assessee is concerned, which is 09/09/2010. The date of search falls in previous year 2010-11 and the corresponding assessment year is 2011-12. There is nothing on record to show that this cash found was out of any income earned by the assessee in the year under consideration. In absence of any explanation in respect of the cash found during the previous year corresponding to the assessment year 2011-12, the addition should have been made only in the assessment 2011-12 and not in the assessment year under consideration. In

view of the settled position of law on this issue, we set aside the order of the lower authorities and direct the Assessing Officer to delete the addition in the year under consideration. The additional ground raised by the assessee is accordingly allowed. The grounds raised by the assessee are rendered only academic and thus, we are not adjudicating those grounds.

**8.** In the result, the appeal of the assessee is allowed.

***Order is pronounced in the open court on 29<sup>th</sup> January, 2019.***

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

Sd/-  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Dated: 29<sup>th</sup> January, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi