

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'SMC': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.5235/DEL/2018  
[Assessment Year: 2008-09]**

Ashok Kumar Gupta, 1543, Neel Kanth Apartment, Sector-13, Rohini, Delhi-110085	Vs	ITO, Ward-39(1), New Delhi
<b>PAN-AIGPG7703G</b>		
Assessee		Revenue

Assessee by	None
Revenue by	Sh. Om Parkash, Sr. DR

<b>Date of Hearing</b>	<b>07.11.2022</b>
<b>Date of Pronouncement</b>	<b>.11.2022</b>

**ORDER**

This appeal by the assessee is directed against the order of the Ld. CIT(A)-13, New Delhi, dated 08.05.2018 and pertains to Assessment Year 2008-09.

2. This appeal was earlier dismissed by ITAT for non-prosecution on 13.02.2019. Subsequently, the said order was recalled pursuant to Miscellaneous Application order. Thereafter, this appeal has been heard by ITAT.

3. The grounds of appeal read as under:-

*“1. That the order passed by the Id. CIT(A) and Ld. AO is bad in law and against the facts of the case.*

*2. That the Ld. AO erred in invoking provisions of section 148.*

*3. That Ld. AO failed to serve the notice u/s 148 within the prescribed time.*

4. *That the Ld. CIT(A) erred in considering the fact that the Ld. AO has passed an order u/s 144/147 without providing reasons recorded for reopening.*

5. *That the Ld. CIT(A) erred in considering the fact that the Ld. AO has passed an order u/s 144/147 without issuing a notice u/s 143(2).*

6. *That the Ld. CIT(A) erred in sustaining the addition made by the ld. AO amounting Rs.9,29,906/- on account of unexplained deposits.*

7. *That the ld. A.O. also erred in not following various judgments of jurisdictional High Court and ITAT.*

4. It is noted that even after recall by ITAT, the assessee is not pursuing the appeal. Several notices have been returned un-served. In this case, the assessment order was passed u/s 147/144 of the Act. Information was received about the cash deposit of Rs.1,92,74,974/- in the bank account of M/s Pooja Home Appliances Corp. which is the proprietorship concern of the assessee. The Assessing Officer noted lack of compliance by the assessee. The Assessing Officer noted the assessee's plea of having not received the notices. He referred to the assessee's profit & loss account. He noted that the net percentage as per trading and profit & loss account comes to 5.84% and gross profit in percentage is 16.23%. The assessee was asked as to why cash deposit of Rs.1,92,74,974/- were not appearing in the profit & loss account. The assessee failed to file any information regarding cash deposit. The assessee was also requested to provide copy of sale/purchase bills, cash book and cash flow statement and the same were also not provided to the Assessing Officer. The Assessing Officer proceeded to add the amount of Rs.9,29,906/- as assessee's unexplained income. The Assessing Officer has made addition of only percentage rate of net profit for the sum of Rs.1,92,74,974/-, which

is not explained by the assessee and made the addition of Rs.9,29,906/- only.

5. Upon assessee's appeal, the Ld. CIT(A) firstly addressed the challenge to the reopening. The Ld. CIT(A) referred to the assessment order and observed that sufficient time was given to the assessee to supply the document. Hence, he held that he has no hesitation in confirming the action of the Assessing Officer in resorting the assessment as per u/s 144 of the Act. He also rejected the challenge of reasons recorded. The Ld. CIT(A) after analyzing the facts and record found that the assessee was in knowledge of full fact and issuance of notice u/s 148 but he has deliberately failed to comply.

6. Another ground raised by the assessee that notice u/s 147 was served late and therefore assumption of jurisdiction u/s 147 of the Act is time barred. In this regard, the assessee has relied on the judgment of Hon'ble Supreme Court in the case of R.K.Upadhyaya vs Shanabhai P. Patel (1987) 3 SCC 96. The Ld. CIT(A) noted that the assessee has not submitted the copy of the said decision but he could look into the assessment record and found that the decision held that service of notice is not a condition precedent to conferment of jurisdiction in ITO. He held that in the present case, the notice was issued on 30.03.2015 which is within the prescribed period of limitation and it was also served before making the assessment. Therefore, according to the Ld. CIT(A) both cited case helps the case of the Revenue.

7. Against the above order, the assessee is in appeal before the Tribunal.

8. I have heard Ld. DR and perused the record. None has appeared on behalf of the assessee despite notices which have returned unserved. Upon careful consideration, I note that the issue of cash deposit was not at all explained by the assessee. The Assessing Officer has been more than fair in charging only small percentage of cash deposit as net profit of the assessee. The non-cooperation of the assessee before the authorities below and coupled with the facts narrated above, I do not find any infirmity in the orders of the authorities below. Hence I uphold the same.

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

Order pronounced in the open court on 22<sup>nd</sup> November, 2022.

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

**Delhi:** 22.11.2022.

*Shekhar,*

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi