

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

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. S. Rifaur Rahman, Accountant Member**

ITA No. 4250/Del/2019 : Asstt. Year : 2010-11

Manish Agarwal, 116, Chaman Vihar Murari Nagar Khurja, Bulandshahr, Uttar Pradesh-201313	Vs	Income Tax Officer, Ward-3(2), Bulandshahr, Uttar Pradesh-203001
(APPELLANT)		(RESPONDENT)
PAN No. ANNPA3514B		

**Assessee by : Sh. Raj Kumar Agarwal, CA
Revenue by : Sh. Dhiraj Kumar Jain, Sr. DR**

Date of Hearing: 21.01.2025	Date of Pronouncement: 21.01.2025
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ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for Assessment Year 2010-11, arises against the CIT(A), Ghaziabad's case No. 353249360020118 dated 28.02.2019, in proceedings u/s 144/147 of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties at length. Case file perused.
3. The assessee's instant appeal raises the following substantive grounds:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making the addition of Rs 75,94,850/- on account of AIR information received that cash had been deposited in the savings bank account of assessee that too without appreciating the facts and

circumstances of the case and without considering the submissions/evidences that the assessee during the year assessee was engaged in the business of trading of mobile phones, accessories and other small electronic items under the name and style of JMD Enterprises, the amount under question was deposited in his bank account. The assessee is registered with UPVAT and assessment has been completed.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO as the reasons recorded for reopening of case under section 148 indicate is that cash deposits aggregating to Rs 75,94,850/- have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. Therefore the reason of initiating the case proceedings under section 147 is void-ab-initio. The reliance can be placed in the case of "Bir Bahadur Singh Sijwali vs Assessee" ITA No 3814 Dell 1 where the Hon'ble ITAT Delhi.

3. That in any case and any view of the matter, action of Ld. CIT(A) in not reversing the action of Ld. AO in making the impugned addition and framing the impugned assessment order which is contrary to law and facts, void-ab- initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B, 234C and of the Income Tax Act, 1961."

3. It emerges during the course of hearing with the able assistance coming from both the parties that the learned Assessing Officer had framed his "best judgment" assessment

u/s 144 r.w.s. 147 of the Act treating the assessee's cash deposits of Rs.75,94,850/- made in his HDFC bank account; as unexplained cash credits, which stand upheld in the lower appellate discussion.

4. It is in this factual backdrop that learned counsel takes us to para 5 page 6 of the lower appellate discussion wherein the assessee had moved his additional evidence application dated 12.02.2019 under Rules 46A thereby explaining the reasons of his non-appearance/non-cooperation before the Assessing Officer. It is in this clinching factual backdrop that the Revenue could hardly dispute that the said reasons tendered at the assessee's behest along with his additional evidence have not been properly considered which could make us uphold the CIT(A)'s lower appellate findings affirming the impugned addition.

5. We, therefore, deem it appropriate in these peculiar facts that the assessee's instant appeal deserves to be restored back to the learned CIT(A) for his afresh appropriate adjudication and factual verification as per law subject to a rider that the appellant herein shall plead and prove his case, at his own risk and responsibility, within three effective opportunities, in consequential proceedings. Ordered accordingly.

6. This assessee's appeal is allowed for statistical purposes.

Order Pronounced in the Open Court on 21/01/2025.

Sd/-

(S. Rifaur Rahman)
Accountant Member

Dated: 21/01/2025

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Satbeer Singh Godara)
Judicial Member

ASSISTANT REGISTRAR