

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 6609/DEL/2019 (A.Y. 2011-12)**

Naem Khan 2693, ChuriWalan, Jama Masjid, Delhi <b>PAN: AHRPK1966H</b>	Vs.	ITO Ward-46(4), New Delhi
<b>Appellant</b>		<b>Respondent</b>
Assessee by	Sh. W. A. Khan, Adv and Sh. Mohnis Khan, adv	
Revenue by	Sh. Amit Katoch, Sr. DR	
Date of Hearing	17/02/2025	
Date of Pronouncement	20/02/2025	

**ORDER**

**PER YOGESH KUMAR, U.S. JM:**

The present appeal is filed by the Assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-16, New Delhi [‘Ld. CIT(A) ’ for short] dated 17/07/2019 for the Assessment Year 2011-12.

2. The Grounds of Appeal are as under:-

*“1. That ld commissioner of income tax (appeals)-16 has not appreciated that the orders of ld A.O. are highly arbitrary, illegal and against the facts of the case.*

2. That Id commissioner of income tax (appeals)-16 has not appreciated that Id income tax officer was not justified in deciding the case *exparte* without providing sufficient opportunity and service of notice required under section 148 of income tax act.
3. That Id commissioner of income tax (appeals)-16 has not appreciated that Id income tax officer was not justified in making the *exparte* assessment without service of notices required to initiate proceedings u/s 144 and the orders of Id income tax officer are liable to be quashed on this ground alone.
4. That Id commissioner of income tax (appeals)-16 has not appreciated that Id income tax officer has grossly erred in treating the entire cash deposited amounting Rs 6627000/- as income of the assessee.
5. That Id commissioner of income tax (appeals)-16 has not appreciated that Id A.O. has made an addition of Rs.6627000/- under section 69A treating all the cash deposit entries as income of the assessee which is wrong and illegal as section 69A speaks about the ownership of any money, bullion jewellery or other valuable article and the appellant was never owner of the money (cash deposit) during the year under consideration the addition made on this ground is liable to be deleted.
6. That Id commissioner of income tax (appeals)-16 has not appreciated that the cash deposited in the banks were out of sale of property and advances received against the sale of property and were the amount deposited by the sisters of the assessee for the purchase of house property.
7. That Id commissioner of income tax (appeals)-16 has not appreciated that Id income tax officer has made the said addition without any basis and without any reasonable material available on record.
8. That Id commissioner of income tax (appeals)-16 has not appreciated that Id income tax officer has made the assessment on the ground that it is a time barring matter and thus he will have to decide the case *exparte* which is hardly any ground.

9. That Id commissioner of income tax appeals 16 has grossly eared in disallowing the evidences regarding purchases of properties by the sister of the appellant as orders under section were passed without providing any opportunity and service of required notice.

10. That Id commissioner of income tax appeals was wrong in rejecting the affidavit without verifying the contents of affidavit filed before her.

11. That the additions made by the A.O. are bad in law illegal and against the principal of natural justice.”

3. Brief facts of the case as mentioned in the order of the Ld. CIT(A)

are as under:-

“As per AIR/CIB information received through NMS available with the department, assessee had deposited cash of Rs.66,27,000/- in Bank during the financial year 2010-11 relevant to assessment year 2011-12. The AO has in his assessment order recorded that on physical verification as well as from the ITD database, it was gathered that no return had been filed by the assessee for A.Y. 2011-12 and also that the case had not been scrutinized u/s 143(3) for the relevant year. Hence, in absence of return of income as per the explanation 2(a) to section 147 of the Act, the AO formed a reason to believe that that the assessee had not disclosed his income and income to the extent of Rs. 66,27,000/- for FY 2010-11 had escaped assessment within the meaning of section 147/148 of the I.T. Act for the A.Y. 2011-12. Notice u/s 148 was issued on 31.03.2018 after seeking and being accorded approval by the competent Authority as per provisions of Section 151 of the Income Tax Act. No return was filed in response to the notice u/s 148. Subsequently, statutory notices u/s 142(1) of IT Act, 1961 were also issued with a questionnaire and sent to all the addresses available with the department. However, these notices also went uncompiled with. A show-cause notice issued to the assessee on 01.11.2018 also met a similar fate. The AO in his order has recorded that the show cause notice was retuned by the postal department with the remarks 'Refused'. In the absence of compliance to statutory notices issued as also the final show cause issued, the AO perforce passed a best judgement assessment by invoking the provisions of Section 144 of the

*Income Tax Act, wherein the AO made an addition of Rs 66,27,000/- on account of cash deposits made in the bank account of the assessee and by treating them as unexplained money in the hands of the assessee as per section 69A of the Income Tax Act.”*

4. Aggrieved by the assessment order dated 18/12/2018, the Assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 17/07/2019, dismissed the Appeal filed by the Assessee. As against the order of the Ld. CIT(A) the Assessee preferred the present Appeal on the Grounds mentioned above.

5. The Ground No. 1 being general in nature, requires no adjudication. Accordingly, Ground No. 1 is dismissed.

6. The Ld. Counsel for the Assessee arguing on Ground No. 2, submitted that the Ld. CIT(A) has not appreciated the fact that the assessment order came to be passed without service of notice required u/s 148 of the Act, therefore, submitted that the entire assessment proceedings is vitiated. The Ld. Counsel further relying on the Judgment of Jurisdictional High Court in the case of Income Tax Commissioner Vs. Incoem Tax Vs. Madhu Gupta in ITA No. 286/2022 dated 12/10/2023, sought for allowing the Appeal.

7. Per contra, the Ld. Departmental Representative submitted that the Assessee is a non-filer and the notice u/s 148 of the Act has been sent to

the address mentioned in the PAN of the Assessee. Thus, submitted that the assessment order has been passed after issuing notice in accordance with section 148 of the Act, therefore, sought for dismissal of Ground No. 2 of the Assessee.

8. We have heard both the parties and perused the material available on record. Admittedly the notice u/s 148 of the Act has been issued to the address mentioned in the PAN. Further, the Assessee being a non-filer, has not informed the Department regarding the change of his address. Considering the above facts and circumstance, we are of the opinion that the A.O. committed no error in issuing the notice u/s 148 of the Act to the address mentioned in the PAN.

9. Further in so far as reliance placed by the Ld. Assessee's Representative on the Judgment of Delhi High Court in the case of Madhu Gupta (supra), the facts are entirely different thereon. In the case of Madhu Gupta (supra), the Assessee was an Income Tax Return filer and shown his new address in the ITR of several Assessment Years, thereby the A.O. was made aware of the facts of change of address in the said case. Therefore, the Jurisdictional High Court held that A.O. committed error in issuing the notice to the old address. However, in the present case, at no point of time, the A.O. was made aware of the change

of address of the Assessee and the Assessee being a non-filer, his address was continue to be the same in PAN on which notice u/s 148 of the Act has been rightly issued. Thus, finding no error in the order of the Ld. CIT(A), we dismiss the Ground No. 2 of the Assessee.

10. The Ld. Counsel for the Assessee canvassing on Ground No. 3 to 12 submitted that, the Ld. CIT(A) committed error in upholding the addition of Rs. 66,27,000/- u/s 69A of the Act by treating all the cash deposit entries as income of the Assessee which is erroneous. The Ld. Counsel for the Assessee further submitted that the Assessee is not the 'owner' of the 'money' deposited in his bank account, therefore, invocation of Section 69A of the Act is itself illegal, Thus, the Ld. Assessee's Representative sought for deletion of the addition.

11. Per contra, the Ld. Departmental Representative submitted that the unexplained cash deposited in the account of the Assessee and also the joint account of the Assessee with his sister. The Ld. Departmental Representative pointed out that in so far as money deposited in the joint account of the Assessee and his sister, the Ld. CIT(A) has rightly given 50% relief, however, in so far as deposit of cash in his account, the same being unexplained cash deposits, Ld. CIT(A) rightly confirmed the addition in the hands of the Assessee which requires no interference at

the hands of the Tribunal. The Ld. Department's Representative relying on the order of the Ld.CIT(A), sought for dismissal of Ground No. 3 to 12.

12. We have heard both the parties and perused the material available on record. During the Financial Year 2010-11 relevant to Assessment Year 2011-12, the Assessee deposited cash of Rs. 66,27,000/-. The Assessee being a non-filer and in the absence of Return of Income a notice u/s 148 of the Act was issued to the address given in the PAN, no return was filed in response to the notice u/s 148 of the Act, even the show cause notice issued to the Assessee was also returned as 'refused'. The Ld. A.O. made addition of Rs. 66,27,000/- u/s 69A of the Act as the Assessee failed to discharge his onus and also failed to offer any explanation with regard to cash credit entries amounting to Rs. 66,27,000/-. Admittedly, there was two bank accounts which are involved in the deposit of cash. The details of the bank account and the amount of cash deposited are as under:-

	<b>A/c No.</b>	<b>Cash Deposit</b>	<b>A/c holder/s name</b>
a.	200100100059006	2605000.00	<b>Joint account of Assessee and MahmoodaKhanam</b>
b.	200100100049442	4022000.00	<b>Assessee</b>

13. It was the specific contention of the Assessee that the entire money deposited in the above two accounts are belongs to sister of the Assessee and the Assessee is not the owner of the amount and the said amount

has been transferred to the seller of the property, wherein sister of the Assessee purchased the property. The Ld. CIT(A) considering the holding of the joint account, cash of Rs. 26,05,000/- which was deposited in the joint account has been restricted to 50% of the total cash deposits. In our considered opinion, the Ld. CIT(A) has rightly restricted the addition to 50% of the cash deposited in the joint account of the Assessee and his sister in the absence of any cogent material to prove that the entire money deposited in the joint account are belongs to the sister of the Assessee.

14. In so far as depositing the cash of Rs. 42,22,000/- in the account of the Assessee, it was the specific case of the Assessee that the money deposited was belongs to sister of the Assessee Mahmooda Khanam, who invested in the immovable property by making payment of the said amount. To substantiate the said claim, Assessee produced the sale deed before the Ld. CIT(A). The Ld. Assessee's Representative argued beforeus that the sister of the Assessee was not having the bank account and the cash must have been deposited in Assessee's bank account. We find no merit in the said contention of the A.R since the Assessee is also holding one more joint bank account, wherein the said Mahmooda Khanam is one of the joint account holder. The Ld. CIT(A) has also examined one more fact that actually the property has been purchased in

the name of 'Salima Begum' and not in the name of Mahmooda Khanam as claimed by the Assessee. Even if the property is purchased in the name of Mahmooda Khanam, that will not discharge the onus to prove with regard to cash credit entries reflected in the Assessee's bank account. Considering the above facts and circumstances, we find no merit in Ground No. 3 to 12 of the Assessee. Accordingly, we dismiss the Ground No. 3 to 12.

15. In the result, the Appeal of the Assessee is dismissed.

**Order pronounced in the open court on 20<sup>th</sup> February, 2025**

Sd/-

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

Date:- 20.02.2025

R.N, Sr.P.S\*

Copy forwarded to:

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

Sd/-

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

