

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री जॉर्ज माथान, न्यायिक सदस्य
एवं
श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1768/KOL/2024
Assessment Year: 2012-13**

Mithu Pal (Appellant)	Vs.	I.T.O., Ward-50(2), Kolkata (Respondent)
PAN: BDKPP3517R		

Appearances:

Assessee represented by : Narendra Kedia, Adv.
Department represented by : Arun Kumar Meena, Addl. CIT, Sr.
DR.
Date of concluding the hearing : March 5th, 2025
Date of pronouncing the order : March 5th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2012-13 dated 18.06.2024,



which has been passed against the assessment order u/s 147 r.w.s. 143(3) of the Act, dated 22.12.2019.

2. The assessee has raised the following grounds of appeal before the Tribunal which are not numbered in the appeal memo, but have been numbered here for the sake of reference:

“1. In light of the facts and circumstances of the case and in accordance with the relevant legal provisions, the learned CIT(Appels) erroneously disregarded the appellant's submission that she is not the owner of the amount deposited in her bank account, totalling Rs. 2,33,12,575/-, as per the definition under section 69A of the Income Tax Act. Consequently, the addition of this amount under section 69A is both unjustified and legally unsustainable.

2. On the facts and in the circumstances of the case, the learned CIT(Appels) failed to acknowledge the affidavit submitted during the appellate proceedings, which provided the name and PAN number of the actual owner of the cash deposited in the appellant's bank account. This oversight of a substantial piece of evidence undermined the factual basis of the decision, rendering the order of the CIT(Appels) unsustainable and legally flawed due to the lack of proper examination of this critical affidavit and related documents.

3. On the facts and in the circumstances of the case, the learned CIT(Appels) also disregarded the appellant's income pattern from the assessment year 2010-11 to 2017-18, which was presented in written submissions before the Ld. CIT(Appels), based on the Income Tax Returns filed. This income pattern clearly demonstrates that the appellant cannot be considered the owner of the amount deposited into the bank account.

4. On the facts and in the circumstances of the case, the learned CIT(Appels) summarily rejected all submissions made by the appellant, including the affidavit and facts on record, without providing any reason. This renders the order of the CIT(Appels) a non-speaking order, legally unsustainable, and liable to be quashed and cancelled.

5. On the facts and in the circumstances of the case, the appellant provided comprehensive details regarding the nature and source of the deposits in her bank account, including the name of the beneficiary, during the appellate proceedings. However, the learned CIT(Appels) rejected these submissions without offering any reasons and confirmed the addition under



section 69A of the Act without any explanation or reference in the order under section 250 of the Act.

6. *The appellant craves to add or amend ground or grounds of Appeal on or before the date of hearing as may be allowed by appellate authority.”*

3. Brief facts of the case are that the assessee's assessment for the impugned assessment year was reopened u/s 147 of the Act after obtaining the requisite statutory approval. The Ld. AO noted that in the bank accounts of Kotak Mahindra Bank and Canara Bank, cash of Rs. 69,16,575/- and Rs. 1,63,96,000/- totalling to Rs. 2,33,12,575/- was deposited during the financial year 2011-12 and the assessee was requested to explain the source of the cash deposit. Since the assessee did not comply with the notices issued, the sum of Rs. 2,33,12,575/- was added as deemed income u/s 69A of the Act and the total income was assessed at Rs. 2,33,12,575/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who dismissed the appeal after relying on the judicial pronouncements mentioned in the order and his decision is extracted hereunder:

“I have carefully perused the appellate documents, submission filed, and order passed by the Ld. JAO.

For the appellate year under consideration, notice under section 148 was issued after recording the reasons and obtaining approval of the competent authority. Appellant did not file ROI in response. The information gathered indicated that the appellant had made huge cash deposits in the bank account. SCN was issued and cash deposits were brought to tax. During the appellate proceeding, notices were issued. and submissions were filed. Grounds of appeal are adjudicated as follows-

Ground of Appeal One - Averment - Ld. JAO has erred in making deemed income addition under section 69A

The primary conditions for invoking section 69A are (1) assessee should be found owner of bullion, jewellery or other valuable articles, which is not recorded in the books (i) the assessee offers no explanation of these assets/ investment, or the explanation is not found satisfactory. Therefore, initial



burden is on the Revenue to show that (1) assessee is owner of certain bullion, jewellery etc. (i) such bullion, jewellery is not recorded in the books. Thereafter, burden will shift on the assessee to furnish explanation of such investment/assets.

The burden of proof was on appellant after it was established by the revenue that cash deposits were made in bank account of the appellant. The same remains undischarged as of today. Thus, in view of absence of any plausible explanation from the side of the appellant, submission is rejected.

Ground of Appeal Two - Averment - that cash deposits were out of sale of shares and commodities.

It is curious to note that the appellant is taking a divergent stand while proposing a ground of appeal wherein ownership of the cash has been unequivocally accepted and in juxtaposition in later submissions alleges that the cash was deposited by one Jhunjhunwala in her account, who again allegedly was employer of her husband. Now it was deposed that bank account was used by third person to invest in shares. So, cash in crores get deposited in bank account thought(sic) fraudulent misuse and appellant allows the same. Appellant has no compunction in doing illegal act. No legal steps are taken, or department is informed of the same. No police complaint is filed, or FIR is lodged.

Contradiction in stand taken, is pointer to fact that the nature and source of deposits remain unexplained till date. A legal fiction is created under which burden is placed on the appellant to satisfactorily explain the nature and source of monies found with it.

Further, the expression is found to be the owner appearing in section 69A clearly show that when cash is found in possession, or in the bank account of the assessee. primary inference may be that the assessee is the owner of such cash/money. The onus thereafter is on the assessee to lead evidence that even though money is found in his possession, it does not belong to him but belonged to somebody else.

Generally, the ingredients of "ownership" are -

(1) Control, possession, and enjoyment

(ii) The collection of rights allowing one to use and enjoy property including the rights to convey to others.

(iii) The ownership rights are general, permanent, and inheritable.

(iv) In respect of property, ownership is a bundle of right such as rights of exclusive enjoyment, of destruction, of conveying to others, alteration,

alienation or disposal and includes right of recovery of possession of the property from all other persons.

(v) Ownership may be proved by possession of title, receiving, and enjoying usufruct (like rent in the case of immovable property, or interest in the case of FDRs). Ownership is a plenary control over an object.

(vi) Such control may be actual or constructive.

(vii) Ownership is the right by which a thing belongs to an individual to the exclusion of all other persons.

(viii) The ownership is guarantee of law, the possession is guarantee of facts.

It is settled proposition of law that best evidence of ownership is the fact of possession. This presumption is best illustrated in case of cash found in the possession of the person, as property in cash is easily transferable from one person to another. Thus, where the assessee, the account holder, claims that cash deposited in his account belonged to some other person, than onus to prove different ownership other than the assessee is on the assessee. Failure of the assessee to prove that money found in his possession did not belong to him, addition u/s.69A would be justified. It will be wrong to put the onus on the Revenue to establish that the assessee from whose possession cash was found was not the owner of the cash.

Reference can be made to ratio laid down in the case of **CIT vs KTMS Mohamood 92 Taxman 169, by Hon'ble Madras HC** wherein it held that onus is on appellant to explain the ownership. The headnotes are reproduced as below for a ready reference-

Section 69A of the Income-tax Act, 1961 Unexplained moneys - Assessment year 1967-68-In regard to cash amounting to Rs. 4,28,713 found in his possession during search by Enforcement Officials, assessee stated that same represented balance out of Rs. 6 lakhs received from two persons for disbursement according to one G's Instructions - Before Assessing Officer, assessee denied its recovery and possession by him and stated that cash belonged to one Q- Assessing Officer included entire amount of Rs. 6 lakhs as assessee's income from other sources on ground that assessee had failed to discharge onus of proving that he was not its owner - Commissioner (Appeals) sustained addition of Rs. 4,28,713 only which was found in assessee's possession - Whether Tribunal was right in holding that for applicability of section 69A, burden was on department to prove that person in whose possession money was found was owner of same - Held, no - Whether assessee having failed to establish that he was not owner of

amount found in his possession, addition to extent of Rs. 4,28,713 was sustainable under section 69A - Held, yes

Similarly, Hon'ble HIGH COURT OF MADHYA PRADESH in the case of [1987] 30 TAXMANN 389 (MP) Ashok Kumar v. Commissioner of Income-tax propounded that Section 69A of the Income-tax Act, 1961- Unexplained moneys - During search of his premises by Central Excise Department, certain cash was found in possession of assessee and assessee's explanation in relation thereto was rejected Whether possession of cash indicated that assessee was its owner and it was to be included in his income - Held, yes'

Relevant extract is reproduced as follows for ready reference-

'5. The learned counsel for the assessee, however, contended that the requirement of section 69A is that the assessee should be found to be the 'owner' of the money and his mere possession of the cash does not indicate that he was its owner. On this basis, it is contended that a question of law arises inasmuch as section 69A has not been properly construed or applied to the facts found proved. We are unable to accept this contention. It is settled that possession is evidence of ownership and the strength of the presumption of ownership arising from the fact of possession depends on the nature of property involved. This presumption is one of the strongest in case of cash found in possession of a person since cash is one of the properties of which title is transferable by mere delivery of possession. In such a situation, unless any cogent explanation is given by the person in possession of cash to explain his possession and show that someone else was the owner of that amount of money, it is reasonable to assume that the cash belonged to the person from whose possession it was found as its owner. In view of the assessee's explanation for possession of the cash being rejected, it logically follows that the assessee was the owner of that unaccounted cash found in his possession and this is the conclusion reached by the Tribunal.'

In view of the discussion supra, ground of appeal is rejected.

6. Appeal for AY 2012-13 is dismissed.”

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival submissions were heard; the paper book filed and the submissions made have been examined. It was argued by the Ld. AR



that the assessee was a victim of entry operator and the assessee is not the owner of the money, therefore, the addition u/s 69A of the Act was not liable to be made. The Bench raised a query whether the bank accounts are of the assessee and whether the KYC documents related to the assessee or not, to which the answer was not in the negative. In this regard, our attention was drawn to pages 18 to 29, 30 to 31 and 30 to 34 of the paper book which are the bank statements. It was stated that the cash was deposited and subsequently the cash was transferred to share purchase account and funds were transferred to Swastik Poly Plast Pvt. Ltd. and others. Most of the funds transferred belonged to the person who was the negotiator or the key person. The assessee had filed an affidavit before the Ld. CIT(A) and at paper book page 35, the assessment order of Shri Birendra Kumar Jhunjhunwala, who accepted before the DDIT (Inv.) that the cash belonged to him, as mentioned at pages 36 & 37 at para 5 was also filed. It was stated that no commission was earned and Mr. Jhunjhunwala had given the name to the DDIT(Inv.) for this account. The assessee is a housewife and an innocent person.

6. The Ld. DR countered by stating that the assessee waited for the time barring limitation and filed the details only before the Ld. CIT(A). Our attention was also drawn by the Ld. AR to page 591 para 3 of the order in the case of **M/s. D. N. Singh Vs. Commissioner of Income Tax, Central, Patna and Another** reported in **[2023] 7 S.C.R. 530** in support of the claim that the addition under section 69A of the Act should not be made as the assessee was not the owner of the money. However, the facts of the case relied upon by the Ld. AR are different as in that case the appellant was only a Bailee/Carrier of bitumen while in the present case the money is deposited in the bank account of the



assessee and the issue in the decision relied upon mainly revolved around the applicability of section 69A to bitumen. The Ld. DR also brought our attention to the fact that in this case the assessee was claiming not to be the owner despite AADHAAR, PAN card submitted to the bank. Our attention was also drawn to pages 58 and 59 of the paper book being letter to the DDIT(Inv.) and email by Shri Birendra Junjhunwala in support of the fact that the assessee was hand in glove with Mr Jhunjhunwala and the source of credits was not explained, hence the addition was liable to be sustained. None had owned up the money deposited in cash in the bank accounts of the assessee. It was reiterated by the Ld. DR that the assessee's claim that she is not the owner despite furnishing the AADHAAR, PAN etc. and no F.I.R. or Court case being filed against the entry provider was liable to be rejected. The Bench stated that in the absence of any evidence in this regard no relief was liable to be allowed to the assessee as the source of the cash deposit in the bank account had not been satisfactorily explained.

7. The assessee has neither been able to explain the source of cash deposited in the bank accounts, nor has given any details of the beneficiaries which are more than one. The Ld. CIT(A) has considered the submissions of the assessee and has decided the grounds of appeal and we have no hesitation in confirming the order of the Ld. CIT(A). Accordingly, all the grounds of appeal are dismissed as there is no reason to disagree with the findings of the Ld. CIT(A) whose order is confirmed. Hence, all the grounds raised by the assessee before us are dismissed and the appeal is dismissed.



8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 5th March, 2025.

Sd/-

[George Mathan]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 05.03.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Mithu Pal, 1st Lanejessore Road, Sukanta Nagar, Kolkata, West Bengal, 700133.**
2. **I.T.O., Ward-50(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata