

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "E", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA NO. 3193/DEL/2024 (AY 2021-22)		
MEENU GUPTA, 214, MADHUBAN COLONY, BAGHPAT ROAD, MEERUT-250002 UTTAR PRADESH-250002 (PAN: ACRPG2700J)	VS.	ACIT, CENTRAL CIRCLE, MEERUT
(APPELLANT)		(RESPONDENT)

Appellant by : Shri Anil Jain, CA
Respondent by : Ns, Amisha S. Gupt., CIT-DR

Date of hearing : 13.05.2025
Date of pronouncement : 16.05.2025

ORDER

PER SHAMIM YAHYA, AM :

This appeal has been filed by the Assessee against the Order of the Ld. CIT(A)-3, Noida relating to assessment year 2021-22 on the following grounds:-

1. The Ld. CIT(A) has erred in confirming the assessment order passed by the AO.
2. *The Ld. CIT(A) has erred in confirming the addition of Rs. 9,98,000/- on the basis of copy of seized digital document under section 69A of the I.T. Act, 1961 to total income of the assessee*

without any corroborative evidence on record and not considering the submissions.

2. Brief facts of the case are that in this case search was conducted on 08.03.2022 and the case was taken up in the consequence to the search on account of some whatsapp chat found in the mobile phone of assessee's son. The assessee is a proprietor of coal business in the name of Meenu Enterprises. The return was filed on 15.12.2021 with duly audited accounts at income at of Rs.7,66,410/- and assessment was completed vide order dated 02.12.2022 at Rs. 17,64,410/- and addition was made u/s. 69A of Rs. 9,98,000/- (Rs. 5,00,000/- + Rs. 4,98,000) on account of cash paid to Shiva Brick against cheque received as per the copy of account found in received whatsapp messages in the mobile of Rachit Gupta (Son of the assessee). In appeal, Ld. CIT(A) dismissed the appeal of the assessee. Against the above action, assessee is in appeal before us.

3. We have heard both the parties and perused the records. Ld. AR for the assessee submitted that there is no cash payment to Shiva Brick Field which is evident from the copy of ledger account from the audited books. The whatsapp message is only for the purpose of confirmation of account during the year in which the mistakes were pointed out and corrections made. It was the further contention that whatsapp message relied upon is secondary evidence and the same is not admissible without complying with the certificate as per the conditions of section 65B(4) of the Indian Evidence Act 1872. There is no corroborative evidence of payment of cash or receipt of cash by the other party. The ledger account as per the whatsapp is not

having any opening balance, whereas the copy of account as per the books is having a opening balance of Rs. 31,72,795/-. The confirmed copy of account is also obtained and filed by the Shiva Brick field with PAN number in which the alleged entries of cash are not there and the same has not been considered or confronted. It was further submitted that the sole photo seized from mobile phone, which is solely relied upon by the AO in making the addition, being digital record, cannot be admitted as evidence as the mandatory certificate/s 65B(4) of the Indian Evidence Act 1872 is not provided to the appellant rendering the said photo as non-est in the eye of law. In support of the aforesaid contention, Ld. AR has relied upon the various case laws wherein it has been held that whatsapp messages will be admissible or not and it was ultimately held that such a message would be inadmissible unless accompanied by a proper certificate as given under S. 65B of the Indian Evidence Act, 1872.

4. Ld. CIT(DR) relied upon the orders of the authorities below.

5. Upon careful consideration, we find that addition in this case was made u/s. 69A of Rs. 9,98,000/- on account of cash paid to Shiva Brick against cheque received as per the copy of account found in received whatsapp messages in the mobile of Rachit Gupta (Son of the assessee). In appeal, Ld. CIT(A) dismissed the appeal of the assessee. We find considerable cogency in the contention of the Ld. AR that there is no cash payment to Shiva Brick Field which is evident from the copy of ledger account from the audited books. However, the whatsapp message is only for the purpose of confirmation of account during the year. The whatsapp message relied upon is secondary evidence and the same is not admissible

without complying with the certificate as per the conditions of section 65B(4) of the Indian Evidence Act 1872. We do not find any corroborative evidence of payment of cash or receipt of cash by the other party. The ledger account as per the whatsapp is not having any opening balance, whereas the copy of account as per the books is having a opening balance of Rs. 31,72,795/-. The confirmed copy of account is also obtained and filed by the Shiva Brick field with PAN number in which the alleged entries of cash are not there and the same has not been considered or confronted. The only photo seized from mobile phone, which is relied upon by the AO in making the addition in dispute, being digital record and cannot be admitted as evidence as the mandatory certificate/s 65B(4) of the Indian Evidence Act 1872 is not provided to the assessee rendering the said photo as non-est in the eye of law. This view has been fortified by the decision of the ITAT, Delhi in the case of Ritu Tuli Vs.DCIT ITA No 2016/D/2023 dated 31.12.2024 wherein, it has been held that no addition for unexplained investment in property can be made under section 69B of the Act based on an illegible, unsigned copy of an image or photo extracted from the mobile phone of the searched person, in the absence of a certificate under Section 65B of the Indian Evidence Act, 1872. Further, in the case of M/s Monica Kamarpal Banda vs. ACIT Central-2, ITAT, Mumbai in ITA No. 170/Mum/2023 dated 7.8.2023 has observed that the addition was deleted and order was set aside as Electronic Evidence collected by Revenue was without compliance of Section 65B. We further find that Hon'ble Jurisdictional High Court in the case of Dell

International India Pvt. Ltd. vs. Adeel Feroze (WP©) 4733/2024 (Delhi High Court) has held that whatsapp messages will be admissible or not and it was ultimately held that such a message would be inadmissible unless accompanied by a proper certificate as given under S. 65B of the Indian Evidence Act, 1872, which has not been given to the assessee, as pleaded by the Ld. AR. Hence, addition made on this account deserve to be deleted. We hold and direct accordingly.

6. In the result, the assessee's appeal is allowed in the aforesaid manner.

Oder Pronounced on 16/05/2025.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBHATNAGAR

Copy forwarded to:-

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

Assistant Registrar

