

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "J(SMC)" Bench, Mumbai.

Before Shri Rahul Chaudhary (JM) & Shri Omkareshwar Chidara (AM)

ITA No. 2414/MUM/2025 (Assessment Year : 2012-13)

Prakash Biru Zore R.No. 30, Chawl No. 40 Shiv Krupa CHS 1 <sup>st</sup> Floor, Chandanwadi Chira Bazar Mumbai-400 002.	Vs.	ITO- 19(2)(5) Room No. 210 Matru Mandir Mumbai-400 007.
PAN : AAIPZ3276f		
Appellant		Respondent

Assessee by	:	Shri Ashok Patil
Revenue by	:	Shri Asif Karmali
Date of Hearing	:	26/06/2025
Date of pronouncement	:	30/06/2025

O R D E R

Per Omkareshwar Chidara (AM) :-

On the above captioned appeal, the appellant, Shri Praksh Zore has deposited cash of Rs. 31,45,200/- in his savings bank account of Syndicate Bank, as per the information received and hence the Ld. AO issued a notice under section 148 of the Income Tax Act as the appellant has not filed Return of Income for the impugned year of 2012-13. From the assessment order passed by Ld. AO, it is observed that the appellant filed a Return of Income in pursuance of this notice under section 148 of the Act, but the same was not e-verified as mandated under section 148(1) of the Act. Hence, the Ld. AO treated the same as invalid and as not filed. Subsequently the assessment proceedings continued and notices under section 142(1) were issued three times as mentioned in para 4 of assessment order. As there was no response to these notices, the Ld. AO completed the assessment ex-parte under section 144 of the Act adding the cash deposit made by appellant under section 69A of the Act.

2. Before the Ld. CIT(A), an appeal was filed by appellant where it was argued on the following lines:-

- a) Even though it was an invalid return, the contents should be seen where the appellant opted for presumptive taxation under section 44AD of the Act. Hence, only 8% of cash sales should be assumed as income and not all cash deposits.
- b) The total cash deposits are only Rs. 23,19,365/- out of which Rs. 15,72,600/- represent cash sales of fruits, other sales deposits amount of Rs. 3,35,640/- and Rs. 4,10,000/- represents cash loans taken by him. In view of the same, 8% of cash sales of Rs. 15,72,600/- should be treated as income and not the whole cash deposits.
- c) The appellant further disputed that the total cash deposited in his savings bank account is only Rs. 23,19,365/- during the impugned year and not Rs. 31,45,200/- as mentioned in the assessment order.

3. After taking into consideration of all these arguments, the Ld. CIT(A) confirmed the addition by stating that the appellant could not discharge his duty of explaining the sources of deposits in his savings bank account.

4. Aggrieved further by the order of Ld. CIT(A) the appellant escalated the appeal to ITAT where the sole ground agitated is that the cash deposited are only Rs. 15,72,600/- and not Rs. 31,45,200/- as presumed by Ld. AO and confirmed by Ld. CIT(A). The lower authorities did not understand the issue in a proper manner and made/confirmed the addition.

5. The Ld. DR relied on the orders of the lower authorities.

6. Heard both sides. The fact remains that the appellant did not respond to the notices of Ld. AO and no reason was also mentioned as to why he was non-complaint. But, what is observed from the order of Ld. CIT(A), there was no adjudication on the issues raised by appellant, especially the amount of cash deposit which is a factual issue. The Ld. AO has not given the source of

information that the appellant deposited Rs. 31,45,200/-. The primary issue of amount of cash deposit was not resolved nor reversed by Ld. AO/Ld. CIT(A). As the basic issue of amount of cash deposit was not adjudicated by Ld. AO due to non-compliance of appellant where all primary facts should have been marshalled. The matter of cash deposits added under section 69A of Act is remitted to the file of Ld. AO for fresh adjudication after giving an opportunity to the appellant. The Ld. AO should take into consideration all the submissions of the appellant and pass a speaking order.

7. The appeal of appellant is allowed for statistical purposes.

Order pronounced in the open Court on 30/06/2025.

Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

PS

BY ORDER,  
(Assistant Registrar)  
ITAT, Mumbai