

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

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

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

**I.T.A. No.: 967/KOL/2025  
Assessment Year: 2013-14**

Shyama Shree <i>(Appellant)</i>	Vs.	I.T.O., Ward-1(1), Asansol <i>(Respondent)</i>
<b>PAN: AAKFS6057P</b>		

**Appearances:**

**Assessee represented by** : None.

**Department represented by** : Sailen Samadder, CIT(DR).

Date of concluding the hearing : 08-July-2025

Date of pronouncing the order : 09-July-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 2013-14 dated 19.03.2025, which has been passed against the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act, dated 25.03.2022. The assessee filed the application for adjournment but the same was rejected for the reason that proper dress code was not maintained by the counsel who appeared



before the Tribunal. The appeal was heard with the assistance of the Ld. DR.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*“1. Because that the ld. Commissioner of Income Tax (Appeals) erred in law as well as in facts in upholding the initiation of the Re-assessment Proceedings vide notice dated 24/03/2021 issued u/s 148 of I.T. Act, 1961 ignoring the submission made on 22/07/2015 that cash deposits relate to PAN ACMPA3683P and the fact that there was no escapement of income within the meaning of section 147 of I.T. Act, 1961 in the hands of the appellant*

*2. Because that the ld. Commissioner of Income Tax (Appeals) erred in law as well as in facts in upholding the reassessment order u/s 143(3)/147 dated 25<sup>th</sup> March, 2022, passed by the Ld. A.O. which was otherwise passed arbitrarily, and void ab- Initio, in view of the fact that there was no escapement of income within the meaning of section 147 of the I.T. Act 1961, as the partnership was dissolved w.e.f. 01.-04.2012 and cash deposit has been duly considered in the hands of Proprietor Arun Kumar Agarwal, assessed under PAN ACMPA3683P;*

*3. For that, without prejudice to the above, ld. Commissioner of Income Tax (Appeals) erred in law as well as in facts, in drawing adverse view merely on the basis of incomplete Form 3CD (without mentioning any figures of sale/GP/NP etc.), which was inadvertently uploaded by Chartered Accountant without the knowledge of the appellant, but ignoring the NIL return filed on 17-03-2022 in response to notice u/s. 148 vide E-Filing Acknowledgement Number 385685810170322.*

*4. Without prejudice to the above, the ld. Commissioner of Income Tax (Appeals) erred in law as well as in facts in sustaining the addition of Rs. Rs 106577400/- against actual cash deposit, in the hands of non-existent Partnership Firm, being the credits in bank account by invoking Section 69A of the Income Tax Act, 1961, ignoring the fact that that cash deposits relate to PAN ACMPA3683P and has been duly assessed in the hands of Arun Kumar Agarwal as sole proprietor of Shyama Shree.*

*5. Without prejudice to the above, the ld. Commissioner of Income Tax (Appeals) erred in law as well as in facts in not considering the fact while considering/sustaining addition of Rs. 106577400.00 by ignoring the submission that actual cash deposit of Rs.6,16,21,669.99 in current account with HDFC bank P.C. Chatterjee market, Asansol, account no. 3248620000032 and also a net deposit of Rs. 4,23,554 (cash deposit Rs. 12,23,544.00 minus cash withdrawal of Rs. 8,00,000) in overdraft account*



no. 0324897000041 with HDFC bank, P.C. Chatterjee market, Asansol. Both the bank accounts are duly disclosed in the return of income filed under PAN. ACMPA3683P for A.Y.2013-14 vide Acknowledgement No. 812565591021013 which was filed by shri Arun Kumar Agarwal as sole proprietor of SHYAMASHREE.

6. The appellant craves leave to add further ground of appeal or alter the Grounds at the time of hearing.”

3. Brief facts of the case are that on the basis of information available with the Department, the assessment of the assessee was reopened by issuing notice u/s 148 of the Act dated 24.03.2021. As the assessee was found to have deposited cash to the tune of ₹ 10,65,77,400/- being ₹ 6,21,31,400/- in Saving Bank Account and deposit in cash amounting to ₹ 4,44,46,000/- with a banking company during the relevant FY 2012-13 and no return of income had been filed. A notice u/s 148 of the Act was issued after fulfilling the statutory requirements, which was duly served upon the assessee to file the return of income within 30 days from the service of the said notice but assessee did not comply and no return of income was filed. Subsequently, a notice u/s 142(1) of the Act dated 06.10.2021 was issued which was also duly served upon the assessee for providing one more opportunity to the assessee for submission of the details. No compliance was made to this and the other notices issued thereafter. The assessee, however, furnished a reply on 17.03.2022 in response to the notice issued on 15/03/2022 which is as under:

*“Respected Sir, in compliance to notice dt. 24/03/2021 issued under section 148 of the Income Tax Act, 1961, the petitioner, who was a partner of Messrs Shyama Shree up to 31/03/2012 and sole-proprietor since 01/04/2012, have filed NIL return vide e-filing acknowledgement no. 385685810170322 on 17/03/2022, as the partnership firm has been dissolved vide deed of dissolution of partnership executed on 01/04/2012. It shall be pertinent to mention here that your petitioner i.e. Arun Kumar Agarwal has taken over the business as sole proprietor with effect from 01/04/2012. Copy of deed of Dissolution is enclosed herewith vide Annexure-1. All the bank accounts i.e., with HDFC Bank, owned by the then partnership firm, have also become*



*the bank accounts (with HDFC bank) of sole proprietorship firm with effect from 01/04/2012. Moreover, response to AIR-001 and CIB-410 for cash deposit received under this PAN was also furnished with the jurisdictional assessing officer, Ward 1(4), Asansol on 24/07/2015, stating that the cash deposit transaction relate to PAN ACMPA3683P. A copy of said response is furnished vide Annexure-2. As per accounts of sole proprietorship there is cash deposit of Rs.6,16,21,669.99 in current account with HDFC bank P.C. Chatterjee market, Asansol, account no. 3248620000032 and also a net deposit of Rs. 4,23,554 (cash deposit Rs. 12,23,544.00 minus cash withdrawal of Rs. 8,00,000) in overdraft account no. 03248970000041 with HDFC bank, P.C. Chatterjee market, Asansol. The assessee denies to have any other cash deposit in any other account. The source of cash deposit was from regular sales of Rs. 6,34,18,943.00 disclosed in the audited accounts and tax audit report filed under PAN ACMPA3683P ON 02/10/2013. It is hoped that you shall find the above in order. In case, Your Honour needs any further information/clarification in the matter, your petitioner shall be glad to furnish the same on hearing from you. Thanking You. Arun Kumar Agarwal.”*

4. The submission of the assessee was considered by the Ld. AO but was not found acceptable for the reason that there was no date mentioned on the stamp paper on which the deed of dissolution/retirement was prepared and the same was neither registered nor notarized. Since all the bank accounts with other assets were owned by the partner of the firm namely Sh. Arun Kumar Agarwal, therefore, therefore, the firm was liable for any transactions made in the account. It was also noted by the Ld. AO that if the firm had been dissolved as on 01.04.2012, there was no reason why the same was not intimated to the banker for closure of the firm's bank account and why the huge transactions of cash deposits were made in the bank account in the name of the partnership firm having the PAN of the firm if the firm had been dissolved. In response to the notices issued, the assessee filed a reply on 17.03.2022 wherein the assessee explained the source of cash deposit of ₹ 6,16,21,669.99 in current account with HDFC bank, Account No. 3248620000032 and also a net deposit of ₹ 4,23,554/- in



Overdraft Account No. 03248970000041 with HDFC bank. Cash was not deposited in the individual bank account or deposited in the bank account of the firm even though the partnership was claimed to have been dissolved with effect from 01.04.2012. The assessee was also found to have filed Form No. 3CB for AY 2013-14 relevant for FY 2012-13. Since the assessee did not respond to the notices except for the last notice and had not explained satisfactorily the source of cash deposited in the bank account, a sum of ₹ 10,65,77,400/- remained unexplained according to the Ld. AO and was added u/s 69A of the Act r.w.s. 115BBE of the Act and the total income was assessed at ₹ 10,65,77,400/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who vide order dated 19.03.2025 dismissed the appeal of the assessee.

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

6. A perusal of the statement of facts filed before the Ld. CIT(A) shows that the assessee filed the return of income on 17.03.2022 vide Acknowledgement No. 385685810170322 in compliance to the notice dated 17.01.2022 issued u/s 142(1) read with notice dated 24.03.2022 issued u/s 148 of the Act. The copy of ITR-V was enclosed. It was stated that the appellant was a partnership firm constituted vide Deed of Partnership executed on 13.05.1998 and the firm was engaged in the business of trading in cloth up to 31.03.2012. The firm consisted of two partners i.e. Sh. Arun Kr. Agarwal (Pasari) and his wife Smt. Anshu Devi Pasari but the firm was dissolved with effect from 01.04.2012 vide Deed of Dissolution/retirement executed on 01.04.2012, a copy of which was duly filed before the Ld. AO on 17.03.2022 and in consequence of which Smt. Anshu Devi Pasari retired from the partnership firm voluntarily



w.e.f. 01.04.2012 and other partner Sh. Arun Kr Pasari (the husband of Smt. Anshu Devi Pasari) had taken over the business carried under the name and style of M/s. Shyama Shree as sole proprietor with effect from 01.04.2012. A copy of the deed of dissolution of partnership was also filed. It was submitted in the statement of facts that all the bank accounts having Account No. 3248620000032 and 03248970000041 with HDFC Bank, owned by the then partnership firm, had become the bank accounts of the sole proprietorship firm with effect from 01.04.2012. All cash deposits of ₹ 6,15,81,727.32 stood duly disclosed in the books of account of M/s. Shyama Shree under the sole proprietorship of Sh. Arun Kr. Agarwal (Pasari) assessed under PAN ACMPA3683P. It was also mentioned that the response to AIR-001 and CIB-410 for cash deposit received under the PAN of partnership (i.e. AAKFS6057P) was also furnished online on 22.07.2015 and a hard copy was also submitted with the jurisdictional Assessing Officer, Ward-1(4), Asansol on 24.07.2015 stating that the transactions relating to deposits of cash in the Bank Accounts in the name of Shyama Shree related to the PAN ACMPA3683P. A copy of the said response was enclosed before the Ld. CIT(A). Both the bank accounts in current account with HDFC bank account no. 3248620000032 and in overdraft account no. 03248970000041 with HDFC bank were duly disclosed in the return of income filed under the PAN of the proprietor. A copy of the Return of Income was also enclosed. The assessee unequivocally denied having made any other cash deposits in any other account and the source of the cash deposit was from regular sales of ₹ 6,34,18,943/- disclosed in the audited accounts and tax audit report filed under the PAN of the proprietor. The assessee was under the *bona fide* belief that due compliance to the notices issued by the Department was being made by



his CA Sh. Umesh Dokania; but he informed that he could not comply to the earlier notices issued u/s 148 and 142(1) of the Act due to his other pre-occupation. Thereafter, the assessee took steps to comply with the notices through other consultant and uploaded the return disclosing 'NIL' income in e-filing portal on 17.03.2022 in response to the notice dated 24.03.2021, issued u/s 148 of the Act, as the partnership was dissolved with effect from 01.04.2012. Responses to the notice dated 15.03.2022 and 17.01.2022 u/s 142(1) of the Act were also submitted on the same date as the assessee had already informed the Department as early as in the year 2015 that cash deposits, if any in the bank account related to the other PAN i.e. ACMPA3683P, in compliance to the query dated 15.07.2015 (AIMS/AAKFS6057P/162676) and the response was filed online. Since no information regarding issue of any show cause notice dated 21.03.2022 was received, and only on 25.03.2022 after logging into the e-filing portal, the assessee was aware of the show cause notice issued, the compliance was made on 25.03.2022. However, the assessment order was passed without considering the submission made on 25.03.2022. Further submissions were also made.

7. The Ld. CIT(A) considered the submissions and held that if the firm was dissolved on 01.04.2012, why the same was not intimated to the banker for closure of the firm's bank account and why the huge transactions of cash deposits were made in the bank account in the name of the partnership firm and not deposited by Sh. Arun Kumar Agarwal in his individual bank account or in the account of his proprietorship business and therefore, dismissed ground no. 1 raised by the assessee relating to reopening. The other ground relating to

borrowed satisfaction was also dismissed after considering the following judicial pronouncements:

- i) Peass Industrial Engineers 73 Taxmann 185 (Gujarat)
- ii) Meghavi Minerals Pvt Ltd vs ITO 110 Taxmann 174 (Gujarat)
- iii) Pavan Kishanchand Tulsiani vs UOI (2023) 146 Tax 396 (Guj)
- iv) Akshat Pramod Kumar Chaudhary vs. DCIT [2023] 153 taxmann.com 25 (Gujarat)[05-05-2023]
- v) Pratibha Finvest (P.) Ltd. vs. ITO [2013] 29 taxmann.com 420 (Delhi)[05-12-2012]
- vi) Raymond Woolen Mills 236 ITR 34 (SC)
- vii) Hemjay Construction Vs ITO [2019] 109 Taxmann 59 (Gujarat)
- viii) Amit Polyprints (P) Ltd. Vs DCIT [2018] 94 Taxmann 393 (Gujarat)
- ix) Zaveri & Company (P) Ltd, Vs DCIT [2021] 133 Taxmann 397
- x) Priya Blue Industries (P.) Ltd. vs. Assistant Commissioner of Income-Tax [2022] 138 taxmann.com 69 (SC)[04-03-2022]

8. As regards the addition u/s 69A of the Act, the Ld. CIT(A) has held as under:

*“6.3.1 The contention of the appellant is not acceptable on merit. The appellant Vide its submission stated that by the partner of the firm the partnership firm has been dissolved vide deed of dissolution of partnership executed on 01.04.2012. However, on perusal of deed, it was found that there is no date mentioned on the stamp paper on which deed of dissolution/retirement is prepared as to when it was purchased and who has purchased the said stamp paper. Further, the deed of dissolution/retirement is neither registered nor Notarized. Therefore, the same cannot be relied upon. Various courts have ruled that unregistered or unnotarized documents are not enforceable in court of law.*

*Further, it is pertinent to mention here the fact that appellant firm has filed Form 3CD for A.Y. 2013-14. If the submission of the appellant that firm was dissolved with effect from 01.04.2012, then what was the need for filing*

*form 3CD for A.Y.2013-14. The appellant's reasoning in this regard that the form was filed by old CA is illogical and without any substance in it.*

*6.3.2 Further, it is stated by the appellant that the partner of the firm namely Shri Arun Kumar Agarwal has taken over the business as sole proprietor with effect from 01.04.2012. All the bank accounts i.e., with HDFC Bank, owned by the then partnership firm, have also become the bank accounts (with HDFC bank) of sole proprietorship firm with effect from 01.04.2012. As per appellant's submission, the all bank accounts with other assets were owned by the partner of firm namely Shri Arun Kumar Agarwal therefore, any transactions made in this account, for this the appellant will be liable.*

*However, it is pertinent to mention here that if firm had been dissolved as on 01.04.2012 why the same was not intimated to banker for closure of firm's bank account and why the huge transaction of cash deposit was made in the bank account in the name of partnership firm. Why the cash was not deposited by Shri Arun Kumar Agarwal in his individual bank account or in the account of his proprietorship business. Therefore, the contention of the appellant is without any substance in it."*

9. As the assessee had failed to prove the source of cash deposit made in the bank account relying upon the decisions of the Hon'ble Supreme Court and various Hon'ble High Courts in the cases of i) **Rajmeet Singh Vs ITO (2024) 160 Taxmann 83 (Jharkhand)**, ii) **PCIT Vs NRA Iron and Steel (P) Ltd (2019) 103 Taxmann 48 (SC)**, iii) **CIT Vs Durga Prasad More, 83 ITR 540 SC**, iv) **Roshan Di Hatti vs. Commissioner of Income-tax [1977] 107 ITR 938 (SC)[08-03-1977]** and v) **Kale Khan Mohammad Hanif Vs CIT (1963) 50 ITR 1 (SC)** and as the assessee had failed to discharge the primary onus to prove the identity, creditworthiness of the creditor and the genuineness of the transaction therefore, the Ld. CIT(A) treated a sum of ₹ 10,65,77,400/- as nothing but unexplained money u/s 69A of the Act and accordingly, confirmed the addition made by the Ld. AO and the appeal of the assessee was dismissed.

10. Before us, the Ld. DR relied upon the order of the Ld. AO as well as of the Ld. CIT(A) and stated that the assessee had not made any effort



to respond to the notices issued nor had informed that the partnership firm was dissolved. Our attention was drawn to the provisions of section 184(4) of the Act and it was stated that the assessee contends that the partnership was dissolved but the same was not informed to the Department. It was also submitted that the assessee furnished explanation in respect of credits was only ₹ 6 Crore and denied the rest of the transactions.

11. We have considered the submission of the Ld. DR. The assessment order was made u/s 144 of the Act. The assessee has argued before the Ld. CIT(A) and also in the grounds of appeal raised that the bank accounts in the name of the firm one taken over by the proprietorship concern and therefore, there was no justification for making the addition in the hands of the assessee. However, the fact remains that as against the sum of cash deposit of ₹ 10,65,77,400/- mentioned in the assessment order, the assessee had only admitted deposits of ₹ 6,16,21,669.99 in the current account held in HDFC bank bearing A/c no. 3248620000032 and also cash deposit of ₹ 12,23,544/- and cash withdrawal of ₹ 8,00,000/- in the overdraft account no. 03248970000041 with HDFC bank. Thus, the deposit of ₹ 4,44,46,000/- with the banking company was not satisfactorily explained. Since the assessee claims that the firm had been dissolved with effect from 01.04.2012 and the partner had retired, however, since the bank account in the name of the firm was continuing therefore, in the absence of the existence of the firm, the firm was liable to be assessed as an Association of Persons. The assessee claims to have furnished certain documents before the Ld. AO in support of the claim that the deposits were duly shown in the return of income of the proprietor. However, the assessment order does not state so. Hence, in



order to be fair to both the assessee as well as the Ld. AO, the order of the Ld. CIT(A) as well as the assessment order of the Ld. AO both are hereby set aside and the matter is remanded back to the Ld. AO for the assessment to be done *de novo* after examining as to whether the deposits in the bank account claimed to be made out of the sale proceeds of the proprietorship firm were actually from the said source and were deposited in the bank account. The assessee is also directed to furnish explanation the balance amount for which no explanation was filed before the Ld. AO. The Ld. AO shall provide a copy of the documentary evidence in support of the deposits made in the saving bank account and the banking company and the assessee shall furnish the evidence in support of the claim that the source of the deposit is duly explained for the amount for which no satisfactory explanation was filed before him and thereafter the Ld. AO shall make the assessment as per law. Since no further submission has been made as regards the legality of the case and there was evidence before the Ld. AO for issuing notice u/s 148 of the Act, the ground relating to the validity of reassessment proceedings are hereby dismissed as has also done by the Ld. CIT(A) and the other grounds are allowed for statistical purposes.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 9<sup>th</sup> July, 2025.**

Sd/-

**[George Mathan]**  
Judicial Member

Sd/-

**[Rakesh Mishra]**  
Accountant Member

Dated: 09.07.2025

*Bldhan (P.S.)*



Copy of the order forwarded to:

1. **Shyama Shree, 1<sup>st</sup> Floor, 37, Bakar Ali Lane, Asansol, West Bengal, 713301.**
2. **I.T.O., Ward-1(1), Asansol.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata