

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E”, DELHI**

**BEFORE SH. SUDHIR KUMAR, JUDICIAL MEMBER
AND
SH. MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.4515/DEL/2025
Assessment Year- 2022-23

Meenu Gupta 214, Madhuban Colony, Baghpat Road Meerut 250002 Uttar Pradesh 250002 PAN No. ACRPG2700J	Vs.	ACIT, Central Circle Meerut
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Rishab Jain, Advocate
Respondent by	Ms. Sita Srivastava, CIT. DR.

Date of hearing:	23/09/2025
Date of Pronouncement:	17/10/2025

ORDER

PER SUDHIR KUMAR, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order of the Commissioner Of Income Tax (Appeals)-3 Noida [hereinafter referred to as “Ld. CIT(A)”] vide order dated 08.05.2025 arising out of the order of the Assessing officer under section 143(3) of the Income Tax Act 1961 (In short “the Act”) vide dated 16-06-2023 for Assessment year 2022-23.

2. The assessee has raised the following grounds in appeal:-

1. The Ld. (A) has erred in confirming the assessment order passed by the Ld. AO.

2. The Ld. CIT(A) has erred in confirming the addition of Rs.17,00,000/- on basis of copy of seized digital document under section 69B of the I.T. Act 1961 to total income of the Appellant without any corroboration evidence on record and not considering the submissions.

3. The order of Ld. CIT(A) is against law, facts and circumstances of the case.

4. The appellant craves leave to add alter amend modify or delete all or any of the grounds of appeal on or before the date of hearing of appeal.

3. The brief facts of the case are that a search and seizure operation was conducted on 08-03-2022 in the business and residential premises of Sharda Group of Family and Agarwal family. The assessee filed return of income on 01-11-2022 declaring total income at Rs.16,47,670/-. Notices under section 143(2) of the Act were issued after taking the administrative approval to the assessee. The assessee is a proprietor of coal business in the name of M/S Meenu Enterprises. Further notice u/s 142(1) of the Act was issued with questionnaire. The

ledger of M/s Meenu Enterprises in the books of M/s Shree Jee Enterprises was retrieved from the I-phone of Shri Rachit Gupta. According to Assessing Officer, the assessee was paid the RS.17,00,000/- in cash to M/s Shree Jee Enterprises during the period of 01-04-2021 to 23-09-2021 and made the addition of this amount under section 69B of the Act.

4. Aggrieved the order of the ld. Assessing officer the assessee preferred the appeal before the Ld. CIT(A) who vide his order dated 08-05-2025 dismissed the appeal. Being aggrieved the order of the Ld. CIT(A) the assessee is in appeal before the Tribunal.

5. Ld. Counsel for the assessee submitted that there is no cash, payment to M/s Shree Jee Enterprises 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 were made. He also submitted that whatsapp message is secondary evidence and same is not admissible in evidence without complying with the certificate as per the

section 65 B of the Indian Evidence Act 1872. There is no corroborative evidence of payment of cash receipt of cash by the party. It is also submitted that the case is squarely covered by the assessee's own case for the A.Y. 2021-2022.

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

7. We have heard the parties and gone through the material available on record. In the ITA No. 3193/Del/ 2024 Meenu Gupta v. ACIT the Co-ordinate Bench held as under:

5. Upon careful consideration, we find that addition in this case was made u/s 69 A 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 message in the mobile of Racit 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 of 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 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 u/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 Np. 2016/Del/ 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 07-08-2023 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 (WPC) 4733/2024 (Delhi High Court) has held that whatsapp message 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. 65 B of the Indian Evidence Act, 1872, which has not been given to the assessee, as pleaded by the AR. Hence, the 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.

7. In this case the addition was made as unexplained investment u/s 69 B of the Act, on the basis of the whatsapp message without any corroborative evidence. The assessee's case is squarely covered from the assessee's own case,

therefore, we allowed the appeal of the assessee and deleted the addition made by Assessing Office.

8. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 17.10.2025.

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Neha, Sr. PS

Date: 17.10.2025

Copy forwarded to:

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

Sd/-
(SUDHIR KUMAR)
(JUDICIAL MEMBER)

ASSISTANT REGISTRAR
ITAT DELHI