

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 3797/DEL/2024 [A.Y. 2009-10]

Shri Guljar
Village Umahi Kota
Post Kota, Dist. Saharanpur,
Uttar Pradesh

Vs.

The I.T.O [TDS]
Ward - 3(5)
Saharanpur

PAN - BXAPG 1492 G

(Applicant)

(Respondent)

Assessee By : Shri Ankit Gupta, Adv [through VC]

Department By : Shri Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing : 08.09.2025

Date of Pronouncement : 14.11.2025

ORDER

PER NAVEEN CHANDRA, A.M:-

This appeal by the assessee is preferred against the order of the NFAC, Delhi dated 21.06.2024 for A.Y 2009-10.

2. The assessee has raised the following grounds of appeal:

“1. That the notice issued U/s 148 and re-assessment proceeding initiated U/s 147 and the order passed U/s 143(3)/147 are bad in law, without jurisdiction and bad in law. The NFAC erred in upholding the same.

2. That the NFAC erred in upholding the same without appreciating that the Assessing officer has failed to establish the live nexus between tangible material and income escaped assessment, which is vague, incorrect and baseless, hence, the proceedings initiated is illegal, bad in law and without jurisdiction., hence, the reassessment by the assessing officer is illegal, bad in law and without jurisdiction.

3. That no proper statutory approval has been taken by the Assessing officer U/s 151 of the Income Tax Act, 1961 on the alleged reason to believe, as the same has been taken prior reason to believe, hence the proceedings initiated U/s 147/148 is illegal, bad in law and without jurisdiction. The NFAC erred in upholding the same.

4. That, the NFAC has failed to appreciate, the alleged approval given by from Pr. CIT, U/s 151 is mechanical and without application of mind, which is illegal bad in law and without jurisdiction.

5. That, the NFAC has failed to appreciate that no addition was made on the reason recorded, hence the reassessment order passed and alleged addition made is illegal, bad in law and without jurisdiction.

6. That the NFAC has erred in upholding the additions/ disallowances made by the assessing officer at Rs.19,56,900.00

alongwith Agriculture Income of Rs.4,93,100.00 as against income declared Agriculture Income of Rs.24,50,000.00.

7. That, the NFAC has erred in upholding the addition of Rs.19,56,900.00 to the income of the assessee on account of 7) disallowance of agriculture income treated as undisclosed sources U/s 68 of the Income Tax Act, 1961, was made by the assessing officer, which is highly arbitrary and unjustified.

8. That, the NFAC has erred in not appreciating that the provision of section 68 is not applicable on cash deposit in the saving bank account, hence the addition made is illegal, bad in law and without jurisdiction

9. The CIT(A) has erred in making the observation, in the impugned order, which are unjustified, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record and also excessive.

10. That, the CIT(A) has erred in not providing proper and adequate opportunity of hearing to the Appellant to place the evidence/details on record to substantiate its claim during the assessment proceedings.

11. The explanation given in the evidence produced, material placed that has been made available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.

12. The Appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.”

3. At the very outset, the ld. counsel for the assessee vehemently contested the reassessment proceedings u/s 147 of the Income-tax Act, 1961 [the Act, for short] and the reasons recorded by the Assessing Officer for reopening the assessment are flawed and invalid.

4. Briefly stated the facts of the case are that the assessee filed his Return of Income on 20.09.2016 in response to notice u/s 148 of the Act dated 30.03.2016. The AO made an addition on account of cash credit in bank account as undisclosed sources of Rs.19,56,900/- u/s 68 of the Act along with Agricultural Income at Rs.4,93,100/-.

5. The assessee went in appeal before the ld. CIT(A) against the action of the Assessing Officer.

6. The ld. CIT(A) upheld the additions/disallowances made by the Assessing Officer at Rs. 19,56,900/- along with agricultural income of Rs. 4,93,100/- as against agricultural income declared at Rs. 24,50,000/-

7. Aggrieved, the assessee is in appeal before us.

8. Before us, the ld. counsel for the assessee challenged the reasons recorded by the AO as bad in law being without jurisdiction and without application of mind. The ld AR vehemently argued that the reasons were recorded after the approval of the PCIT and hence the notice u/s 148 is in violation of section 151(1) of the Act. The ld AR argued that the assessing officer has failed to apply his independent mind while

recording reasons, and has not established any co-relation/nexus between the material and opinion formed. The ld AR relied on the several decisions of ITAT and on the decision of Hon'ble Apex Court in the case of *ACIT vs. Kelvinator of India Ltd.* 320 ITR 561 (SC) and the decision in the case of *CIT vs. Orient Craft Ltd.* 354 ITR 536 (Del) and *Pr. CIT vs. G&G Pharma India Limited* in ITA No. 545/2015 wherein it has been held that the reason to believe should be based on some tangible material and the same should have the live nexus that income has escaped assessment.

9. It is further submitted that in the instant case, the assessing officer has failed to demonstrate that the cash deposit, in the saving bank accounts is from the unknown source, which has not been disclosed in the return of income or whether the cash has been deposited in single date or the different date, which shows that the assessing officer has not applied his independent mind to the information available at AIR, which is contrary to the decision/ratio of Hon'ble Delhi High Court, in the case of *Pr. CIT Vs. Meenakshi Overseas*, 395 ITR 677 (Delhi), in which, the Hon'ble High Court has followed, its earlier decision in the case of *Pr. CIT Vs. G & G Pharma India Ltd.*, 384 ITR 147 (Delhi).

10. The ld AR of the assessee submitted that the reason to believe recorded by Ld AO do not state that there is any escapement of income

by the assessee which are necessary as per section 148 & 149 for the reasons to believe and relied on *Amar Nath Agarwal Vs. CIT* (2015) 273 CTR (All.) 344 and *Ranbaxy Laboratories Ltd. Vs. CIT* (2011) 242 CTR 117 (Del.)

11. The Id AR argued on merits stating that during the re-assessment proceedings, the assessee has given an explanation that the assessee has deposited the cash of Rs.55,12,000/- out of the sale of agriculture land and sale of agriculture produce, such as crops and popular trees. It was submitted that, the assessee only deposited Rs.50,00,000/-, the balance Rs.5,12,000/- is self-explanatory as covered from the self- withdrawal from the Bank. However, out of Rs. 50,00,000/-, in the year under consideration, mother of the assessee has sold the family agriculture land measuring approx 25 bigas and deposited the cash received in the bank account of his son assessee. Also, the assessee sold the 1100 popular tree, which is evident from the Khasara and Khautani that the assessee had grown 1150 trees, which was sold in the year under consideration at Yamana Nagar, Haryana, which also stated by the assessee in his statement on oath recorded by the assessee. The Copy of the Khautani along with Khasara is being enclosed for your ready reference.

12. The ld AR contested the applicability of section 68 submitting that the assessee is a farmer and only source of income is Agriculture income and interest income received on saving Bank and Agriculture income is exempt from income tax purposes and that the assessee does not maintained any books of accounts. The ld AR further submitted that the amount has been credited in the Bank account of the assessee. therefore, the Hon'ble Bombay High Court has held in the case *ITO Poona v. Bhaichand H. Gandhi* 141 ITR 67 (Bom.) that the pass book supplied by the bank to the assessee cannot be regarded as the book of the assessee, that is, a book maintained by the assessee or under his instructions. Therefore, a cash credit for the previous year shown in the assessee's bank pass book but not shown in the cash book maintained by the assessee for that year, does not fall within the ambit of Section 68 of Income Tax Act, 1961. The ld AR also relied on the Hon'ble Gauhati High Court in the case of *Anand Ram Ratiani vs. CIT* [1997 223 ITR 544 (Gau.). The ld AR further submitted that the assessee has given an explanation that the deposit in the bank account is covered from the sale proceeds of popular trees and agriculture crops, which was also not disproved by the assessing officer. The assessing officer merely doubted the source to whom the trees were sold, which is not permissible in this case, while 1150 popular trees are well entered in Khasara.

13. Per contra, the ld. DR relied on the orders of the authorities below.

14. We have heard the rival submissions and have perused the relevant material on record. For adjudication of the instant case, it would be pertinent to reproduce the reasons recorded by the Assessing Officer which read as under:

30.03.2016 "This is a case of cash deposit of Rs. 55,12,000/- . Neither reply of the verification letters has been filed and/nor return has been filed. Therefore, I have reason to believe that Rs. 55,12,000/- has escaped assessment."

The necessary approval under section 151(1) of the I.T. Act, 1961 has already been accorded by the Pr.CIT, Mzr. Vide letter F.No.Pr.CITMZR/ITO(Tech)/Approval u/s 148/151(1)/2015-16 dated 28.03.2016.

30.03.2016 issued notice under section 148"

ITO

15. It is important to note the dates. From the above "reasons recorded" by the AO, it is apparently clear that on **30.03.2016**, the assessing officer recorded his reasons for reopening, that the income of Rs.55,12,000/- has escaped assessment. The AO however, further records that necessary approval u/s 151(1) was taken from Pr.CIT. Muzaffarnagar vide letter no. F. No. Pr. CIT- MZR/ITO/(Tech)/Approval

u/s 148/151(1)/ 2015-16/8852, on **28.03.2016**. In the above factual matrix, we find that the approval granted by the PCIT dated 28.03.2016, is anterior to the time/date when the reasons for reopening the assessment are recorded i.e., 30.03.2016. We are of the opinion that the reasons should have been recorded prior to the approval date of the PCIT. We are therefore of the considered view that reasons for reopening has not been accorded proper and statutory approval u/s 151(1) of the Act and hence is not legally valid. This fact was not controverted by the ld. DR. In that view of the matter, we hold that the assumption of jurisdiction is without proper and valid approval u/s 151(1) of the Act by the competent authority and the notice issued u/s 148 is liable to be quashed. Accordingly, the impugned notice u/s 148 and the consequent assessment is hereby quashed as void ab initio. The ground no 3 is allowed.

16. Since we have quashed the notice u/s 148 and assessment order, we do not find it necessary to dwell into the other jurisdictional ground as well grounds on merits of the case.

17. In the result, the appeal of the assessee in ITA No. 3797/DEL/2024 is allowed.

The order is pronounced in the open court on 14.11.2025.

Sd/-
[MADHUMITA ROY]
JUDICIAL MEMBER

Sd/-
[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 14th November, 2025.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

SI No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order</i>	
2.	<i>Date on which the typed draft order is placed before the Dictating Member</i>	
3.	<i>Date on which the typed draft order is placed before the other Member [in case of DB]</i>	
4.	<i>Date on which the approved draft order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Order is placed before the Dictating Member for sign</i>	
6.	<i>Date on which the fair order is placed before the other Member for sign [in case of DB]</i>	
7.	<i>Date on which the Order comes back to the Sr. P.S./P.S for uploading on ITAT website</i>	
8.	<i>Date of uploading, inf not, reason for not uploading</i>	
9.	<i>Date on which the file goes to the Bench Clerk</i>	
10.	<i>Date on which the file goes for Xerox</i>	
11.	<i>Date on which the file goes for endorsement</i>	
12.	<i>The date on which the file goes to the Superintendent for checking</i>	
13.	<i>Date on which the file goes to the Assistant Registrar for signature on the order</i>	
14.	<i>Date on which the file goes to the dispatch section for dispatch the Tribunal order</i>	
15.	<i>Date of Dispatch of the Order</i>	
16.	<i>Date on which the file goes to the Record Room after dispatch the order</i>	