

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1714/Del/2024
Assessment Year : 2017-18

Aabid Ali Khan,
2016, First Floor,
Bank Street, Karol Bagh,
Delhi – 110 005.

Vs. ACIT,
CC-26,
New Delhi.

PAN: AGQPK0737J

(Appellant)

(Respondent)

Assessee by : Shri Sanjesh Jarwani, CA
Revenue by : Shri Jitender Singh, CIT-DR
Date of Hearing : 04.11.2025
Date of Pronouncement : 14.11.2025

ORDER

PER ANUBHAV SHARMA, JM:

This is an appeal preferred by the Assessee against the order dated 16.02.2024 of the Commissioner of Income-tax (Appeals)-29, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.CIT(A), Delhi-29/10570/2016-17 arising out of the appeal before it against the order dated 17.05.2021 passed u/s 144/153A of the Income Tax Act,

1961 (hereinafter referred as 'the Act') by the JCIT (OSD), Central Circle-26, New Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the records. The facts in brief are that on 07.03.2017, the Police at Shahjahanpur, U.P. intercepted a bus and seized cash of Rs. 68,47,000/- from two individuals, Mujahid and Shadab. They stated that the said cash belonged to Aabid Ali Khan. The matter was referred to the Income Tax Department, Central Circle-26, New Delhi. The Appellant explained that he had collected a total sum of Rs. 80,42,100/- from 17 individuals, most of whom were close family members, including the Appellant's son, brother, mother-in-law, son's mother-in-law, son's brother-in-law, as well as friends, for the specific purpose of purchasing a property in Lucknow, Uttar Pradesh. Since the proposed property deal could not materialize, the collected funds were being transported back to Delhi. Ld. AR stated before us that by an order dated 10.05.2017 of Criminal Court it was held that the purpose of the collection could not be construed as illicit, and the funds were neither used to commit any offence nor involved in any economic wrongdoing. This clearly substantiates the Appellant's explanation that the cash was intended solely for the lawful purpose of acquiring property and had no connection with any illegal or undisclosed transaction. The Assessing Officer (AO), however, rejected the explanation citing various inconsistencies and passed an order dated 17.05.2021, making the following additions:

- Rs. 80,42,100/- as unexplained cash under section 69A.
- Rs. 4,02,300/- as estimated income by averaging past years' income, since no return was filed for the relevant year.

2.1 The Appellant preferred an appeal before the CIT(A) who vide order dated 16.02.2024, partly allowed the appeal by deleting the addition of Rs. 4,02,300/- holding the same to be arbitrary and without evidence but confirmed the addition of Rs. 80,42,100/- holding that the Appellant failed to furnish verifiable details (such as bank account numbers, withdrawal dates, confirmations of lenders), for which appellant is in appeal raising following grounds:-

“1. The assessment is Bad in Law and Void Ab- initio.

2. The Assessment proceedings via E-notice u/s 153A of the Income Tax Act, 1961 was issued and uploaded on 15/04/2021, for filing the Return of Income for the AY 2017-18 within 15 days from the service of notice. However, a corrigendum was issued on 19/04/2021 within 7 days from the service of the notice. Further, on 22/04/2021, a notice u/s 142(1) of the Income Tax Act, 1961 along with detailed questionnaire was issued for which response has to be filed by 24/04/2021. The A.O. ultimately passed the order u/s 144/153 A read with section 142(1) of the Income Tax Act, 1961 on 17/05/2021 during the period of Severe Pandemic.

3. The Assessing Officer had not issued an appropriate Show Cause Notice duly indicating the reasons for the proposed additions along with necessary evidence/ reasons forming the basis of the same as (Instruction No. 20/2016 dated 29/12/2015 of CBDT).

4. Addition on Account of Unexplained cash of Rs. 80,42,100/-

a. The Learned Assessing Officer has failed to appreciate the source of Cash which emanated from the persons who had individually contributed through their own resources and funds.

b. Without prejudice to what is stated also the learned Assessing Officer had added a sum of Rs.80,42,100/- as against Rs. 68,47,000/- seized by the police and as per their seizure memo,

c. The Learned CIT Appeal while upholding the addition has stated that the addition has been made by the Assessing Officer on the basis of evidences received after examining various persons. The Learned Assessing Officer had not sent any confirmation notice to the parties from whom such cash was received nor did he confront the said parties by sending confirmation notices when the parties had already submitted affidavits. The list of persons who have contributed as lenders for the Prospective purchase of the property in Lucknow are close family of the assessee.”

3. Ld. AR contended that the Appellant has explained that he had collected a total sum of Rs. 80,42,100/- from 17 individuals, most of whom were close family members, including the Appellant's son, brother, mother-in-law, son's mother-in-law, son's brother-in-law, as well as friends, for the specific purpose of purchasing a property in Lucknow, Uttar Pradesh. Since the proposed property deal could not materialize, the collected funds were being transported back to Delhi. The Appellant' AR emphasized that the entire collection was made with the express intention of acquiring the property, and that the contributions were legitimate, documented, and from known associates and family members, thereby explaining the source and purpose of the amount in question. The Appellant's AR submitted details of the investment/contribution of each person, duly signed and notarised affidavit along with their bank statement available at PB 17 to 129. It was submitted that under Muslim law, the concept of absolute ownership (mal) permits a Muslim to acquire property by purchase, gift, inheritance, or other lawful means. Further, Muslim law expressly recognizes joint ownership (*shirkat al-milk*), where property may be purchased collectively,

with each co-owner's share determined in proportion to their contribution unless otherwise agreed. The identity of co-owners whether relatives, friends, or strangers is immaterial so long as the transaction is lawful, the consideration genuine, and the shares ascertainable. Upon the death of a co-owner, his or her share devolves strictly in accordance with Muslim law of inheritance, and not by survivorship as under English law. Thus, joint acquisition of property by pooling resources is not only legally permissible but also a well-accepted practice within the Muslim community, where close relatives and associates often collectively purchase land or property for common benefit. Ld AR submitted that the fact can further be substantiated by the fact that the Assesee along with his son Sajid Chaudhary even availed a loan against gold ornaments from Muthoot Finance of Rs. 10,14,000/-. (Copy of loan sanction letter is enclosed, PB 124 to 125).

3.1 The appellant's AR submits that the impugned addition is wholly unsustainable both on facts and in law. The AO failed to exercise his statutory powers u/s 131 to summon or examine the contributors, even though their names, details, and affidavits were on record. He contended that it is a settled law, as laid down in Commissioner Of Income Tax Orissa vs. Orissa Corporation Pvt Ltd. (159 ITR 78, SC), that once the Appellant provides prima facie evidence regarding the identity and source, the burden shifts to the Department to verify,

Likewise, the affidavits filed could not have been brushed aside without cross-examination, in view of the ratio in *Mehta Parikh & Co. vs. CIT* (30 ITR 181, SC).

3.2 Further, the addition of Rs.11,95,100/- over and above the amount actually seized by the Police is arbitrary and beyond jurisdiction. Most importantly, the entire conclusion of the AO rests on suspicion and conjecture rather than evidence, which is impermissible in law as held in *Umacharan Shaw & Bros. vs. CIT* (37 ITR 271, SC). Having furnished affidavits and supporting bank details, the appellant discharged the initial burden, and the Department's failure to make further enquiries cannot be a ground for sustaining the addition.

4. Ld. DR However, relied the impugned orders and submitted that criminal court has in fact held that appellant's claim is not verifiable. It was submitted that a concocted story needs no verification of facts.

5. We have taken into consideration the facts and circumstances and the plea of the assessee and what immediately strikes is that at pages No.1 to 5 of PB, a copy of the order dated 10.05.2017 from the court of Addl. Sessions Judge No.10, Shajahanpur, Uttar Pradesh, is on record wherein in regard to a case registered u/s 8/22 of the NDPS Act at P.S. Ramchandra Mission, an application of the present assessee, Shri Abid Ali Khan for release of Rs.78,80,000/- was dismissed. As we go through the facts narrated in this order dated 10.05.2017,

we find that on a secret information, four persons were arrested from whom a contraband 'brown sugar' and cash was recovered. They had disclosed to the police that the amount received is proceeds of contraband sold by them. Later on, one of the accused was found to be innocent. While dismissing this claim of the present assessee, the Id. Criminal Court has taken into consideration the plea of the assessee that recovered money belonged to him and he had arranged the same from various relatives to buy land and as the deal did not went through the amount was being taken back.

6. During the hearing of this appeal, we asked the Id. AR if the criminal case has culminated and the order dated 24.07.2017 of the Criminal Court had been filed which shows that out of four persons apprehended as suspects, two of them Mujahid, S/o Salim and Shadab, S/o Eitsham were found to be innocent and no charge sheet against them was filed. In regard to two other persons apprehended, namely TaufEEK and Deepu Goswami, there is nothing on record to show that after facing trial they have been acquitted. The Id. Counsel has also placed on record a copy of the order dated 02.02.2018 of the said Criminal Court whereby the Investigating Officer had sought directions for deposit of Rs.68,47,000/- recovered at the time of alleged arrest of four persons with the statement of Indian Bank account of the Income-tax Department. The order dated 02.02.2018 also shows that two accused, TaufEEK and Deepu Goswami had filed their replies while the accused Mujahid and Shadab had not filed the reply.

7. In the light of the aforesaid discussion and the facts and circumstances surrounding the recovery of the amount, we fail to find any streak of truth in the claim of the assessee that the amounts recovered from these persons belonged to assessee being collected from various relatives for purchase of land which did not fructify. The principles of Muslim law relied with regard to purchase of land by family and its co-ownership have no relevance in the background of circumstances leading to seizure of the cash. Though the assessee is not one of the accused in the said criminal case and no criminality has been attributed to him with regard to dealing in contrabands. However, to accept that as many as 17 persons helped assessee in collecting the amount of Rs.80,42,100/- would be extending the rules of prudence beyond ordinary human conduct.

8. Certainly, the ld. AO has failed to issue notices u/s 131 of the Act to summon and examine the contributors even though their names, details and affidavits were on record, but, it is only once initial onus is sufficiently discharged by the assessee explaining the source that would need rebuttal by the AO by entering into further inquiries about the truthfulness and credibility of the explanation. Section 114 of the Indian Evidence Act 1872 (now 119 of Bharatiya Sakshya Adhiniyam (BSA), 2023) allows a court to presume the existence of a fact if it is likely to have happened based on the "common course of natural events, human conduct, and public and private business" in the context of the specific case. In cases like the present when natural events and human conduct narrated do not have even meager probability of truth, then ld. AO cannot be

faulted to have not made further enquires. We are of the considered opinion that an explanation of source of cash found in possession of individuals, dehors of all human conduct and probability need no rebuttal from revenue. Thus, we find no substance in the contentions raised. The grounds have no substance. The appeal of the assessee is dismissed.

Order pronounced in the open court on 14.11.2025.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 14th November, 2025.

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Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi