

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER
AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

ITA No. 130/Del/2025 (AY 2012-13)

DCIT ROOM NO. 218-D BLOCK, VIKASH BHAWAN, DELHI- 110 002	Vs	Rajan Kumar 31,Vijay Block Laxmi Nagar Delhi-110092 PAN: CAAPK8381E
(APPELLANT)		(RESPONDENT)

&

Cross Objection No.124/Del/2025 (A.Y.2012-13)

Rajan Kumar 31,Vijay Block Laxmi Nagar Delhi-110092 PAN: CAAPK8381E	Vs	DCIT ROOM NO. 218-D BLOCK, VIKASH BHAWAN, DELHI- 110 002
(APPELLANT)		(RESPONDENT)

Revenue by	Shri Ajay Kumar Arora, Sr. DR
Assessee by	Sh. Mukesh Kumar Jain, CA Sh. Atul Dhama, CA Sh. Samyak Jain, Adv.

Date of hearing:	27/1/2026
Date of Pronouncement:	06/2/2026

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the Revenue is preferred against the order dated 13-11.2024 of the National Faceless Appeal Centre (NFAC) Delhi (in short “the Ld. NFAC)) relevant to assessment year 2012-13. The assessee also filed the cross objection for the Assessment Year 2012-13.

2. The Revenue has raised the following grounds in appeal:

1. Whether on the facts and in circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made on account of unexplained money u/s 69A of the Act to the tune of Rs.1,83,50,000/-.
2. Whether on the facts and in circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,83,50,000/- which is nothing but accommodation entry provided in form of non- genuine share premium to M/s SSJ Foods Ltd and M/s South Asia Impex. Pvt. Ltd.
3. Whether the Ld. CIT(A) is justified in deleting the addition of Rs. 1,83,50,000/- whereas upholding the addition on account of commission earned @ 2% (Rs.3,67,000/-) which emanates from the unexplained money to the tune of Rs.1,83,50,000/- without considering the facts and enquires made by the AO.
4. That the grounds of appeal are without prejudice to each other.

5. That the appellant craves leave to add/ alter/delete/modify any/all the grounds of appeal before or during the course of hearing of the appeal.

3. The brief facts of the case are that the assessee is an individual and running a proprietorship firm under the name of “ M/s Shipra Engineers and Consultants”. The assessee filed return of income on 21-03-2013 declaring total income at Rs. 42,50,268/-. The case of the assessee was selected for scrutiny. Notices u/s 143(1) of the Income Tax Act, 1961 and u/s. 142(1) of the Act along with questionnaire which were issued on 14-08-2013 and 02-09-2014 and duly served upon the assessee. The Assessing Officer rejected the books of account and completed the assessment, after making the addition of Rs.1,82,39,020/-. Aggrieved the order of the AO the assessee filed the appeal before the Ld. CIT(A) who vide his order dated 17-01-2020 dismissed the appeal of the assessee. Being aggrieved the order of the Ld. CIT(A) the assessee filed the appeal before the tribunal, which was disposed-off, on the ground the assessee opted the scheme Vivad se Vishwas scheme and settled the dispute.

4. Further information received from the investigation wing that a search action u/s 132 of the Act was carried out at premise of M/s Skylark Group of cases on 25-04-2017. It was found that Shipra Engineers and Consultants Prop. Rajan Kumar is one of the beneficiary who has given accommodation entries to M/s Skylark Group through non-genuine entities during the A.Y.2012-13 amounting to Rs.1,83,50,000/-. The AO processed the case u/s 147/148 of the Act after obtaining the approval. Notice u/s 148 of the

Act was issued to the assessee. Further notices u/s 142(1) of the Act with detailed questionnaire was also issued. The Assessing officer completed the assessment, after making the addition of Rs.1,83,50,000/- as non- genuine transaction u/s 69A of the Act and on that amount of 2% commission amount for providing accommodation entry.

5. Aggrieved the order of the AO the assessee preferred the appeal before the Ld. NFAC, who vide order dated 13-11-2024 deleted the addition of Rs.1,83,50,000/- made by AO u/s 69A Of the Act on merits but confirmed the addition of 2 % commission on the non-genuine accommodation entry. The Ld. CIT(A) in his order has observed as under:-

“In ground no 8, the facts of the case are that the appellant was engaged in business of suppliers and civil contractors under the name and style of “M/s Shipra Engineering & Consultant “. The appellant has already been assessed under 143(3) of the I.T. Act, 1961 at Rs.2,24,89,220/- by rejecting books of accounts @ 8 % of entire receipts of the Appellant against the returned income of Rs.42,50,268/- on 21-03-2013. During the year under consideration the appellant had paid an account of Rs.1,83,50,000/- to two entities namely M/s SSJ Foods Ltd and M/s South Aisa Impex Pvt Ltd. The appellant has stated that it had paid the amount of the alleged entities towards purchases of raw material used for business purposes.

The appellant raised the issue that AO could not make the addition u/s 69A of the IT Act, 1961. The appellant stated that the

applicability of section 69A of the Act lays when the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or other valuable article is not recorded in the books of account, maintained by him for any source of income and the assessee offers no explanation about the nature and source of acquisition of such money , bullion, jewellery or other valuable article, or the explanation offered is not satisfactory in the opinion of the Assessing Officer, then the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee of such financial year. Section 69A of the Act is reproduced here below:

69A Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

From the reading of section 69 A of the Act the Assessing officer should first come to a finding that the assessee has owner of money, bullion jewelry or other valuable articles and the same are not reprinted in the books of account and thereafter he can call the

assessee for an explanation from about the nature and sources of the investments and in case e finds that the assessee is unable to furnish the explanation or the explanation offered by him is not satisfactory the assessing officer can treat the such money bullion, jewelry or other valuable articles to be the income of the assessee of the financial year in which assessee has found the possession of such money bullion, jewelry or other valuable articles.

From the perusal of the above, it shall be clear that the basic condition for invoking the provisions of section 69A is that the assessee should be the owner of the money or bullion or jewelry etc. and same should be found in his possession. Further we wish to submit that addition under section 69A of the Act can only be made if the assessee is found to be in possession of money bullion, jewelry etc. which are not recorded in his books.

In the recent judgment delivered by Hon'ble Delhi High Court in the matter the Commissioner of Income Tax (International Taxation)-1 New Delhi Versus Hersh Washesher Chadha 2023 (12) Tmi 656 –Delhi High Court wherein held that

6.The provision under Section 69A of the Act basically deals with unexplained money etc. to be considered in the exercise of aggregation of income under Chapter VI of the Act. Section 69A of the Act lays down that Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of

account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

7. Admittedly in the present case the respondent/assessee is a non-Resident Indian and his sources of income in India being from interest on bank accounts and interest on income tax refund, he is not obliged to maintain any books of account in India. It appears to us prima facie that the expression “if any specifically used in section 69A of the amplifies that where books of account are not maintained it would not be possible to invoke this provision. But as mentioned above learned counsel for appellant/ revenue requested to keep this question open to be agitated in some better case. We accede to this request.”

Reliance may be placed on the decision of the DY. Commissioner of Income Tax, Circle -32(2) Mumbai versus M/s Karthik Construction Co. 2021 (9) TMI459 ITAT Viskhatnam wherein it is held that Addition u/s 69A can only be made when the assessee found to be in possession of money , bullion, jewelry etc. not recorded in the books of accounts of the assessee.

Further reliance may be placed on the decision of Income Tax Officer-19 versus Shri Parvez Mohammed Hussain Ghaswala 2015 (10) TMI 2575 –ITAT Mumbai wherein it is held that for invoking

provisions of section 69A assessee should be the owner of any money, bullion jewelry or any other valuable articles. In this case of assessee he was not found to be the owner of any money, bullion, jewelry or any other valuable articles. In such a situation invoking of provisions of section 69A was not justified.

In the instant case the AO failed to establish that the appellant has found to be the owner of any money or other valuable articles but only acted upon the statement taken u/s 131(1A) of the Act which is not correct. The AO himself admitting that the appellant has made payment to the certain superfluous entities, then the question to add the income u/s 69A of the IT Act does not arises. On the other hand in pars 12 of the assessment order, the AO observed that the conduct of the appellant seems to like entry operator. If the perception of the AO is true then also the entire amount can not be added to the income of the appellant. It is pertinent to note that the appellant has already been assessed under 143(3) of the IT Act, 1961 at Rs. 2,24,89,220/- by rejecting books of accounts @ 8 % of entire receipts of the Appellant against the returned income of Rs.42,50,268/-.

Accordingly additions made by assessing officer on account of payment made to M/s SSJ Foods and M/s South Aisa Impex Pvt. Ltd. amounting to Rs.1,83,50,000/- for A.Y. is deleted and ground no. 8 raised by the appellant is allowed.'

6. Aggrieved, the order of the NFAC the Revenue preferred the appeal.

6.1 The Ld. Sr. DR submitted that the NFAC confirmed the addition of 2% commission on the non-genuine accommodation entry but wrongly deleted the accommodation entry. He relied on the order of the Assessing Officer.

7. Ld. AR of the assessee submitted that the entire sum could not be the income of the assessee. If the assessee is engaged in business of accommodation entry, then he would only be earning 0.5% to 1% of the amount as income and same is liable to be treated as the income of the assessee and not the entire amount. The assessee has already been assessed @8% of gross credit in the bank account u/s 143(3) of the Act after rejecting the books of accounts vide order dated 30-03-2015.

8. We have heard the rival contentions and perused the records. In the present case the assessee was not found the owner of any money or other valuable articles but the AO acted upon the statement taken u/s 131(1A) of the Act. The assessee has already been assessed under section 143(3) of the Act at Rs. 2,24,89,20/- by rejecting books of accounts after making the addition of RS.1,82,39,020/- and estimated his profit @8% of the gross receipts of Rs.22,11,16,102/-. We find that Ld. NFAC has examined the issues in the correct perspective and rightly deleted the addition towards the addition on the non-genuine transaction and treated the same as unexplained money u/s 69A of the Act made by the AO. The reasoning and findings of the Ld. NFAC, while granting relief is on the proper appreciation of law expounded by the judicial dicta. We do not

find any reasons to interfere with the findings of the NFAC. The appeal of the Revenue is dismissed.

Assessee's Cross objection no. 130/Del/2025

9. The assessee raised the following grounds:

1. *That having regards to the facts and circumstances of the case, the assessee has already been assessed u/s 143(3) of the Act and re-opening merely on the change in opinion and appellant has provided true and fair disclosure at the time of original assessment.*
2. *That having regards to the facts and circumstances of the case, the initiation of proceedings u/s 148 and the consequent assessment u/s 147/148 is contrary to law in the absence of any incriminating material to form reason to believe, as per the report of Investigation Wing and AO relied on, which only directs that the AO has examine the details and after this examination only to determine whether there could be any justification for initiation of action u/s 147/148. Thus the issue of notice u/s 148 and consequent assessment order is without the authority of law.*
3. *The appellant craves to add or amend any /all grounds of appeal before or during the hearing of the appeal.*

10. We have heard the revival contention and perused the records.

11. As regard ground No-1, is concerned, the Ld. AR submitted that the reasons recorded by the AO are bad in law because the reasons was recorded without application of independent of mind. The Ld. AO was unaware and confused regarding the fact that assessee has given or

received the accommodation entry. Reliance is placed on the following decisions:

- (i) Pr. CIT v. Meenakashi Overseas Pvt. Ltd. [2017] 82 taxmann.com 300 Delhi In this case the Hon'ble High Court held that there is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusive of the AO are at best a reproduction of the conclusion in the investigation report. Indeed, it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.
- (ii) CIT v. Insecticide (India) Ltd. {201} 38 taxmann. Com 403 (Delhi)
- (iii) PCIT v. G & G Pharma India Ltd[2017] 81 taxmann. Com 109 (Delhi)
- (iv) In the case of Signature Hotels (P) Ltd. v. ITO [2012] 20 taxmann. Com 797 (Delhi) the Hon'ble High Court held that it was apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in mechanical manner. The commissioner also acted on the same basis by

mechanically giving his approval. Therefore, the proceedings under section 148 were to be quashed.

- (v) In the case of CIT v. SFIL stock Broking Ltd. [2010] ITR 285 (Del) the Hon'ble High Court held that mere information received from the Dy. Director of IT(Inv.) and direction of the said officer and the Addl. CIT to initiate proceedings under s.147 cannot constitute valid reasons for initiating reassessment proceedings in the absence of any thing to show that the AO has independently applied his mind to arrive at a belief that income has escaped assessment.

12. In the reasons recorded the AO stated that Shipra Engineering and Consultant is one of the beneficiary who has given the accommodation entry to M/s Skylark Group. In the information received from the Investigation Wing, it is mentioned that assessee has received the share capital and share premium. A perusal of the reasons for reopening of the case for the impugned assessment year shows that the re-opening was made on the basis of the report of the Investigation Wing and there is no independent application of mind by the AO for re-opening. In the above cited cases, it was held that re-opening on the basis of the report of the Investigation Wing without independent application of mind by the AO is not valid. Accordingly, the reassessment proceedings which were based on the report of Investigation Wing and without independent application of mind by the AO have been held to be illegal. In this case the AO has reopened the assessment on the basis of report of the Investigation Wing

and there appears to be no independent application of mind by the AO, hence, the reassessment is not proper. Accordingly, we hold that the reassessment proceedings initiated by Assessing Officer is illegal and thus quashed. The legal ground raised by assesses is allowed.

13. As regard Ground No-2 is concerned, the Ld. AR submitted that the assessment has been framed u/s 143(3) of the Act and there is no failure of assessee to disclose facts relevant to assessment, the jurisdiction assumed by Ld. Assessing Officer beyond the limitation of 4 years was illegal and liable to be quashed. He also submitted that no complete assessment can be reopened after four years from the end of Assessment Year unless there is a failure on the part of assessee to disclose truly and fairly all the material facts at the time of assessment. Reliance is placed on the following decisions;

- (i) PCIT v. L&T Ltd. (2020) 113 taxmann.47
- (ii) Sabh Instrastructure Ltd. v. asst. Commissioner of Income Tax [2018] 99 taxmann. Com 409 (Delhi)
- (iii) German Remedies Ltd. v. DCIT (2006) 287 ITR (Bom) H.C.
- (iv) CIT v. Foramer France (2003) 264 ITR 566 (SC)
- (v) Haryana Acrylic Manufacturing v. CIT[2008] 175 taxman 262
- (vi) Coperion Ideal (P.)Ltd. v. CIT [2017] 80 taxmann. Com
- (vii) CIT v. Suren International (P.) Ltd. [2013] taxmann. Com 398

The first proviso to Section 147 reads as under ;

“ Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no

action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment , for that assessment year. “

14. The power under section 147 of the Act have to be exercised after a period of four years only if there is a failure to disclose fully and truly all material facts and information, by the assessee. In the present case the case of assessee was re-opened beyond period four years where the original assessment has been completed u/s 143 (3) of the Act. The assessee had disclosed the fully and truly materials facts at the time of the original assessment. The Assessing officer has failed to show that escapement of income is due to failure on part of the assessee. Since the assessment had earlier been concluded under section 143(3) by order dated 30-03-2015 and assessee had fully and truly disclosed all material facts necessary for assessment, the pre-condonation for invoking the proviso to section 147 of the Act had not been satisfied. Thus the reassessment order is liable to be quashed. We hold and direct accordingly. Accordingly, we allow this legal ground raised by the assessee.

15. In the result, the appeal of the Revenue appeal is dismissed and the cross objection filed by the assessee is allowed in the aforesaid manner.

Order pronounced in the open court on 6-2-2026.

Sd/-

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER
SR BHATNAGGAR

(SUDHIR KUMAR)
JUDICIAL MEMBER

Date:- 6.2.2026

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI