

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

**BEFORE
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

ITA No.2201/Del/2025, A.Y. 2017-18

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| Zeliant Corp A-2/11, Rana Pratap Bagh, Delhi New Delhi-110007 PAN: AAAAZ2019H (Appellant) | Vs. | Income Tax Officer, Ward 36(1), Delhi (Respondent) |
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| Appellant by | Sh. Suresh Gupta, CA |
| Respondent by | Sh. Nitin Kumar Jaiman, SR-DR, |

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| Date of Hearing | 30/01/2026 |
| Date of Pronouncement | 06/02/2026 |

ORDER

PER RAJ KUMAR CHAUHAN , J.M. :

1. This appeal is filed by the assessee /appellant against the order of Learned Commissioner of Income Tax (Appeals)/ NFAC, Delhi [hereinafter referred to as the "CIT(A)"], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "*the Act*"] dated

11.02.2025 for the A.Y. 2017-18 wherein the appeal was allowed for statistical purposes by restoring the matter to the Ld. Assessing Officer ('AO') for deciding the case afresh after verifying all the new evidence before him.

2. Aggrieved by the impugned order, assessee is in appeal before us and raised following grounds of appeal:

1. "On the facts and circumstances of the case, the authorities below have erred both in law and in facts of the case in upholding the assessment order as the was never served upon appellant within the period prescribed u/s 153(1) of the Act and in accordance with the procedure prescribed u/s 282 of IT Act and rules framed thereunder.

2. On the facts and circumstances of the case, the authorities below have erred both in law and in facts of the case in making/upholding the addition of Rs. 83,50,900/- u/s 69A rws 115BBE allegedly treating the above credits in bank account as unexplained money ignoring the submission of appellant.

3. On the facts and circumstances of the case, the authorities below have erred both in law and in facts of the case in upholding the assessment order as the same has been undertaken 3 in the status of AOP u/s 2(31) (v) whereas the appellant is a partnership firm assessable as firm in view of sec 2(31)(iv) of IT Act. Therefore, such assessment order has been passed without the procedure for changing the status of appellant.

4. The appellant craves leave to add, delete, modify/ amend the above grounds of appeal with the permission of the Hon'ble appellate authority."

3. The facts in brief as culled out from the proceedings that the appellant is a partnership firm coming into existence w.e.f. 31.07.2025 through a deed of partnership executed on that date between two partners Sh.

Apurv Jain and Shlshu Sharma. As per Section 2(31)(iv) of the Act, the appellant being a firm is assessable entity and assessment has been carried out in the status of AOP wrongly. As per e-filing record, the assessee has not filed ITR for A.Y. 2017-18. As per AIMS module of ITBA Portal, it was noticed that the assessee made cash deposit of Rs. 67,25,000/- in account maintained with ICICI, Gujranwala Town Branch, Delhi during the period of demonetization. Accordingly, notice u/s 142(1) of the Act was issued through AIMS module of ITBA portal dated 24.11.2017 asking the assessee to file return of income for A.Y. 2017-18. It is alleged that the said notice was duly served by the mode of E-mail but assessee failed to comply with the notice u/s 142(1) of the Act. Subsequently, notice u/s 142(1) of the Act vide dated 07.06.2019 and 09.09.2019 were issued. The assessee filed reply in compliance of notice dated 09.09.2019 vide reply dated 14.09.2019 stating that the amount of cash deposited during demonetization period was received in cash from relatives. The details of relatives were also provided to whom the notice u/s 133(6) of the Act were sent to find out identity, creditworthiness and genuineness of the transaction. It is stated that none of the response to the notice u/s 133(6) of the Act fulfilled the criteria to prove the genuineness of the claim made by the assessee and

finally, show cause notice was get affixed at the known addresses of the assesseees. Despite several notices issued the assessee did not file the ITR in response to notice u/s 142(1) of the Act. No books of accounts like balance sheet, profit & loss account and other supporting documents were filed by the assessee. The assessing officer proceeded to pass the best judgment assessment u/s 144A of the Act. After notice issuing to the Bank Manager of ICICI bank, the bank statement was procured wherein the huge cash deposit of Rs. 72,82,000/- (Rs. 67,25,000/- during demonetization period and Rs. 5,57,000/- in the remaining period of F.Y. 2016-17) was noticed. In response to the various notices issued, the assessee failed to prove the genuineness of the claim with respect to money deposit during the demonetization period. Final show cause notice u/s 144(1)(b) of the Act was issued on 26.12.2019 asking to explain the cash deposit and credit deposit of Rs. 83,50,900/- and as to why the same be not treated as unexplained income u/s 69A r.w.s. 115 BBE of the Act. The AO observed that in respect of cash deposit and credit deposit, no valid explanation has been offered by the assessee. Hence, the addition of Rs. 72,82,000/- including 67,25,000/- during the demonetization period was added as

unexplained money u/s 69A r.w.s 115BBE penalty proceeding u/s 271AAC were initiated.

4. Aggrieved by the assessment order, the assessee filed appeal before the Ld. CIT(A) who has restored the file to the Ld. AO and allowed the appeal for statistical purposes by observing para no. 5 & 6 reproduced as under:

“5. OBSERVATIONS, FINDINGS AND DECISIONS:

It appears from the records that the appellant failed to comply with the notices issued by the A.O. during the course of assessment proceedings. It is also observed that the return of income u/s 139 of the Act was not filed for the A.Y. 2017-18. Notice u/s, 142(1) of the I.T. Act were issued but no response was made by the appellant during the assessment proceedings. Moreover, it is noted that the appellant has not furnished any documents/information to the satisfaction of the A.O. in response to show cause notice issued by the A.O. and the Ld. A.O has made addition amounting to Rs.83,50,900/- on account of unexplained money u/s 69A of the I.T. Act, 1961 which were found to have been deposited in the assessee's bank account.

During appellate proceeding Appellant has made an elaborate submission including written submission, copy of partnership deed copy of ICICI Bank statement, copy of form 25AS and others. Therefore, in the interest of natural justice, I consider that it would be appropriate to give cognizance to the submissions made by the assessee during appellate proceeding for explaining his case and to set aside the assessment order passed by the A.O. u/s 144 of the I.T. Act. 1961 on 28/12/2019 in view of the new amendment (provision) inserted by the Finance (No.2) Act, 2024 w.e.f. 01.10.2024, to decide the case afresh after verifying all the new evidences before him/her and after allowing the assessee a reasonable opportunity to explain his case. The appellant is also directed to furnish the requisite details as required by the A.O. The A.O, is directed to collect the necessary information wherever required

6. Conclusion: In the result the appeal of the appellant is set aside and the appeal is allowed for statistical purpose.”

5. Aggrieved by the impugned order, the assessee is in appeal before us.
6. We have heard the Ld. AR for the assessee and Ld. Sr. DR on behalf of the Revenue. The Ld. AR at the very outset, submitted that the assessment order itself is void ab initio and is liable to be quashed because the notice and the assessment order were never served upon the appellant within the period prescribed u/s 153(1) of the Act as the same were never served in accordance with the procedure prescribed u/s 282 of the Act and the Rules framed therein. It is argued that the impugned order, therefore, suffers from perversely and illegality as the assessment order itself has been issued beyond the prescribed period and was never served and no purpose would be served by restoring the matter to the file to the AO which will amount to adding salt to the wound. Hence, prayed for allowing of the appeal and quashing of the assessment order. The Ld. AR has filed compilation of decisions and has relied upon the following cases as under:

1. *“Nitin Jain vs ACIT in ITA No. 1775/Del/2024*
2. *Hersh Washesher Chadha, Vs. ACIT. Circle (International Taxation) in ITA No.123/Del/2021 dated 13.04.2023 and Delhi High Court order in 471 ITR 764.*
3. *Deepak Sharma vs ACIT ITA No.2886/Del/2022 dated 26.03.2025*

4. *Ganna Vikas Parishad vs JCIT ITA No.6481/Del/2014 dated 31.05.2023*
 5. *JCIT Vs. M/s N.S. Committee ITA 20/Del/2012*
 6. *Kanchi Heritage vs ACIT ITA No.1591/Pun/2017 dated 16.10.2020*
 7. *M/s D N Builders vs ACIT ITA No.220/RPR/2018 dated 02.02.2023”*
7. During the argument, it was further submitted that the assessment order was served on the incomplete e-mail ID i.e. 1911@gmail.com **secondly**, no SMS alert for another mode of communication other than ITBA portal was used for sending the notice/ communication of the assessment order to the assessee. The ld. AR for the assessee has relied upon the case of Suman Jeet Agarwal and Other vs. ITO, Ward 61(1) & Ors. reported as 2022 (9) TMI 1384-Delhi High Court and it is submitted that in view of the finding of Hon'ble High Court, the assessment order is barred by limitation as the notice were never served as per procedure laid down in section 282 of the Act and the Rule framed therein. During the hearing of the matter on 23.12.2025, revenue was directed to place on record factual report on the following issues: -

“a) Whether the Assessment order was served on e mail ID mentioned as 1911 @gmail.com was bounced back to the department?

b) Whether any SMS alert or any other mode of communication other that ITBA portal was sent to Assessee for communication of Assessment order. The Revenue is directed to place on record the factual report on the above mentioned issues on or before

*16/01/2026 with advance copy of Ld. AR. Adjourned to
29/01/2026 as part heard at 2:30 p.m."*

8. The Ld. DR for the Revenue has filed the reply in pursuance to the direction issued which is reproduced as under:

As per the directions issued by Hon'ble bench, submission on following queries were desired from Assessing Officer:-

1. Whether Assessment Order served in the Email ID 1911@gmail.com was bounced back?
2. Whether any SMS alert or any other mode of communication other than on ITBA portal was sent to Assessee for communication of Assessment Order?

In this regard, as reported by Assessing Officer, the assessment order was sent to the email ID "1911@gmail.com". However, the ITBA module bears the remarks "email not sent" in the window of "delivery status" (screenshot attached as "Annexure A"). Thereafter, the assessment order along with the computation sheet and demand notice was duly sent through speed post vide tracking ID No. ED591719230IN on 31.12.2019. A copy of the speed post proof is attached as "Annexure B" for ready reference.

On perusal of the database available on the e-filing portal, it is found that the computation of income and the demand notice were successfully uploaded through the e-filing portal (copy attached as "Annexure C"). Further, the assessment order was also uploaded on the e filing portal, however, due to some technical/system error, the assessment order was showing in the "Notices" Section.

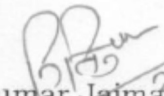
Also, it has been reported by Assessing Officer that the assessment order along with the computation sheet and demand notice was duly served upon the assessee through speed post vide tracking ID No. ED591719230IN dated 31.12.2019.

Further, it is pertinent to mention that the assessee duly complied with the first notice dated 09.09.2019 issued by the Assessing Officer, which is evident from the entries recorded in the order sheet (copy attached as "Annexure D").

The notice dated 09.09.2019 and the show cause notice dated 26.12.2019 were uploaded on the e-filing portal, where the same would have been visible to the assessee. However, the assessee remained unresponsive thereafter and did not file any further replies to the subsequent notices issued during the course of proceedings. This conduct clearly indicates that the assessee was aware of the ongoing assessment proceedings but chose not to participate further.

In view of the above submission made by the AO and in the present circumstances of the case, where the assessment has been set aside by Ld. CIT (A) to the file of AO, it is humbly prayed that the claim of the Appellant (assessee) may not be entertained and the matter may please be decided accordingly.

Yours faithfully


(Nitin Kumar Jaiman)
Sr. DR, A Bench
ITAT, New Delhi
23/01/2026

9. The Ld. AR for the assessee submitted that it is clear from the response of the Revenue that the notice and the assessment order has not been served as per provision of Section 282 of the Act and Rule 127 of the Income Tax Rules (hereinafter referred to as the Rules). It is therefore, submitted that in view of the law laid down by Jurisdictional High Court

in Suman Jeet Agarwal and Ors (supra) and the admitted facts by the Revenue in their reply wherein admittedly before sending the notice through ITBA portal, SMS trigger was not sent, hence, it shall be presumed that the notice and the assessment order were deemed to be served when the same were become known to the assessee and the said knowledge of the proceedings and the assessment order of the assessee are beyond the period of limitation in this case. Hence, the ld. AR prayed for allowing of the appeal and quashing of the assessment order being void ab initio for non-following the procedure laid down under Section 282 of the Act r.w.r 127 of the Rules.

10. Ld. DR on the other hand submitted that, vide impugned order, the Ld. CIT(A) has allowed the appeal for statistical purposes and that no prejudice would be caused to the assessee in case the assessee appears before the AO and presents the case. Hence, he prayed for dismissal of the appeal.

11. We have considered the rival submission and examined the record. The Hon'ble Delhi High Court in Suman Jeet Agarwal (supra) in para 31.4 and 31.6 was pleased to hold as under:

“31.4. Category ‘D’: The petitions challenging Notices falling under category 'D' which were only uploaded in the E-filing portal of the assessee without any real time alert, are disposed of with the direction to the JAOs to determine the date and time when the assessee viewed the Notices in the E-filing portal, as recorded in the ITBA portal and conclude such date as the date of issuance in accordance with the law laid down in this judgment. If such date of issuance is determined to be on or after 1st of April 2021, the Notices will be construed as issued under Section 148(b) of the Act of 1961 as per the Ashish Agarwal (Supra) judgment.

31.6 Notices sent to unrelated e-mail addresses: The petitions challenging Notices which were sent to unrelated e-mail addresses are disposed of with the direction the JAOs to verify the date on which the Notice was first viewed by the assessee on the E-filing portal and consider the same as the date of issuance. If such date of issuance is determined to be on or after 01st April, 2021, the Notices will be construed as issued under Section 148 (b) of the Act of 1961 as per judgment in Ashish Agarwal (Supra).”

12. We have examined the reply of the Revenue dated 28.01.2026 in pursuance to the direction issued by the Bench wherein it is admitted that the assessment order was uploaded on e-filing portal, however, due to some technical error and system error, the assessment order was showing in the “Notices” section. It is further stated that the assessment order along with computation sheet and demand notice was duly served by assessee through speed post vide tracking ID No. ED591719230IN on 31.12.2019. It is pertinent to mention that no proof of tracking record showing service of the assessment order through speed post has been

filed. It is to be noted that in the written argument submitted on previous date by the Ld. Sr. DR which are marked as Annexure 1, it is categorically stated that “on perusal of the database available on the e-filing portal, it is found that the computation of income and the demand notice have been served through e-filing portal and the assessment order could not be served through e-filing due to some technical/system error. In the subsequent report / written submissions filed by the Ld. Sr. DR on 28.01.2026 in Annexure B, it is again admitted that the assessment order was not uploaded through e-filing portal but it was claimed that the assessment order was served through speed post. As observed by us in the preceding para, no proof of service of speed post by filing the tracking report has been submitted. In the absence of report of service through tracking report, there is nothing to believe that the assessment order and other computation sheet and demand notice were duly served through speed post sent on 31.12.2019. Therefore, in view of the finding of the Hon'ble Jurisdictional High Court in Suman Jeet Agarwal (supra) and in view of the provision of Section 282 of the Act and rule 127 of the Rules, we are of the considered opinion that the assessment order and the requisite notice has not been served upon the assessee as per rule and procedure laid down in that regard which has resulted into

miscarriage of justice. Therefore, passing of the assessment order and the subsequent proceeding relating to the demand raised in pursuance of the assessment order are bad in law and liable to be quashed. It is ordered accordingly. The appeal of the assessee is allowed in above terms.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in open Court on 06 February, 2025

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Dated: 06/02/2026
Binita, Sr. PS

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI