

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No. 4031/Del/2024
(Assessment Year: 2017-18)

Income Tax Officer, Ward-34(1), New Delhi	Vs.	Kaushal Kishor Mishra, E-2, Block, New Delhi
(Appellant)		(Respondent)
		PAN: CZEPM8418D

Assessee by :	Shri Amarbir Singh Walia, Adv Shri Manish Mittal, Adv Shri Arvinder Pal Singh, CA
Revenue by:	Shri Om Prakash, Sr. DR
Date of Hearing	11/03/2026
Date of pronouncement	27/03/2026

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.4031/Del/2024 for AY 2017-18, arises out of the order of the Id National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 10.07.2024 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.12.2019 by the Assessing Officer, ITO, Ward-34(2), New Delhi (hereinafter referred to as 'Id. AO').
2. The Assessee had derived business income and had filed his return of income for the assessment year 2017-18 on 16-01-2018 declaring total income of Rs 5,01,440. The case of the Assessee was selected for scrutiny and assessment was completed under section 143(3) of the Act

on 27-12-2019 determining total income at Rs 1,88,18,537. In the assessment, the following additions were made:-

a) Addition under section 69A of the Act on account of cash deposits in the bank account – Rs 1,11,11,550

b) Addition under section 69A of the Act by estimating the profit at the rate of 8% of gross receipts - Rs 72,05,547

3. The Learned CITA noted that Assessee is the proprietor of two concerns, i.e., M/s Kuber Enterprises and M/s Image Promotion and Branding. The Learned CITA noted that Assessee had earned profit from one of the proprietorship concerns i.e., M/s Image Promotion and Branding, while he had incurred loss from another proprietorship concern M/s Kuber Enterprises. From the book results of M/s Kuber Enterprises, the Learned CITA noted that Assessee had declared loss of Rs. 1,28,520.

But from the audited books of accounts of M/s Kuber Enterprises for the next two assessment years, the Learned CITA found that Assessee had declared net profit of 0.80% and 1.82%. Accordingly, he adopted the average of the net profit of that and arrived at 1.31% of turnover and sought to substitute 1.31% of turnover to be considered as net profit of M/s Kuber Enterprises and directed the Learned AO to calculate the profit accordingly. The Learned CITA effectively deleted the addition made on account of estimation of net profit at 8% in the sum of Rs 72,05,547.

4. The Learned CITA, as against the addition made on account of cash deposits noted that Assessee is having sufficient cash balance as per his Cash Book to explain the cash deposits in page 47 of his appellate order. He further noted that Assessee had made regular cash

deposits in his bank accounts out of his cash sales and as such presumption regarding available cash being treated as undisclosed income is not in accordance with the records particularly in the absence of any finding or corroboration. Accordingly, the Learned CITA deleted the addition made in the sum of Rs 1,11,11,550 made by the Learned AO on account of cash deposits.

5. Further with regard to cash deposits made during the demonetization period, the Learned CITA estimated the addition at the rate of 20% of such deposits of Rs 46,55,660.

6. No information was placed on record as to whether any appeal was preferred by the Assessee against this CITA order before the Tribunal. Hence we proceed to adjudicate only the Revenue Appeal.

7. We find that the final figure contested by the revenue before this Tribunal is only Rs 1,60,86,640 as per Column 7(c) of Form 36 filed by the revenue. We find that the revenue had applied tax rate of 60% as per section 115BBE of the Act and had arrived at the tax effect figure of Rs 1,30,36,204. But we find that the Hon'ble Madras High Court in the case of Smile Microfinance Ltd vs ACIT reported in 479 ITR 172 (Mad) had categorically held that the enhanced rate of tax of 60% provided under section 115BBE of the Act shall not be applicable for transactions prior to 1.4.2017. Hence applying the tax at the normal rate of 30% plus applicable surcharge and cess, the tax effect involved in the present appeal of the revenue works out to Rs 57,16,838, which would be less than the monetary limit of Rs 60,00,000 prescribed by the CBDT vide CBDT Circular No. 9 of 2024 dated 17.9.2024, for filing an appeal by the revenue before this Tribunal. Hence the present case squarely falls under

the low tax effect circular referred supra. In case if the revenue is able to bring on record that the present case falls under the exceptions provided in the low tax effect circular issued by the CBDT, then the revenue is given liberty to prefer Miscellaneous Application to recall this order for adjudication of the issues in dispute.

8. With these observations, the appeal of the revenue is dismissed as not maintainable.

Order pronounced in the open court on 27/03/2026.

-Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 27/03/2026
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi