

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH AT KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No(s). 2420/KOL/2025
Assessment Year(s) 2017-18**

Disha Eye Hospitals Pvt. Ltd. (Appellant)	Vs.	DCIT, Circle-14(1), Kolkata (Respondent)
PAN: AABCD4082F		

Appearances:

Assessee represented by : None.

Department represented by : Manoj Kumar Pati, Addl.CIT, Sr. DR.

Date of concluding the hearing : 16-March-2026

Date of pronouncing the order : 06-April-2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2017-18 dated 29.09.2025.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“Legal issue:

1. For that Whole assessment proceedings is void ab initio as statutory 143(2) notice has not been issued in prescribed format of CBDT as per CBDT circular No F.No. 225/157/2017/ITA-11 dt 26.3.17.

2. For that Assessment order is bad in law as it has been passed in the name of erstwhile amalgamating company DISHA EYE HOSPITALS HOOGLY PVT LTD (non existent entity).

Merit:

3. The Ld. AO erred in making addition of Rs 43,98,500 on account of cash deposit of SBN in demonetization period in initial 5 days in spite of the fact



the appellant is large eye hospital and cash was received due to exigencies and CIT(A) further erred in sustaining without considering the submission.

4. Appellant crave leave to add, modify, delete any other ground at or before hearing”

3. None appeared on behalf of the assessee and the appeal was heard with the assistance of Ld. DR. Brief facts of the case are that the assessee, Disha Eye Hospitals Pvt. Ltd. (earlier known as M/s Disha Eye Hospital Hooghly Pvt. Ltd.) is a private limited company engaged in providing specialized eye care treatment through its branches located at Sheoraphully, Gariahat, and Mourigram in the State of West Bengal. For the AY 2017-18, the assessee filed its return of income on 15.09.2017 declaring total income of ₹18,94,55,130/- along with the audited financial statements u/s 44AB of the Act. The return was processed u/s 143(1) of the Act and later selected for scrutiny assessment under Computer Assisted Scrutiny Selection (in short 'CASS'). Statutory notices u/s 143(2) and 142(1) of the Act were issued and the assessee complied with and filed details and books of account, ledgers and cash registers were produced before the Assessing Officer (hereinafter referred to as Ld. 'AO'). The assessee had recorded a turnover of ₹38.85 crore for the relevant year as against ₹32.64 crore in the preceding year. During the course of assessment proceedings, the Ld. AO observed that during the period 09.11.2016 to 15.11.2016, i.e. immediately after the announcement of demonetization, the assessee deposited Specified Bank Notes (SBNs) aggregating to ₹43,98,500/-. The Ld. AO accepted the nature of overall cash deposits during the demonetization period but treated the sum of ₹43,98,500/- as "unexplained money" within the meaning of section 69A of the Act on the sole ground that SBNs had ceased to be legal tender from midnight of 08.11.2016. Aggrieved with the assessment order, the assessee filed



an appeal before the Ld. CIT(A), who considered the submissions of the assessee, the assessment order and the material placed on record and noted that the assessee had received the SBNs between 09.11.2016 and 15.11.2016 and deposited in the bank account during the demonetization period. The Govt. of India's notification dated 08.11.2016 [S.O. 3407(E)] unequivocally withdrew the legal tender character of currency notes of ₹500/- and ₹1,000/- with effect from midnight of 08.11.2016 and the notification permitted use of such notes only for a limited list of exempted transactions such as payments at Government hospitals, petrol pumps, and specified public utilities. Private hospitals did not find place in this exemption list. Consequently, the assessee was not legally authorized to accept SBNs in discharge of patient dues after 08.11.2016. The Ld. CIT(A) held that the plea that the assessee acted under a *bona fide* belief does not alter the statutory position, i.e. a transaction carried out in contravention of a clear legal prohibition cannot be conferred legitimacy by mere bona fides. He held that Section 69A of the Act provides that where any money is found in the possession of the assessee and no satisfactory explanation is offered as to its nature and source, the same may be deemed to be the income of the assessee. The Ld. CIT(A) dismissed the appeal of the assessee by holding as under:

“Considering the totality of facts and the legal framework, the addition made by the Assessing Officer is both factually and legally sustainable. The assessee has failed to discharge the burden of proving that the amount represented a legally permissible receipt. Accordingly, the addition of Rs. 43,98,500/- under section 69A is confirmed and the sole ground of appeal is dismissed.

In view of the foregoing discussion, it is held that the Assessing Officer was justified in invoking the provisions of section 69A of the Income-tax Act, 1961, and making an addition of Rs. 43,98,500/- representing Specified Bank Notes deposited during 09.11.2016 to 15.11.2016. The assessee's



explanation, though recorded in the books of account, does not meet the test of legal acceptability inasmuch as private hospitals were not authorized to accept such notes as valid tender after 08.11.2016, and the subsequent recording of such receipts does not grant them legal sanctity. Accordingly, the addition made by the Assessing Officer is confirmed and the solitary ground of appeal stands dismissed.'

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. None appeared on behalf of the assessee and the case was heard with the assistance of the Ld. DR.

6. We have considered the grounds of appeal including the legal issues raised by the assessee. However, we are not in agreement that the legal issue raised that notice u/s 143(2) of the Act has not been issued in the prescribed format of CBDT as per CBDT circular No F. No. 225/157/2017/ITA-11 dated 26.03.17 as the notice u/s 143(2) of the Act was issued for providing an opportunity of being heard to the assessee and there is no statutory notice prescribed under the Income Tax Rules, 1962. The provisions of sub-section (2) of section 143 of the Act are as under:

“Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of [three] months from the end of the financial year in which the return is furnished.”

7. This opportunity was allowed to the assessee to justify the income shown in the return of income. Hence, Ground No. 1 is hereby dismissed.

8. The legal issue in Ground No. 2 that the assessment order is bad in law as it was passed in the name of erstwhile amalgamating company, Disha Eye Hospital Hooghly Pvt. Ltd., a non-existent entity is also not allowed as it has been held in the case of **Principal Commissioner of Income-tax vs. Mahagun Realtors (P.) Ltd. [2022] 137 taxmann.com 91 (SC)/[2022] 287 Taxman 566 (SC)/[2022] 443 ITR 194 (SC)[05-04-2022]** that in the case of amalgamation, the amalgamating company does not lose its existence as it is taken over as a going concern and the terms of the amalgamation would determine the status after the amalgamation. Since the required details relating to the terms of the amalgamation have not been filed before us, therefore, this ground of appeal is hereby dismissed.

9. Ground No. 3 is relating to the addition of ₹43,98,500/- on account of cash deposit of SBNs during the demonetization period in the initial 5 days. In this respect it has been held in the case of **Nanakchand Agrawal vs. Income-tax Officer [2025] 178 taxmann.com 96 (Chhattisgarh)[29-08-2025]** as under:

“■ A focused perusal of the provisions contained in section 69A would show that this provision is in the nature of deeming fiction engrafted under the IT Act which deems the money, bullion, jewellery or other valuable article to be income of the assessee for the financial year in which the assessee is found to be the owner of such money, bullion, jewellery or valuable article if the stipulated conditions are satisfied necessitating the invocation of the deeming fiction. [Para 13]

■ Having noticed the provisions contained in section 69A read with the principles of law laid down by the Supreme Court in D.N. Singh v. CIT [2023] 150 taxmann.com 301/293 Taxman 550/454 ITR 595 (SC) for invoking

section 69A, if the facts of the present case are examined, it would clearly emerge that the source of cash deposits made during the demonetization period pertains to and has its immediate inextricable nexus with cash withdrawals made by the assessee from regular disclosed bank account in the assessment year 2015-16 relevant to financial year 2014-15, which were thereafter advanced to various persons as short term loans and advances on which interest income was earned in the assessment year 2016-17 relevant to financial year 2015-16 and which were thereafter returned/refunded and consequently, lying with the assessee as closing cash-in-hand as on 31-3-2016 in the balance sheet drawn for the financial year 2015-16 and thereafter was carried out to the next financial year viz., financial year 2016-17 relevant to assessment year 2017-18 as opening balance and pursuant to demonetization announced by the Government, the same was deposited in SBN on 1-12-2016. [Para 15]

■ It is the case of the assessee that the short term loans and advances were returned back to her in the assessment year 2016-17 itself and formed part of her disclosed cash balance in the return of income filed in respect of the assessment year 2016-17 and lying unutilized as on 31-3-2016 which is clearly evidenced by the balance sheet as on 31-3-2016 filed on record of the Assessing Officer. The assessee had filed her return of income for the assessment year 2016-17 on 2-12-2016, wherein the cash balance to the tune of Rs. 23.45 lakhs was diligently declared. [Para 16]

■ The Assessing Officer has miserably failed to appreciate that the provisions of sub-section (4) of section 139, at the relevant time, provided an outer time-limit till 31-3-2017 to the assessee to file return of income for the assessment year 2016-17. Further, the said return of income was duly processed on 21-1-2017 vide an intimation order issued under the provisions of section 143(1)(a) wherein the returned income was assessed as such. The Assessing Officer has further failed to appreciate that non-issuance of mandatory scrutiny notice under the provisions of section 143(2) selecting the case for scrutiny assessment by the outer time limitation of 30-9-2017, the return of income filed by the assessee attained finality with all the figures declared therein well within the knowledge of the Income Tax Department and forming part of the assessment records and even thereafter, there were no fetters on the powers of the Assessing Officer and he was not estopped in law nor debarred to take up the case for reassessment by issuance of reassessment notice under section 148, which as per the provisions of section 149, provided for an outer time limit of six years from the end of the relevant A.Y. i.e. till 31-3-2023, particularly when the assertion of the source of cash deposit tracing it to closing balance as on 31-3-2016 was well before him in the regular assessment proceedings ongoing in the year 2019 itself. [Para 17]

■ *Not only this, the provisions of section 69A contemplate that the 'money' (cash deposit in the present case) could be deemed to be in the nature of income only in the financial year in respect of which the assessee is found to be the owner and in the instant case, by offering plausible explanation tracing the source of money to closing balance of preceding year, the assessee was found to be the owner of the 'asset'/cash in the assessment year 2016-17 and hence, the explanation of nature and source of such money and invocation of deeming fiction engrafted under section 69A could have been sought/examined by the Assessing Officer in the assessment year 2016-17 and could not have been done in the assessment year 2017-18 going by the express language contained in section 69A and not otherwise. Furthermore, the factum of liquidation/refund of short term loans and advances and its consequential accumulation as cash-in-hand as on 31-3-2016 could have been examined in the assessment year 2016-17 only particularly when the Assessing Officer has not discharged the burden cast upon him to implicate the assessee into the sweep of section 69A. As such, the Assessing Officer has made addition on pure guess. It is well settled principle of law that while making an assessment under the provisions of the IT Act, the Income Tax Officer is not entitled to make a pure guess and to resort to an assessment without reference to any evidence or any material at all and that suspicion howsoever strong cannot take the place of proof beyond reasonable doubt. [Para 20]*

■ *In view of the aforesaid analysis, it is opined that the Tribunal is absolutely unjustified in dismissing the appeal partly upholding the addition of Rs. 20.50 lakhs treating it as unexplained money invoking the deeming fiction engrafted under section 69A charging the same to higher rate of tax as prescribed under section 115BBE. As such, the impugned order passed by the Assessing Officer affirmed by the Commissioner (Appeals) and further partly affirmed by the Tribunal is hereby set aside. It is hereby held that Rs. 20.50 lakhs cannot be said to be unexplained money under section 69A. Accordingly, the substantial question of law is answered in favour of the assessee and against the revenue. [Para 22]"*

10. The assessee claims that this was the money received from the patient which fact has not been disputed and only because the same ceased to be legal tender, the addition has been made. The decision of the Ld. CIT(A) is paradoxical as on one hand, he states that these were not legal tenders but at the same time the addition has been made u/s 69A of the Act which refers to unexplained "money", bullion or jewellery etc. Hence, only on account of the fact that the receipts were in SBNs,



the same could not be added u/s 69A of the Act when the source of receipts has not been disputed, more so when the assessee himself included the amount as part of the receipts. Hence, the order of the Ld. AO and the Ld. CIT(A) are hereby set aside as if the same were not the legal currency, the same could not have been added as unexplained money and if the same have been included as part of the receipts from the patients on the basis of which total income was computed and the total income as per the return of ₹18,50,56,630/- and deemed total income of ₹12,31,03,082/- has been taken as such by the Ld. AO yet the addition of ₹43,98,500/- has been made, the addition is not sustainable and is hereby deleted.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 6th April, 2026.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 06.04.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Disha Eye Hospitals Pvt. Ltd., 88(63A) Ghospara Road, Barrackpur, Kolkata, West Bengal, 700120.**
2. **DCIT, Circle-14(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata