

आयकर अपीलीय अधिकरण, दिल्ली पीठें, नई दिल्ली  
**INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCHES, NEW DELHI**

**BENCH: A**

**BEFORE HON'BLE SUDHIR KUMAR, JUDICIAL MEMBER  
AND HON'BLE MANISH AGARWAL, ACCOUNTANT MEMBER**

<b>ITA NO. 6191/DEL/2025</b>		
निर्धारण वर्ष/Asstt. Year: <b>2020-21</b>		
Permanent Account Number: <b>AGYPD7834M</b>		
SHAM SUNDER DHINGRA BC-16, UPPTER GROUND FLOOR, SHALIMAR BAGH, DELHI – 110 088	<b>Vs.</b>	ACIT, CENTRAL CIRCLE-8, NEW DELHI
(अपीलार्थी <b>Appellant</b> )		(प्रत्यर्थी <b>Respondent</b> )
निर्धारिती द्वारा/Assessee represented by:		Sh. Salil Kapoor, Adv. & Sh. Sumit Lalchandani, Adv., Sh. Shivam Yadav, Adv, Ms. Ananya Kaoor, Adv., & Ms. Sejal Arora, Adv.
राजस्व द्वारा/Revenue represented by:		Sh. Jitender Singh, CIT(DR)

सुनवाई की तारीख / Date of conclusion of hearing:	07-May-2026
घोषणा की तारीख / Date of pronouncement:	26-May-2026

**आदेश / ORDER**

**PER SUDHIR KUMAR, JUDICIAL MEMBER:**

This appeal is filed by the Assessee against the order of Ld. CIT(A-24), Delhi dated 02-7-2025 for the Assessment Year 2020-21 on the following grounds:-

1. That the notice issued u/s. 148 of the Act and the assessment order passed are illegal, bad in law, without jurisdiction and not in accordance with the provisions of the Act.
2. On the facts and in law, the provisions of Section 69A of the Act are not attracted in the present case, as the essential conditions precedent for its invocation are not satisfied. Consequently, the addition made under section 69A and the consequential application of Section 115BBE are without jurisdiction and liable to be deleted.
3. That the appellant had declared income under section 44AD at a presumptive rate of 75 percent of gross receipts, reflecting voluntary compliance. Presumption of undisclosed income in such facts is misplaced.
4. That the assessment proceedings initiated under section 148 of the Act are void ab initio as the reasons recorded for reopening are incorrect, vague, and not based on correct facts and do not satisfy the jurisdictional requirements laid down under the Act and judicial precedents.
5. That the assessment order passed and also the additions made therein are illegal, bad in law, without jurisdiction and void ab initio. The AO has grossly erred in assessing the total income of the appellant at Rs. 26,08,150 as against the returned income of Rs. 5,16,150/-.
6. On the facts and in law, the AO/CIT(A) failed to appreciate that, in the absence of incriminating material found during the search, the interference with a completed assessment is not as per law and additions are unsustainable and without jurisdiction.
7. On the facts and in law, the reliance placed on alleged unverified digital evidence is inadmissible in the absence of a valid certificate under section 65B of the Indian Evidence Act, 1872 and due to

non-compliance with the CBDT Manual. Consequently, the additions made are untenable and liable to be deleted.

8. That no opportunity of cross examination was granted, and the appellant adjournment request dated 10.1.2025 was arbitrarily rejected, violating principles of natural justice and vitiating the assessment.
9. On the facts and in law, the assessment order stands vitiated due to denial of adequate opportunity and violation of principles of natural justice, as the Assessing Officer rejected the appellant adjournment request dated 09.01.2025 and proceeded exparte. The CIT(A) erred in upholding the same without proper appreciating, causing grave prejudice to the appellant.
10. That reliance on third party statements under section 132(4) and 131(IA) and on digital data such as whatsapp chats and excel sheets, is unsustainable, as the material was neither confronted nor subjected to cross examination.

2. Brief facts of the case are that the assessee filed his return of income on 7.1.2021 for the assessment year 2020-21 declaring total income of Rs. 5,16,150/- under normal provisions of the Income Tax Act, 1961. The return of the assessee was processed u/s. 143(1) of the Act on 19.3.2021 by CPC. The assessee is an individual and during the given assessment year, the assessee has earned his income from the business / profession. In this case, a search operation u/s. 132 of the Act was carried out on ALM Group of companies on 03.01.2023 by the DDIT (Inv.) (Unit-7(4), Delhi on the basis of warrant authorization issued by the Principal Director of Income Tax (Investigation)-01, New Delhi. The assessee is associated with key persons/entities covered under this search operation. A search and seizure action u/s. 132 of the Income Tax Act, 1961 was carried out on 03.01.2023 on ALM Group and its associated

persons and entities. The assessee, Sh. Sham Sunder Dhingra, was involved in unaccounted transactions with the key persons of the group. During the search action, various incriminating documents were seized from the premises of Mujeeb Malik (ex-director) in M/s ALM Industries Lrtd.) situated at House No. 131, Solani Puram, Roorkee, Haridwar, Uttrakhand-247667. During search proceedings, the mobile phone data of Mr. Mujeeb malik was forensically cloned at the search premise of Mujeeb Malik on 03.01.2023 and certain excel sheets were found in the mobile phone of Mujeeb Malik in his chats with one Khalid Akhtar (+91-9871307543) (path: Mujeeb Malik Iphone 12 Pro Max 256GB/UFDR Report/2023-01-14.11.39-59/Apple iOS iTunes (Backup)/Apple IOS iTunes (backup)\_20023-01-14\_Report.ufdr). Khalid Akhtar is the office in charge of the Delhi branch of the ALM group of companies at Darya Ganj, Delhi. During the post search proceedings, on perusal of the email id mmalik131@rediffmail.com, it was noticed that various mails were received on the said mail id seeking payment of commission from Mr. Mujeeb Malik in respect of export sales facilitated by Mujeeb Malik through various commission agents. Based on the analysis of the replies from Mujeeb Malik, Soheb Malik, ALM group and after analyzing the digital data seized from the premises of Mujeeb Malik, six parties were identified namely, Sunny Khattar; Col. Kumar; Moyez Adaitya; Prakash Bajaj; Sham Sunder Dhingra and Yogender Pal Singh (YP Singh) On the basis of summary of the search and seizure action as described above, the case of the assessee for the subject assessment year was reopened under section 147 of the Income Tax Act, 1961, after following all the due procedure laid down in the Act and notice under section 148 of the Act was issued on 31.3.2024. In response to the said notice, assessee filed his return of income vide e-filing dated 15.5.2024 declaring an income of Rs. 5,16,150/-. Subsequently, the notice under section 143(2) of the Act was issued to the assessee on 24.6.2024. Questionnaires were issued to the assessee, alongwith the various statutory notices under section 142(1) of the Act on 21.6.2024,

21.11.2024, 10.12.2024 and 26.12.2024, incorporating findings of the search action and providing opportunities to complete necessary details of the case. The assessee was separately provided information / documents suggesting escapement of income alongwith copy of approval obtained from PCIT(Central)-1, Delhi vide letter dated 18.12.2024. In response to the notices issued under section 142(1) of the Act, the assessee submitted his reply on 6.7.2024, 16.12.2024, 02.1.2025 and 9.1.2025. The assessee, in his response dated 31.12.2024, raised objections to the reasons for opening the assessment proceedings. These objections were presented under various heads, including alleged commission income, discrepancies regarding the data, inconsistencies in documents/Annexures etc. The assessee also asserted his right to cross examine the evidence on which the reassessment proceedings have been initiated. The objections filed by the assessee were disposed of vide letter dated 7.1.2025. Assessee in response to the above show cause has filed its reply vide letter dated 27.1.2025. The reply submitted by the assessee has been duly considered. Upon careful perusal of the reply, AO noted that assessee has failed to provide any credible documentation or justification to refute the findings of the commission income receipt amounting to Rs. 20,92,200/-. As per the provisions of the Income Tax Act, 1961, commission income is taxable under the head "Income from Business or Profession," and the failure to disclose such income, coupled with the lack of explanation regarding the source and nature of such payments, raises serious concerns, which demonstrates that assessee has indeed received commission income of Rs. 20,92,000/-, and the omission or non-disclosure of the income under the relevant section of the Income Tax Act, 1961. AO further noted that mere denial of whatsapp messages or excel sheets does not negate their evidentiary value unless an alternative explanation is provided. Statements made in whatsapp conversations, when correlated with financial transactions and records, form a chain of corroborative evidence that supports the findings of this assessment order. Therefore, AO concluded that assessee, being one of the

commission agents of the ALM group, has received a commission income of Rs. 20,92,000/- for the given assessment year – which has not been disclosed by the assessee in his ITR and thus, he added the same to the assessee's income under section 69A of the Act and assessed the income at 26,08,200/- u/s. 147 of the Act dated 4.2.2025. Against the above action of the AO, assessee preferred the appeal before the Ld. CIT(A), who vide his impugned order dated 2.7.2025 dismissed the appeal of the assessee by upholding the action of the AO. Aggrieved, assessee is in appeal before us.

3. Ld. AR submitted that the information found by the lower authorities are certain documents containing the details of commission received, but the addition cannot be proposed u/s. 69A of the Act, hence, he prayed that the addition may be deleted. To support his contention, he relied upon the decision of the Coordinate Bench of Delhi Tribunal in the case of Sanjay Wahi vs. ACIT decided in ITA no. 2198/Del/2024 on 14.11.2025 on identical facts and stated that similar issue has been decided by the Tribunal in assessee's favour, thus respectfully following the ratio of the same, the addition involved in the present case may be deleted.

4. Ld. DR relied upon the orders of the lower authorities.

5. We have heard the rival contentions and perused the records. It is undisputed fact that addition in dispute was made on the basis of certain documents found during the course of search and seizure, containing the details of commission received, by invoking the provisions of section 69A of the Act. The relevant provisions of 69A read as under:-

69A. Wherein 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.”

6. On plain reading of the aforesaid provisions, it is abundantly clear that in any financial year the assessee is found to be owner of any money, bullion, jewellery or other valuable article and such articles is not recorded in the books of account if any maintained by the assessee for any source of income and it does not offer any explanation to the satisfaction of the AO, the money and value of the such article may be deemed to be the income of the assessee. It is undisputed fact that revenue has not found any money or bullion or jewellery in the possession of the assessee. Therefore, in the absence of any unexplained money or article, the provisions of section 69A cannot be invoked. In the present case, certain documents found which contains the details of commission received by the assessee. Thus applying the provisions of section 69A in the case of the assessee is not appropriate and bad in law. Accordingly, the Revenue cannot make addition of gross income which should be the net profit. Therefore, the relevant expenses have to be allowed to the assessee. We further find that the Coordinate Bench of Delhi Tribunal in the case of Sanjay Wahi vs. ACIT decided in ITA no. 2198/Del/2024 on 14.11.2025 on exactly similar facts and circumstances of the case, has directed the AO to treat the 20% of the gross commission as income of the income. Considering the entirety of the fact and circumstances of the case and respectfully following the precedent, as aforesaid, we are inclined to close the issue under consideration by directing the Assessing Officer to treat the 20% of the gross commission as income of the assessee on similar lines.

7. In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26-05-2026.

Sd/-  
**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**  
SR BHATNAGGAR

Sd/-  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

Date: 26.05.2026

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT DELHI**