



2026:DHC:9167-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13th October, 2026

CNR No. DLHC010496922026
+ W.P.(C) 15244/2026 & CM APPL. 71636/2026, CM APPL. 71637/2026

BALESHWAR SHARMA Petitioner
Through: Mr. Tushar Jarwal, Advocate with
Mr. Vivek Malik, Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent
Through: Mr. Ruchir Bhatia, SSC with Mr.
Anant Mann and Mr. P. Gupta, JSCs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE DR. JUSTICE ADITI CHOUDHARY

J U D G M E N T

DINESH MEHTA, J. (ORAL)

1. By way of the instant writ petition, the petitioner has challenged the Assessment Order dated 22.09.2026 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act of 1961') on the ground of the same being contrary to principles of natural justice and in breach of the directions issued by this Court.

2. It may be noted that the petitioner had earlier preferred a writ petition W.P.(C) 5921/2026, inter alia challenging the Assessment Order dated 31.03.2026 passed under Section 143(3) of the Act of 1961, whereby the respondent No.1 had raised a demand against the petitioner essentially on

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the basis of slip recovered from one Pradeep Kumar Sehgal in which a sum of Rs.10,000/- was written. The Assessing Officer (hereinafter referred to as 'AO') alleged to have recorded the statement of said Pradeep Kumar Sehgal who reportedly deposed that the amount of Rs.10,000/- had been written in place of Rs.1,00,00,000/- and three zeros were intentionally not mentioned in the slip. The AO, thus, added such amount (Rs.1,00,00,000/-) in petitioner's hands, inspite of the petitioner's objection.

3. The petitioner sought an opportunity to cross-examine the said Pradeep Kumar Sehgal but the AO refused to grant such an opportunity, for which the petitioner approached this Court by way of the aforesaid writ petition. The said writ petition came to be allowed by this Court *vide* order dated 30.04.2026, whereby the assessment order under challenge was quashed and set aside and the AO was directed to grant an opportunity to cross-examine the said Pradeep Kumar Sehgal. The operating part of the above order dated 30.04.2026 reads thus:-

"8. We, therefore, set aside the assessment order dated 31.03.2026, which essentially hinges upon the seized document (Kachchi Parchi) and the statement of the said Mr. Pradeep Kumar Sehgal for want of opportunity of cross examination. Because, since the entire addition is edified on the statement and slip recovered from Pradeep Kumar Sehgal.

9. The AO shall fix any date of hearing between 18.05.2026 to 20.05.2026 and inform the petitioner at least 7 days in advance and provide an opportunity to cross-examine Pradeep Kumar Sehgal. It shall be incumbent upon the AO to ensure that said Pradeep Kumar is available for cross-examination at the time of hearing so fixed and after the cross examination being so done, the AO shall pass a fresh assessment order in accordance with law, giving due regard to the cross-examination."

4. Mr. Jarwal, learned counsel for the petitioner informed that in

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furtherance of the directions so issued by this Court, the AO did issue a notice dated 08.05.2026, requiring the petitioner to appear on 19.05.2026 and also called said Pradeep Kumar Sehgal to remain present at 11:30a.m. for the purpose of cross-examination but on the very same date, the petitioner had a matter in the High Court, for which his presence (in the High Court) was necessary. After attending the hearing at High Court, when the petitioner reached the office of the AO, it was already 12:20 p.m. Then, the Assessing Officer informed that Pradeep Kumar Sehgal, the witness had left the office at 12:10 p.m.

5. The petitioner requested the AO to call said Pradeep Kumar Sehgal but his request was turned down. The petitioner immediately made a representation to the Additional Commissioner in this regard, perhaps at whose intervention, the AO acceded to petitioner's request and called the said witness Pradeep Kumar Sehgal on 26.05.2026, on the said date the petitioner was present alongwith his Counsel at the scheduled time but said witness (Pradeep Kumar Sehgal) did not show up.

6. In the meantime, the incumbent in the chair of AO got transferred and the new officer who resumed charge refused to grant any indulgence and proceeded to pass impugned order by observing that the High Court's order had been complied with and that it was the petitioner's fault in not showing up at the time fixed by the AO on 19.05.2026.

7. While observing so, the AO proceeded to pass an assessment order, obviously on the same lines as the earlier assessment order dated 31.03.2026 and raised identical demand.

8. Learned counsel for the petitioner argued that the petitioner had reached the office of the AO at 12:20 p.m., just 10 minutes after the witness

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Pradeep Kumar Sehgal had left the office of the AO. He contended that the AO could have called the witness back so as to facilitate cross-examination but he refused to do so and submitted that by not providing an opportunity to cross examine, the AO has not followed the order of this Court in its true spirit and has thus breached the directions passed by this Court. He argued that the impugned order not only suffers from violation of principles of natural justice but the same is also contrary to the order of this Court and thus liable to be quashed and set aside.

9. He further argued that the entire basis of the demand as raised against the petitioner is, the slip which records an amount of Rs.10,000/- which too incorrectly records petitioner's name. He submitted that in the facts of the present case, unless the petitioner is given an opportunity to cross-examine the said Pradeep Kumar Sehgal, whom the petitioner does not even know, such amount cannot be added in petitioner's income, when there is no other incriminating material. He, therefore, submitted that the impugned demand raised against the petitioner is liable to be quashed on this ground as well.

10. Mr. Mann, learned counsel for the respondent, on the other hand, argued that the AO has complied with the directions contained in the order dated 30.04.2026 in both letter and spirit. He highlighted that admittedly he had given 10 days' prior intimation to the petitioner and call the witness Pradeep Kumar Sehgal for cross-examination, who remained in the office from 11:30 p.m. to 12:10 p.m. waiting for the petitioner, but when the petitioner did not come he had no other option but to leave.

11. Learned counsel submitted that neither the petitioner nor his Counsel had the courtesy to even inform the AO that they would be late, so that the AO could have asked the witness to wait for some time.

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12. Mr. Mann further submitted that in the interest of justice, the AO had called not only Pradeep Kumar Sehgal but also Yogesh Jain to ensure that complete justice was done and hence, it cannot be said that the AO had acted arbitrarily or vindictively in any manner.

13. Inviting the Court's attention towards the assessment order, learned counsel submitted that it was the petitioner himself, who did not want to cross-examine the witnesses so as to take undue advantage of the situation and thus no indulgence be granted.

14. Heard learned counsel for the parties.

15. On appraisal of the facts on record, we are of the view that the petitioner has been indolent and negligent so far as taking up the proceedings with due diligence and requisite seriousness is concerned. When this Court had set aside the assessment order and directed the AO to grant an opportunity to cross-examine, it was imperative for the petitioner to be ready for cross-examination. The petitioner's approach of not keeping himself or his counsel available for the purpose of cross-examination, when the AO had given him atleast 10 days notice in advance cannot be countenanced. His plea that he was busy attending the hearing in the High Court is a lame excuse. An assessee has to prioritise his cases.

16. Be that as it may. What persuades us to intervene is, the AO's own action of acceding to petitioner's request. Indisputably, at petitioner's request the then AO had issued another notice to the petitioner and to the witnesses (Pradeep Kumar Sehgal and Yogesh Jain) to appear on 26.05.2026, on which date they (witnesses) did not appear but the petitioner and his counsel did come. Therefore, by his own action, the AO had condoned petitioner's fault or negligence of not appearing on 19.05.2026.



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Such being the position, the AO in our opinion could not have backtracked and said that the petitioner had failed to avail opportunity to cross examine on 19.05.2026.

17. Despite holding above opinion, we feel that the witnesses cannot be called again and again to serve the cause of the petitioner. Their time also has its own value. Therefore, while allowing the present petition and setting aside the impugned assessment order dated 22.09.2026, we hereby direct that the petitioner shall have to pay costs of Rs.25,000/- to each of the witnesses, when they come for cross-examination.

18. The AO shall fix a suitable date of hearing preferably between 16.11.2026 to 30.11.2026 and inform the petitioner and witness(es) atleast 07 days in advance and provide an opportunity to cross-examine Pradeep Kumar Sehgal and Yogesh Jain. It shall be incumbent upon the AO to ensure that said Pradeep Kumar Sehgal and Yogesh Jain are available for cross-examination at the time of hearing, so fixed. In case the witness(es) do not appear on the date fixed, the AO shall fix another date. But if on 3 occasions, the witness(es) do not come, the AO shall pass order in accordance with law without waiting any further.

19. In case, the cross-examination is done, the AO shall pass fresh assessment order in accordance with law, giving due regard to the cross-examination.

20. The petitioner shall keep pay order/Banker's cheque of Rs.25,000/- each drawn in the name of Pradeep Kumar Sehgal and Yogesh Jain ready with him to be handed over to the respective witness(es) as and when they appear for cross examination; their cross-examination shall be allowed only on payment of the aforesaid cost(s).

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21. With the aforesaid observations, the petition stands allowed. Pending application(s) stands disposed of.

**DINESH MEHTA
(JUDGE)**

**ADITI CHOUDHARY
(JUDGE)**

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