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HOW TO FILE YOUR FIRST CIT (APPEAL)

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How to file your first CIT(Appeal)

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(Hope this will level up your confidence to file your First CIT(Appeal)).

Elevate your Career with Practical & life Experience sharing Course on CIT (Appeal).

Book an Appointment for your Query with the Author of the Book.

ABOUT THE AUTHOR



CA Kamlesh Kumar Chaurasiya, currently a partner in a Reputed Chartered Accountants Firm, handling all taxation related cases on all India basis, qualified chartered accountancy in the year 2008. He is Law Graduate and he has also completed DISA in the year 2011. He has been practising in the field of Direct Tax, Indirect Tax, Company law matters since 2010 and heading the Taxation and advisory Team of the firm. For the last couple of years, he is working exclusively in the field of Appeal and representation of direct tax cases to CIT(A) and ITAT level.

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He has authored many books on Income Tax and regularly writes articles on his blog www.mytaxdost.com & conduct workshop and webinar on Personal Finance and Taxation. He is the owner of the YouTube Channel- [MyTaxdost](#).

1. Presumptive Taxation for Professional
2. मेरी Income मेरा Tax
3. Capital Gain -Tax on the Sale of Real Estate
4. Retire with Pride

Chapter -1 Introduction (Appeal & Relevant Section & Rules)

An appeal is a mechanism provided by the law to challenge the order of lower authorities before the higher authority. It amounts to a complaint to a higher forum that the decision of a subordinate officer is erroneous or Removal of a cause from an inferior to a superior court to test the soundness of the decision or the inferior court.

When an Assessee is not satisfied with assessment, determination of income or loss, or any action of any officer which result to Increase income, reduce loss or imposing penalty which harsh to the Assessee, then the Assessee can seek following remedies or options:

- Filing Application for Rectification under section 154 of income Act 1961, for the mistake apparent from records.
- Application for Revision to Commissioner of Income Tax, under section 264 of Income Tax Act.
- **Filing Appeal to Commissioner of Income Tax (Appeal).**
- Filing Writ Petition to High Court (only in case of Abnormal Case).

An Assessee can file an appeal with the Commissioner of Income Tax (Appeals) against the order of an Assessing Officer (AO) and the AO shall comply with the directions given in the appellate order. Alternatively, the Assessee or the Income Tax Department (ITD) can initiate the proceedings for revision of the assessment order. An appeal against the order of CIT (A) can be preferred by the Assessee or the Income Tax Department (ITD) to the Income Tax Appellate Tribunal (ITAT). The order of the Appellate Tribunal can be challenged by the Assessee or the ITD in the High Court. Similarly, orders of the High Court can be challenged by preferring an appeal to the Supreme Court.

This is the law of Natural justice (Opportunity of being heard).

Filing Appeal to the Commissioner of Income Tax (Appeal) is the most suitable option for filling appeal. We are discussing only this option.

The total number of sections are only 5 and the Total number of rules are only 3 deals concerning Appeal to Commissioner of Income Tax (Appeal),

Relevant Sections under income tax Act 1961, is section 246A, Section 248, Section 249, Section 250 and Section 251.

Section -246A Appealable orders before Commissioner (Appeals).

The orders against which an appeal can be filed before the Commissioner of **Income Tax** (Appeals). All appeals have to be made to the Commissioner of **Income Tax** (Appeals), who is considered to be the first appellate authority

- 1) Any Assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against -
 - (a) An order against the Assessee where the Assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143, where the Assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
 - (b) An order of assessment, reassessment or recomputation under section 147 or section 150;
 - (c) An order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the Assessee under either of the said sections;
 - (d) An order made under section 163 treating the Assessee as the agent of a non-resident;
 - (e) An order made under sub-section (2) or sub-section (3) of section 170;
 - (f) An order made under section 171;

(g) An order made under clause (B) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April 1992;

(h) An order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April 1992 or any earlier assessment year;

(i) An order made under section 237;

(j) An order imposing a penalty under -

(A) Section 221; or

(B) Section 271, section 271A, section 271F, section 271AA or section 272BB;

(C) Section 272, section 272B or section 273, as the stood immediately before the 1st day of April 1989, in respect of an assessment for the assessment year commencing on the 1st day of April 1988, or any earlier assessment years;

(k) An order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January 1997;

(l) An order imposing a penalty under sub-section (2) of section 158BFA;

(m) An order imposing penalty under section 271B or section 271BB;

(n) An order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;

(o) An order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

(p) An order made by a Deputy Commissioner imposing a penalty under section 272AA;

(q) An order imposing a penalty under Chapter XXI;

(r) An order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or classes of person as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.

Explanation: For this sub-section, where on or after the 1st day of October 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for "Deputy Commissioner" and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively.

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day :

Provided that the appellant may demand that before proceeding further with appeal or matter, the previous proceeding or any part thereof be reopened or that he be reheard.

Explanation: For this section, "appointed day" means the day appointed by the Central Government by notification in the Official Gazette.

Section -248 Appeal by Person denying liability to deduct Tax.

A person having deducted and paid tax under section 195(1) of the Act may file an appeal before the CIT(A) for denying his liability to make such deduction and for a declaration that he is not liable to make such a deduction.

Section -249 FORM OF APPEAL AND LIMITATION.

1. Every appeal under this Chapter shall be in the prescribed form i.e. **Form 35** and shall be verified in the prescribed manner and shall, in case of an appeal made to the Commissioner (appeals) on or after the 1st day of October 1998, irrespective of the date of initiation of the assessment proceedings relating thereto be accompanied by a fee of, -

(i)Where the total income of the Assessee as computed by the Assessing Officer in the case to which the appeal relates is one hundred thousand rupees or less, two hundred fifty rupees; (Rs 250/-)

(ii)Where the total income of the Assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, five hundred rupees; (Rs 500/-)

(iii)Where the total income of the Assessee, computed as aforesaid, in the case to which the appeal is more than two hundred thousand rupees, one thousand rupees. (Rs 1000/-)

(iv) Where the subject matter of an appeal is not covered under clauses (i), (ii) and (iii), two hundred fifty rupees. (Rs 250/-)

2. The appeal shall be presented within thirty days of the following date, that is to say, -

(a) Where the appeal relates to any tax deducted under sub-section (1) of section 195, the date of payment of the tax, or

(b)Where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty: Provided that, where an application has been made under section 146 for reopening an assessment, the period from the date on which the application is made to the date on which the order passed on the application is served on the Assessee shall be excluded, or

(c) In any other case, the date on which intimation of the order sought to be appealed against is served.

(3)The Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(4)No appeal under this Chapter shall be admitted unless at the time of filing of the appeal, -

(a)Where a return has been filed by the Assessee, the Assessee has paid the tax due on the income returned by him; or

(b)Where no return has been filed by the Assessee, the Assessee has paid an amount equal to the amount of advance tax which was payable by him :

Provided that in a case falling under clause (b) and on an application made by the appellant on this behalf, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause.

Section -250 PROCEDURE IN APPEAL.

(1)The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.

(2)The following shall have the right to be heard at the hearing of the appeal -

(a) The appellant, either in person or by an authorised representative;

(b) The Assessing Officer, either in person or by a representative.

(3)The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.

(4)The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).

(5)The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6)The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state points for determination, the decision thereon and the reason for the decision.

(6A)In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A.

(7) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the Assessee and the Chief Commissioner or Commissioner.

Related Judgements

T. O. ALIAS v. ASSISTANT COMMISSIONER OF INCOME-TAX & ANR.

Section -251 POWERS OF THE COMMISSIONER (APPEALS)

- (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers -
- (a) In an appeal against an order of assessment he may confirm, reduce, enhance or annul the assessment, or he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment under the directions given by the Commissioner (Appeals) and after making such further inquiry as may be necessary, and the Assessing Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable based on such fresh assessment;
 - (b) In an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
 - (c) In any other case, he may pass such orders in the appeal as he thinks fit.
- (2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation: In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

Related Judgements

[DR. \(Mrs.\) RENUKA DATLA v. COMMISSIONER OF INCOME-TAX & ANR.](#)

Relevant Rules under income tax rules are Rule 45, Rule 46 and Rule 46A

Rule -45 Form of appeal to Commissioner (Appeals)

- 1) An appeal to the Commissioner (Appeals) shall be made in **Form No. 35**.
- 2) **Form No. 35** shall be furnished in the following manner, namely:—
 - (a) in the case of a person who is required to furnish return of income electronically under sub- rule (3) of rule 12,—
 - (i) by furnishing the form electronically under digital signature, if the return of income is furnished under digital signature;
 - (ii) by furnishing the form electronically through electronic verification code in a case not covered under sub-clause (i);
 - (b) in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically following clause (a) of sub-rule(2) or in paper form.
- 3) The form of appeal referred to in sub-rule (1), shall be verified by the person who is authorised to verify the return of income under section 140 of the Act, as applicable to the Assessee.
- 4) Any document accompanying **Form No. 35** shall be furnished in the manner in which the said form is furnished.
- 5) The Principal Director General of Income-tax (Systems) or the Director-General of Income-tax (Systems), as the case may be, shall—
 - (i) specify the procedure for electronic filing of **Form No. 35** and documents;
 - (ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(2), for verification of the person furnishing the said form; and

- (iii) be responsible for formulating and implementing appropriate security, archival and retrieval of policies concerning the said form so furnished.

Rule – 46 Mode of service.

Rule – 46A Production of additional evidence before the Commissioner (Appeals)

- (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during proceedings before the [Assessing Officer], except in the following circumstances, namely:—
 - (a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted; or
 - (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer]; or
 - (c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal; or
 - (d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- (2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.
- (3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—
 - (a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or
 - (b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

- (4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his motion or the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]

Chapter -2 When & Why we file an Appeal

When We file an Appeal -

When there is a difference between Returned income and Assessed income, due to such differences in The income of the Assessee, There is an Increase in Income or loss in decrease, or any action of the income tax officer which lead to the extra burden of taxes or penalties, against such action Aggrieved Assessee may file an appeal to Commissioner of Income Tax (Appeal).

Why we file an Appeal: -

To get relief or nullify the order of the Assessing officer, it may be increasing income, reducing losses, imposing a penalty or any other order which impose a burden on the Assessee.

If an appeal is not filed then the Assessing officer will recover the amount as per notice of demand as mention in section 156 of the income tax act 1961.

The consequences for not filling the appeal is accepting the demand notice and to pay the demanded amount.

Chapter 3- Appealable Order

Appealable order is the order against which, one needs to file an appeal, in the income tax act, 1961, under section 246(1), various lists of the order are mentioned against which one can file an appeal, it includes, Order Under Section 143(3), Order Under Section 144, Order under section 147/143, order under section 153A.

Sample Copy of Order

D.P. No. 441

INCOME TAX DEPARTMENT

Name & Address of the Assessee : [REDACTED]
 New Delhi 110048.

Assessment Year : 2015-16

PAN : [REDACTED]

Date of order : 27.06.2018

PENALTY ORDER UNDER SECTION 271(1)(c) OF THE I.T.ACT, 1961.

INCOME TAX DEPARTMENT

Name of the assessee	[REDACTED]
Address of the assessee	[REDACTED]
Permanent Account Number	[REDACTED]
Circle/Ward	Ward 44, New Delhi
Status	Individual
Assessment Year	2011-12
Previous Year	2010-11
Whether resident or Non Resident	Resident
Date of Hearing	As per record
Date of Order	25.12.2018
Section & Sub-section under which the assessment is made	147/143(3) of the Income Tax Act, 1961

Chapter -4 – Who can file an Appeal

An appeal can be filed only against an appealable order as mention under section 246(1), once having the appealable order, then one can file an appeal. section 246A empowers “any Assessee or any deductor or any collector aggrieved by a specific order” hence two conditions must be satisfied for filling the appeal by a person:

- He should be an Assessee including a deemed Assessee or deductor or collector and
- He should be aggrieved by a specified order (appealable order)

An appeal can be filed by the Assessee himself or an Authorised representative.

Normally by Chartered Accountant or Lawyer.

Chapter – 5 Mode of Filing Appeal

The appeal needs to be filed in **Form 35** to Commissioner of Income Tax (Appeal), [CIT(A)],

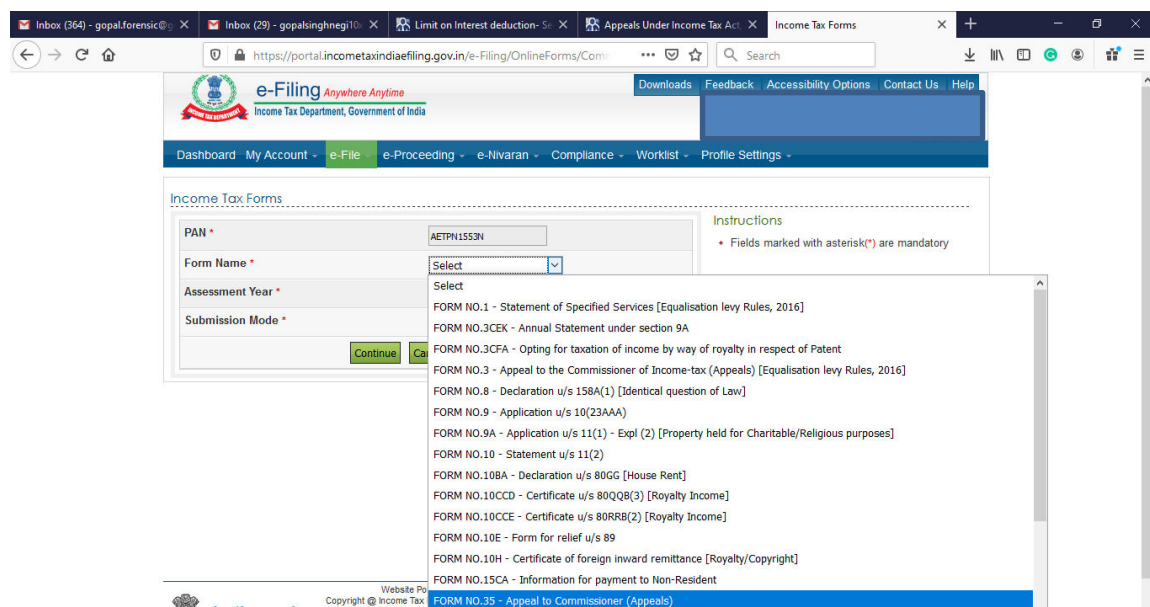
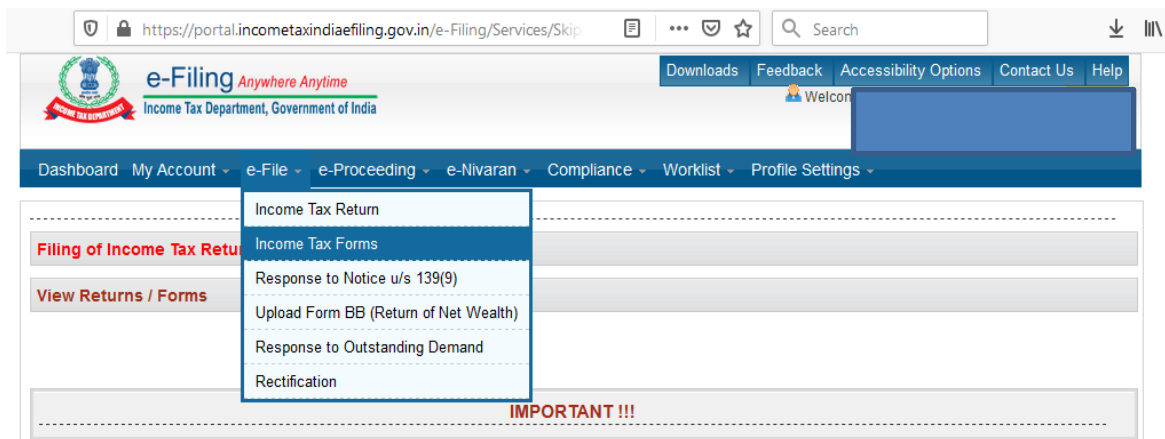
Nowadays, Form can be filed online mode by login at the portal of Income Tax Website. Earlier there was a system to file appeal manually.

Steps

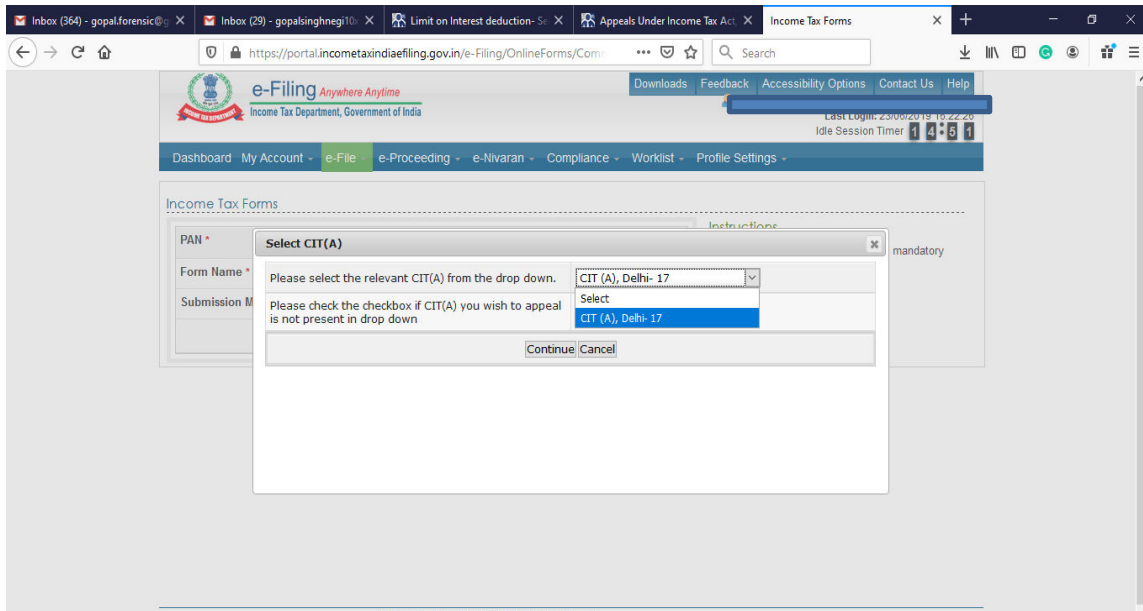
1. Login to Assessee Account in

<https://www.incometaxindiaefiling.gov.in> Using - User ID & Password.

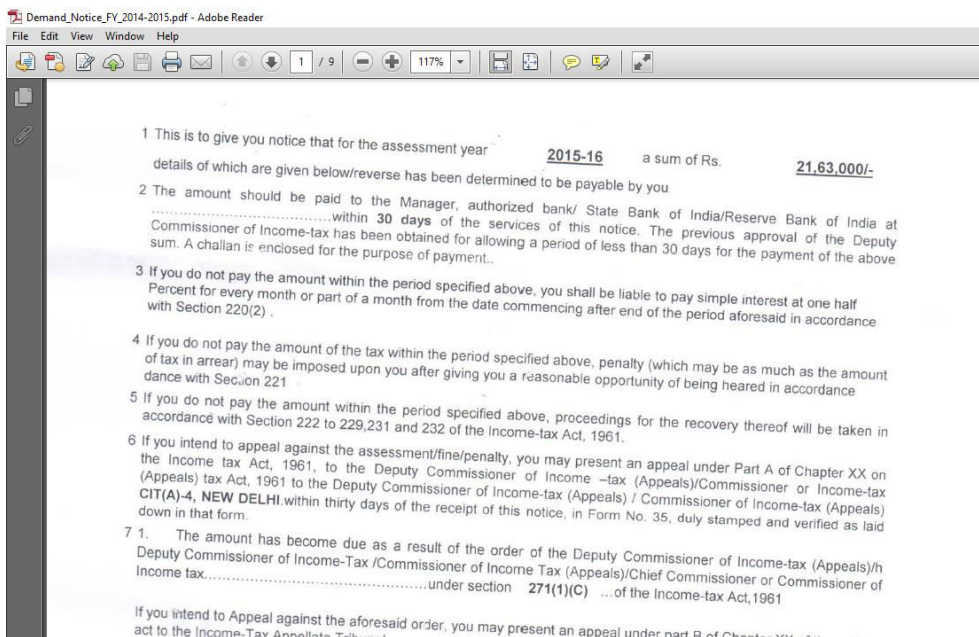
2. Then E-File option in that Income Tax Forms



Next, submit & Confirm your CIT (Appeal Jurisdiction. In case it's not available, manual entry can be made.



You can find details about CIT (Appeal) in The Demand order.



Form 35

FORM NO. 35
[See rule 45]
Appeal to the Commissioner of Income-tax (Appeals)

Preview and Submit
 Save Draft
 Exit

Instructions
Form 35
Verification

General Instructions:

1. Fields marked with asterisk (*) are mandatory.
2. While entering the data in online form, please do not click BACK button in browser or press BACKSPACE button. You will be logged out.
3. All amounts are in Indian Rupees.
4. A calendar is provided for selecting the date field (format DD/MM/YYYY).
5. All greyed out fields are either auto-filled or non-editable.
6. In Forms wherever information is captured in tables
 - (a) Adding new Row: Click ADD button to add a new row and enter values in the field provided.
 - (b) Deleting Row: Select the row to delete from the list and click DELETE ROW button.
7. Please enter only the value wherever the information is needed in percentile.
8. It is preferable to have JRE version 1.7 and above installed on your machine.
9. Please verify the details of the Form by clicking on "Preview and Submit" and upload attachments/Documents before you submit.
10. It is a good practice to save your work frequently. Please use SAVE AS DRAFT option.

Preview and Submit
 Save Draft
 Exit

Instructions
Form 35
Verification

Personal Information

First Name <input type="text"/>	Middle Name <input type="text"/>	Last Name or Name of Entity* <input type="text"/>	PAN* <input type="text"/>
			TAN (if available) <input type="text"/>
Flat/ Door/Block No * <input type="text"/>		Name of Premises / Building / Village <input type="text"/>	Road/ Street /Post Office <input type="text"/>
Area/ Locality * <input type="text"/>	Town/ City/ District * <input type="text" value="CENTRAL DELHI"/>	State * <input type="text" value="DELHI"/>	Country * <input type="text" value="INDIA"/>
Pincode * <input type="text" value="110008"/>	Mobile No * <input type="text"/>	STD code <input type="text"/>	Phone No. <input type="text"/>
Email Address * <input type="text"/>		Whether notices/ communication may be sent on email? <input type="text" value="Select"/>	

Order against which Appeal is filed

1 Assessment year in connection with which the appeal is preferred/ Enter financial year in case appeal is filed against an order where assessment year is not relevant*	Assessment Year	<input type="text" value="Select"/>	
	Financial Year	<input type="text" value="Select"/>	
	Block Period	From (AY)	<input type="text" value="Select"/>
		To (AY)	<input type="text" value="Select"/>
	Date of Search	<input type="text"/>	

Details of Order appealed against/Application u/s 248

1 Assessment year in connection with which the appeal is preferred/ Enter financial year in case appeal is filed against an order where assessment year is not relevant*		Assessment Year	Select
		Financial Year	Select
		Block Period	From (AY) Select
			To (AY) Select
		Date of Search	<input type="text"/>
Details of Order appealed against/Application u/s 248			
2 a Section and sub-section of the Income-tax Act,1961*		Select	
b Order Number		<input type="text"/>	
b Date of Order/Date of Tax Payment in case of Application u/s 248		<input type="text"/>	
c Date of service of Order / Notice of Demand		<input type="text"/>	
3 Income-tax Authority passing the order appealed against *		WARD 51(3), DELHI	
Pending Appeal			
4 Whether an appeal in relation to any other assessment year/ financial year is pending in the case of the appellant with any Commissioner (Appeals) *		Select	
Appeal Details			
5 Section and sub-section of the Income-tax Act,1961 under which the appeal is preferred *		<input type="text"/>	
6 If appeal relates to any assessment ?*		Select	
a Amount of Income Assessed (₹)		<input type="text"/>	

Appeal Details			
5 Section and sub-section of the Income-tax Act,1961 under which the appeal is preferred *		<input type="text"/>	
6 If appeal relates to any assessment ?*		Select	
a Amount of Income Assessed (₹)		<input type="text"/>	
b Total Addition to Income (₹)		<input type="text"/>	
c In case of Loss, total disallowance of Loss in assessment (₹)		<input type="text"/>	
d Amount of Addition/ Disallowance of Loss disputed in Appeal (₹)		<input type="text"/>	
e Amount of Disputed Demand (₹)- Enter Nil in case of Loss		<input type="text"/>	
7 If appeal relates to penalty ?*		Select	
a Amount of penalty as per order (₹)		<input type="text"/>	
b Amount of penalty disputed in Appeal (₹)		<input type="text"/>	
Details of Taxes paid			
8 Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full *		Select	
9 Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act,1961 has been paid*		Select	
10 If the appeal relates to any tax deductible under section 195 of the Income-tax Act,1961 and borne by the deductor, details of tax deposited under section 195(1)			
Statement of facts, Grounds of Appeal and additional evidence			
Statement of Facts			
<input type="text"/>			

10 If the appeal relates to any tax deductible under section 195 of the Income-tax Act, 1961 and borne by the deductor, details of tax deposited under section 195(1)

Statement of facts, Grounds of Appeal and additional evidence

Statement of Facts

11 Facts of the case in brief (not exceeding 1000 words) *

List of documentary evidence relied upon

12 Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of Rule 46A *

Select

12.1 If reply to 12 is Yes, furnish the list of such documentary evidence

13 Grounds of Appeal(each ground not exceeding 100 words)*

Sl. No.	Relevant section (s) of IT/Act	Issue	Ground of Appeal
1	<input type="checkbox"/>		

+ Add - Delete

Appeal filing details

14 Whether there is delay in filing appeal*

Select

Appeal filing details

14 Whether there is delay in filing appeal*

Select

15 If reply to 14 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)

16 Details of Appeal Fees Paid*

Sl. No.	BSR Code	Date of payment	Serial Number	Amount
1	<input type="checkbox"/>			

+ Add - Delete

17. Address to which notices may be sent to the appellant*

Flat/ Door/Block No *	Name of Premises / Building / Village	Road/ Street /Post Office
Area/ Locality *	Town/ City/ District *	State *
BALJEET NAGAR NEW DELHI	CENTRAL DELHI	DELHI
Country *	Pincode *	Mobile No *
INDIA	110008	
		Email Address *

Preview and Submit
 Save Draft
 Exit

Chapter -6 Faceless Appeal Process

From 25th September 2020, faceless Appeal started.

The Faceless Appeals Scheme, 2020 will be operated through the Faceless Appeal Centres. The Central Board of Direct Taxes ('the CBDT'), vide notification dated 25 September 2020 has specified the Income-tax authorities of the National Faceless Appeal Centre and Regional Faceless Appeal Centre and has directed them to exercise their powers and perform functions to facilitate the conduct of the Faceless appeal proceedings.

The entire scheme of the Faceless Appeal will be a confluence of the National Faceless Appeal Centre, Regional Faceless Appeal Centre and the Appeal units, the National e-Assessment Centre/the tax officer and the Appellant. The National Faceless Appeal Centre will coordinate with other players of the scheme to drive the entire scheme. Hence, it will act as a nodal agency and shall be a single contact point between other players.

In the case of faceless Appeal, neither appellant will not physically interact with the Commissioner of Income Tax (Appeal) nor the Commissioner of Income Tax (Appeal) CIT(A) will interact with the Appellant. Now even Appellant would not know the name of CIT(A),

There are three-layer in Faceless Appeal i.e National Faceless Appeal Centre, Regional Faceless Appeal Centre and Appeal Units

There is one National Faceless Appeal Centre situated in Delhi and various Regional Faceless Appeal Centre and various Appeal Units all over India.

National Faceless Appeal Centre work as a nodal agency between Appellant and Regional Faceless Appeal centre and appeal units.

All communication between the appeal unit and the appellant or any other person or the National e-Assessment Centre or the Assessing Officer concerning the information or documents or evidence or any

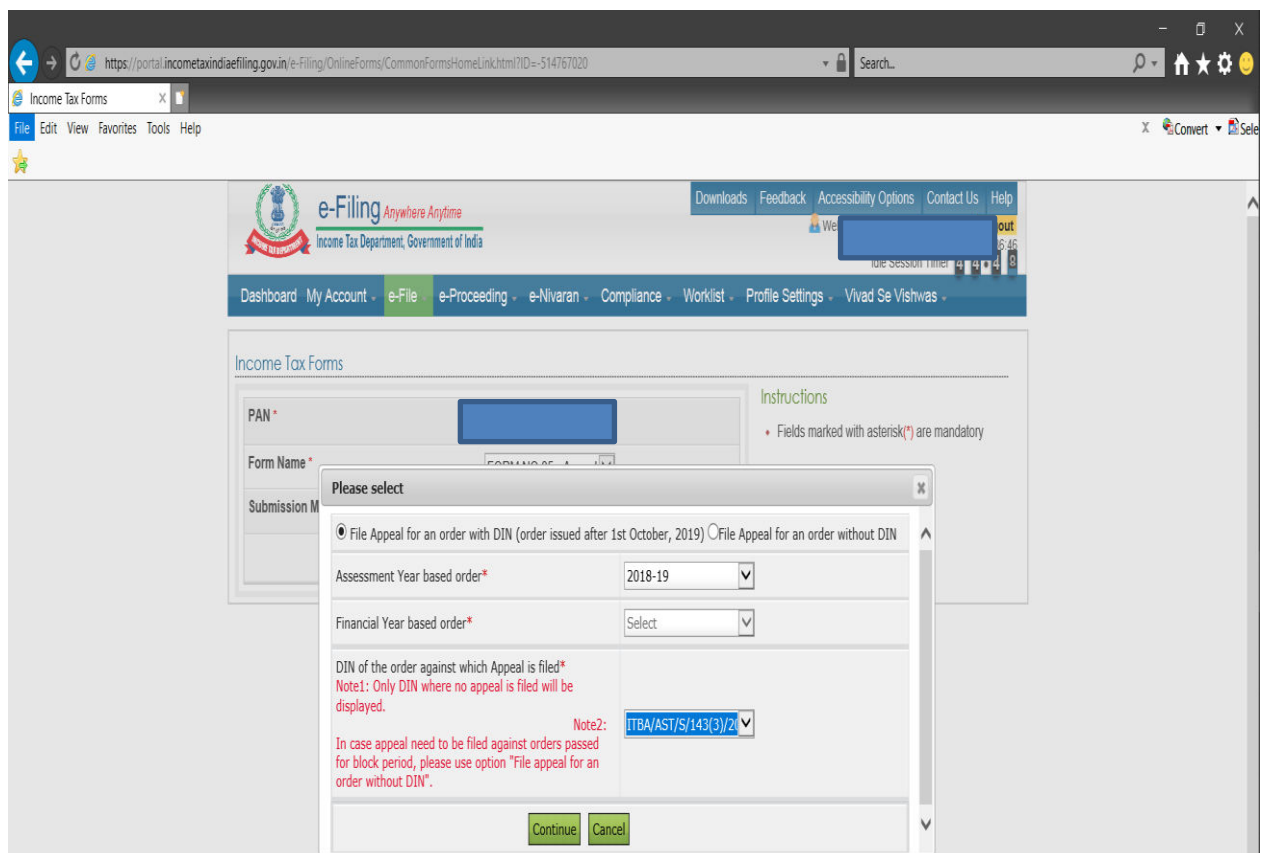
other details, as may be necessary under this Scheme shall be through the National Faceless Appeal Centre.

The National Faceless Appeal Centre shall intimate the admission or rejection of the appeal, as the case may be, to the appellant;

All information, basis notification issued on dated 25th September 2020.

In faceless, Appeal all the procedure of filling of appeal are the same except few following things.

1. There is no CIT(A) Number as earlier mention at the notice of demand.
2. The appeal is filed based on DIN i.e. documents identification number as mention at Assessment Order and DIN will automatically reflect at the time of filling appeal after selecting Assessment Year.



The screenshot displays the Income Tax e-Filing portal interface. The browser address bar shows the URL: <https://portal.incometaxindiaefiling.gov.in/e-Filing/OnlineForms/CommonFormsHomeLink.html?ID=514767020>. The page header includes the e-Filing logo and navigation links: Downloads, Feedback, Accessibility Options, Contact Us, and Help. The user is logged in as 'Vivad Se Vishwas'. The main content area is titled 'Income Tax Forms' and contains a form for filing an appeal. A modal dialog box is open, titled 'Please select', with the following options and fields:

- File Appeal for an order with DIN (order issued after 1st October, 2019)
- File Appeal for an order without DIN
- Assessment Year based order*: 2018-19
- Financial Year based order*: Select
- DIN of the order against which Appeal is filed*
Note1: Only DIN where no appeal is filed will be displayed.
Note2: ITBA/AST/S/143(3)/2

Buttons for 'Continue' and 'Cancel' are visible at the bottom of the modal dialog.

Chapter -7 How to file first time First Appeal to CIT(A)

It can be very easy to file An Appeal for those persons who are normally filling income tax return. It can be understood by an example that if you want to go Mumbai for the first time, then there would various questions in your mind, how you should go i.e by Air or train or any other mode, you will decide on the basis cost constraint, time constraint & other questions come in mind that where will you stay in Mumbai i.e in a hotel or at any of relatives place etc.

You will ask some queries from friends, search internet details about Mumbai and finally, you will succeed by reaching there and next time. It will be very easy and comfortable and there will be no need to take help from any friend & known.

And in the same way Appeal to CIT(A), by the end of the Book, it will be like child play for you too.

When any Assessment Order is passed by the Assessing Officer which is not according to our expectation or we disagree with our return income, due to that there is a huge tax liability on Assessee. Now the problem arises - income tax return was filed by the same professionals who represented the case in the Assessment on behalf of the Assessee.

In such a situation it becomes a big challenge for a New Professional who has no experience in appeal to CIT(A). It becomes more complex when no senior professional is there to help such a new professional.

A professional who is at the initial stage of his/her career has fear or is afraid to take any Appeal assignments due to a lack of confidence and experience.

But once the new professional has done any case of appeal, then he feels comfortable filing an appeal to the commissioner of income tax (Appeal) because now he has got experience in filling appeal and handling appeals solely basis.

Soon the new professional takes more cases in hand and slowly become an expert in his field. This is a learning process; we learn day by day.

We want to see you on the path of Expertise.

In the Word of Dr **CA Girish Ahuja Ji**, “Expert doctors, become expert only by taking chance on the patient during their experiment/Chance on a patient, the patient may be saved or may be not. But doctors got to experience for a future patient. In the same way in our field when a new professional gets any chance to file any appeal, he should do and get experience then only he/she can become an expert in filing and handling appeal. But in our field, there is a chance to save the client due to the Second Appeal to ITAT, third Appeal to High Court and fourth appeal to Supreme Court”

By the time The Supreme Court pronounce its judgement, your career will already set. Higher than earlier expectation.

So, take a new challenge, learn & grow.

It will be a great pleasure to see you at CIT (Appeal) very soon.

Chapter 8-Common Problem during filing your First Appeal

After receiving any appealable order (**Refer** Section 246) Assessee faces a problem on two fronts, first in filing an appeal to CIT(A) and Second from the Assessing Officer end, regarding depositing demand amount & keeping penalty proceeding in abeyance till the disposal of the first appeal.

Filing appeal for the first time to CIT(A) is very tricky and confusing, due to a lack of confidence and knowledge.

A new Professional know the law by reading book & attending Classes, but they face problems like -

1. The procedure to follow, (Theory vs Practical ground reality)
2. In drafting appeal paper
 - Drafting statement of facts, and
 - Drafting grounds of appeal, and
 - Drafting application for condonation of delay in case of delay in filling appeal within the specified period,
3. Dealing with Assessing officer regarding
 - Stay of demand, (Assessing officer pressure to Assessee for depositing demand of tax amount).
 - Format for filing stay of demand &
 - kept in abeyance of penalty proceeding till the disposal of the first appeal.

Chapter -9 Documents required for filling

Before filing an appeal, one should know about the document requirement otherwise all exercise will be useless.

The following document is required for the appeal.

- Form 35
- Statements of Fact
- Ground of Appeal
- Copy of the order appealed against. (after New scheme of e-Assessment not required). In earlier days of Manual system certified copy of order itself a lengthy work)
- Notice of Demand U/s 156 (after New scheme of e-Assessment not required). The earlier certified copy must.
- BSR code, Date & Amount. An earlier copy of challan was a must.
- Application for condonation of delay in presenting the appeal, in case there is any delay

In simple words, earlier days are known for fat file.



Chapter -10 Who will sign the Appeal

Next question that arises in the mind, who will sign the Appeal paper.

- If an appeal is made by an individual, the form has to be signed by the Individual or a representative of the Individual.
- If an appeal is made by a Hindu Undivided Family, the form to be signed by the Karta or other elder members of the family.
- If an appeal is made by a Company, the form to be signed by the Managing Director or other directors of the company.
- If an appeal is made by a Foreign Company, the form to be signed by the representative of the company.

In Simple Terms- Responsible Person of Entity

Let's review Section 140 of the Act.

- As per the provision of section 140 of the income tax act, 1961, a person authorised the sign while filing an income tax return, same persons are liable to sign Appeal filing form.
- Now we are in an era of technology, appeal is filed online through the income tax portal, hence a manual signature is not required, it can be done via verifying One Time Password (OTP) or Digital Signature Certificate (DSC).

Chapter 11- Statements of Facts

Nowhere Statements of Facts define in the income tax act and There is no specified format by the income tax department for preparing Statements of Facts.

Is the summary of the case by which CIT(A) can understand the whole case in summarised form. It is very easy to prepare, all the story of the case is normally given in Appealable order i.e.

- a) Assessment Order,
- b) Penalty Order etc., passed by Assessing officer

one can get help from Appealable order for preparing Statements of Facts. And if the appealable order is missing any facts then the appellant should mention facts.

Now while filling appeal online there is a word limit of one thousand words (1000), hence the appellant need to prepare statements of facts within the limit of one thousand words.

However, the appellant can prepare Statements of Facts more than one thousand words than he needs to attach while filling appeal as other attachments.

However, before filing the Appeal, Assessee or his authorised representative must consider the Pros and Cons of filing the appeal.

The reason, Commissioner of Income Tax Act (Appeal) has powers of enhancement and the entire assessment proceedings are open before him.

Furthermore, once the appeal is filed, it can't be withdrawn at any stage of the proceeding. It's up to the Appellate Authority on its discretion may allow withdrawal of Appeal or dismiss the same. It's not compulsive.

It was observed that Statement of Facts and Grounds of Appeal, a step that does not get the deserved attention from Assessee.

In many cases, it is observed that the Statement of Facts is not filed before the CIT (A) or is filed in a cursory manner. The Statement of Facts and Grounds of Appeal before CIT (A) are the most important documents when appeals are filed before the Income-tax Appellate Tribunal (the “Tribunal”) and High Court.

This is because, in the appeals before the Tribunal or the High Court, Statement of Facts and Grounds of Appeal before CIT (A) compulsorily form part of the record before them.

Therefore, the Assessee needs to present the statement of facts in such a manner to bring out the steps in the assessment/penalty proceedings leading to the order under challenge.

it is advisable to file an elaborate statement of facts covering all issues and wherever possible, along with the case laws.

Normally, it is observed that in the first appeal, a statement of facts is not filed. But, the filing of the statement of facts before the first appellate authority becomes very relevant for the reason that as per the rules of the Appellate Tribunal, a statement of facts cannot be filed in the appeal before the Appellate Tribunal. Filing a detailed statement of facts, along with supporting case laws will help the Assessee, especially when appeals are disposed of by the first appellate authority ex-parte.

The following points must be kept in mind while drafting the statement of facts: -

1. Statement of facts must contain all the details in respect of each of the point as if the Assessee submitting reply on receipt of the assessment order. The same should be comprehensive and complete.
2. If some documentary evidence is produced/furnished and the assessment order states otherwise, one needs to object to the same by giving reference to the letter by which evidence is furnished to the AO.

3. If some details are never asked for and it is stated contrary in the assessment that details were asked for and were not furnished, one has to point out to this effect by stating categorically in the statement of facts that no such details were ever asked for.

HINT - Record of the paper submitted to AO will play a crucial role later, at the time of Appeal. Due care needs to be taken care of.

4. Statement of facts must be used as an opportunity to bring additional facts on record if the same could not have been so brought before the AO.
5. All factual mistakes/ errors/ incorrect observations of AO must be specifically mentioned, challenged and rebutted. This would include instances where the AO has wrongly stated in the assessment order that certain details were called for and not submitted. Wherever possible the correct position should be expressly mentioned.

Issues such as lack of proper opportunity of being heard or violation of any other principle of natural justice (such as denial of opportunity of cross-examination, relying on material behind Assessee's back etc.) must be specifically brought out – This will also help the Assessee's case for the admission of additional evidence under Rule 46A of the Income-tax Rules, 1962 (the "Rules") if required.

Chapter 12- Ground of Appeal

The Ground of appeal is statements or documents which specify the nature of disputes and expectation of resolution of disputes.

Hence, the objective of the ground of appeal is to communicate to the Commissioner of Income Tax (Appeal) about the nature of disputes and expectation from CIT(A).

The language used in drafting the grounds of appeal should be very easy, simple and clear. It should be precise and concise to make an effective ground of appeal. The grounds should not be argumentative and narrative.

A ground of appeal can be said to be well-drafted only when it brings out the exact disputes between Appellant and Revenue i.e. Income Tax Department.

ATTENTION-

While drafting grounds of appeal, it is better to avoid mentioning the case laws and arguments. Case laws and arguments should mention at the time of submission of reply to the Commissioner of Income Tax (Appeal).

The following points should be taken care of while preparing grounds of appeal

- The ground should be precise, concise and without any ambiguity.
- Grounds should highlight the nature of the dispute and the relief expected from the Commissioner [Appeals].
- For separate issues, there should be separate grounds.
- Grounds should avoid referring to case law if any.
- Simple language should be used as a complicated language may be unintelligible and may also, in some unfortunate cases, result in dismissal of the appeal.

- Grounds challenging jurisdiction should be preferred first in order of grounds of appeal.
- Ground mentioning that the assessing officer did not provide sufficient opportunity to make the case before he should be given higher weightage.

Chapter -13 Appeal Filing Fees

The fee structure to file an appeal before the Commissioner of Income Tax (Appeals) is given below: -



- If the total income determined by the Assessing officer is less than or equal to Rs. 1,00,000, the appeal fee is Rs 250/-.
- If the total income determined by the Assessing officer is more than Rs1,00,000 but less than and equal to Rs. 2,00,000, the appeal fee is Rs 500/-
- If the total income determined by the Assessing officer is more than Rs. 2,00,000, the appeal fee is Rs. 1,000/-.
- For other appeals like a penalty, the appeal filing fee is Rs 250/-.

NOTE –

The appeal fee is to be paid before filing an appeal. Following points should be taken care of while making the payment of the appeal fee and filling the proper challan as that fee can't be adjusted against tax payment:

1. The challan form to be used is **Challan No. 280**.
2. If the Appeal is for more than one year, Appeal Fees has to be paid for each year through a separate challan.
3. Write Correct Permanent Account Number (PAN).
4. For depositing the Appeal Fees in case of Non-Corporate and Corporate Assessee, Major Head 020 or 021 is to be selected
5. Under '**Type of Payment**', **Minor Head** Self-Assessment Tax **(300)** has to be selected.

Under 'Details of Payments', the amount has to be entered in the "Others" column.

Name of the Assessee 
Complete Address _____


PAN 

Major Head 0021 - INCOME-TAX (OTHER THAN COMPANIES)

Minor Head 300 - SELF ASSESSMENT TAX

Description of Tax	Amount in Rupees
Basic Tax	0.00
Surcharge	0.00
Education Cess	0.00
Penalty	0.00
Others	1,000.00
Interest	0.00
TOTAL	1,000.00

HDFC BANK LIMITED	
Challan No	280
B&R Code	0610308
Date of Receipt	28/08/2018
Challan Serial No	
Assessment Year	2011-12
Bank Reference	
Drawn On	HDFC Bank Netbanking

Rupees (In words) INR ONE THOUSAND ONLY

CIN 

Chapter -14 Period for Filing Appeal

As per Section 249(2) of the Income Tax Act 1961 for Time-limit for presenting an appeal, the appeal should be presented within 30 days of the following date:

- a) Where the appeal relates to any assessment or penalty, the date of service of notice of demand relating to the assessment or penalty.
- b) Where an appeal is under section 248, i.e., appeal by a person denying liability to deduct tax under section 195, the date of payment of tax.
- c) In any other case, the date on which intimation of the order sought to be appealed against is served.

An appeal has to be filed within the time prescribed under the relevant provisions. An appeal filed beyond the time prescribed under the law is liable to be dismissed.

However, delay in filing an appeal may be condoned under section 249(3), the Commissioner of Income Tax (Appeals) has the discretion to admit appeals filed beyond time, if satisfied that delay was due to “**sufficient cause**”.

That period is 30 days specified for filling Appeal to Commissioner of Income (Appeal) from the date of receiving demand notice against the appealable Order from the Assessing Officer.

Chapter 15- Condonation of Delay

As per provision of sub section (3) of section 249, In case of delay in filing the appeal within 30 days, the appeal shall be filed along with an application to condone the delay in filing the appeal with supporting evidence like Affidavit, Doctor's Certificate, etc. Section 249(3) gives power to the Commissioner (Appeals) to admit the appeal, even filed beyond the specified period i.e. 30 days, if there exists sufficient cause for not presenting the appeal within the limitation period. In **Collector of Land Acquisition v. Mrs Katiji & Others 167 ITR 471 (SC)**, the Honorable Supreme Court has held that the Courts should have a pragmatic & liberal approach in admitting the appeal beyond the period of limitation.

Section 5 of the Limitation act 1963, appeal to be file within the limitation period as specified in the relevant statute, but it can file belated if there is sufficient reason for delay filing.

That condonation of delay is a matter of discretion of the Court, provide discretion only in the cases of delay within a certain limit.

The only criterion is the acceptability of explanation irrespective of the length of the delay. The primary function of the Court, being adjudication of the disputes between the parties and to advance substantial justice,

it is not enough to turn down the plea of the litigant and to shut the door against him for some lapse on the part of the litigant for the delay.

The sufficient reason can be beyond the control of the appellant, for example, it can be serious illness or medical problem, the appellant is out of India, the appellant is in jail, the order is passed against an Assessee, to whom not having Permanent Account Number then period involve for taking PAN etc.

If an Assessee chooses to support its condonation application with an affidavit, it must give due consideration to the manner of drafting and filing affidavits. The following points must be taken care of: -

1. The affidavit must be properly endorsed by the notary regarding the oath of affirmation before him by the executant of the affidavit
2. The place and date of administration of oath must be mentioned
3. The words “**sworn before me**” must be mentioned by the notary on the affidavit;
4. Executant must sign the affidavit before the notary
5. The notary must sign the affidavit, put official notary seal and stamp, mention his registration number and also the General Register Number (unique for each document executed before the Notary) on the affidavit

The Commissioner of Income-tax (Appeals) can condone the delay in filing the appeal if a genuine reason exists for the delay.

Chapter 16- Early Hearing

Early hearing is a legal remedy available in the Law. It can be used only in the condition where-

- The assessee is very confident in the merit of his case.

The question arises, first of all why use it?

Correct, let us explain the logic first.

As per Act, CIT(Appeal) has 1 year period of time to confirm, reduce, enhance or annul the assessment order passed by the Assessing Officer.

1 Year is a long time and Assessing Officer normally continue with the recovery proceeding of Demand raised in the Assessment order.

Assessee can apply for a stay of Demand, and the Assessing Officer has the discretion to grant the same.

Let's suppose, There is a tax demand of 10 Crore, 20% will be 2 crores and the assessee in liquidity crunch or not willing to get his money struck with the department, and sure in the merit of his case.

In that case, Assessee can apply for an early hearing.

Assessing officer can stay of demand after approval from CIT or Principal Commissioner of Income Tax in such cases.

CIT or PCIT can grant such a stay and allow an early hearing in case of High pitch demand.

The benefit of this process-

- No need for a security deposit. If the case decided in your favour

it's a way to tackle High- pitch demand, where you are sure of the merit of the case.

Draft format of application for your reference-

To,

Date:

Commissioner of Income Tax (Appeal)

Subject: Request for Early hearing of an appeal filed in case offor A.Y:, against the Assessment Order U/s 144 of income Tax Act, 1961

In the Case of:

PAN: ANAPDXXXXM

Assessment Year:

APPEAL ACK No:

Respected Sir,

Concerning above mention subjects regarding early hearing, In this regard, I would like to request you to please consider the following points:

1. That the Assessment order passed under section 144 of Income Tax Act, 1961, by making addition assessed income of Rs. XXXXXX/- as against returned income of Rs. XXXXXX/-
2. That I have filed an appeal to Commissioner of Income Tax (Appeals) Delhi, in **Form No. 35** on, having acknowledgement number against the Assessment Order under section 144 of income Tax Act 1961, dated, Copy of Appeal form 35 attached herewith.
3. That I would also like to state that the addition of Amount in Assessment order is very high (High Pitch Addition) as compared to the returned income and the demand which has been raised is also very high amounted to Rs. XXXXXXXX/- and it is an undue hardship to deposit of demand amount as per notice of demand under section

156 of income tax act 1961. I cannot deposit even 20% as office memorandum No. 1419 dated issued by CBDT, as modified by CBDT on dated, Somehow, I can manage of Stay of Demand till 30th June 2020, by the Respected Pr. CIT.

Given the above submission, it is humbly requested for an early hearing of Appeal by your good self.

Assessee

Name & Signature

Chapter 17- How to face CIT(A)

Now the crux of the book and practical life, how to face CIT(A)

1. That Assessee himself or through the authorised representative can appear for facing the Commissioner of Income Tax (Appeal)
2. Appearance by an authorised representative- Any Assessee who is entitled to or required to attend before any Income-tax authority in connection with any proceeding under the Income Tax Act, 1961 (Otherwise than when required under section 131 to attend personally for examination on oath or affirmation, may subject to the other provisions of this section), attended by an authorised representative (Authorised Representative is defined in Section 288(1) of the Income Tax Act 1961.) through a valid Power of Attorney (**Model Format of Power of Attorney is given in last**)
3. Before appearing to CIT(A) for the presentation of the case, the following preparation and step must be done regarding the case. (This preparation makes all difference. Your knowledge about law and fact should be more than another side)
 - 1) Study the Assessment order in-depth and carefully understand the facts of the case and the background involved in each addition.
 - 2) Study all the replies filed before the Assessing Officer during the assessment Proceedings.
 - 3) Examine whether any additional evidence is to be taken. If so, draft an appropriate application under **Rule 46A**. Apply Rule 46A along with documentary evidence in support of your claim as far as possible.
 - 4) Prepare paper book with index containing all written submission filed, evidence in support of assertions made in written submissions.

- 5) Prepare exhaustive written submission relevant to each ground of appeal. Highlight the important submission in bold or italic.
4. At the time of hearing before CIT(A) the following points must be kept in mind: -
- 1) Maintain Calm and be peaceful and confident.
 - 2) Explains the facts clearly. Be honest with the facts. Law will take its course.
 - 3) Have proper knowledge of all facts of the case. Reply to the queries raised by the CIT(A) to be offered promptly and to the point.
 - 4) Quote only relevant case laws
 - 5) Avoid unnecessary arguments and altercations in case if the CIT(A) is not satisfied with your arguments.
 - 6) Always keep in mind that we are there to assist the CIT(A) in taking decision.
 - 7) Do not ridicule the Assessing Officer Order, let the CIT(A) see the absurdity.

The time between the filing of the appeal with the CIT (A) and the actual hearing of the appeal by the CIT (A) may be used by Assessee to obtain information/ material on which the AO has relied during assessment proceedings, but has failed to provide notice thereof to the Assessee.

A letter to the AO requesting such details or an application under the Right to Information Act, 2005, depending on the facts and circumstances of the case, may be used by the Assessee. This would help in avoiding delays after hearings during the appellate proceedings commence.

Chapter 18 Petition for a stay of demand

This part is more on the Gyan side. We will discuss the background and current status for better understanding.

Petition for a stay of demand is an application to the Assessing Officer to keep demand stay till the disposal of the appeal. After filing appeal to CIT(A), Assessee will have to deal with the taxes that have been demanded by the Assessing Officer in the notice of demand under section 156 bypassing the assessment order appealed against.

Sometimes it is very high tax demand as compare to declared income, in such a situation it is very difficult and a burden on Assessee to pay the tax demanded.

Before 29.02.2016, As per **Office instructions no. 1914 in 1996**, in case of high pitch demand, stay of demand was granted equalling to such amount as Assessing Officer deemed fit.

The Assessing Officer sometimes allowed 20% demand or sometimes 25% or sometimes 40% or sometimes 50% etc. It all depends on Assessing Officer. It is also lead to corruptions.

When assessing unable to pay the tax amount as demanded by Assessing Officer, then the assessing becomes Assessee in default, then Income tax department ceases the Bank accounts and other properties as deemed fit unless they recover the demand amount of taxes.

From 29.02.2016, To keep uniformity as per instruction 1914 as modified, for getting a stay of demand CBDT modified the instruction no. 1914, allowed to stay of demand at least 15% demand amount, further instruction 1914 amended on 31.07.2017, that on payment of 20% of demand amount, stay on demand can be granted by the Assessing Officer.

2017- INSTRUCTIONS 1914 FURTHER MODIFIED

Instruction 1914 was further modified by Office Memorandum bearing number F.No.404/72/93 – ITCC dated 31.07 2017 as follows: **OFFICE MEMORANDUM** F No. 404/72/93- ITCC dated 31.07.2017

Subject: Partial modification of Instruction No. 1914 dated 21.3.1996 to provide for guidelines for a stay of demand at the first appeal stage.

Reference: Board's O.M. of even number dated 29.2.2016.

Instruction No. 1914 dated 21.3.1996 contains guidelines issued by the Board regarding the procedure to be followed for recovery of outstanding demand, including the procedure for grant of stay of demand. Vide O.M. No.404/72/93-ITCC dated 29.2.2016 revised guidelines were issued in partial modification of instruction No 1914, wherein, inter alia, vide para 4(A) it had been laid down that in a case where the outstanding demand is disputed before CIT(A), the Assessing Officer shall grant a stay of demand till disposal of the first appeal on payment of 15% of the disputed demand unless the case falls in the category discussed in para (B) thereunder. Similar references to the standard rate of 15% have also been made in succeeding paragraphs therein.

The matter has been reviewed by the Board in the light of feedback received from field authorities. Because of the Board's efforts to contain over pitched assessments through several measures resulting in fairer and more reasonable assessment orders, the standard rate of 15% of the disputed demand is found to be on the lower side. Accordingly, it has been decided that the standard rate prescribed in O.M dated 29.2.2016 be revised to 20% of the disputed demand, where the demand is contested before CIT (A). Thus all references to 15% of the disputed demand in the aforesaid O.M dated 29.2.2016 hereby stand modified to 20% of the disputed demand. Other guidelines contained in the O.M. dated 29.2.2016 shall remain unchanged.

These modifications may be immediately brought to the notice of all officers working in your jurisdiction for proper compliance.

The foregoing discussion concerning stay of demands clearly shows that the two circulars are only in addition to Instruction No 96 and not in the supersession of what has been approved by the 'Informal Consultative Committee of Parliament' and the then deputy Prime Minister/finance minister. That instruction is still valid and has not been withdrawn so far. Hence, where income assessed is twice the income returned or more, the demand attributable to such high-pitched

assessments, on applications made by the Assessee, has to be stayed until the disposal of appeals by the CIT (A).

There is no escape from this situation and the AO's, who are not adhering to this Instruction and are compelling the Assessee to pay the demand, which is more than the income returned, based on the criterion in Instruction No 96, could be held to be guilty of not following the decision of a Committee of Parliament and could say to be committing contempt of Parliament. The two Circulars of the CBDT cannot be said to change this situation, as the CBDT cannot unilaterally issue Circulars, which are contrary to Instruction No 96 (supra) issued with the approval of the Informal Consultative Committee of Parliament.

In simple words, 20% of Demand need to deposit before hearing.

SUMMARY

Particulars	246A	254	260A	261
Appellate Authority	CIT (A)	ITAT	High Court	Supreme Court
The time limit for Appeal	30 days from the receipt of the order	60 days from the communication of the Order	120 days from the communication of the order of ITAT	
The time limit for disposal of Appeal	1 year from the end of the FY	4 year from the end of the FY	As per Court procedure	As per Court procedure
Application Form	35	36	As per Court procedure	As per Court procedure
Fees to be Paid				
Returned Income up to Rs1 Lac	Rs 250	Rs 500	As per Court procedure	As per Court procedure
More than 1 lac up to Rs 2 Lac	Rs 500	Rs 1500	As per Court procedure	As per Court procedure
More than 2 lac	Rs 1000	1 % of Income (Max Rs 10,000)	As per Court procedure	As per Court procedure
Appeal for other than Income	Rs 250	Rs 500	As per Court procedure	As per Court procedure
Stay of Demand	Not Possible	Possible against an order of CIT(A)	Possible	Possible
Demand Deposit	20%			
Recovery of Tax	No power to stay the recovery of Tax	The final order should be passed within 180 days from the stay order so passed	-	-

Model -Power of Attorney -1

I HEREBY APPOINT AND EMPOWER ~~XXXXXXXXXXXX~~ through ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ to appear, to correspondence, to agreed to act, to sign my/our/name/s to move and file petition to sign and swear statements on my/our behalf in original assessment proceedings, miscellaneous, review and/of appellate proceedings to accept service of notices, to produce and take back document to apply for and take delivery copies of order and documents to authorise his representative and clerks to take delivery of copies and to do clerical works in the offices of the Income Tax authorities, Vat authorities in all stage and also before officers Appellate of inspecting Assistant Commissioners, of Income Tax, Gift Tax, Estate Duty and Sales Tax and Income Tax, Appellate Tribunal Office without being personally responsible for my/our act short-coming faults and concealment if any whatsoever, To apply for refund receive the refund vouchers, cheques, pay-orders, to deposit and withdraw proceeding inspect files records paper and document filed and orders therein to present my/us to in of matters and to every others necessary and lawful act incidental in this case of connection proceeding on my/our behalf.

I/We further hereby authorise the said Counsel/Counsels to receive and reply directly all communication from the said Income-Tax, Gift Tax, Wealth Tax, Sales Tax, Estate Duty authorise/Appellate Tribunal and other authorise on my/our behalf.

I/We further hereby authorise the said Counsel/Counsels to appoint any Counsel and or report as his substitute and/or assistant/and/or addition to acting to my/our behalf in these present before any and or all the authorities named above and I/We further agreed to confirm and ratify all his Substitutes/assistants such acts done under this powers, and not to hold the said attorney to be personals responsible for my/our and or acts shortcoming faults and deeds whatsoever.

Name
(Assessee)

Accepted _____.

CA. XXXXXXXXXXXX

(Designation)
Firm Name
Chartered Accountants

CA. XXXXXXXX

(Designation)
Firm Name
Chartered Accountants

Date:

Model Power Attorney -2

LETTER OF AUTHORITY

I..... hereby authorize **Mr** **CA** to appear, represent and settle on my behalf the Income-tax assessment proceedings **before the Income-tax officer / Assistant/Dy. / Commissioner of Income-tax or in appeal before the Appellate Assistant Commissioner of Income Tax, Commissioner of Income-tax (Appeal) or the Appellate Tribunal or the Board of Direct Taxes** for the assessment year and

- 1.To produce accounts and documents/statements and to receive on my behalf any notice or documents/statements issued in connection with the said proceedings] and
2. To apply for, obtain and receive refund order in respect of the said assessment (if any) and] and
- 3.To apply for copies of the Income-tax assessment order, the Appellate order or the order of the Commissioner of Income-tax, the Central Board of Direct-taxes].

I agree to ratify all acts done by the CA in pursuance of this authorization. Their explanations and statements will be binding on me.

This authority shall remain in force till it is duly cancelled by me and intimated to the concerned authorities

Solemnly affirmed at..... on thisth **day of March**

Place:

(Assessee)

Date: .../.../.....

PAN:

Status:

.....

ACCEPTANCE

I,, **Chartered Accountants**, holding **membership no** of ICAI, do hereby declare that being a Chartered Accountant I am duly qualified under section 288 of Income Tax Act, accept the aforesaid authority to attend on behalf of the above-named assessee.

CA (Name of CA)

Add:,

.....,

M. No

Date:/...../.....

Place:

Specific Application for Seeking Stay of Demand under Section 220(6)

Date: XXXX

To,

Assessing Officer
Ward/Circle

Subject: Request under section 220(6) of The Income Tax Act, 1961 for keeping the demand of disputed tax in abeyance till the disposal of the appeal.

In the Case of Mr XXXX

PAN: AXXXXXXXXXX

Assessment Year:

Sir,

We have been served a notice of demand under section 156 of The Income Tax Act, 1961 dated XX/XX/XXXX in which a sum of Rs...../- has been determined to be payable by us within 30 days of the service of notice. In this regard, we would like to request you to please consider the following points:

1. We have filed an appeal to Commissioner of Income Tax (Appeals)-X, New Delhi in **Form No. 35** dated XX/XX/XXXX, having acknowledgement number XXXXXXXXXXXX against the assessment order dated XX/XX/XXXX raising the said demand. We have also enclosed a copy of the Statement of Facts and The Grounds of appeal which have been submitted along with **Form 35**.
2. In the assessment year in question (i.e.), the Assessee filed the Return of Income within the time allowed under Income Tax Act and disclosed all his incomes and all other relevant facts and figures to the best of his knowledge and belief and declared the net taxable income of Rs. on which a sum of Rs. was determined to be payable as tax and said amount was paid in full by the Assessee. The

case was selected for scrutiny assessment under section 142(2) and an assessment order has been passed under section 143(3) on dated XX/XX/XXXX in which the total income has been assessed at Rs..... on which a sum of Rs..... has been determined to be payable as tax by the Assessee apart from the tax paid on the returned income as stated above.

3. You will observe that the demand has been raised mainly on the additions disallow the exemption etc. (Please specify the reason for the additions).
4. We would like to request you to please consider our case based on the facts and the merits involved. The Courts and many benches of ITAT have held in many similar cases that exemption in full is allowed. (Mention any case law if possible on the same merit).
5. We would like to bring to your notice that the Assessee Sh. has a very good assessment history and has never concealed any income nor have given inaccurate particulars with regards to any of the previous assessment years including the A.Y. Moreover, the Assessee has always had very good conduct and has always cooperated with the department in the past as well including the present case. The Assessee has always been regular in filing the Returns on Incomes in the past including the present case and has always paid all the taxes within the due time allowed including the present case.
6. We would also like to state that the income which has been assessed in assessment order is very high as compared to the returned income and the demand which has been raised is also very high and as per Instruction No.1914, dated 21-3-1996 issued by CBDT, as amended dated 29.02.2016 and further amended by dated 31.07.2017, we have deposited 20% of the disputed tax amount.

We are requesting you to please stay the demand till the disposal of the appeal. We want to assure you that we will pay the amount which will be assessed after the final disposal of the appeal within the time allowed to

us and request you to please keep the demand in abeyance till the final disposal of the appeal.

For
Chartered Accountants

CA/ Authorised Representative Name
(Partner/ Authorised Signatory)

100% Practical & Important Part of Book.

(12 Real Cases for better understanding. All cases contain-)

Here, First, we are sharing the order passed by Assessing Order. So that it's easy for you can co-relate and understand the gravity of the situation.

- Copy of Order Pass by Assessing Authority.

Then, We have shared

- The ground of Appeal and statement of Fact drafted on the basis that the order

All details shared, are 100% real and Practically handled.

I Hope, this will boost your confidence to Next Level.

Case- 1

Part- A -Order passed by Assessing

INCOME TAX DEPARTMENT

1	Name and address of the assessee	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
2	PAN	XXXXXXX8222X
3	Assessment Year
4	Previous Year
5	Method of Computing	Mercantile
6	Ward	ITO, Ward-24(2), New Delhi
7	Status	Pvt. Ltd. Company
8	Residential Status	Resident
9	Date of hearing	As per note sheet
10	Order U/S	147/144 of Income tax Act, 1961
11	Date Of Order	30.11.2019

ASSESSMENT ORDER

1. The assessee company has not furnished its return of income for A.Y. Also, the case was not scrutinized u/s 143(3) or 147 of the I.T. Act, 1961. Subsequently, information was received from the DDIT (Inv.), Unit-4(2), New Delhi vide his letter dated 30.01.2019. Information revealed that the bank accounts of the assessee company have been credited with Rs...../- during the year under consideration. But despite carrying out so large transactions through its bank accounts, the assessee company has not furnished prescribed Income Tax Return for the year under consideration which is mandatory for a company as per provisions of I.T. Act, 1961. Further, information also revealed that the assessee company was involved in transactions through fake cheques.
2. Before the opening of the case, letters were issued to the assessee company on 20.02.2018 and 03.01.2019 to furnish reply through e-

filing portal within 10 days with regard to non-filing of Income Tax Return despite carrying out huge transactions in its bank. However, no reply was received from the assessee company. Also, letters were issued to the related parties M/s XXXX XXXX XXXX Ltd. and M/s xxxxxxxxxxxxxxxx Pvt. Ltd. on 19.03.2019 seeking details of their ITR and transactions carried out with the assessee company on or before 22.03.2019. The letters were sent through speed post as well as their e-mail IDs. However, no reply received from any of the entities.

3. On the above credible information, vis-à-vis analysis made with the records available, case of the assessee was re-opened u/s 147 of the I.T. Act, 1961 after recording reasons to believe and obtaining approval of the Pr. Commissioner of Income Tax-08, New Delhi. Notice u/s 148 of I.T. Act, 1961 was issued to the assessee on 28.03.2019. The same was sent to the assessee electronically through ITBA as well as speed post. Subsequent reminders were also sent to the assessee to furnish ITR in response to notice u/s 148 and certain details but the assessee neither furnished ITR in response to the statutory notice u/s 148 nor any detail. Notices were issued to all known addresses of the assessee through electronic means and also through other modes of service. However, the assessee chose not to respond. The details of notices sent to the assessee are as follows:-

SI. No.	Name and address	Date issuance of notice	Type of Notice	Compliance	Remarks
1	Xxxxxxxxxxxxxx pvt. Ltd	28.03.2019	148	None	Sent through ITBa and speed post
2	Xxxxxxxxxxxxxx pvt. Ltd	23.08.2019	142(1)	None	Sent through ITBA
3	Xxxxxxxxxxxxxx pvt. Ltd	23.08.2019	Mail	none	Request to furnish Income Tax Return

					and details sought vide notice u/s 142(1) dated 23.08.2019
4	XXXXXXXXXXXXX pvt. Ltd	23.08.2019	142(1)	None	Served through speed post and e-mail IDs along with notice u/s 148
5	XXXXXXXXXXXXX pvt. Ltd	23.08.2019	142(1)	None	Served through speed post and e-mail IDs along with a copy of notice u/s 148
6	XXXXXXXXXXXXX pvt. Ltd	06.09.2019	142(1)	None	Reminder sent through ITBA
7	XXXXXXXXXXXXX pvt. Ltd	29.09.2019	142(1)	None	Reminder sent through ITBA

4. From the above table, it is seen that despite several opportunities given to the assessee company through various modes of service, it did not comply with any of the above notices. It is also seen that even after the expiry of more than six months, the assessee has not furnished the return of income in response to notice u/s 148 which is mandatory as per the provisions of I.T, Act, 1961. Reliance is also placed on the landmark judicial pronouncements made by the

Hon'ble Apex Court of India in the case of M/s GKN Driveshafts (India) Ltd. vs. ITO(2003) 259 ITR19(SC) which makes it mandatory to furnish return of income in response to notice u/s 148.

5. Information, in this case, was received from the Investigation Wing, relevant extract of which is as under:-

(A) This office has information that M/SPvt. Ltd maintains a bank account number 544146565656 with Corporation bank since 24.03.2003. Sh. xxxxxxxxxxxxxx and Ms. xxxxxxxxxxxxxx are the Directors of the company. The said company has been given a credit facility by the bank. On 30.09.2011, the bank had collected a cheque of Rs. 85,86,186/- on behalf of the above party, issued on SBI and drawn by M/s xxxxxxxxxxxxxxxxxxxx. Because of the dispute between the drawer and the assessee, the bank has frozen the bank account of the assessee company on 24.09.2011. The cumulative figures of debit and credit summations of the account are Rs. 132.32 Lakhs and Rs. 120.82 Lakhs respectively. The drawer of the cheque complains with the CBI stating that the said cheque was fake.

Summons u/s 131 were issued to the assessee and the assessee has complied from time to time. The assessee has furnished the statement of its corporate bank account and a copy of the complaint lodged by Sh. xxxxxxxxxxxxxx (complainant-1) and Sh. xxxxxxxxxxxxxx (complainant -2). The gist of the complaint is that one Sh. Xxxxxxxxxxxx (Accused), a self-declared IAS officer, has offered the complainant-2 a scheme of earning income. The modus operandi of the scheme is that the accused would give cheques to the complainants and they would arrange the third parties. The cheques would be drawn in favour of the 3 parties and subsequently, the cheque amount would be encashed by the third party and the amount would be handed over to the accused. These cheques were fake and were not drawn by the account holder but drawn by the accused by using duplicate signatures. In this deal, 90% of the cheque amount would be given back to the accused and the rest of the amount would be shared by the complainants and

the third party in the percentage ratio of 2% and 8% respectively. The complainants used this method with the help of the accused and some other third parties. In between, the complainants met Sh. xxxxxxxxxxxx, Director of M/s xxxxxxxxxxxx Pvt. Ltd. and briefed the modus operandi and asked him to enter into the deal as the third party. Sh. xxxxxxxxxxxx agreed upon the deal and accepted a cheque of Rs. 84, 54, 540/ He further encashed Rs. 33,00,000/ and transferred Rs. 40,00,000/- to the account of Ms. XXXX XXXX XXXX. This cumulative amount of Rs. 73,00,000/ has been handed over to the accused through the complainants. After few days of this deal, M/s xxxxxxxxxxxx has noticed this transaction and communicated to his banker, SBI about the fraud. SBI has approached RBI and RBI directed the Corporation Bank to reimburse that amount. Corporation bank has frozen account of M/s xxxxxxxxxxxx Pvt. Ltd. on 24.09.2011.

Further, it was revealed that M/s xxxxxxxxxxxx Pvt. Ltd. has shown Rs. 40,00,000/ and Rs. 33,00,000/ as trade receivable from Sh. xxxxxxxxxxxx and M/s xxxxxxxxxxxx respectively. But the treatment of Rs. 12,86,186/ is not given anywhere in the income tax particulars of the assessee company. The assessee could not explain the same thereafter also"

(B) Besides the above, information is also available on I-tax net that the assessee received income under heads' interest other than interest on securities' and 'payments to contractors' on which TDS was deducted u/s 194A and 194C of the Act respectively As per I-tax net data, following information is revealed:-

Sl. No.	Information Code	Information Type	Amount Credited	TDS Deducted
1	(A) TDS-94A	TDS return- Interest other than interest on securities (sec 194A)	Rs. 23,97,646/	Rs. 47,956/

2	(A) TDS-94C	TDS Return-Payments to contractors (sec 194C)	Rs. 85,843/-	Rs.10,230/-
		Total	RS. 24,83,489/-	Rs. 58,186/-

6. Further, statements of the bank account no. xxxxxxxxxxxx and xxxxxxxxxxxx being maintained by the assessee company at Corporation Bank, xxxxxxxxxxxx were obtained and examined. As per the reply received from the bank, it is revealed that the assessee company was having many deposit accounts in the bank which have now been closed. Apart from this, the bank had given advances to the company which became NPA since 29.06.2012. The current account no. xxxxxxxxxxxxxx was credited with Rs. 9,28,884/- during F.Y. 2011-12 and is inoperative since 28.05.2012 and having a negative balance of Rs. 3357/Other bank accounts no. xxxxxxxxxxxxxxxxxxxxxx was credited with Rs. 1,13,46,160/-. Thus, total credit in the bank accounts of the assessee company during the year under consideration was Rs.1,22,75,044/-. This amount includes the above credits of Rs. 85,86,186/- (received through cheques and as discussed in para 5A above) and Rs. 24,83,489/- (on which TDS of Rs. 58,186/- was deducted).

7. Further, several opportunities have been given to the assessee to furnish details but the assessee neither furnished its return of income in response to notice u/s 148 nor any detail i.e. financials. Because of the above conduct of the assessee, the AO is constrained to proceed in the case based on information available on record. To complete the assessment proceedings, a show-cause notice dated 04.11.2019 was issued to the assessee company electronically and sought a reply on or before 14.11.2019. The above information and communication details were shared with the assessee company through show cause notice along with details of proposed addition which are as under:

Further, several opportunities have been given to the assessee to furnish details but the assessee neither furnished its return of

income in response to notice u/s 148 nor any detail i.e. financials. Thus, the assessee company failed to substantiate the identity, genuineness and creditworthiness of the transacted amount of Rs. 1,22,75,044/- (credited in the bank accounts of the assessee). Further, to date, despite all efforts made by this office to contact the assessee, the assessee is choosing not to respond. Because of the above conduct of the assessee, the Assessing Officer is left with no choice but to proceed with the assessment proceedings based on the material available on record.

8. Considering the above-mentioned credible information and no explanation being offered by the assessee about the nature and source of the above transactions, I propose to hold that an amount of Rs. 1,22,75,044/- has escaped assessment in the case of assessee company for the A.Y. 2012-13 within the meaning of section 147 of the IT Act, 1961. A/so, I propose to add the same to the income of the assessee as unexplained income for the A.Y. 2012-13.

Because of the above and to the principle of natural justice i.e. Nemo judex in causa sua, Audi alteram Partem, a final opportunity is being offered to the assessee company to explain the true nature of credit of Rs. 1,22,75,044/- in its bank accounts along with substantive pieces of evidence. Assessee Company is also show cause as to why the same shall not be added to its income for A. Y. 2012-13 as an unexplained income.

You are required to furnish your reply in this regard through an online portal or my official e-mail ID "delhi.ito24.2@incometax.gov.in on or before 14.11.2019. This notice may be treated as an opportunity granted to you before completion of the assessment for the year under consideration. Kindly note that this is a time barring matter and if you fail to comply with this notice, it shall be presumed that you have nothing to say in this matter and the assessment will be completed on merits based on the materials available on record.

9. In response to the above show cause notice dated 04.11.2019, the assessee was required to explain the true nature, purpose and

source of credit of Rs. 1,22,75,044/- in its bank accounts along with substantive evidence. However, no reply received from the assessee company. On 17.11.2019, a reminder of show cause notice was also issued to the assessee company to furnish its reply but again the assessee company failed to respond. Given the above conduct of the assessee, there is no alternative except completion of assessment proceedings ex-parte.

10. Because the assessee company received Rs. 23,97,646/- as interest other than interest on securities on which TDS was deducted u/s 194A, the income of the assessee was proposed to be added 100% of total such receipt. In absence of any detail furnished by the assessee, Rs. 23,97,646/- is treated as income of the assessee and added to its income for A.Y. 2012-13. **(Addition: Rs. 23,97,646/-)**

11. Further, the assessee company received Rs. 85,843/- under contractual receipt on which TDS was deducted u/s 194C, the income of the assessee was proposed to be added @ 8% of total such receipt which is Rs. 6,867/-. In absence of any detail furnished by the assessee, 10. Rs. 6,867/- Is treated as income of the assessee under contractual receipt and added to its income for A.Y. 2012-13.

(Addition: Rs. 6,867/-)

12. In addition to the above receipts, the assessee's bank accounts were also credited with Rs. 98,77,398/- including cash deposit of Rs. 89,800/- and Rs. 85,86,186 through fake cheque (as discussed at Para 5A above) during the year under consideration. The Assessee was requested to furnish a reply to establish the identity and creditworthiness of the creditors and the genuineness of the above transactions. However, the assessee did not furnish any reply to substantiate these transactions. Further, the Assessee was involved in suspicious activities. Hence, all the credits amounting to Rs. 98,77,398/- remained unexplained in absence of any reply. Accordingly, Rs. 98,77,398/- is treated as unexplained cash credit of the Assessee and added back to its income.

(Addition: Rs. 98,77,398/-)

13. Subject to the above remarks, the total income of the assessee is computed as under:-

Addition as per Para 9 above = RS. 23,97,646/-

Addition as per Para 10 above = Rs. 6,867/-

14. Addition as per Para 11 above = Rs. 98,77,398/-

Total Income =Rs. 1,22,81,911/- Rounded Off
=Rs. 1,22,81,910/-

15. In view of the above, I am satisfied that the assessee has concealed its income to the tune of Rs. 1,22,81,911/-. Therefore, penalty proceedings u/s 271(1)(c) are being initiated separately. For non-compliance of section 139 of the I.T. Act, 1961, penalty proceedings u/s 271F of the I.T. Act, 1961 is also being initiated separately for non-filing of the return of income within the stipulated time.

16. Assessed at an income of Rs. 1,22,81,910/-. Credit for prepaid taxes is being given. Computation of tax as per ITNS-150 is enclosed separately which also forms part of this order. Interest u/s 234A, 234B & 234C of the Income Tax Act, 1961, as applicable is charged as per law. Penalty proceedings u/s 271(1)(c) and 271F of the I.T. Act, 1961 are being initiated separately. Necessary forms are being issued.

(xxxxxxxxxxxxxxxxxxxx)

Income Tax Officer

Ward-24(2), New Delhi

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts

Appellant is a company and not filed its income tax return for the financial year 2011-2012, relevant to Assessment Year 2012-2013, due to acute illness(Cancer) of director younger brother who was chartered accountant also was handling accounting and Income tax-related issues, got expired. Information was received from DDIT (Inv.), Unit-4(2), New Delhi that Assessee Company has been credited with Rs. 1,22,75,044/- during the relevant period under consideration information revealed that the Assessee Company was involved in a transaction through fake cheques. That the assessee company already replied to DDIT (Inv.) on the matter of fake cheques and the matter is still pending in Court.

Assessing Officer issued the notices under section 148, 142(1) of the income tax act, and passed the Assessment Order 147/44 on dated 30.11.2019 and penalty proceedings under section 271(1)(c) and 271F initiated.

On the grounds of appeal, the appellant has challenged the Assessment order on the following total additions of Rs. 1,22,81,910/-made by the assessing officer in the impugned assessment order under section 147/144 of the income tax act, vide order dated 30.11.2019:-

1. Addition on account of Interest of Rs. 23,97,646/-
2. Addition on account of contractual receipts (8% on 85,843) of Rs. 6,867/-
3. Addition on account of credit in bank account amount to Rs. 98,77,398/- including the following
 - a. On Account of cash deposit amount to Rs. 89,800

- b. On Account of a fake cheque of Rs. 85,86,186/- credit in the bank on the account.
- c. On Account of the amount credited in the bank account to Rs. 12,01,412/-

Hence present the appeal.



Ground of Appeal

**BEFORE HON'BLE COMMISSIONER OF INCOME TAX
(APPEALS)-XX, NEW DELHI**

**IN THE CASE OF M/s XXXXXX PRIVATE LIMITED FOR THE
AY 2012-13 AGAINST ORDER PASSED U/S 147/144 OF THE
INCOME-TAX ACT, 1961**

1. That the appellant denies its liability to be assessed at the total income of Rs. 1,22,81,910/- accordingly denies its liability to pay tax, cess and interest demanded thereon.
2. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing an ex-parte assessment order u/s 144/147 and that too without giving show cause notices as per law and without giving adequate opportunity to the assessee.
3. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in framing impugned assessment order and that too without assuming jurisdiction as per law and without serving the mandatory notices u/s 148, 143(2), and 142(1) of the Income Tax Act, 1961.
4. That having regard to facts and circumstances of the case, Ld. A.O. has erred in law and on facts in framing impugned assessment order mentioning show cause notice through inspector by affixture, without cross verification from the registrar of companies, is bad in law.
5. That by recording incorrect facts and findings and without giving the adequate opportunity of hearing and without granting the

opportunity being heard and without observing the principles of natural justice.

6. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in passing Assessment Order and without jurisdiction and independent application of mind, without cross-examination of facts.
7. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in not specifying the Section or subsection under which addition is made in Assessment Order.
8. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing an ex-parte assessment order u/s 144/147 without following the mandatory process specified under section 147 to 151 of the income tax act.
9. That on the facts and circumstances, the Ld Assessing Officer has erred in making the addition of Rs. 23,97,646/- on a/c of interest, wrongly held that the source of income as interest, without cross verification from the records of income tax.
10. That on the facts and circumstances, the Ld Assessing Officer has erred in making the addition of Rs. 6867/- on a/c contractual receipts, wrongly holding income is bad in law.
11. That on the facts and circumstances, the Ld Assessing Officer has erred in making the addition of Rs. 89,800/- on account of a cash deposit in the bank account, wrongly held that the source of credit entries remained unexplained.
12. That on the facts and circumstances, the Ld Assessing Officer has erred in making the addition of Rs. 85,86,186/- being credit entry in

a bank account, wrongly holding that the source of credit entries remained unexplained.

13. That on the facts and circumstances, the Ld Assessing Officer has erred in making the addition of Rs. 12,01,412/- being credit entry in a bank account, wrongly holding that the source of credit entries remained unexplained.

14. That on the facts and circumstances, the Ld Assessing Officer has erred in not allowing credit of TDS reflecting in 26AS, which is bad in law.

15. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.

PRAYER: In the facts and circumstances the assessee humbly prays as under:

- i. To set aside the impugned assessment order passed in violation of the principle of natural justice and without jurisdiction.
- ii. Alternatively, to delete additions of Rs 1,22,81,910/- made without considering the material on records, and in violation of the principle of natural justice.

(Assessee)

Case- 2

Part- A- Order Pass by Assessing Officer

INCOME TAX DEPARTMENT

1	Name and address of the assessee	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
2	PAN	XXXXXXX8222X
3	Assessment Year	2012-13
4	Previous Year	2011-12
5	Ward	Ward-38(8) new delhi
7	Status	Individual
8	Residential Status	Resident
10	Order U/S	U/S 144/ 147 of the IT Act, 1961
11	Date Of Order	25.12.2019
12	Date of Hearing	As per Order Sheet

ASSESSMENT ORDER

In this case, the assessee had filed a return of income dated 12.09.2012 declaring an income of Rs. 1,58,802/- under section 139(1) of the Act for the year under consideration. As per AIR/CIB information available with this office, the assessee had deposited cash amounting to Rs. 26,84,500/- during F.Y. 2011-12 relevant to A.Y. 2012-13 in saving accounts with State Bank of India. In view of the above facts and circumstances, the AO had reason to believe that income of Rs. 26,84,500/- has escaped assessment and it is a fit case for opening u/s 147 of the I.T. Act (hereinafter referred to as "the Act"). Hence, the case of the assessee for AY 2012-13 was opened for assessment u/s 147 of the IT Act after recording reasons and taking necessary approval of the Pr. Commissioner of Income Tax-22, New Delhi u/s 151 of the I.T. Act 1961.

1. Reasons for re-opening of assessment u/s 147 of I.T. Act

“The assessee has filed his return of income for A. Y. 2012-13 at taxable income of Rs. 1,58,800/-. AIR information was received in this office that an amount of Rs. 26,84,500/- has been deposited in cash in his saving bank account in State Bank of India during the F.Y. 2011-12 relevant to A. Y. 2012-13.

Notice u/s 133(6) of the I.T. Act, 1961 was issued to the assessee requiring him to explain the source of cash deposits made into his saving bank account during the F.Y. 2011-12. The assessee filed a reply in regard to the said notice but he failed to explain the source of cash deposits with documentary evidence.

In the light of the above discussion, it is apparent that the assessee has Cash deposits of Rs. 26,84,500/- and has filed his ITR for the A.Y. 2012-13, but in the absence of supportive documents, it is not ascertainable whether the source of cash deposits had brought to tax. Therefore, I have reasons to believe that an income of Rs. 26,84, 500/- has escaped the assessment for A. Y. 2012-13.

In view of the above, the provision of clause (a) of Explanation 2 to Section 147 applies to the facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. As the jurisdiction over the PAN is before the undersigned. I am satisfied that notice under section 148 of the I.T. Act, 1961 is to be issued to the said assessee for the said A.Y. 2012-13.

Necessary statutory approval u/s 151(1) of the I.T. Act may kindly be accorded from Pr. CIT-22, New Delhi to issue notice for the A.Y. 2012-13 to reopen of the case u/s 147 of the I.T. Act, 1961 to issue notice u/s 148 r.w. provisions of section 149(1) (b) of the Income-tax Act, 1961 for the A. Y. 2012-13. Limitation for the issue of notice u/s 148 of the I.T. Act, 1961 is expiring on 31.03.2019 in this case."

3. Accordingly, notice u/s 148 of the I.T Act, dated 28.03.2019 was issued and served upon the assessee through ITBA Module and also through speed post but, neither any return nor any submission has been filed by the assessee. Thereafter, notice u/s 142(1) from time to time was an issue

and served upon the assessee. Thereafter, finally, the show-cause notices dated 11.12.2019 was issued to the assessee which is re-produced.

4. **Section 69A Unexplained Money:**

"Where in any financial year the assessee is found to be the owner of any money bullion, jewellery or 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 another 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 another valuable article may be deemed to be the income of the assessee for such financial year."

5. Till the date of passing the order neither any reply nor any adjournment has been received. This office has no option to pass the order u/s 144 of the Income-tax Act, basis of material available on record and amount of Rs. 26,84,500/- is treated as unexplained income u/s 69A of the Income-tax Act and added to the total income of the assessee. I am satisfied that the assessee has concealed income, as such, penalty proceedings u/s 271(1)(c) is being initiated separately.

(Addition of Rs.: 26,84,500)

6. In view of the facts narrated above, the assessee is failed to file the return and reply notice u/s 142(1) of the Income-tax Act, Hence, penalty proceeding u/s 271(1)(b) are being initiated separately.

In view of the above, the total taxable income of the assessee is computed as under-

Income declared u/s 143(1)	1,58,802
Addition: as per above (para 5)	<u>26,84,500</u>
Total assessed income	<u>28,43,302</u>

7. Assessment is completed u/s 147/144 of the Income Tax Act, 1961 at income of Rs. 28,43,302/-. Issue necessary form. Penalty proceedings u/s 271(1)(c) and 271(1)(b) of the Act are being initiated separately.

(xxxxxxx xxxxxx)

Income Tax Officer

Ward 68(8), New Delhi

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts

The Appellant is an individual retired from Army personal with a disability, aged about 69 years and has filed his Income Tax Return on 12/09/2012 for the Assessment Year 2012-13, declaring total taxable income of Rs. 1,58,802/-. Notice under section 133(6) of income tax received and pursuance to this notice, appellant filed his reply with required documents and stating in his reply that cash was deposited with sale consideration of property sold during the period and cash savings through the email on 8th March 2019, On the basis of AIR/CIB information available Assessee has deposited Cash of Rs. 26,84,500/- in his bank accounts during the financial year 2011-12, relevant to Assessment Year 2012-13, notice under section 148 issued and Assessment completed under section 147/144 of income tax act with the addition of Rs. 26,84,500/-

All the notices issued by the Assessing officer to Appellant at Delhi Address in regarding Assessment and Assessment order passed under 147/144 of income Tax Act, 1961, because appellant was shifted from Delhi to Gujrat to stay with his son, that is way appellant was not aware of the notices issued by Assessing Officer.

That at page number 1 of the Assessment Order, Assessing Officer stated that Assessee filed a return of income dated 12.09.2012 declaring an income of Rs. 1,58,802/-

On-Page Number 2, it is stated “Notice u/s 133(6) of the I.T.Act 1961 was issued to the assessee requiring him to explain the source of cash deposits made into his saving bank account during the F.Y. 2011-1. The Assessee filed a reply in regard to the said notice but he failed to explain the source of cash deposits with documentary evidence”

That as per Show Cause Notice dated 11.12.2019 mention in Assessment Order on page number 3 “ Return of income had not been filed by you. An opportunity was given to you before re-opening the case to explain the source of cash deposit/FDR. But no response was filed by, hence the case was re-opened as per the provision of the I. T Act.”

Reason for re-opening of Assessment under section 147 of the income tax act, 1961 by invoking the provision of clause (a) of Explanation 2 to Section 147 of the income tax act 1961, which is invoked in the case of non-filing of the income tax return.

That in show cause notice provision of section 68 of income tax invoke but addition done by Ld Assessing Officer under section 69A of Income Tax Act, 1961. And the provision of section 115BBE and section 271AAC would invoke which did not exist in the financial year 2011-12, relevant to Assessment Year 2012-13.

Assessing Officer passed the impugned Assessment Order under section 147/144 dated 25.12.2019 by making addition under section 69A amounted to Rs. 28,84,500/- and demand amount of Rs. 12,65,290/-.

Hence present the appeal.
(Appellant)



Ground of Appeal

**BEFORE HON'BLE COMMISSIONER OF INCOME TAX
(APPEALS)-21, NEW DELHI,**

**IN THE CASE OF FOR THE AY 2012-13
AGAINST ORDER PASSED U/S 147/144 OF THE INCOME-TAX
ACT, 1961**

1. That on the facts and circumstances of the case, the Ld Assessing Officer has no material in his possession or cogent reasons to believe that appellant's income escaped assessment within the meaning of section 147 and 148 of the Act; and therefore the assessment has been re-opened for making fishing and roving enquiry as to whether the appellant has paid tax on cash deposit of Rs. 26,84,500/-.
2. That on the facts and circumstances of the case, the Reasons recorded for initiating proceedings u/s 147 of the IT Act, in clause (a) to Explanation 2 to section 147 of the Act applies, is false and contrary to the facts on record.
3. That due to false Reasons recorded for initiating proceedings u/s 147 of the Act, the satisfaction the Ld Pr. CIT in term of provisions of section 151 (1) of the IT Act is vitiated, consequently the notice dated 28.03.2019 issued u/s 148 of the Act is invalid, illegal and without jurisdiction and therefore the impugned assessment order is illegal and bad in law ab initio.
4. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing an ex-parte assessment order u/s 147/144 and that too without giving an

adequate opportunity of hearing and without granting the opportunity of cross-examination of the entire material used against the assessee and without observing the principles of natural justice.

5. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in show cause notice issued having notice number ITBA/AST/F/147(SCN)2019-20/1022153405(1) dated 11.12.2019 invoking section 68 of income tax, while addition has done under section 69A of Income Tax Act, 1961.
6. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in show cause notice issued having notice number ITBA/AST/F/147(SCN)2019-20/1022153405(1) dated 11.12.2019 charging tax under section 115BBE and Penalty Under section 271AAC of income tax Act, 1961.
7. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making the addition of Rs. 26,84,500/- on account of cash deposit of Rs. 26,84,500/- in State bank of India as unexplained cash under section 69A of Income Tax Act 1961.
8. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.

PRAYER: In the facts and circumstances the assessee humbly prays as under:

- i. To set aside the notice issued u/s 148 of the act by recording reasons based on suspicion, conjectures and surmises and therefore invalid, illegal and without jurisdiction.
- ii. To set aside the impugned assessment order passed in violation of the principle of natural justice and without jurisdiction, because the order is assessed based on invalid notice issued u/s 148 of the Act.
- iii. Alternatively, to delete additions of Rs 26,84,500/- made without considering the material on records, and in violation of the principle of natural justice.

(Appellant)

Case- 3

Part- A- Order Pass by Assessing Officer

**GOVERNMENT OF INDIA MINISTRY OF FINANCE
INCOME TAX DEPARTMENT**

**OFFICE OF THE INCOME-TAX OFFICER WARD 28(5),
DELHI**

To,XXXXXXXX XXXXXXXX	
XXXXXXXXXXXXXXXXXXXXXXXXXXXX	

Name of the assessee	XXXXXXXXXXXX
Address of the assessee	XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX
Status	INDIVIDUAL
Range/Circle/Ward	WARD 28(5), DELHI
Resident/Resident but not Ordinary resident/ Non-resident	Resident
Date of Hearing	30/08/2018, 12/07/2019, 09/08/2019, 21/12/2019
Section/Sub-section under which assessment is made	143(3)
Date of Order	24/12/2019

ASSESSMENT ORDER

The assessee e-filed return of Income for the Assessment Year 2017-18 on 13-08-2017 declaring an income of Rs. 3,21,830/-. The case was selected under CASS for Limited scrutiny for the reason- "Credit Card Payment." Accordingly, statutory notice under section 143(2) was issued on 10.08.2018, which was duly issued and served on the assessee through the ITBA Portal within the statutory period. Subsequently, the notice under section 142(1) of

the Income Tax Act, 1961 dated 03/07/2019 and 02/08/2019 along with a questionnaire was issued to the assessee seeking various details as per reason of selection. In response to the statutory notices, the AR/Assessee did not furnish any satisfactory explanation regarding the payment of credit card bills.

2. During the course of assessment proceedings, it was observed that the assessee has made payment of credit card bills to the tune of Rs.30,31,179/- out of which payment of Rs.14,07,030/- has been made in cash during the year. the detail of which is as under:-

Name and Branch of Bank	Total amount bills paid in cash	The total amount of bills paid
ICICI Bank	Rs.5,26,720/-	Rs. 12,37,309/-
CITI Bank	Rs.5,04,500/-	Rs. 10,62,500/-
Indusind Bank	Rs.3,75,810/-	Rs.7,31,370/-
Total	Rs.14,07,030/-	Rs 30,31,179/-

The assessee was accordingly asked to furnish all details of payments of credit cards made by him along with a copy of credit card statements. In response to the notices issued, the assessee only furnished a copy of the City Bank credit card. The Source of payments of credit cards still not explained by him. Therefore, the assessee was issued a final show cause notice dated 18-12-2019 to furnish a source of payment of Rs. 30,31,179/- (including cash payments of Rs. 14,07,030/-). The case was fixed for hearing on 21-12-2019. However, again assessee failed to furnish any reply along with supporting evidence with regard to the source of credit card payments.

In view of the above, it can be seen that the assessee did not furnish a satisfactory explanation regarding the nature and source of such cash. Further, it is also noticed that during the year the assessee has only declared taxable income of Rs. 3,21,830/- which is also not commensurate with the credit card payments made by him to the extent of Rs. 30,31,179/-. In nutshell, the assessee has failed to discharge his onus to explain the nature and source of credit card bill payment Rs.30,31,179/- (Including Rs.14,07,030/- cash payment of credit card bill). In this context, reliance is also placed on the following case laws:-

Roshan Di Hatti v. CIT{1977} 107 ITR 938(SC)/Kale Khan Mohammad Hanif v. CIT{1963} 50 ITR 1(SC).

The law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. Where the nature and source of a receipt, is not satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any other particular source.

2.3. In view of the above, I hold that payment of Credit card made by the assessee to the tune of Rs. 30,31,179/- is nothing but the income of the assessee from undisclosed sources. He has failed to discharge his onus to prove a source of money used for making payments of credit cards. He is found to be the owner of the money to this extent, the explanation and source of which have not been furnished by him. Therefore, the same is hereby added to his income as unexplained cash under Section 69A of the I.T. Act, 1961 under the head income from other sources. (Addition: Rs. 30,31,179/-)

As the assessee has under-report the particulars of income, therefore penalty proceedings u/s 271AAC(1) of the I.T. Act, 1961 is initiated separately. For sake of clarity relevant portion of section 271AAC(1) is reproduced below:-

“The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to the tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of subsection (1) of section 115BBE.

3. Taking into consideration the above addition of income, the total income of the assessee is re-computed below:-

Income declared	-	3,21,830/-
Income from other sources		
Addition u/s 69A of IT Act(Para 2.3 above)	-	<u>30,31,179/-</u>
Total Income		<u>33,53,009/</u>

Assessed at the income of Rs. 33,53,010/- u/s 143(3) of the I.T. Act, 1961. Charge interest u/s 234B and 234C of IT Act, if any. Give credit for pre-paid taxes. Issue necessary forms, demand notice and challan. Penalty u/s 271AAC of IT Act is also initiated separately for under-reporting of income. Tax to be charged u/s 115BBE of the I.T. Act, 1961.

XXXXXXXXXXXXXXXXXXXX
Income Tax Officer

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts

The Appellant is an individual and running a small medical store and has e-filed his Income Tax Return on 18/08/2017 for the Assessment Year 2017-18, declaring total revenue of Rs. 58,97,907/- & 8% profit of Rs. 4,71,833/- under section 44AD of the Income Tax Act 1961 and taxable income at Rs. 3,21,830/-, the same was processed u/s. 143(1) of the Income-tax Act, 1961. The case was selected for limited scrutiny under CASS for the reason “Credit Card Payment”.

Appellant had made credit card payment a tune of Rs. 30,31,179/-, out of which 14,07,030/- had been made in cash in three credit cards as follows

ICICI Bank Credit Card Rs. 5,26,720/-

CITI Bank Credit Card Rs. 5,04,500/-

Indusind Bank Credit Card Rs. 3,75,810/-

Appellant has three credit cards and used these credit cards for the business purpose and cash deposited for the payment of credit cards are business revenue for the meeting of business expenses.

Assessing Officer made the addition of Rs. 30,31,179/- as unexplained cash under section 69A of the Income Tax Act, 1961.

Assessing Officer passed the impugned Assessment Order under section 143(3) dated 24.12.2019 by making addition under section 69A amounted to Rs. 30,31,179/- and calculated tax under section 115BBE of income Tax Act, 1961 amounted to Rs. 31,44,161/- .

Hence present the appeal.

(Appellant)



Ground of Appeal

**BEFORE HON'BLE COMMISSIONER OF INCOME TAX
(APPEALS)-19, DELHI,**

**IN THE CASE OF FOR THE AY 2017-18 AGAINST
ORDER PASSED U/S 143(3) OF THE INCOME-TAX ACT, 1961**

1. That the appellant denies his liability to be assessed at the total income of Rs. 33,53,009/- as against returned income of Rs.3,21,830/- accordingly denies his liability of Rs. 31,44,161/- to pay tax, cess and interest demanded thereon.
2. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making the addition of Rs. 30,31,179/- on account of a cash payment of Rs. 14,07,030/- to credit cards as unexplained cash under section 69A of Income Tax Act 1961.
3. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in charging tax under section 115BBE of income tax Act, 1961.
4. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in addition to Rs. 30,31,179/- without cross verification from the revenue declared in Income Tax Return.
5. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in initiating penalty provision under section 271AAC of the income tax act, 1961.
6. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.

PRAYER: In the facts and circumstances the assessee humbly prays as under:

- i. To set aside the impugned assessment order passed without jurisdiction.
- ii. Alternatively, to delete additions of Rs 30,31,179/- made without considering the material on records.

(Appellant)

Case- 4

Part- A- Order Pass by Assessing Officer

INCOME TAX DEPARTMENT

1	Name and address of the assessee	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
2	PAN	XXXXXX8222X
3	Assessment Year	2009-10
4	Previous Year	2008-09
5	Ward	Ward-3(1). Bulandshahar
7	Status	Individual
8	Residential Status	Resident
10	Order U/S	U/S 144/ 147 of the IT Act, 1961
11	Date Of Order	28.09.2016

ASSESSMENT ORDER

In this case, an AIR information was received that assessee had made a cash deposit of Rs. 15,36,500/- in his saving bank account maintained with Oriental Bank of Commerce, Gesupur, Bulandshahr during the F.Y. 2008-09. The assessee was asked to furnish the source of cash deposits in the above bank account and to furnish his assessment details. The assessee has not furnished any reply.

Therefore the source of cash deposits of Rs.15,36,500/- remain unexplained; therefore after recording reasons u/s 147 with the prior approval of Ld. Pr. CIT, Ghaziabad notice u/s 148 dated 23.03.2016 was issued to assessee and was well served upon.

The assessee did not make any compliance in response to notice u/s 148. Thereafter notice U/s 142(1) dated 03.05.2016 and again notice u/s 142(1) dated 16.06.2016 and 11.08.2016 was issued and fixing the date of compliance on 19.05.2016, 27.06.2016 and 22.08.2016 accordingly. The assessee did not make any compliance. Thereafter notice U/s 144 dated

26.08.2016 was issued to the assessee fixing date of compliance on 14.09.2016. No compliance was made. Further prior to proceeding, a final opportunity was provided to the assessee by issuing notice u/s 144 dated 16.09.2016 and fixing the date of compliance on 27.09.2016 accordingly. Notice u/s 144.

The assessee did not avail of this last opportunity and did not make any compliance in response to the above notice this is serious laches of the assessee.

After issuing several notices the assessee has not filed his return of income neither has filed any reply to the notices issued by the department. The case is time-barred on 31.12.2016. In these circumstances, I have no alternative to decide the case as ex-parte under best judgment assessment U/s 144 of the Income-tax act 1961 on the basis of facts and circumstances of the case and the material available on records.

According to the above-mentioned facts and circumstances, inference can easily be drawn that the assessee is not co-operating with the department and avoiding the notices issued by the department as he has not filed a return of income nor produced any pieces of evidence regarding the source of cash deposit of Rs 15,36,500/- during the financial year 2008-09 in his saving bank A/c. Thus the above amount of cash deposit remains unexplained for the purpose of the IT Act, 1961. In absence of any explanation and evidence offered by the assessee the amount of Rs. 15,36,500/- deposited in cash in a saving bank account is being treated as the income of the assessee for the A.Y, 2009-10.

After considering the above facts and on the basis of material available with me on record assessment is completed under best judgment assessment on the net taxable income of Rs. 15,36,500/- Since the assessee has concealed the particulars of his income penal proceedings u/s 271(1)(c) of the I.T. Act, 1961 is being initiated against him.
(Determined income: =Rs. 15,36,500/-)

Consequent to the above the income of the assessee is computed as under Determined income- on account of unexplained cash received
= Rs 15,36,500/

Assessment is completed at an Income of Rs. 15,36,500/-Charge Interest U/s-234A, 2348 &234C of the IT Act, 1961 accordingly. Penalty proceedings u/s 271(1)(c) have been initiated separately. Issue notice of demand and challan.

(xxxxxxxxxxxxxxxxxxxxxx)

Incomé Tax Officer, Ward-3(1),

Bulandshahr

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts

Assessee is a non-tax payee assessee and has not filed her return for Assessment Year 2009-10/- and AIR information was received by Assessing Officer that Assessee had made a cash deposit of Rs. 15,36,500/- in her saving bank account maintained with Oriental Bank of Commerce and assessment was completed u/s 144/147 on 28.09.2016 by making aggregate addition of Rs. 15,36,500/- on account of a cash deposit in bank accounts

That the assessee has a joint bank account in Oriental Bank of Commerce along with her husband Mr., all cash deposited in joint bank account belongs to her husband.

Hence present the appeal.



Ground of Appeal

**BEFORE HON'BLE COMMISSIONER OF INCOME TAX
(APPEALS), GHAZIABAD**

**IN THE CASE OF SMT. XXXX FOR THE AY 2009-10 AGAINST
ASSESSMENT ORDER PASSED U/S 144 OF THE INCOME-TAX
ACT, 1961**

1. That the appellant denies her liability to be assessed at the total income of Rs.15,36,500/- as against non-tax assessee and filed appeal and accordingly denies her liability to pay tax, cess and interest demanded thereon.
2. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in framing impugned assessment order and that too without assuming jurisdiction as per law and without serving the mandatory notices u/s 143(2), 148 and 142(1) of the Income Tax Act, 1961.
3. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing an ex-parte assessment order u/s 144 and that too without giving show cause notices as per law and without giving adequate opportunity to the assessee.
4. That in any case and any view of the matter, the action of Ld. AO in passing an ex-parte assessment order u/s 144 is illegal, bad in law and against the facts and circumstances of the case and pursuant to order passed under section 144.
5. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making aggregate addition of

Rs. 15,36,000/- on account of cash deposits in the bank account of the assessee by treating it as alleged income and that assessee have a joint account in Oriental Bank of Commerce with her husband named Ramveer, same income is already taxed in hand of her husband, too by recording incorrect facts and findings and without giving the adequate opportunity of hearing and without granting the opportunity of cross-examination of the entire material used against the assessee and without observing the principles of natural justice.

6. That in any case and any view of the matter, the action of Ld. AO in passing Assessment Order under section 144 of income tax act by adding income of Rs. 15,36,500/-, on account of cash deposits of Rs. 15,36,500/-, is bad in law and against the facts and circumstances of the case.
7. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.
8. The order may be quashed.

(Assessee)

Case- 5

Part- A- Order Pass by Assessing Officer

ASSESSMENT ORDER

In this case AIR/NMS information data was received that the assessee had deposited cash aggregating to Rs. 1824,500/- in his HDFC bank account, purchased the immovable property of Rs.57,82,000/- and paid credit card bills of Rs.4,12,000/- during the period under consideration. The assessee had filed ITR for A.Y. 2012-13 declaring a total income of Rs. 7,20,590/- which was not commensurate with the transactions in question. Accordingly, after taking necessary approval from the competent authorities, the case of the assessee was reopened u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as the: Act”) and notice u/s 148 of the Act dated 25.03.2019 was issued and duly served on the assessee. No compliance was made by the assessee against the said notice.

Thereafter, notices u/s 142(1) of the Act dated 04.06.2019, 02.07.2019, 23.10.2019, 05.11.2019, 11.11.2019 and show cause notice dated 26.11.2019 was issued requesting the assessee to explain the transactions in question. No response was received from the assessee against the said notices. However, keeping in view the principle of natural justice one final opportunity by way of show cause notice u/s 142(1) of the Act dated 02.12.2019 was provided to the assessee requesting to explain as to why the amount of Rs. 80,18,500/- (18,24,500 + 57,82,000 + 4,12,000) being cash deposits, the purchase price of immovable property and payments made to credit card bill payments should not be added to the total income as per the provisions of the Act and be taxed accordingly. However, this also remained un-complied with.

Since the assessment proceedings are barred by time limitation, I am left with no option but to complete the assessment proceedings u/s 144 of the Act to the best of judgment and on the basis of the material and information available on following judicial pronouncements.

Judicial authorities in the case of **Pawan Kumar Pareek Vs ITO 2010-TIOL-8HC RAJ IT** and CWT Vs Motor and General Finance Ltd. (Del) 332 ITR 1 has filed that 'notice u/s 142(1) of the IT Act. was given and assessee failed to comply with the same - No further notice necessary before completing the assessment u/s 14.4

Further, Hon'ble Apex Court in the case of Roshan Di Hatti vs CIT (SC) 107 ITR 938 and KaleKhan Mohammad Hanif us CIT (SC) 50 ITR] has held that the onus of providing the source of money found to have been received by an assessee is on him. When the nature and source of a receipt, whether be it of money or other property cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies On the revenue to show that the income is from any particular source. Further Hon'ble Apex Court in the case of CIT vs K. Chinnathamban (SC) 292 ITR 682 has held that cash deposits in the bank should be explained by the assessee otherwise it is unexplained income.

In these circumstances, this office has no other option but to resort to the provisions of section 144 of the Act and make an ex-parte assessment on the basis of material information available on record.

As the assessee has failed to comply with any notice issued by this office implies that the assessee has no explanation as regards the cash deposits made by him. Therefore, the cash deposits aggregating to Rs. 18,24,500/- in question is treated Unexplained money u/s 69A of the Act and added to the total income and taxed accordingly. **(Addition of Rs. 18,24,500/-)**

Since the assessee has concealed the true particulars of his income, therefore, penalty proceedings u/s 271(1)(c) of the Act is initiated.

Since the assessee has failed to provide details/ supporting documents with respect to the source of the purchase price of immovable property implies that the assessee has no explanation in this regard. Therefore, the purchase price of immovable property of Rs.57,82,000/- is added to the total income of the assessee under the head income from other sources. **(Addition of Rs.57,82,000/-)**

Since the assessee has concealed the true particulars of his income, therefore, penalty proceedings u/s 271(1)(c) of the Act is initiated.

Since the assessee has offered no explanation to the source of payments for the matter. Therefore, the total payments made towards the Credit card bill aggregating to Rs.4,12,000/- is added to the total income of the assessee under the head income from other sources. **(Addition of Rs.4,12,000/-)**

Since the assessee has concealed the true particulars of his income, therefore, penalty proceedings u/s 271(1)(c) of the Act is initiated.

Since the assessee has failed to comply with the statutory notice issued, therefore, penalty proceedings u/s 271(1)(b) of the Act is initiated. Further, the assessee has failed to file his ITR for A.Y, 2012-13 in response to notice u/s 148 of the Act. therefore, penalty proceedings u/s 271F of the Act is initiated.

Since the assessee has originally filed his return of income declaring a total income of Rs.7,20,590/-, therefore, the same is taken into consideration for computing the total income of the assessee.

With these remarks the income of the assessee is recomputed is as under:

Income as per Original ITR	Rs. 7,20,590/-
Add	
As discussed in para	Rs. 18,24,500/-
As discussed in para	Rs. 57,82,000/-
As discussed in para	Rs 4,12,000/
Total Taxable Income	Rs. 87,39,090/-

Assessed at a total income of **Rs. 87,39,090/-** u/s 147/144 of the Act. Give credit of prepaid taxes after verification. Charge interest u/s 234A, 234B and 234C of the Act. Penalty proceedings u/s 271(1)(b), 271(1)(c) & 271F of the Act have been initiated separately: Issue necessary challan.

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts

Assessee is an individual, filed his income tax return declaring a total income of Rs. 7,20,950/- and notice issued under section 148 of income tax act issued y after obtaining necessary approval of the authority on basis of AIR/NMS information, Assessing Officer done the addition aggregating amounted to Rs. 50,96,710/- in the Assessment order passed dated 06.12.2019, under section 147/144 of the income tax act, 1961. Addition done on account of cash deposit amounted to Rs. 18,24,000/- in HDFC bank account, on account of Purchased of immovable property at circle rate of Rs. 57,82,000/- (actual purchase cost amount to Rs. 35,10,000/-), and on account of expenditure through credit card for Rs. 4,12,000/-

On the grounds of appeal, the appellant has challenged the Assessment order on the following additions made by the assessing officer in the impugned assessment order passed under section 147/144 vide order dated 06.12.2019:-

1. Addition under section 69A, on account of Cash Deposit of Rs. 18,24,000/-
2. Addition without specifying section on account of purchase of Immovable property of Rs. 57,82,000/-
3. Addition without specifying section on account of expenditure on the credit card of Rs. 4,12,000/-

Hence present the appeal.

Ground of Appeal

BEFORE HON'BLE COMMISSIONER OF INCOME TAX (APPEALS)-19, NEW DELHI IN THE CASE OF FOR THE AY 2012-13 AGAINST ORDER PASSED U/S 147/144 OF THE INCOME-TAX ACT, 1961

1. That the appellant denies his liability to be assessed at a total income of Rs. 87,39,090/- as against the returned income of Rs. 7,20,590/- accordingly denies his liability to pay tax, cess and interest demanded thereon.
2. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing an ex-parte assessment order u/s 147/144 and that too without giving show cause notices as per law and without giving adequate opportunity to the assessee.
3. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making the addition of Rs. 18,24,500/- on account of cash deposit and treating as unexplained money under section 69A of Income Tax Act, 1961.
4. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making the addition of Rs. 57,82,000/- on account of Purchased of immovable property at the price of Rs. 35,10,000/- and circle rate of Rs. 57,82,000/-
5. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making the addition of Rs. 4,12,000/- on account of expenditure through credit card.

6. That by recording incorrect facts and findings and without giving the adequate opportunity of hearing and without granting the opportunity of cross-examination of the entire material used against the assessee and without observing the principles of natural justice.
7. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in not specifying the Section or subsection under which addition is made in Assessment Order.
8. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.

(Assessee)

Case- 6

**Part- A- Order Pass by
Assessing Officer**

GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT

OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX DCIT CIR 2(2) JAMNAGAR

To, XXXXXXXXXXXX	
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PAN: XXXXX2365X	AY: 2017-18	Order No: ITBA/AST/S/143(3)/2019- 20/1022553587(1)	Dated: 17/12/2019
Name of the assessee	XXXXXXXXXXXXXXXXXXXX		
Address of the assessee	XXXXXXXXXXXXXXXXXXXX		
Status	INDIVIDUAL		
Range/Circle/Ward	DCIT CIR 2(2) JAMNAGAR		
Resident/Resident but not Ordinary resident/ Non- resident	Resident		
Date of Hearing	28/09/2018, 15/02/2019, 14/03/2019, 25/04/2019, 17/07/2019, 06/09/2019, 11/11/2019, 26/11/2019, 28/11/2019, 12/12/2019, 17/12/2019, 17/12/2019, 17/12/2019		

ASSESSMENT ORDER

The assessee has e-filed his original return of Income on 04/11/2017, declaring total income at Rs. 3,12,230/- u/s.44AD of the Act, the same was processed u/s. 143(1) of the Income-tax Act, 1961.

1. Further, the case was selected for **complete scrutiny** under CASS for the reason “**Abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period**”. Notice u/s. 143(2) of the I. T. Act, 1961 dated: 21/09/2018 was issued and duly served upon the assessee by the O/o-erstwhile ITO, Ward-3(1), Jamnagar. Further, the case was re-assigned by the Pr. Commissioner of Income Tax Jamnagar vide order dated 15/01/2019 in this charge. In view of the CBDT instruction 8/2017 dtd. 27.09.2017, the assessee was given an option to furnish its consent for conduct of Assessment Proceedings through the ‘e-proceeding facility on online ITBA application. However, the assessee has exercised its option of ‘e-proceedings’.
2. Subsequently, notices u/s. 142(1) dtd. 04/02/2019, 05/03/2019, 10/07/2019 & 30/08/2019 were issued and served upon the assessee calling for various details/information/ explanation/clarification along with supporting relevant to the assessment in his case. A show-cause notice dated: 16/04/2019 was also issued to the assessee for proceeding initiated u/s. 143(3) of the I.T. Act.
3. Further, In view of the CBDT, New Delhi’s notifications No.61/2019 & 62/2019 dated: 12/09/2019 and the order u/s. 120 of the Pr. CCIT, Ahmedabad vide letter No. PCCIT/ABD/DC-HQ-Co-ord/ECAC/Restructure/2019-20 date: 01/10/2019, the erstwhile Jurisdiction of the ACIT, C-3, Jamnagar has been restructured to the newly formed Jurisdiction of the ACIT, Circle-2(2), Jamnagar. Subsequently, the assessee has been given a fresh opportunity by this office i.e. ACIT, Circle -2(2), Jamnagar to furnish the details called for vide notice u/s. 142(1) r.w.s.129 dated: 06/11/2019, 18/11/2019, 22/11/2019 & 13/12/2019 through the ‘e-proceeding’ facility on ITBA application. Again show-cause notices dated: 07/12/2019 & 13/12/2019

has been issued to the assessee and calling for details/explanations.

4. In response to the above notices, the assessee has submitted the required details through e-proceedings on 28/09/2018, 22/11/2019, 28/11/2019, 26/11/2019, 28/11/2019, 02/12/2019, 07/12/2019, 12/12/2019, 16/12/2019 & 17/12/2019 and furnished the details called for. During the year under consideration, the assessee was having a proprietary business for the trading of Petrol & Diesel in the name of proprietary concern's Bansidhar Petroleum. During the year under consideration, the assessee was engaged in the business of Agricultural activity and having income from other sources and agricultural income.
5. It is seen from the details filed by the assessee. The assessee has deposited cash into the bank during demonetization amounting to Rs.9,25,000/-. In this regard, the assessee was asked to explain the source of cash deposited during the demonetization and issue show cause notice 07/12/2019 which is reproduced as under.

“You has been selected for complete scrutiny to verify cash deposited during the demonetization in the bank account. In this regard notice u/s.142(1) of the Act issued and calling details of cash deposited during the above mentioned period. In this regard, you have filed details and stated that the return of income filed by u/s.44AD of the Act. It is seen from the details filed by you during the assessment proceeding that you deposited cash into the bank amounting to Rs.9,25,000/- but the source of the above cash could not submit. Further, you have stated that the Petrol Pump was started in January 2017 before that you did not show your business activities.

Further, it is seen that you have shown opening cash on 01/04/2016 of Rs.40,013/- and closing cash as of 08/11/2016 of Rs.23,67,013/- You have not filed the details source of cash in hand as of 08/11/2016 of Rs.23,67,013/-. You, therefore, show cause as to why should not be added back into your income amounting to Rs.23,67,013/- as un explain cash credit u/s.69A of the Act.

Your explanation on the issues discussed above should reach this office by 12/12/2019 along with supporting documents to prove the

genuineness of cash deposited in the bank account during the demonetization. The same will be taken into consideration while finalizing the assessment in your case. Please note that in case you fail to avail of the opportunity of being heard in the matter and to furnish any explanation, it will be concluded that you have no explanation to offer in the matter and the assessment will be finalized accordingly.”

6. In response to the notice, the assessee has submitted details vide letter dated 07/12/2019 is reproduced as under.

With the above subject and reference, we are submitting herewith details by you.

This is the first year of our operation of the petrol pump. We have filed a return of income under 44AD of the Act, 1961 details of earlier submitted to you. Sir, we have made a cash deposit in the bank Rs.46,40,820/- out of cash received as under.

- a) Cash sales..... Rs.26,61,396
- b) Cash received from debtors out of debit sales made to debtors
Rs.14,56,453
- c) Cash introduced as capital from agriculture income Rs.10,15,000

We are selling in cash as well as in debit in routine cash we are realized from sales made on a debit to debtors.

Likewise have agriculture income we have a fertile and irrigated agriculture land 7/12 form of agriculture land is attached kindly pray and requested to accept our submission and drop the proceedings and closed the matter.

7. Further, show cause notice dated 12/12/2019 issued to the assessee for asking explanation for cash deposited into the bank during the demonetization. Assessee again to failed submit proper details for cash deposited into the bank. The assessee has submitted an explanation vide letter dated 16/12/2019 by which the assessee has submitted evidence regarding the agricultural activity. The assessee has submitted a total sales bill of Rs.10,15,000 in respect of

agricultural produce. It is noticed that the assessee has not shown any agricultural income in its return of income filed for the year under consideration. However, during the course of assessment proceedings, the assessee is submitted proof of agricultural income of Rs.10,15,000/-. However, out of the above income the assessee has deposited cash into the bank amounting to Rs.9,25,000/- during the demonetization period.

8. Accordingly, the assessee has shown gross receipt of agriculture income during the course of assessment proceedings without considering expenses incurred for earn income. Therefore, 40% of expenses on gross receipt of agriculture income of Rs.10,15,000/- which comes to Rs. 4,06,000/- is added back into the total income of the assessee being unexplained expense u/s. 69C of the I.T. Act. Penalty proceedings u/s. 274 r.w.s. 270A of the I.T. Act for under-reporting of income is being initiated. **(Addition of Rs. 4,06,000)**
9. Subject to the above remarks and based on data made available on records, total income is determined as under:

Computation of Total Income

Sr. No	<u>Particular</u>	<u>Amount</u>
1	Income as per return of income	3,12,230
	Addition- On account of unexplained expenses u/s.69C of the Act as discussed in Para-9 above	<u>4,06,500</u>
2	Total Income	7,18,730

10. Assessed u/s 143(3) of the I.T. Act at **Rs. 7,18,730/-**-Give credit for prepaid taxes, if any, after due verification. Charge Interest u/s.234-A/B/C and/or D of the Act, as the case may be. Issue Show Cause notice u/s. 274 r.w.s. 270A for under-reporting of income. Issue demand notice and challan accordingly. I.T.N.S. 150 forms part of the order.

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts

The Appellant is an individual and has e-filed his Income Tax Return on 04/11/2017, declaring total income at Rs. 3,12,230/- u/s.44AD of the Act, the same was processed u/s. 143(1) of the Income-tax Act, 1961. The case was selected for complete scrutiny under CASS for the reason “Abnormal increase in cash deposits during demonetization period as compared to pre- demonetization period”.

Appellant had deposited Rs. 925000/- during the demonetization period i.e. 09/11/2016 to 31/12/2016. On being asked the source of this cash deposit amounting to Rs. 925000/- during the demonetization period, it was explained by the appellant that the said deposit was made out of the sale of agricultural produce amounting to Rs. 1015000/- belonging to his HUF.

Appellant furnished all the details called for and gave all the explanations asked for and AO has accepted the explanations of cash deposited.

AO made the addition of Rs. 406500/- as unexplained agricultural expenses estimated at 40% of the value of the agricultural produce, in the hands of the appellant though he has not disputed that agricultural income belongs to HUF.

That Assessing Officer did an additional 40% on Rs. 10,15,000/- on an ad-hoc basis amounted to Rs. 4,06,500/-.

Assessing Officer passed the impugned Assessment Order under section 143(3) dated 17.12.2019 by making addition under section 69C amounted to Rs. 4,06,500/-

Hence present the appeal.



Ground of Appeal-

BEFORE HON'BLE COMMISSIONER OF INCOME TAX (APPEALS) JAMNAGAR, IN THE CASE OF FOR THE AY 2017-18 AGAINST ORDER PASSED U/S 143(3) OF THE INCOME-TAX ACT, 1961.

1. That the appellant denies his liability to be assessed at a total income of Rs. 7,18,720/- as against returned income of Rs.3,12,230/- accordingly denies his liability of Rs. 4,38,427/- to pay tax, cess and interest demanded thereon.
2. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making 40% addition of Rs. 4,06,500/- on Rs. 10,15,000/- of on account of deemed agriculture expenses of HUF in the hands of Assessee as unexplained expenses under section 69C of Income Tax Act.
3. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in addition to Rs. 4,06,500/- by crossing his jurisdiction that expenses of HUF added to Assessee's income which bad in law.
4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.

PRAYER: In the facts and circumstances the assessee humbly prays as under:

- i. To set aside the impugned assessment order passed without jurisdiction.

- ii. Alternatively, to delete additions of Rs 4,06,500/- made without considering the material on records.

(Assessee)

Case- 7

**Part- A- Order Pass by
Assessing Officer**

INCOME TAX DEPARTMENT

1	Name and address of the assessee	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
2	PAN	XXXXXXX8222X
3	Assessment Year	2014-15
4	Previous Year	2013-14
5	Ward	Ward -1(5) Noida
7	Status	Individual
8	Residential Status	Resident
10	Order U/S	144 of Income tax Act, 1961
11	Date Of Order	29-11-2016

Assessment Order

In this case, the assessee has furnished his return of income for A.Y. 2014-15. electronically, on 31.07.2014, declaring income of Rs. 5,45,930-,. The case was picked up by CASS for scrutiny to examine large cash deposits in saving bank account(s). Accordingly, notice u/s 143(2) of the I.T. Act, 1961 was issued on 28.08.2015. Further notice u/s 142(1) along with questionnaires were issued on 12.08.2016 and 13.10.2016. The notices were sent through speed post as well as through email. Notices were properly served upon the assessee. in response to the notices, Sh. Xxxxxx xxxxxxxxx, Son of the assessee attended the proceedings but, no reply has been received to date.

2 During the year under consideration, the assessee has shown income from house property of Rs. 2,60,400/-, Long Term Capital Gain of Rs. 87,188/- and Income from other sources of Rs. 1,99,462/- As per information available in the office during the year under consideration.

the assessee deposited cash amounting to Rs. 69,67,000/- in her various saving bank accounts. She deposited Rs. 31,61,000/- in her saving bank account maintained in Punjab National Bank, Rs. 28,05,000/- in her saving bank account maintained in Central Bank and Rs. 10,01,00/- in her saving bank account maintained in Union Bank. Vide notices the assessee was, again and again, asked to establish the source of this cash deposited in her saving bank accounts.

Vide notice dated 13.10.2016. the assessee was asked as to why the amount of Rs 69,67,000/- as cash deposit in various saving bank accounts would not be treated as an amount received from undisclosed sources and added in returned income. The assessee was unable to produce any reply regarding the source of these deposits. Accordingly, the amount of Rs. 69,67,000/- has been taken as income from undisclosed sources and added to the income of the assessee as per provisions of section 69 of the I.T. Act. **(Addition: Rs. 69,67,000/-)**

Penalty proceedings were 271(1)(c) of the I.T, Act is also being initiated separately on issuing penalty notice u/s 271(1)(c) on this issue.

After discussion. income of the assessee is re-computed as under:-

Returned Income	Rs. 5,45,930/-
Addition: as per para 2 (under the head IFOS)	<u>Rs. 69,67,000/-</u>
Total Income	Rs.75,12,930/-

3.Assessment has been completed on an income of Rs. 15,12,930/- after making necessary addition u/s 143(3) of the I.T. Act. 1961. Issue notice of demand. challan and ITNS-150 and charge interest u/s 234A. 234B and 234C. Allow credit of prepaid taxes Penalty notice u/'s 271(Mc) of the I.T. Act, 1961 is also being issued separately.

(xxxxxxx xxxxxxxxxxxx)

Income-tax officer,

Ward-1(5). Noida

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts

Assessee is a senior citizen and has filed her return electronically on 31.07.2014 for AY 2014-15 at an income of Rs. 5,45,930/- and assessment was completed u/s 144 on 29.11.2016 by making aggregate addition of Rs. 69,67,000/- u/s 69 on account of a cash deposit in bank accounts.

Hence present the appeal.

Ground of Appeal-

BEFORE HON'BLE COMMISSIONER OF INCOME TAX (APPEALS), NOIDA IN THE CASE OF SMT. FOR THE AY 2014-15 AGAINST ORDER PASSED U/S 144 OF THE INCOME-TAX ACT, 1961

1. That the appellant denies her liability to be assessed at a total income of Rs.75,12,930/- as against returned income of Rs.5,45,930/- and accordingly denies her liability to pay tax, cess and interest demanded thereon.
2. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in framing impugned assessment order and that too without assuming jurisdiction as per law and without serving the mandatory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961.
3. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing an ex-parte assessment order u/s 144 and that too without giving show cause notices as per law and without giving adequate opportunity to the assessee.
4. That in any case and any view of the matter, the action of Ld. AO in passing an ex-parte assessment order u/s 144 is illegal, bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making aggregate addition of Rs.69,67,000/- on account of cash deposits in the bank account of the assessee by treating it as alleged income from undisclosed sources u/s 69 and that too by recording incorrect facts and findings and without giving the adequate opportunity of hearing and without granting the opportunity of cross-examination of the entire material used against the assessee and without observing the principles of natural justice.
6. That in any case and any view of the matter, the action of Ld. AO in making aggregate addition of Rs.69,67,000/- on account of cash deposits u/s 69, is bad in law and against the facts and circumstances of the case.
7. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in charging interest u/s 234A, 234B and 234C of the Income Tax Act, 1961.
8. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.

(Assessee)

Case- 8

Part- A- Order Pass by Assessing Officer

INCOMETAX DEPARTMENT

Name & Address of the Assessee. : XXXXXX XXXXXXXXX
Assessment Year : 2015-16
PAN : xxxxxx5825x
Date Of Order : 27.06.2018

PENALTY ORDER UNDER SECTION 271(1)(c) OF THE IT ACT, 1961.

Income Tax Return declaring an income of Rs. 14,04,690/- was filed on 29.10.2015. The case was selected for Scrutiny and notice u/s 143(2) of the Income Tax Act 1961 was issued on 28.07.2016. The final assessment was completed in this case on 11. 12.2017 at an income of Rs. 14,04,690/- inter-alia making certain disallowances/additions on the following grounds in which penalty was initiated u/s 271(1)(c) of the I.T. Act. This disallowance/addition is as under:

- i. Disallowance of Rs. 20,98,457/- to the losses claimed by the assessee u/s 50C of the Income-tax Act.

Facts of the case:

During the assessment proceedings, it was found that the assessee had sold two properties during the relevant year. The assessee had shown Long Term Capital Loss of Rs. (22,52,269/-) from the sale of the property of 5 marlas of 478, Model Tower, Jalandhar on 21.08.2014 and LTCG of Rs. 1,24,933/- from the sale of the property of 1.25 marla of 478 Model Town, Jalandhar on 21.06.2014. It is pertinent to mention that the above properties had been sold below the circle rate during the relevant year. Therefore, the AR was asked to recompute the capital gains taking the sale consideration equal to the circle rate as per provision of 50C of

Income-tax Act, 1961. As a result of this, losses claimed by the assessee have been reduced from Rs. 21,27,336/- to Rs. 28,879/- only. Accordingly, disallowance of Rs. 20,98,457/- was made on account of the losses claimed by the assessee. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 was initiated for furnishing inaccurate particulars of income within the meaning of the Act.

Notice u/s 274 read with section 271 of the Income-tax Act, 1961 was issued to the assessee on 08.06.2018 to show cause why an order imposing penalty should not be made on him.

The assessee in his response dated 26.06.2018 stated the following-

"The assessee submitted all details related to assessment for the A. Y. 2015-16 to the assessing officer. During the course of assessment, there is no addition in income and income tax of the assessee. The assessee has not furnished inaccurate particulars of income. The assessee has not evaded income tax. In the assessment order, the assessing officer had taken a circle value of Rs. 36,37,500/- (Rs. 27,00,000+9,37,500/-) in computation of capital gain on sale of property. The capital loss on sale of assets was reduced due to clerical mistake in the calculation in the income tax form."

The reply of the assessee has been considered but is not acceptable due to the following reasons:

- i. The fact that there was no addition of income and income tax of the assessee is immaterial. It can be seen that the losses claimed by the assessee with respect to the capital transactions were reduced by an amount of Rs. 20,98,457/-. Income as defined u/s 271(c) in a legal sense and not a commercial sense. The argument of the assessee that he had not evaded income tax is not relevant as section 27 of the Act talks about the amount of tax sought to be evaded and not the actual tax evaded.
- ii. The assessee's argument that the loss on sale of asset was reduced due to clerical mistake is also not acceptable. The assessee had access to the professional advice of tax professionals while filling her return. Even her case had been represented by, tax professionals. Till the point, the AO

observed and pointed out the facts to the assessee, the assessee himself made no efforts to point out this alleged clerical mistake. He did not revise his return neither submitted any documents in this regard until the AO himself pointed out the escapement of the income. Therefore, there is every reason to believe that non-declaration of true income was a deliberate act of furnishing inaccurate particulars of income and evasion of tax. The assessee cannot be absolved from his responsibility of particulars of income on the part of the assessee and I am satisfied that returning correct income. Hence this is a case of furnishing inaccurate the penal provisions of section 271(1)(e) are attracted in this case.

In view of the above facts, it is evident that the assessee has deliberately not offered an income of Rs, 20,98,457/-for taxation in return filed for the year u/s 139 of the IT Act and has therefore had deliberately furnished inaccurate particulars of his income to the tune of Rs. 20,98,457/-within the meaning of section 271(1)(e) the income-tax Act, 1961.

Here, it would be relevant to quote the observation of Hon'ble Delhi High Court in CIT vs. Zoom Communications Pvt. Ltd., 327 ITR 51 as under:-

“It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bona fide. If the claim besides being incorrect in law is mala fide, Explanation 1 to section 271(1)(c) would come into play and work to the disadvantage of the assessee.

The court cannot overlook the fact that only a small percentage of the income tax returns are picked up for scrutiny. The assessee makes a claim which is not only incorrect in law but is also wholly without any basis and the explanation furnished by him for making such a claim is not found to be bona fide, it would be difficult to say that he would still not be liable to penalty under section 271(1)(c) of the Act. If we take the view that a claim which is wholly untenable in law and has absolutely no foundation on which it would be made, the assessee

would not be liable to imposition of penalty, even if he was not acting bona fide while claiming this nature, that would give a license to unscrupulous assesses to make wholly untenable and unsustainable claims without there being any basis for making them, in the hope that their return would not be picked up for scrutiny and they would be assessed based on self-assessment under section 143(1) of the Income-tax Act, 1961 and even if their case is selected for scrutiny, they can get away merely by paying the tax, which in any case, was payable by them. The consequence would be that the persons who make claims of this nature, actuated by a mala fide intention to evade tax otherwise payable by them would get away without paying the tax legally payable by them if their cases are not picked up for scrutiny. This would take away the deterrent effect, which these penalty provisions in the Act have.”

The observations of the Hon'ble Delhi High Court highlight the importance of scheme of scrutiny assessment being administered by the CBDT, wherein the very small percentage of returns are picked up for scrutiny and therefore, any omission/wrong claim therein would mean loss of due Revenue to the Government in a situation that the case does not fall under the scrutiny guidelines. This is to mean that the deterrence for filing inaccurate particulars in the return of income has to be severe by the imposition of penalty as envisaged in the Income-Tax Act, 1961.

Further, after insertion of explanation 1 of section 271(1) (c) of the Act, w.e.f 01.04.1989 the onus is on the assessee to show that there was no intention of concealment and not on the Revenue. This proposition has been upheld by Delhi High Court in the case of CIT vs. GurbachanLal 250 1R 157(DEL)). The onus under explanation has not been discharged by the assessee, Therefore, the facts fully justify the imposition of penalty u/s 271(1e). It is thus clearly established that the assessee has tried to suppress its taxable income, which was not allowable as per the provisions of the Income-tax Act. Therefore, it is clear that the assessee has furnished inaccurate particulars of its income & concealed the income and I am satisfied that the penal provisions of section 271(1)(c) are attracted in this case,

Here we also discuss that in the case of UOI vs Dharmendra Textiles (306 ITR 277(SC) the Hon'ble Supreme Court said that the object behind the enactment of section 271(1)(c) read with explanations indicate that the said section has been enacted to provide for the loss of revenue and they create the element of strict liability on the assessee for concealment or for giving inaccurate particulars of income while filing the return. The penalty under that provision is a civil liability. Willful concealment is not an essential ingredient for attracting civil liability unlike the matter of prosecution under section 276C.

In view of the above discussion, it is clear that the assessee had furnished inaccurate particulars of income amounting to Rs. 20,98,457/-

Keeping in view all the facts of the case, nature of submissions and issues involved, I hold that it is a fit case for, imposition of penalty under the provision of section 271(1) of the Income Tax Act, 1961. Therefore, a penalty amounting to Rs. 4,32,280/- is levied u/s 271(1)(c) of the IT Act, 1961 is worked out as under:-

Tax on Rs. 20,98,460/- @ 20.6%	Rs. 4,32,280/-
Tax sought to be evaded @ 100%	Rs. 4,32,280/-
Tax sought to be evaded @ 300%	Rs. 12,96,840/-
Penalty levied	Rs. 4,32,280/-

This order is being passed after getting approval from the Joint Commissioner of Income Tax, Range-30, New Delhi.

Issue necessary forms.

XXXXXXXXXXXXXXXXXXXX

(Asstt. Commissioner of Income Tax,)

Circle- 30(1), New Delhi.

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts

The assessee has filed his return of income on 29.10.2015, for the Assessment Year 2015-16 declaring an income of Rs. 14,04,690/-. The assessment was completed u/s 143(3) on 11.12.2017 at an income of Rs. 14,04,690/- with the disallowance of Rs. 20, 98,457/- to the capital loss under section 50C of the income tax act. As per Penalty Order pursuant to this addition penalty notice under section 271(1)(c) read with section 274 of income tax act issued and Penalty order passed on dated 27.06.2018 and imposed penalty under section 271(1)(c) for Rs. 4,32,280/- Hence present the appeal.

Ground of Appeal-

BEFORE HON'BLE COMMISSIONER OF INCOME TAX (APPEALS)-10, IN THE CASE OF SH. FOR THE AY 2015-16 AGAINST ORDER PASSED U/S 271(1)(c) READ WITH SECTION 274 OF THE INCOME-TAX ACT, 1961

1. That the appellant denies his liability of penalty imposed under section 271(1)(c) read with section 274 of the Income Tax Act, 1961. Amount to Rs. 4,32,280/-
2. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making aggregate addition of Rs.20,98,460/- on account of Disallowed/Addition under section 50C of Income Tax Act, and penalty imposed under section 271(1)(c) for Rs. 4,32,280/-
3. That in any case and any view of the matter, the action of Ld. AO in imposing penalty under section 271(1)(c) amount to Rs.4,32,280/- on account of disallowed/addition under section 50C, while the valuation of the property at Circle rate already shown in Income Tax Return in the relevant column, is bad in law and against the facts and circumstances of the case.
4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.

Assessee

Case- 9

**Part- A- Order Pass by
Assessing Officer**

ASSESSMENT ORDER

The assessee did not file a return of income for the year under consideration. As per AIR information in the NMS portal of the ITD system, the assessee had deposited cash in the bank amounting to Rs. 12,02,400/- and has earned commission income as per 26AS of Rs. 27,513/- totalling Rs. 12,29,913/- The case was re-opened u/s. 147 of the Income-tax Act, after recording the reason and notice u/s. 148 dt. 28.3.2018 was issued and served. In response to notice u/s. 148 dated 28.03.2018, the assessee relied on the e-proceedings portal stating that " THE ASSESSEE WAS OUT OF STATION AND NO RETURN IS' PILES HE WAS NRI. AND HOW COME THE NOTICE U/S. 148 IS ISSUED. KINDLY CLARIFY THE SAME AND UPDATE IN YOUR SYSTEM. However, no proof establishing the residential status of the assessee as NRI was submitted by the assessee.

Subsequently, notice u/s. 142(1) of the Income-tax Act dated 24.09.2018 was issued to the assessee for submitting certain details and the same was Served by mail. There was no response to the notice. A Show cause notices dated 23/11/2018 was issued for non-compliance to the notice u/s. 142(1) dated 24.09.2018, giving the assessee an opportunity till 28/11/2018 to comply with notice u/s. 142(1) dated 24/09/2018, served by email of the assessee. In response to show cause to notice dated 23.11.2018, the assessee responded on the e- proceedings portal on 30.11.2018 stating that

DEAR MM, I HAVE APPROACHED C.A. FOR THIE RESPONSE AND PENDING SUBMISSION OF THE NOTICE 147 WILL REVERT ASAP WARM REGARDS"

However, the assessee neither filed the Return of Income for the A.Y. 2011-12 nor submitted any details pertaining to A.Y. 2011-12. Thus it is seen that in spite of making efforts, the assessee did not the return of income till 17.12.2018 nor any details in response to notice u/s.142(1) was filed. The case is getting barred by limitation of time and the same is being disposed of based on details available on record.

As per the condition of Best Judgment assessment u/s. 144 of the IT Act, if the assessee has failed to comply with the terms of the notice issued under section 1 of section 142, the assessing officer after taking into account all the relevant material gathered of the total income/loss to the best of his judgment shall determine the sum payable by the assessee on the basis of such assessment.

“..... Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgement:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section(1) of section 142 has been issued prior to the making of an assessment under this section.”

In the absence of compliance to various notices in the form of documentary evidence on the part of the assessee, the assessment is completed u/s. 144 r.w.s.147 treating the cash deposits of Rs.12,02,400/- and commission income of Rs. 27,513/- totalling Rs. 12,29,913/-, as income of the assessee. Hence a total amount of Rs.12,29,913/- is treated as undisclosed income and the addition is made accordingly. Penalty proceedings u/s. 271(1){c) of the Act for concealment of income is also initiated.

Subject to the above remarks, total income is computed as under:

Assessed income as discussed above. Rs. 12,29,913/-

Rounded off to Rs. 12,29,910/-

Assessed u/s. 144 r.w.s. 147 of the I.T. Act, 1961. Credit is hereby given for the prepaid taxes after due verification Computation of income tax, surcharge, cess and interest u/s. 234A, 234B, 234C & 234D of the I.T. Act,

1961 as per the ITD system is enclosed herewith as part of this order. Notice of demand u/s. 156 of the Income-tax Act is Issued accordingly. Penalty notice u/s. 274 r.w.s. 271(1)(c), 271(1)(b), 271F of the Income-tax Act is issued separately.

XXXXXXXXXXXXXXXXXXXX

Income-tax Officer

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts

The assessee was filed his income tax return electronically in pursuance of a notice under section 148(1) vide Acknowledgment Number on dated 29.12.2018 for Assessment Year 2011-12 at an income of Rs. 1,39,350/- and income tax return was filed after the assessment was completed u/s 144 r.w.s 147 of Income Tax Act 1961, on 18.12.2018 by making aggregate addition of Rs. 12,29,910/-, for cash deposit in bank accounts.

Hence present the appeal.



Ground of Appeal

BEFORE HON'BLE COMMISSIONER OF INCOME TAX (APPEALS)-26, MUMBAI IN THE CASE OF MR. FOR THE AY 2011-12 AGAINST ORDER PASSED U/S 144 r.w.s 147 OF THE INCOME-TAX ACT, 1961

1. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing an ex-parte assessment order under section 144 r.w.s. 147 and that too without giving show cause notices as per law and without giving adequate opportunity to the assessee.
2. That in any case and any view of the matter, the action of Ld. AO in passing an ex-parte assessment order u/s 144 r.w.s. 147 is illegal, bad in law and against the facts and circumstances of the case.
3. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making the addition of Rs. 12,29,910/- on account of cash deposits in the bank account of the assessee by treating it as alleged income from undisclosed sources and that too by recording incorrect facts and findings and without giving the adequate opportunity of hearing and without granting the opportunity of cross-examination of the entire material used against the assessee and without observing the principles of natural justice.
4. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in not specifying the Section or subsection under which addition is made in Assessment Order.

5. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in passing Assessment Order and reasons are recorded without independent application of mind.
6. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.

Case- 10

Part- A- Order Pass by Assessing Officer

INCOME TAX DEPARTMENT

1	Name and address of the assessee	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
2	PAN	XXXXXX8222X
3	Assessment Year	2012-13
4	Previous Year	2011-12
6	Status	Individual
8	Residential Status	Resident
10	Order U/S	144r.w.s. 147 of the Income tax Act, 1961
11	Date Of Order	24.12.2019

Assessment Order

In this case, there was certain information in possession with the department, it that the assessee has paid credit card bill amounting to Rs.4,04,999/ and received a fee for professional/ technical services and salary amounting to Rs.1,86,00,266/- and TDS has also deducted u/s 194, 192A & 1928 of the Act during F.Y 2011-12 relevant to A.Y. 2012-13. Thereafter, reasons were recorded by the Income Tax Officer, Ward- 32(3), New Delhi and after obtaining the prior approval of the Pr. Commissioner of Income Tax, Delhi-11, New Delhi, notice u/s 148 was issued on 29.03.2019 to the assessee. A relevant portion of the reasons so recorded is reproduced as under:

"Reasons for issuance to notice under section 148 of the Income Tax Act. 1961

1. In this case, the AIR transaction is available with the department, wherein the assessee has paid a credit card bill amounting to Rs. 4,04,999/- and received a fee for professional/technical services & salary amounting to Rs. 1,86,00,266/- and TDS has been deducted u/s 191, 192A & 192B during the F.Y. 2011-12 pertaining to the assessment year 2012-13. On perusal of the ITD database, it is observed that the assessee has not filed a return for A.Y 2012-13. The case was picked up for non-filing of the Income Tax Return by NMS and accordingly, letters were sent to the assessee on various dates to furnishing a copy of the return for the AY 2012-13 or submit response. However, the assessee failed to submit the reply within the time period.
 - (a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax.

Further explanation 3 of section 147 of the Income Tax Act, 1961 is reproduced as given below:-

Explanation 3- For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

2. It is pertinent to mention that in the case of Raymond Woolen Mill Ltd. 236 ITR 34(SC) the Hon'ble Apex Court has held that in determining whether commencement or reassessment proceedings were valid it has only to be seen whether there was prima facie some material of the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.

It is also in accordance with the judicial principles laid down by the Hon'ble Supreme Court in the case of in the case ACIT v. Rajesh Jhaveri Stock Brokers P. Ltd. (2007) 291 ITR 500 (SC) (BCAJ) wherein issuance of notice u/s 148 has been validated under similar circumstances. "As per our considered view, at the time of issue of notice, it is sufficient that prima-facie reasons and material should be with Assessing Officer that there is escapement of the same income. At the time of issue of notice the Assessing Officer is not required to conclusively establish that there is escapement of income is sufficient for the issue of notice u/s 148."

3. Considering the factual matrix, statutory provisions and legal principles, the undersigned has reason to believe that the assessee has not filed return u/s 139 of the Act even though he has chargeable income, mentioned supra, and the income chargeable to tax has escaped assessment with the meaning of section 147, of the Act amounts to one lakh rupees or more for the above-mentioned assessment year. Accordingly, the provisions of section 147/148 of the Act are attracted in the present case.
4. The case was reopened u/s 148 of the Income Tax Act, 1961, after duly recorded reasons and after obtaining approval from Pr. Commissioner of Income-tax, Delhi-11, New Delhi. Notice u/s 148 was issued through ITBA to the assessee on 29.03.2019. Thereafter, the case was received on transfer to the undersigned by the ITO, Ward-32(3), New Delhi in view of the order passed u/s 127 of the Act by the Pr.CIT-11, New Delhi vide F.No. Pr. CIT-11/127/2019-20/1244 dated 18.09.2019. Due to a change of incumbent, fresh notice u/s 142(1) fixing the case for 05.11.2019 was issued on 02.11.2019. However, in response thereto no return of Income was filed nor any reply was received. Subsequently notices u/s 142(1) were issued dated 11.11.2019 & 22.12.2019 requiring the assessee to file a return of income along with certain information to complete the assessment proceedings. However, on the fixed date and time neither the assessee has filed his return of income nor has filed any information as asked for, the statutory notice remained non-

complied the notices sent to the assessee through the online portal of ITBA as well as speed post. Non-compliance of these notice implies that assessee is deliberately not providing the desired information/details relating to the source of payment of Rs.4,04,999/- made through credit card and explanation/justification of amounting to Rs.1,86,00,266/- received salary and fee for professional/technical services and avoiding the assessment proceedings with the department and, hence, there is every reason to believe that amount of Rs.1,90,05,265/- (404999+18600266) is escaped assessment as the ITR has not been filed by the assessee.

5. To meet the end of justice and to comply with the Principal of Natural Justice a final show cause notice was issued together with a notice U/s 142(1) to the assessee on 22.12.2019 fixing the case for 23.12.2019 sent through the ITBA portal. **The contents of the show cause notice are hereunder:**

"FINAL SHOW CAUSE S& LAST OPPORTUNITY

In connection with assessment proceedings of your case for the A.Y. 2012-13, pending with this office and as per the provisions of section 148 of the Act, you were liable to file a return of income for the A. Y. 2012-13 within 30 days from the receipt of the aforesaid notice. But on perusal of the available details, it is noticed that no compliance to the aforesaid notice was made. In view of the above, you are requested to prepare a true & correct return of your income in respect of which you are assessable under the Income Tax Act. The return should be in the appropriate form as prescribed in rule 12 of the Income Tax Rules, 1962. It should be duly verified and signed in accordance with the provisions of section 140 of the said Act and furnished online electronically in 'E-Proceeding' facility through your account on 'E-filing website of the Income Tax Department. Apart from the above thereafter, notice u/s 142(1) of the Act, along with questionnaire fixing the case 05.11.2019 & 13.11.2019 were also issued on 02.11.2019 and 11.11.2019 respectively, wherein the assessee was asked to furnish certain

details/information/ documents but the same was also remained uncompiled with.

However, by adopting a judicious approach and in the interest of justice one more but last opportunity to explain your case for furnishing the requisite details is provided and the assessee is once again requested details/information/documents as the same is urgently required to complete the assessment proceedings. For this purpose, notice u/s 142(1) of the Act, along with the questionnaire is enclosed herewith and the case is fixed for 23.12.2019. Please note that only specific and relevant details shall be entertained and no further adjournment shall be possible to be allowed.

6. On verification from the ITD database, it is observed that the assessee has not filed a return for A. Y 2012-13. No scrutiny assessment u/s 143(3) of the act has taken place in the case of the assessee for the relevant year. The assessee has paid a credit card amounting to Rs 4,04,999/- and received a fee for professional/technical services & salary amounting to Rs.1,86,00,266/- and TDS has been deducted u/s 194J, 192A & 192B during the FY 2011-12 pertaining to the assessment year 2012-13 but failed to disclose the income, by the way, o filing the ITR within the stipulated period. The assessee has failed to provide any explanation regarding the transactions stated above in A. Y 2012-13 In spite of having been provided with the opportunity to do so. In view of these facts, the aforesaid transactions done by the assessee during F. Y. 2011-12 relevant to A.Y 2012-13 remain unaccounted and have been done by the assessee out of Its undisclosed income.
7. In the present case, the undersigned has information as well as sufficient reason to believe that the income for A. Y. 2012-13 has escaped assessment as the assessee has paid a credit card bill amounting to Rs. 4,04,999/- and received a fee for professional/technical services & salary amounting to Rs. 1,86,00,266/- and TDS has been deducted u/s 194J, 192A & 192B which is not supported by the return by the assessee. Besides the above information, I also have independently analyzed the

material available on record and with due application of mind taking into consideration the factual matrix, statutory provisions and legal principles, I am satisfied that income of the assessee to the extent of more than Rs. 1 lakh for A.Y. 2012-13 has escaped assessment and hence it is a fit case for initiation of proceedings in terms of section 147 of the I.T. Act, 1961. The relevant provisions of Section 147 of the I.T. Act, 1961 are reproduced below:

"147- If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153 assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) Provided that where an assessment under sub- section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

Explanation 2- For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

1. Please furnish a copy of ITR filed along with computation of income, P&L account balance sheet and audit report in form 3CB & 3CD (if applicable) or notes thereto and make

disclosures in support of various claims made in the return filed.

2. Please furnish a brief note on the nature of business carried out during the year.
3. Please furnish complete all bank accounts statements for the period 01.04.2011 to 31.03.2012 maintained by you in your name and joint name along with copies of bank accounts, giving a narration of debit/credit entries.
4. Please explain the source of income for all heads along with documentary evidence
5. Please furnish complete details of the transaction, nature of expenses and source of the payment made through credit card along with supporting documentary evidence during the year under consideration.
6. Perusal from the 26AS details, it has been noticed that you have received amounting to Rs. 1,86,00,266/- on account of salary and professional/ technical services. TDS under section 194J, 192A and 192B has also been deducted on the above said payment but no return of income has been filed for the assessment year 2012-13. Please explain as to why the income of Rs.1,86,00,266/- and Rs.4,04,999/- incurred through credit card may not be treated as income from undisclosed sources and may not be added to your taxable income.

NOTE: Please note that if you again failed to avail the opportunity for furnishing the aforesaid requisite documents details/information on or before the given date in such circumstances. I will have no option left with me but to complete the assessment proceedings u/s 144 of the Act. to the best of my Judgment on the basis of material available on record. It is also intimated that no further adjournment shall be possible to be allowed without any cogent reasons.

However, the assessee again failed to furnish the requisite details/explanation/reply required as per the aforementioned final show cause annexed with notice u/s 142(1) of the Act, dated 22.12.2019.

From the above, it is clear that you have exhibited a total disregard of lawful notices issued by this office. In absence of any co-operation from you, I have no alternative other than to complete the assessment under section 144 of the Income-tax Act, 1961 to the best of my judgment from the material available on records, in the absence of any evidence from your side.

The above show cause notice dated 22.12.2019 also remained un-complied with, Therefore, in the absence of any explanation regarding the source of investment made in mutual fund and time deposit it is apparent that the assessee do not wish to say anything and accepted that the assessee has no explanation to offer. Even after sufficient opportunities were provided to the assessee but the requisite explanation/information is still not filed.

7. In response to the above show cause notice, none has attended the assessment proceedings nor any reply or written request seeking adjournment was filed. However, Sh. XXXXXXXX XXXXXX, CA was appeared on 23.12.2019 on behalf of the assessee and submitted a copy of 26AS only and made a request seeking adjournment for 24.12.2019 which was allowed. Though personal attendance of the assessee, as well as the counsel, was not required, to follow the principle of natural justice and to avoid completing the assessment as an ex-party it was allowed verbally. But on 24.12.2019 again no reply was filed by the assessee and Sh. XXXXXXXX XXXXXX, CA, was contacted over his mobile No.98XXXXXXXX9, in response thereto he has expressed his inability to furnish return of income or file any reply on behalf of the assessee.

7.1The above facts and sequence of events are sufficient to prove that adequate opportunities and time has been provided to the assessee but all the efforts made by this office goes in vain. When an assessee does not produce evidence, tries to avoid and digress the issue before the Assessing Officer, it necessarily creates difficulties and prevents ascertainment of true and correct facts as the Assessing Officer is denied the advantage of scrutinizing the factual assertion and claim of the assessee. In the case where the assessee deliberately and intentionally fails to produce evidence, creates hurdles to any inquiry or investigation, an adverse view

might be justified. It would be different if the details and evidence were not available with the assessee or it was explained and justified why the details and evidence could not be furnished. Without being obvious to the constraints of the assessee, an objective and fair approach and determination are required by the Assessing Officer. Thus, no assessee should be harassed and harmed but any dishonest façade and smokescreens which masquerade as pretence should be exposed and not accepted.

7.2 However, the copy of 26AS submitted by Sh. XXXXXXXX XXXXXXXXX has been examined and it is found that the assessee has received income of Rs.5,32,033/- from Center for vocational and entrepreneurship studies and salary of Rs.87,68,100/- from XXXX XXX Pvt. Ltd. respectively against which tax at source of Rs.5,32,033/- u/s 194) and Rs.13,60,517/- u/s 192 of the Act, has also been deducted by the respective parties. In this was the assessee has earned a total income of Rs.93,00,133/ during the year under consideration but the return of income has not been filed by the assessee. The assessee needed to file his return of income under the provisions of section 139 of the Act, for which he has failed to do so.

7.3 In view of the foregoing facts, particularly, the payment made through credit card at Rs.4,04,999/- and Rs.93,00,133/- received on account of fee for professional/technical services and salary remained unexplained in the absence of explanation, solid reasons and concrete documentary evidence. The onus to prove the source of investment is entirely upon the assessee, which has not been discharged. In the instant case the assessee failed to prove the source of payment of Rs.4,04,999/- made through credit card and amounting to Rs.93,00,133/- received on account of fee for professional/technical services and salary. Therefore, the amount of Rs.97,05,132/- is chargeable to tax treating the same as undisclosed income of the assessee as the assessee has not filed his return of income.

8. In view of the above-stated facts and that assessee is deliberately avoiding to provide the details & source of the payment made through credit card and received salary and fee for technical/

professional services, I am left with no choice but to treat this amount of Rs.97,05,132/- (4,04,999+93,00,133) received by the assessee as unexplained income for the A.Y. 2012-13. Therefore, the whole of income amounting to Rs.97,05,132/ is treated as income from undisclosed sources and is added back to the taxable income of the assessee. Since the assessee has failed to file a return of income, therefore, also failed to declare true and actual particulars of its income, therefore, I am satisfied that the assessee has concealed his income to the extent of Rs.97,05,132/- as discussed above. Thus, being satisfied, in terms of section 271(1)(c) of the Act, notice u/s 274 for penalty u/s 271(1)\c) of the Act, is being separately issued to the assessee. **(Addition of Rs.97,05,132/-)**

9.In the light of the above discussion and discussed remarks, the total income of the assessee is recomputed as below:-

Income /loss declared as per return

Addtion as per para 9 **Rs.97,05,132/-**

Income Assessed **Rs.97,05,132/-**

Rounded off **Rs.97,05,130/-**

10. The case is Assessed at a total income of Rs.97,05,130/- u/s 144/147 Interest charged as per the applicable provisions of Income Tax Act, after giving the due credit of TDS and prepaid taxes. **I am satisfied that the assessee has concealed its income on account of additions made in respect of Para No.9, penalty proceedings u/s 271(1)(©), 271F and 271(1)(b) of the Income Tax Act, 1961 are hereby initiated.**

(xxxxxxx xxxxxx)

Income Tax Officer,

Ward-2(1), Faridabad

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts

That Appellant is individual has not filed his income tax return for the Assessment Year 2012-13, as per NMS cases, Notices under section 148 issued by ITO ward-23(3), New Delhi and thereafter order passed under section 127 of the Income Tax Act, 1961 vide F.No. Pr. CIT-11/127/2019-20/1244 dated 18.09.2019 and case were transferred to ITO ward 2(1) Faridabad, Notices 142(1) issued and Assessment order passed under section 144 r.w.s 147 of the Income Tax Act on dated 24.12.2019.

That as per the assessment order there is reason to believe that source of credit card payment of Rs. 4,04,999/- and explanation/justification amounted to Rs. 1,86,00,266/- due to the salary and fee for professional/technical services, the total amounted to Rs. 1,90,05,265/- (Rs. 4,04,999 + Rs. 1,86,00,266), was escaped assessment as the ITR was not filed.

That the appellant has received Rs. 5,32,033/- as consultancy fees and TDS amount to Rs. 53,203/- and Rs. 51,46,300/- from Income under the head income from Salaries as per Form 16, and TDS on salaries amounted to Rs. 13,60,517/- whereas in form 26AS salaries income shown Rs. 87,68,100/-.

That AO has stated in Assessment Order that income is from fees from Centre for Vocational and Entrepreneurship studies and salaries income fromPrivate Limited, which is self-explanatory in nature. AO treated as income from undisclosed sources.

Assessing Officer issued the notices under section 148, 142(1) of the income tax act, and passed the Assessment Order 144 r.w.s 147 on dated 25.12.2019 and penalty proceedings under section 271(1)(c) and 271F initiated.

On the grounds of appeal, the appellant has challenged the impugned Assessment order on the following total additions of Rs. 97,05,132/-

Addition on account of payment made through credit card amount to Rs. 4,04,999/-

1. In addition on account of Fees received from Centre for Vocational and Entrepreneurship studies amounted to Rs. 5,32,033/-
2. Addition on account of Salaries from Limited amounted to Rs. 87,68,100/-

Hence present the appeal.

Ground of Appeal-

BEFORE HON'BLE COMMISSIONER OF INCOME TAX (APPEALS), FARIDABAD IN THE CASE OF MR FOR THE AY 2012-13 AGAINST ASSESSMENT ORDER PASSED U/S 144/147 OF THE INCOME-TAX ACT, 1961

1. That the appellant denies its liability to be assessed at a total income of Rs. 97,05,132/- accordingly denies its liability to pay tax, cess and interest demanded thereon.
2. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing an ex-parte assessment order u/s 144/147 and that too without giving show cause notices as per law and without giving adequate opportunity to the assessee.
3. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in framing impugned assessment order and that too without assuming jurisdiction as per law and without serving the mandatory notices u/s 143(2), 148 and 142(1) of the Income Tax Act, 1961.
4. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in passing Assessment Order and without jurisdiction and independent application of mind, without cross-examination of facts.
5. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in not specifying the Section or subsection under which addition is made in Assessment Order.
6. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing an ex-parte

assessment order u/s 144/147 without following the mandatory process specified under section 147 to 151 of the income tax act.

7. That on the facts and circumstances, the Ld Assessing Officer has erred in making the addition of Rs. 4,04,999/- on account of payment made through credit card, wrongly holding income is bad in law.
8. That on the facts and circumstances, the Ld Assessing Officer has erred in making the addition of Rs. 5,32,033/- on account of fees from Centre for Vocational and Entrepreneurship studies, wrongly holding full income is bad in law.
9. That on the facts and circumstances, the Ld Assessing Officer has erred in making the addition of Rs. 87,68,100/- on account of salaries from Limited, actual income under the head salaries amounted to Rs. 51,46,300/- Ld. AO wrongly holding extra salaries income of Rs. 36,21,800/- and considered as undisclosed income which is bad in law.
10. That on the facts and circumstances, the Ld Assessing Officer has erred in making addition from 26AS but not allowing credit of taxes reflecting on 26AS, which is bad in law.
11. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.

(Appellant)

Case- 11

Part- A- Order Pass by Assessing Officer

ASSESSMENT ORDER

The assessee company E-filed its return of income declaring a total loss of Rs. 16,96,307/- on 28-09-2015. The case was selected for scrutiny under CASS and the notice u/s 143(2) for the Income Tax Act, 1961 was issued on 16/03/2016 and duly served on the assessee. Further questionnaire u/s 142(1) of Income Tax Act, 1961 was issued on 04-12-2017 and duly served on the assessee. In compliance, Sh., CA & authorized representative of the assessee company attended the proceedings and filed details which are placed on record.

2. The assessee company is engaged in the business of trading combustion & Boiler related equipment, C & I products/systems & Services, Rotating machines Equipment etc.

3. During the course of assessment proceedings, it was noticed that according to the audit report net profit/turnover considerably gone down from minus 2.78% to minus 11.69% against the gross profit/turnover of 11.43% in the previous and 30.51% in the current year. In this connection, justification was called from the assessee company vide show cause Notice dated 04-12-2017. However, the assessee could not justify the same and its reply dated 20-12-2017 is not tenable & justifiable. However, the turnover went down during the year compared to last year but other expenses & operating expenses considerably increased during the year. Hence, 1% net profit is taken which comes to Rs. 1,67,791/- and added back to the income of the assessee company.

(Addition of Rs. 1,67,791/-)

As the assessee has furnished inaccurate particulars of its income and has also concealed the particulars of its income on various points as discussed above, penalty proceedings u/s 271(1)(c) have been initiated separately.

4. During the course of assessment proceedings assessee was asked to produce the bills and vouchers of expenses debited from the P & L account during the period under consideration, In response to which the assessee produced the bills and vouchers on 18-12-2017. However, on perusal of the same, it is found that the assessee debited the following bogus expenses in the P& L account:-

(i) Packing expenses:-

(a) All the vouchers of Packing expenses amounting to Rs. 3085 has been drawn in the name of "Cash" instead of a company. Assessee asked to submit justification in this connection, but the assessee could not justify the same. Hence the bills drew amounting to Rs. 3085/- is considered bogus and is disallowed and added back to the income of the assessee company.

(Addition of Rs. 3085/-)

(ii) Freight and Courier Expenses:-

(a) On perusal of voucher/Bills dated 31-08-2014, Voucher No. 207, it is found that the bill has been drawn amounting to Rs. 255/- but the assessee debited amounting to Rs. 2551/- from P & L account. Assessee asked to submit justification in this connection, but could not justify the same. Hence, an amount of Rs. 2296/- (Rs. 2551-255) is disallowed and added back to the income of the assessee company.

(Addition of Rs.:- 2296/-)

(iii) Repair and Maintenance charges:-

On perusal of the following bills and vouchers, it is found that the bills/vouchers have been drawn in the name of "Cash" instead of Company:-

(a) 24-11-2014, voucher No. 324 amounting to Rs. 19659/-

(b) 29/11/2014, voucher No. 338 amounting to Rs. 17280/

(c) 12,13,25/12-2014, Voucher No. 350,354,367 amounting to Rs. 18,979 16,257 & 15,833/-

(d) 30-05-2014 Voucher No. 79 amounting to Rs. 4300

- (e) 31-07-2014 Voucher No. 158 amounting to Rs. 10850/-
- (f) 25-08-2014 Voucher NO. 184 and 185 amounting to Rs. 1500 & 1500 respectively.
- (g) 30-08-2014 Voucher No. 205 amounting to Rs. 700/-
- (h) 23-09-2014 Voucher No. 240 amounting to Rs. 9000/-
- (i) 30-09-2014 Voucher No. 257, 258 & 259 amounting to Rs. 25938,19125, 3970 respectively
- (j) 28/10/2014 Voucher o. 279 amounting to Rs. 9000/-
- (k) 29-10-2014 voucher NO. 281 amounting to Rs. 9213/
- (l) 30-10-2014 Voucher NO. 288 amounting to Rs. 12930/-
- (m) 31-10-2014 Voucher No. 295 & 297 amounting to Rs. 1318, 15700/- respectively
- (n) 03-01-2015 voucher No. 384 amounting to Rs. 19125/
- (o) 31-01-2015 Voucher No. 415 amounting to Rs. 8467/-
- (p) 28-02-2015 Voucher NO. 454 amounting to Rs. 1582/-
- (q) Voucher No. 501 amounting to Rs. 2095/-

Assessee asked to submit justification in this connection, but the assessee could not justify the same. Hence, an amount of Rs. 2,44,321/- total of the above bills) is considered as bogus bills and therefore the same is disallowed and added back to the income of the assessee company. **(Addition of Rs. :-2,44,321/-)**

5. After the discussion, the income of the assessee is computed as under:-

Amount (in Rs.) Returned Income (-)16,96,307/-/-

(i) on a/c of disallowance as discussed in para (3) above 1,67,791/-

(ii) on a/c of disallowance as discussed in para (4)(i) above 3,085/-

(iii) on a/c of disallowance as discussed in para (4)(ii) above
2,296/-

(iv) on alc of disallowance as discussed in para (4)(iii) above
2,44,321/**Total Income** **(-)12,78,814/-**

6. Assessed at the loss of Rs. 12,78,814 - u/s 143(3) of the Income Tax Act, 1961. Issue necessary forms. Penalty proceedings u/s 271(1)(c) have been initiated separately as the assessee has furnished inaccurate particulars of its income and concealed the particulars of its income.

XXXXXXXXXX XXXXXXXXXXXX

Income-tax Officer

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

STATEMENT OF FACTS

1. The appellant, M/sPrivate Limited had E-filed its income tax return declaring total loss for Rs. 16,96,307.00, vide Ack number, dated 28.09.2015. The case was subsequently selected for scrutiny under CASS and the notice u/s 143(2) and Assessment completed by passing an assessment order under section 143(3) of the income tax act, 1961 with a total addition of Rs.4,17,491/-
2. Assessing Officer observed that net profit/turnover has gone down in comparison to the preceding year according to the audit report. However, it was submitted that the audit report has a clerical error and the same was justified with proper support, the actual figures are depicted below and the same could be verified from the financials of the company. However, the AO made ad-hoc addition of 1% on the gross revenue of the company amounting to Rs. 1,67,791/- which was added back to the income of the assessee.

Particulars	AY 2015-16	AY 2014-15
Turnover as per Audited Balance Sheet (A)	16,552,873.00	21,666,113.00
Operating Expenses as per Audited Balance	11,434,091.00	15,037,542.00

Sheet (B)			
Gross Profit (A)-(B)		5,118,782.00	6,628,571.00
Gross Profit Ratio	$= \frac{5118782}{100} \times 16552873$	30.92	$= \frac{6628571}{100} \times 21666113$
<i>[Gross Profit/Turnover]*100</i>			
Net Profit as per Audited Balance Sheet		(1,967,169.00)	(573,707.00)
Net Profit Turnover Ratio	$= \frac{-1967169}{100} \times 16552873$	(11.88)	$= \frac{-573707}{100} \times 21666113$
<i>[Net Profit after Tax/Turnover]*100</i>			

3. The assessing officer also observed that the assessee debited the expenses of Rs. 3,085/- to Statement of Profit & Loss which were in nature of Packing Expenses and being petty cash expenses the same was disallowed. The copy of invoices was presented during the course of the assessment proceeding
4. The assessing officer also observed that the assessee debited the expenses to the tune of Rs. 2,551/- to Statement of Profit & Loss against voucher no. 207 amounting to Rs 255/- which was submitted to the AO during the course of Assessment Proceeding, which was in the nature of Freight and Courier Expenses. However, we deny the

addition on the basis of actual and genuine expenses made amounting to Rs. 2551/- on behalf of the company.

5. The assessing officer also observed that the assessee debited the expenses of Rs. 2,44,321/- to Statement of Profit & Loss which were in nature of Repair and Maintenance Charges and being petty cash expenses the same was disallowed. The assessee also produced the copy of invoices before the AO for verification during the course of assessment proceedings but the same was rejected by the officer being petty cash expenses issued in the name of cash instead of the assessee name.

(Appellant)



Ground of Appeal & Submissions

To,

Date:

**The Commissioner of Income Tax
(Appeals)-8, Aayakar Bhawan
Laxmi Nagar, Delhi-110092.**

**Subject: Income Tax Appeal proceedings under section 250,
Appeal No. 10454/17-18 against an order under section
143(3) of the Income Tax Act-1961, A Y 2014-15, in case
of M/s Private Limited.
[PAN: AADXXXXXL]**

Respected Sir,

With reference to the captioned appeal, we submit to your good self the facts of the case in brief and grounds of appeal in detail as under

FACTS:

1. The appellant, M/s Private Limited had E-filed its income tax return declaring total loss for Rs. 16,96,307.00, vide Ack number, dated 28.09.2015. The case was subsequently selected for scrutiny under CASS and the notice u/s 143(2) and Assessment completed by passing an assessment order under section 143(3) of the income tax act, 1961 with a total addition of Rs.4,17,491/-
2. Assessing Officer observed that net profit/turnover has gone down in comparison to the preceding year according to the audit report. However, it was submitted that the audit report has a clerical error and the same was justified with proper support, the actual figures are

depicted below and the same could be verified from the financials of the company. However, the AO made ad-hoc addition of 1% on the gross revenue of the company amounting to Rs. 1,67,791/- which was added back to the income of the assessee.

3. The assessing officer also observed that the assessee debited the expenses of Rs. 3,085/- to Statement of Profit & Loss which were in nature of Packing Expenses and being petty cash expenses the same was disallowed. The copy of invoices was presented during the course of the assessment proceeding
4. The assessing officer also observed that the assessee debited the expenses to the tune of Rs. 2,551/- to Statement of Profit & Loss against voucher no. 207 amounting to Rs 255/- which was submitted to the AO during the course of Assessment Proceeding, which was in the nature of Freight and Courier Expenses. However, we deny the addition on the basis of actual and genuine expenses made amounting to Rs. 2551/- on behalf of the company.
5. The assessing officer also observed that the assessee debited the expenses of Rs. 2,44,321/- to Statement of Profit & Loss which were in nature of Repair and Maintenance Charges and being petty cash expenses the same was disallowed. The assessee also produced the copy of invoices before the AO for verification during the course of assessment proceedings but the same was rejected by the officer being petty cash expenses issued in the name of cash instead of the assessee name.

On the grounds of appeal, the appellant has challenged the Assessment order on the following additions made by the assessing officer in the impugned assessment order vide order dated 30.12.2017:-

- Ad-hoc Addition of 1% of Total Revenue of Rs. 1,67,791/-
- Packing Expenses in cash of Rs. 3085/-
- Freight and Courier Expenses of Rs. 2296/-
- Repairs & Maintenance Charges paid in cash of Rs. 2,44,321/-

GROUND OF APPEAL

1. The addition amounting to Rs. 1,67,791/- was on account of 1% of Gross Revenue on an ad-hoc basis at the time of assessment by the Assessing Officer. That the net profit/turnover has gone down in comparison to the preceding year according to the audit report. However, it was submitted that the audit report has a clerical error and the same was justified with proper support, the actual figures are depicted below and the same could be verified from the audited financial statements of the company.

A copy of the financial statement and audit report is attached herewith for your reference.

We are also presenting comparable % for the relevant period and previous year period of Gross Profit Ratio and Net Profit Ratio.

Particulars	AY 2015-16	AY 2014-15
Turnover as per Audited Balance Sheet (A)	16,552,873.00	21,666,113.00
Operating Expenses as per Audited Balance Sheet (B)	11,434,091.00	15,037,542.00
Gross Profit (A)-(B)	5,118,782.00	6,628,571.00

Gross Profit Ratio	$= \frac{5118782}{16552873} \times 100$	30.92	$= \frac{6628571}{21666113} \times 100$	30.59
<i>[Gross Profit/Turnover]*100</i>				
Net Profit as per Audited Balance Sheet		(1,967,169.00)		(573,707.00)
Net Profit/Turnover Ratio	$= \frac{-1967169}{16552873} \times 100$	(11.88)	$= \frac{-573707}{21666113} \times 100$	(2.65)
<i>[Net Profit after Tax/Turnover]*100</i>				

Further the there are fixed operating expenses has not decreased as much as there is a downfall in Turnover. There has been a downfall of 23.60% in turnover whereas Non-operating expenses have gone down by 3.64% only, which has resulted in a considerable decrease in Net Profit Ratio from -2.65% to -11.88% as per the financial statement which can be verified from the financial statement attached herewith. The calculation is depicted in the above table.

Further, we would like to state that there was a mistake in a tax audit report by the auditor at serial number 40 of the Tax Audit Report in form 3CD, Auditor had mentioned an 11.43 % gross profit ratio while in actual it is 30.92% in Profit & Loss accounts.

- The Ld. assessing officer has erred in denying packing expenses of Rs. 3085/-, as per provision of section 37(1) of the income tax act, 1961, all expenses incurred related to the business, which was not in the nature of capital expenditure or personal expenses and is wholly or exclusively incurred for the purpose of business are allowed as expenses.

That the addition of packing expenses amounting to Rs. 3,085/- was through the staff interest account, which was genuine expenses, individually verifiable and made on behalf of the company. Mere, being the transactions are in nature of petty

expenses in the case could not be considered as bogus. Bills and voucher of the same were produced at the time of assessment to the assessing officer. The expenses disallowed by the learned assessing officer was without taking into consideration the details filed and the nature of expenses so incurred and the reasons assigned by his good self for doing the same is contrary to the facts of the case and provisions of the income tax act, 1961, and rules made thereunder. Hence, the same shall not be liable for penalty. (copy of Ledger along with bills and voucher attached herewith in Annexure-1)

3. That the addition of freight and courier expenses amounting to Rs. 2,296/- was on account of a clerical error, although the actual payment of Rs 2551/- was made on behalf of the company. That assessee debited the expenses to the tune of Rs. 2,551/- to Statement of Profit & Loss against voucher no. 207 amounting to Rs 255/-, the payment of Rs. 2,551/- genuine, not bogus, hence the addition made by the Ld Assessing Officer is not valid as per provision of section 37(1) of the income tax act, 1961. (copy of bills and voucher attached herewith in Annexure-2)

4. That the addition amounted to Rs. 2,44,321/- was on account of transaction made in cash, which was genuine expenses, not bogus and made on behalf of the company, also the same is independently verifiable. The bills are in the nature of petty expenses which were paid in cash hence the bills were issued in the name of cash instead of the company's name. Copy of bills and voucher were produced during the course of assessment to the assessing officer. Copy of same also producing in your good self.

5. Ld. Assessing Officer stated in Assessment Order that these expenses are bogus expense because it is paid in cash and the name of cash. Ld. Assessing Officer ad-hoc disallowed expense stating it is bogus expenses without any material based on the record, without verifying from vendors, no correspondence was done from vendors from whom the cash was paid for expenses, original bills were produced to Ld. Assessing Officer and copy of bills submitted to Ld Assessing officer. Copy of same also producing in your good self.

We are reproducing the provisions of section 37(1) of the Income Tax Act, 1961:

“37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

[Explanation 1.]—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]

[Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013

(18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.]

[(2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.”

After analysis of above mention provision, all expenses incurred related to the business, which was not in the nature of capital expenditure or personal expenses and is wholly or exclusively incurred for the purpose of business are allowed as expenses. (copy of bills and voucher attached herewith in Annexure-3)

This stand has withstood the judicial test also

The relevant extract of the judicial judgments are mentioned hereunder:

Commissioner of Income Tax v/s Swaminarayan Vijay Carry Trade (P). Ltd [2013] 33 taxmann.com 403 (Hon'ble High Court of Gujarat)

I. Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Freight and transportation expenses] - Assessee-company was engaged in business of transport - Assessing Officer having found that (i) assessee had debited huge sum towards freight and transportation expenses, and (ii) many of expenses were not authentic and also not supported by evidences adduced, disallowed 2 per cent of such expenses - Commissioner (Appeals) deleted impugned disallowance made by Assessing Officer holding that (i) expenses incurred were proved by duly supported vouchers with complete details of expenses as also with name of payee, registration number of truck, etc., and (ii)

Assessing Officer had no evidence in making any disallowance out of freight and transportation expenses - Tribunal upheld order of Commissioner (Appeals) holding that findings of Commissioner (Appeals) could not be controverted by revenue - Whether since entire issue was based on factual matrix with no perversity in findings of appellate authorities, no question of law arose for consideration - Held, yes [Para 8] [In favour of assessee]

II. Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Cash payments] - Assessee made payments to drivers towards their food and miscellaneous expenses in cash and claimed deduction of such expenses - Assessing Officer disallowed 10 per cent of such expenses - Commissioner (Appeals) deleted impugned disallowance made by Assessing Officer holding that Assessing Officer had failed to bring on record any evidence suggesting that any portion of such expenses was non-genuine or not for purpose of business - Tribunal upheld the order of Commissioner (Appeals) holding that drivers couldn't maintain proper supporting evidence and vouchers in respect of various small expenses incurred by them - Whether since appellate authorities had dealt with the issue of disallowance of expenses appropriately on basis of substantive material available in support thereof, no question of law arose for consideration - Held, yes [Para 9.4] [In favour of assessee]

III. Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Clearing and forwarding] - Assessee claimed deduction in respect of clearing and forwarding expenses incurred by it - Assessing Officer disallowed said expenses - Commissioner (Appeals) deleted impugned disallowance made by Assessing Officer holding that Assessing Officer's disallowance was based on an incorrect

understanding of financial transactions - Tribunal upheld the order of Commissioner (Appeals) holding that none of the findings of Commissioner (Appeals) could be controverted by revenue and entire disallowance was based on an incorrect understanding of financial transactions - Whether as both appellate authorities had given cogent reasonings, this issue merited no consideration any further - Held, yes [Para 10.2] [In favour of assessee] (copy of bills and voucher attached herewith in Annexure-3)

Assistant Commissioner of Income-Tax v/s Mir Mazharuddin [2013] 35 taxmann.com 541 (Hyderabad - Trib.)

Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Burden of the proof] - Assessment years 2002-03 to 2005-06 - Assessee was managing director of a company - He was also having his own catering business - He disclosed profit after claiming various expenses - Assessing Officer, relying upon the statement of assessee's employee during the search that kitchen facilities of the company were utilised by assessee for his business, disallowed expenses claimed by the assessee on the ground that there was duplication of expenses - Whether since department could not bring any material to suggest that same expenditure was claimed in case of company 'P' to establish that assessee had made double claim of expenses, disallowance made by Assessing Officer was unjustified - Held, yes [Para 10] [In favour of assessee]

Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Burden of the proof] - Assessment years 2002-03 to 2008-09 - Whether where assessee could not produce proper bills and vouchers for most of the expenditure claimed, five per cent of cash

payments was to be disallowed - Held, yes [Para 19] [In favour of assessee] (copy of bills and voucher attached herewith in Annexure-5)

Amitabh Bachchan Corpn. Ltd. v/s Deputy Commissioner of the Income Tax, Central Circle 13, Mumbai [2015] 56 taxmann.com 77 (Mumbai - Trib.)

II. Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Ad hoc disallowance/Self-made vouchers) - The assessment year 1999-2000 - Assessing Officer had made ad hoc disallowance on account of miscellaneous expenses on the ground that corresponding vouchers were not supported with corroborative evidence from the side of the third party in many cases - It was found that part of vouchers was a self-made and they were not independently verifiable on occasion - Whether in view of reasonability of claim, disallowance was to be restricted to 50 per cent - Held, yes [para 8][Partly in favour of assessee] (copy of bills and voucher attached herewith in Annexure-6)

In view of the above-mentioned facts, it is respectfully submitted that since there existed reasonable cause and facts to show that the assessee has not concealed the income and had given accurate particulars of income for the assessment year 2015-16. The same shall be allowed as expenses and the penalty shall be withdrawn.

We hope that you will find the above in order.

(Appellant)

Case- 12

Part- A- Order Pass by Assessing Officer

INCOME TAX DEPARTMENT

1	Name and address of the assessee	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
2	PAN	XXXXXX8222X
3	Assessment Year	2011-12
4	Previous Year	2010-11
5	Ward	ITO, Ward-24(2), New Delhi
7	Status	Individual
8	Residential Status	Resident
10	Order U/S	147/144 of Income tax Act, 1961
11	Date Of Order	18.12.2018

Assessment Order

As per the information available with the department through Non-Filter Management System {NMS}, It has been found that the assessee has a cash deposit amounting to Rs.10,85,000/- into her bank account maintained with Indian Overseas bank. besides this assessee received a salary income of Rs. 4,15,897/- during the financial Year 2010-11 relevant to A. Y 2011-12 from the ITD database, it was found the assessee has not to field her return of income for the A.Y. 2011-12. she has been asked to vide notice/ letter issued as per S.O.P. of NMS as to why she had not to field her ITR even though she had made investment more than taxable income into her bank account No reply has been received from the assessee in response to this latter. Therefore, reasons were recorded u/s 147 of Act and notice u/s 148 was sent on 28.03.2018 after taking prior approval of the Pr. Commissioner of Income Tax, Gurgaon vide F.NO.Pr.CIT /GGN/2017-18/7586 dated 23.03.2018 to deliver a return in the prescribed from the assessee within 30 days from the date of service

of this notice. Notice u/s 142{1} was issued from time to time and asked to furnish a copy of his/her bank account statement for the period 01.04.2010 to 31.03.2011.

2. since the assessee has failed to comply with notices issued u/s 142 of the IT Act from time to time as under:-

therefore, show cause notice issued dated 05.11.2018 asking for the following information:-

"As for the information available with the department which has been verified from your account statement. it has been found that you have a cash deposit amounting to Rs.10,85,000/-into her bank account maintained with Indian Overseas bank besides this assessee received salary income of Rs 04,15,897during the F.Y 2010-11 relevant to A.Y 2011-12. if you fail to explain these time deposit and source of income, this amount, this amount of Rs.10,43,774/- will be treated as your income from Undisclosed sources"

3. Since the assessee has failed to comply with a notice issued u/s 142(1) of the IT Act from time to time and also on the final opportunity allowed of beginning heard. In the interest of natural Justice notice u/s, 142(1) once again issued to the assessee to file his/her return income and explain the source of time deposits & both income to furnish any reply. The notice served through affixture dated 22.11.2018 for 26.11.2018. Assessee again has not bothered to furnish any reply. I have no other alternative but to frame the assessment as per the provision of sec 144 of the IT Act based on material available on record as best judgment assessment so, the case is decided as under".

3.1 On perusal of bank statement, it is found that the assessee the deposited cash of Rs 10,85,000/- in her saving account No.- maintained with Indian Overseas Bank during the F.Y 2010-11. In the absence of filing of ITR and any reply/ details documentary, evidence/confirmation from the assessee, the cash deposit of Rs 10,85,000/- by the assessee remained unexplained. So, the addition of Rs. 10,85,000/- has been made on account of unexplained cash credit into the bank account of the assessee.
(Addition of Rs.10,85,000/-)

3.2. On perusal of ITS/26AS, it is found that the assessee has received salary income of Rs.4,15,897/- from M/s during the F.Y 2010-11. In the absence of filing of ITR, the salary income of Rs. 4,15,897/- was not offered for taxation purposes. So, the addition of Rs 4,15,987/- has been made on account of undisclosed salary income. **(Addition of Rs. 4,15,897/-)**

3.3 On perusal of bank statement, it is found that the assessee has received interest income of Rs.8,582/- from Indian overseas Bank during the F.Y.2010-11. In the absence of filing of ITR, the interest income of Rs. 8,582/- by assessee remained untaxed so, the addition of Rs.8,582/- has been made. **(addition of Rs.8,582/-)**

3.4 As the assessee has concealed his particulars of income to the turn of Rs. 15,09,479/- . Therefore penalty proceeding under section 271(1)(c) of the Income Tax Act, 1961 are begin initiated separately.

Income of assessee is computed as under:-

Returned Income	Rs. NIL
Addition as discussed in para 3.1 above:	Rs 10,85,000/-
Addition as discussed in para 3.2 above:	Rs. 4,15,897/-
In addition, as discussed in para 3.3 above	Rs. 8,582/-
Total income	Rs. 15,09,479/-

Penalty proceedings u/s 271F of the IT Act non-filing of return u/s 139(1)is hereby initiated separately.

Penalty proceedings u/s 271(1)(c) of the IT Act for concealment of income is hereby initiated separately.

Penalty proceedings u/s 271(1)(b) for failure to comply with notices u/s 142(1)/143(2) of the Income Tax Act, 1961.

Assessed, Issue requisite documents.

xxxxxxx xxxxxx Income Tax Officer

Ward-4(5), Gurgaon.

Part- B Statement of Fact & Ground of Appeal drafted basis Order & Fact of Case.

Statement of Facts


That as per information available with the department through the Non-Filer Management System(NMS), Assessee was not filed her income tax return, (due to notification number 36/2011[F.No. 142/09/2011(TPL), which states that income from Salary less than Rs. Five Lacs, not required to file Income Tax Return) Assessee has cash deposited amounting to Rs. 10,85,000/- in her bank account maintained with Indian Overseas Bank, and Salary Income of Rs. 4,15,897/- during the financial year 2010-11, relevant to Assessment year 2011-12 and Notice under section 148 was issued after recording reason under section 147 of the Act and order passed under section 147/144 of the Income Tax Act, 1961, as per Assessment Order passed under section 147/144 dated 18.12.2018, which was not known by Assessee, as and when she come to known, she applies for a certified copy and received on dated 14.06.2019 and assessment was completed u/s 144/147 on 28.09.2016 by making following addition

Rs. 10,85,000/- on account of a cash deposit in bank accounts

Rs. 4,15,897/- on account of Salary Income

Rs. 8,582/-on account of Interest Income

Hence present the appeal.



Ground of Appeal-

**BEFORE HON'BLE COMMISSIONER OF INCOME TAX (APPEALS), GURGAON IN THE CASE OF SMT.
FOR THE AY 2011-12 AGAINST ASSESSMENT ORDER PASSED U/S 144 OF THE INCOME-TAX ACT, 1961**

1. That the appellant denies her liability to be assessed at the total income of Rs. 15,09,479/- and Ld AO alleged that the assessee was not filed her income tax return, which bad in law and filed an appeal and accordingly denies her liability to pay tax, cess and interest demanded thereon.
2. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing an ex-parte assessment order u/s 144/147 and that too without giving show cause notices as per law and without giving adequate opportunity to the assessee.
3. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in framing impugned assessment order and that too without assuming jurisdiction as per law and without serving the mandatory notices u/s 143(2), 148 and 142(1) of the Income Tax Act, 1961.
4. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making the addition of Rs. 10,85,000/- on account of cash deposits in the bank account of the assessee by treating it as alleged income without giving the adequate opportunity of hearing and without granting the opportunity of cross-examination of the entire material used

against the assessee and without observing the principles of natural justice.

5. That in any case and any view of the matter, the action of Ld. AO in passing Assessment Order under section 144 of income tax act by adding income of Rs. 4,15,897/-, on account of undisclosed salary income, is bad in law and against the facts and circumstances of the case.
6. That in any case and any view of the matter, the action of Ld. AO in passing Assessment Order under section 144 of income tax act by adding income of Rs. 8,582/-, on account of Interest Income, is bad in law and against the facts and circumstances of the case.
7. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in not specifying the Section or subsection under which addition is made in Assessment Order.
8. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of the hearing and all the above grounds are without prejudice to each other.

(Assessee)

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