

**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH,
RAIPUR**

**BEFORE : SHRI N.S.SAINI, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICAL MEMBER**

**ITA No.168/RPR/2014
(Assessment Year :2011-2012)**

Income Tax Officer-5, Bhilai	vs	Shri Ghanshyam Das Nagdev, Behind Gurudwara, New Khursipar, Bhilai
PAN No. : ADOPN 7670 A		
(Appellant)	..	Respondent

Revenue by : Shri Sanjay Kumar, DR
Assessee by : None

Date of Hearing : 12/01/2018

Date of Pronouncement 15/01/2018

आदेश / O R D E R

Per Shri N.S.Saini, AM:

This is an appeal filed by the Revenue against the order of the CIT(A), Raipur, dated 27.06.2014 for the assessment year 2011-2012.

1. *"Whether on the facts and circumstances of the case the CIT(A) was justified in admitting additional evidence produced by the assessee during the course of appellate proceeding without allowing opportunity to the A O to be heard?"*
2. *"Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in deleting the addition of Rs.80,55,800/- on account of as unexplained cash deposits from the bank accounts?"*
3. *"Whether in law and on facts & circumstances of the case, the learned CIT(A).has, erred in holding that unexplained cash deposits are not covered u/s 69 of the IT Act, 1961?"*
4. *" The Order of the Ld. C1T (A) is erroneous both in law and on facts? "*
5. *"Any other ground that may be adduced at the time of hearing?"*

2. Brief facts of the case are that the assessee is an individual and proprietor of M/s Mahaveer Saree Center deriving income from business of retail trade of garments and is partner in Partnership firm M/s Sri Ram Services deriving in the form of remuneration, interest and share of profit. The return of income was filed on 29.03.2014 declaring total income of Rs.1,56,0007-. Subsequently, the assessment was completed u/s 143(3) of the I.T. Act 1961 on 19.03.2013, determining the total income at Rs. 82,11,800/-. The A.O observed that the details of cash deposits made during the financial year relevant to A.Y. 2011-12 reported in AIR are as under:-

PAN	Txn Party name	Txn Type	Bank A/c No.	Amount of deposit	Filler Bank
ADOPN 7670A	Ghanshyam Das Nagdev	AIR	30028295115	41,04,700.00	SBI, Supela, Bhilai
ADOPN7670A	Ghanshyam Das Nagdev	AIR	910010026784482	39,51,100.00	Axis Bank Supela, Bhilai
ADOPN7670A	Ghanshyam Das Nagdev	AIR		25,70,000.00	Axis Bank, Rajnandgaon
TOTAL				1,06,25,800.00	

In view of the above, relevant bank statements from the concerned bank have been called for u/s.133(6) of the Income Tax Act, 1961 and examined. The cash deposits of Rs.25,70,100/- in the bank account of Axis Bank Ltd., Rajnandgaon uploaded by the Income Tax Officer (Intelligence), Raipur is concerned, a notice u/s 133(6) was issued to the concerned bank Tor calling banks statement. The Authorized Signatory of Axis Bank, Rajnandgaon has vided his letter dated 26.02.2014 explained that "our Branch is not holding any account in the name of Mr. Ghanshyam Das Nagdev with PAN ADOPN7670A. The Account

No.910010026784482 in the name of Shri Ghanshyam Das Nagdeo was maintained at our Axis Bank Ltd., Supela Chowk, Bhilai. The assessee did not offer any explanation regarding the source of cash deposited in the bank accounts. The PAN of 8 persons to whom payments were made by the assessee were found to be incorrect, therefore, the AO made the addition u/s 69 of the Act.

3. The AR of the assessee has filed adjournment petition. Since the reason for seeking adjournment was not found plausible one, the adjournment petition filed by the assessee is rejected and the appeal was heard ex-parte *qua* the respondent-assessee.

4. The DR pointed out from the page 5 of the order of the CIT(A) that the CIT(A) issued notice u/s.133(6) of the Act to the society M/s Pahal Swayam Sevi Sanstha and the firm Sri Ram Services on 9th June, 2014. Written replies were received from the society on 19th June, 2014. The society furnished copy of Bye-Laws and Rules and Regulations, audited financial statements for the financial year 2010-2011, bank statement in respect of all the bank accounts of the society for the financial year 2010-2011. Account of the assessee from the books of accounts of the society for the financial year 2010-2011 and minutes of the meeting/resolution of the Governing Body in connection with operation of the bank account. On behalf of the society, Mr. Sushil Nathani, Secretary of the society had appeared on 19th June, 2014 and furnished copy of employees Imprest Account and PAN of the persons to whom payments were made by the assessee from his Bank Account. These documents were not filed by the

assessee before the AO during the course of assessment proceedings. The CIT(A) relying on these documents has deleted the addition made by the AO. He did not call for any remand report from the AO and, hence, there is violation of Rule 46A of the Income Tax Rules, 1962, for which the Revenue has taken a specific ground of appeal before the Tribunal being Ground No.1 of the appeal before the Tribunal, hence, he prayed that the matter should be restored back to the file of AO to readjudicate the issue afresh to consider the evidence filed before the CIT(A), which were not filed before the AO during the course of assessment proceedings.

5. After considering the submission of the DR and on perusal of the order of CIT(A), we find force in the submission of the DR. We find that the CIT(A) has in fact admitted the additional evidence in violation of Rule 46A of the Income Tax Rules, 1962 before adjudicating the appeal of the assessee. In our considered view the AO should also have an opportunity to look into the evidence which were filed by the assessee before the CIT(A) for the first time. Hence, we set aside the orders of lower authorities and remand the matter back to the file of AO for re-adjudicating the issue of unexplained cash deposit in the bank account of Rs.80,55,800/- afresh after allowing a reasonable and proper opportunity of hearing to the assessee. Thus, the grounds of appeal of the Revenue are allowed for statistical purposes.

6. In the result, appeal filed by Revenue is allowed for statistical purposes.

Order pronounced in the open court on this 15/01/2018.

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Raipur; दिनांक Dated 15/01/2018

azप्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
Income Tax Appellate Tribunal, Raipur