

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI ANIL CHATURVEDI, AM  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.124/RPR/2011  
निर्धारण वर्ष / Assessment Year : 2004-05

Income Tax Officer – 2(4),  
Central Revenue Building,  
Civil Lines, Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Shri Ajit Pramod Jogi,  
S/o Late Shri Kasinath Jogi,  
“Anugrah”, Civil Lines, Raipur (C.G.)

PAN : AEUPJ9678K

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.191/RPR/2011  
निर्धारण वर्ष / Assessment Year : 2004-05

Virendra Pandey,  
House No. 4, 4<sup>th</sup> Street,  
New Shanti Nagar, Near Disha College,  
Raipur – 492001 (C.G.)

PAN : AFCPP5100K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Income Tax Officer – 2(4),  
Raipur

.....प्रत्यर्थी / Respondent

Assessee by : Shri P.C. Jain  
Revenue by : S/Shri Lal Chand & P.K. Mishra

सुनवाई की तारीख / Date of Hearing : 14.01.2019  
घोषणा की तारीख / Date of Pronouncement : 17.01.2019

### **आदेश / ORDER**

#### **PER ANIL CHATURVEDI, AM :**

These two appeals filed by the Revenue and assessee emanate out of the order of Commissioner of Income-Tax (A), Central, Raipur dated 28-02-2011 and 28-06-2011 for the A.Y. 2004-05, respectively.

2. ITA No. 124/RPR/2011 is in the case of Shri Ajit Pramod Jogi where the Revenue has raised following grounds :

- “1. Whether in law and on facts & circumstances of the case, the CIT(A) was justified in deleting the addition of Rs.45,00,000/- made by the AO u/s. 69A of the I.T. Act, 1961.
2. The order of the Ld. CIT(A) is erroneous both in law and on facts.”

3. Before us, at the outset, Ld. A.R. submitted that the appeal of the Revenue is not maintainable on account of low tax effect and therefore, the appeal of the Revenue be dismissed.

4. Ld. D.R. did not object to the aforesaid contention made by the Ld. A.R. but however submitted that considering the facts, the appeal be taken up for adjudication.

5. We have heard the rival submissions and perused the material available on record. On perusing the grounds of appeal raised by the Revenue, we find that Revenue is aggrieved by the order of ld. CIT(A) in respect of the relief given by him. As per the recent announcement of Central Board of Direct Taxes (CBDT) dated 11.07.2018 (Circular No. 3 of 2018), no Department appeals are to be filed against relief given by ld. CIT(A) before the Income Tax Appellate Tribunal unless the tax effect, excluding interest, exceeds Rs.20 lakhs and it further states that the instructions will apply retrospectively to the pending appeals also. In the present case, since it is an undisputed fact that on the additions which are in dispute, the tax effect is less than Rs.20 lakhs and in the absence of any material placed on record by the Revenue to demonstrate that the issue in the present appeal is covered by exceptions provided in para 10 of the aforesaid CBDT Circular, we are of the view that the monetary limit prescribed by the instructions of the aforesaid CBDT Circular would be applicable to the present appeal of the Department. We therefore hold the present appeal of Revenue to be not maintainable on account of low tax effect and accordingly dismiss the appeal of Revenue without expressing any opinion on merits of the case. However, in case there is any error in

the computation of the tax effect involved or if for any reason, the aforesaid CBDT Circular is not applicable, it would be open to the Revenue to seek revival of the appeal. Thus, without going into the merits, the grounds of the Revenue are dismissed.

**6. In the result, the appeal of Revenue is dismissed.**

**ITA No. 191/RPR/2011**

7. ITA No. 191/RPR/2011 is in the case of Virendra Pandey wherein the assessee has raised following grounds :

1. *“That CIT(A) has erred in both fact and in law while confirming the assessment order passed u/s. 147/143(3) by the Assessing Officer which is illegal, invalid and bad in law.*
2. *That the CIT(A) has erred in law and fact in confirming the assessment order on protective basis which is bad in law, illegal and invalid and in which parallel proceedings were neither initiated nor was assessment finalized simultaneously along with substantive assessment.*
3. *That the CIT(A) has erred in law and fact in reaching the incorrect findings in relation to ‘Possession of money’ and therefore his order based on such conclusion is baseless, arbitrary and against law.*
4. *That on the facts and circumstances of the case and in law, the CIT(A) has erred in confirming the assessment order despite of the fact that appellant has discharged primary and positive burden of proof by furnishing circumstantial evidences, documentary evidences, name of witnesses and money delivered itself.*
5. *That the CIT(A) has erred in reaching the conclusions without examining the considering the evidences and witnesses and without giving any opportunity of being heard and of cross examination or re-examination of the witnesses of the case to the appellant and therefore, his order is bad in law as principles of natural justice has been violated.*
6. *That the CIT(A) has erred in hastily concluding the matter on mistaken assumptions despite of the fact that the enquiry and investigations with CBI remains pending and therefore, his order is bad in fact and law.*

7. *That the CIT(A) has erred in applying the provisions of Sec 69A of the IT Act 1961 and has grossly mistaken in fact and legal position and therefore the appellate order is bad in law.*
8. *That on the facts and circumstances of the case and in law the CIT(A) erred in confirming the addition of RS.45,00,000 as undisclosed income of the appellant as against returned income of the appellant of Rs.84,800.*
9. *That the CIT(A) has grossly erred in upholding the action of Assessing Officer in charging interest u/s. 234B of the Income Tax Act 1961.*
10. *That the CIT(A) has grossly erred in upholding the action of Assessing Officer in initiating the penalty proceedings u/s. 271(1)(c) of the IT Act 1961.*
11. *That the assessee craves to add, amend or delete any of the above grounds of appeal during the course of hearing.*
12. *That the above grounds are without prejudice to each order.”*

8. Before us, at the outset Ld. A.R. submitted that as far as in the case of the present assessee, Shri Virendra Pandey is concerned, the additions have been made in the case of assessee on “protective basis” and in Shri Ajit Pramod Jogi’s case the additions have been made on substantive basis. He submitted that when the appeal in the case of Shri Ajit Pramod Jogi (supra) has been dismissed, the present appeal in the case of assessee does not stand as the additions have been made on protective basis.

9. Ld. D.R. did not object to the aforesaid contention made by the Ld. A.R. but however supported the order of lower authorities.

10. We have heard the rival submissions and perused the material available on record. It is an undisputed fact that additions have been made on protective basis in the case of assessee whereas the substantive

additions have been made in the case of Shri Ajit Pramod Jogi. We, while deciding the appeal of Shri Ajit Pramod Jogi, have here-in-above dismissed the appeal of Revenue in Shri Ajit Pramod Jogi's case. In such circumstances, we are of the view, that when the assessment where substantive additions have been set aside, assessment in the case of assessee in whose hands the protective additions does not stand. Thus, the appeal assessee is allowed sans merit.

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

**12. To sum up, the appeal by the Revenue is dismissed and the appeal of assessee is allowed.**

Order pronounced on 17<sup>th</sup> day of January, 2019.

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

रायपुर/ RAIPUR ; दिनांक / Dated : 17<sup>th</sup> January, 2019.

RK

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

1. The Appellant.
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, I.T.A.T., Raipur  
//True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	14.01.2019	Sr.PS/PS
2	Draft placed before author	14.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		