

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.481/Ind/2023**  
**(Assessment Year: 2012-13)**

Ramesh Kumar Saini 6/1 Ranthambore Complex Zone 2 MP Nagar Bhopal (Appellant / Assessee)	Vs.	ITO-3(2) Bhopal (Respondent/ Revenue)
<b>PAN: DIJPS0764K</b>		
Assessee by	Shri Saksham Agrawal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	04.05.2024	
Date of Pronouncement	09 .05.2024	

**ORDER**

**Per Vijay Pal Rao, JM :**

This appeal by assessee is directed against the order dated 13.09.2023 of the Commissioner of Income Tax (Appeal)- National Faceless Appeal Centre (NFAC) Delhi for A.Y.2012-13. The assessee has raised following grounds:

*“1. The addition made by the Id. A.O. by invoking section 69 of the Income Tax Act, 1961, pertains to proceeds arising out of a sale of a rural agricultural land then held by the assessee for which a part of the total consideration of Rs. 65 lakhs were received in cash, and out of which the alleged deposit of Rs. 20 lakhs were made by him in his bank account during the F.Y.*

*2011-12. The addition made is bad in law, as the Id. A.O. has either grossly erred or has failed to establish linkages between the significant facts of the case even on furnishing of the relevant documents by the assessee, implying that if he had not failed as such, he would not have treated the cash deposit as unexplained u/s 69 of the Act.*

*2. Owing to our above challenge to the tax demanded, the interest levied u/s 234A & 234B by the Id. Assessing Officer in his above assessment order, as enhanced by another order u/s 154 of the Act, also stands challenged.*

*3. The assessee pleads before the Hon'ble ITAT bench to kindly allow for raising additional grounds of appeal, or amend any of them, before or during the currency of the appeal proceedings.”*

2. The assessee is an individual and as per the information available with the department regarding the deposit of cash of Rs.40 lakhs in the bank account maintained with the Allahabad Bank the AO issued a notice u/s 148 on 28.03.2019. In response to the notices u/s 148 the assessee filed his return of income for year under consideration on 21<sup>st</sup> June 2019 declaring total income of Rs.2,41,010/- and agricultural income of Rs.1,40,000/-. During the assessment proceeding the assessee explained the source of deposit of Rs.20,00,000/- in the bank account as sale proceeds of agricultural land however, the AO did not accept the said explanation of the assessee and pointed out various discrepancies in the transfer documents being Power of Attorney and agreement to sale in the name of different persons. Further the AO also noted that agreements executed are also not signed by the witnesses as well as one of buyers. The AO made addition of Rs.20 lakhs as unexplained cash deposit u/s 69 of the Act. The assessee

challenged the action of the AO before the CIT(A) but the appeal of the assessee was dismissed as there was no response on behalf of the assessee to the various notices issued by the CIT(A). Thus, the CIT(A) has passed the impugned order ex-parte.

3. Before the Tribunal the assessee has filed an application for raising additional grounds of appeal as well as admission of additional evidences as per Rule 18 of Income Tax Appellate Tribunal Rules 1963. The additional grounds sought to be raised by the assessee are as under:

*“1) Invocation of Section 69 is invalid as there does not exist any books of account maintained by the assessee.*

*2) Invocation of Section 69 is invalid as there do not exist any investments made by the assessee during the financial year under consideration.*

*3) Notice under section 148 is annexed with a copy of wrong reasons which pertained to another assessee, which is against the principles of fairness as it virtually amounts to non-furnishing of reasons to the assessee.”*

4. Ld. AR of the assessee has submitted that the addition made by the AO u/s 69 is invalid as there are no books of account maintained by the assessee and therefore, the provisions of section 69 cannot be invoked. He has further submitted that the provisions of section 69 are applicable only in the case of investment and not in the case of cash deposit in the bank account. Thus, Ld. AR has submitted that the addition made by the AO u/s 69 is not sustainable and liable to be deleted. In support of his contention he has relied upon various decisions. Ld. AR has also questioned the

validity of reopening of the assessment on the ground that the AO has recorded wrong reasons and given incurred facts and therefore, the reopening of the assessment is not valid and liable to be quashed.

5. As regards the additional evidences the Ld. AR has submitted that since the CIT(A) has passed ex-parte order and assessee could not produce supporting evidences therefore, the assessee seeks permission to file the additional evidences to explain source of cash of Rs.20 lakhs deposited in the bank account of the assessee. He has further submitted that the additional evidence comprises of registered sale deed, copy of land record maintained by the office of the Tahsildar concern. Thus, Ld. AR has submitted that the addition made by the AO is not sustainable and liable to be deleted.

6. On the other hand, Ld. DR has submitted that the decisions relied upon the assessee have not given conclusive finding on the applicability of section 69 in respect of the cash deposit in the bank account of an individual assessee who is not maintaining any books of account. He has further contended that the assessee has not explained reasons as to why these grounds /pleas were not taken before the authorities below as well as additional evidences sought to be filed before the Tribunal was not filed before the authorities below. He has relied upon the orders of the authorities below.

7. We have considered rival submissions as well as relevant material on record. The AO has made an addition of Rs.20 lakh on account of unexplained cash deposit in the bank account of the

assessee by rejecting documents filed by the assessee being Power of Attorney and agreement to sale on the ground that these documents were not properly executed and also not signed by any witness. Before the CIT(A) there was no representation on behalf of the assessee despite various notices. However, we find that except last notice dated 03.09.2023 other two notices were issued by the CIT(A) during the covid-19 pandemic period. Thus, due to non-furnishing of any supporting evidences or submissions the CIT(A) has confirmed the addition made by the AO. Having perused the impugned order of the CIT(A) as well as assessment order and considering additional grounds raised by the assessee first time before the Tribunal along with additional evidences to explain source of cash deposit in the bank account we are of the considered view that the matter requires a proper verification and examination at the level of the AO of the additional evidences filed by the assessee. Further the additional grounds raised by the assessee before this Tribunal are also requires to be considered by the AO in the light of the additional evidence as it involved the validity of reopening of the assessment as well as addition made by the AO u/s 69 of the Act. Accordingly in the facts and circumstances of the case and in the interest of justice the impugned order is set aside and the matter is remanded to the record of the AO for fresh adjudication after verification and examination of the additional evidences filed by the assessee. The AO shall also give its finding on the additional grounds raised by the assessee challenging the validity of reopening as well as addition made u/s 69 of the Act.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 09.05.2024.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 09 .05.2024**

**Patel/Sr. PS**

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*