आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 513/JP/2024
निर्धारण वर्ष/Assessment Years : 2011-12

Mali Ram Yadav S/o Prabhu Dayal Khori, Dhani New Kothi, Shahpura	बनाम Vs.	Income Tax Officer, Behror
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABAPY 7426 M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. C. L. Yadav, CA
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 03/07/2024
उदघोषणा की तारीख/Date of Pronouncement: 19/07/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is filed by the assessee and is arising out of the order of National Faceless Appeal Centre, Delhi dated 26/03/2024 [here in after (NFAC)] for assessment year 2011-12. That order of the ld. CIT(A) arise from the order dated 30.11.2018 passed under section 147 r.w.s 144 of the Income Tax Act, by ITO, Behror.

2. In this appeal, the assessee has raised following grounds: -

"1 The assumption of jurisdiction by the AO by issue of notice u/s 148 dated 28.03.2018 is bad in law as it is based on incorrect facts and consequently the order passed by the AO in furtherance thereof is bad in law, illegal and void-ab-initio.

2 That the Notice issued u/s 148 of the 1.T. Act, 1961 by Income Tax Officer, is without satisfaction as defined u/s 147 and U/s 151(1) of the I.T. Act, 1961 and therefore the assessment may please be quashed.

3 That the Ld.CIT(NFAC), has partly sustained the addition to the extent of Rs. 19,46,220/- without considering the submissions made by the appellant, which is against the principal of natural justice and therefore the addition may please be deleted.

4 That the Ld.CIT(NFAC) has erred in law and on facts in confirming the addition to the extent of Rs. 19,46,220/-holding it to be deemed income u/s 69A.

5 The learned AO has erred in law as well as facts in confirming the addition of Rs.19,46,220/- u/s 69A, not appreciating the fact that the cash deposited in the bank was only to the extent of Rs. 14,46,220/-.

6 That the Appellant reserves its right to add, amend/modify the grounds of appeal.

3. Succinctly, the fact as culled out from the records is that the assessee Shri Mali Ram Yadav, is an individual and had not furnished the return of income for the assessment year under consideration i.e., AY 2011-12. The AO had the information that during the year under consideration, the assessee had deposited cash in his bank account to the tune of Rs.22,36,500/-. The ld. AO, after obtaining approval from PCIT, Alwar, issued notice u/s 148 dated 28.03.2018. The assessee also not filed the return of income in response to the notice issued u/s. 148 of the Act. Subsequently, notices u/s 142(1) were issued on 11.05.2018, 26.07.2018

and 06.09.2018, however, no compliance was made. Further, there was no compliance to the notice issued for passing order u/s 144 of the Act on 28.09.2018 and final notice was issued on 02.11.2018. As the assessee had failed to explain about the nature and source of cash deposits of Rs. 22,36,500/- in his aforesaid bank account, the AO treated it as unexplained income of the assessee. Accordingly, as the assessee had failed to furnish return of income for the assessment year under consideration and also not complied with notices issued u/s 142(1) of the Act, the AO completed the assessment ex-parte u/s. 144 r.w.s. 147 on 30.11.2018 determining the total income at Rs. 22,36,500/-.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the ld. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the ld. CIT(A)/NFAC is reiterated here in below:

> "4.4 I have carefully considered the facts of the case, grounds raised, impugned order of the AO, submission and additional evidences filed by the assessee, remand report of the JAO.
>
> 4.5 Vide notice u/s 250 dated 29.01.2024, the assessee was requested to submit the comments on the above remand report. However, the assessee has not filed any comments.
>
> 4.6 The Jurisdictional AO has filed his objection on the admissibility of additional evidences stating that the appellant was given sufficient opportunities of hearing during assessment proceedings. However, considering the submission filed stating that he did not have the slightest knowledge about the rules and regulations of Income Tax and had not received any information about the

proceedings of the Income Tax Department; that he came to know about the assessement order only through Bank when his bank account was attached. On going through the reasons submitted by the assessee for non-production of evidences vis-a-vis objection raised by the AO, I am of the view that the assessee was prevented by sufficient cause from producing the evidences before the AO. Therefore, keeping in mind the principles of natural justice and to render substantive justice, the additional evidences produced during appellate proceedings are admitted under Rule 46A(1) of Income tax Rules, 1962.

4.7 As observed from the impugned order, the AO had the information that during the year under consideration, the assessee had deposited cash in his bank account to the tune of Rs.22,36,500/-. As the assessee had failed to explain about the nature and source of cash deposits of Rs. 22,36,500/- in his aforesaid bank account, inspite of providing sufficient opportunities, the AO treated it as unexplained income of the assessee.

4.8 During the course of appellate proceedings, the assessee contended that he was engaged in the business of transportation of goods by road; that he was not the owner of any truck but hired the truck from the outside party and plyed them on hire; that he used to receive the freight in cash and same was deposited in his bank account, that total gross receipts were Rs. 19,46,220/- during the year under reference from the transport business and out of these receipts, cash of Rs. 1 4,26,500/- were deposited in this bank account, that according to the cash book maintained, he had the sufficient cash to deposit in to the bank account. The assessee submitted an affidavit from a truck owner along with the copy of registration certificates of the transport vehicles, copy of the bank statement, Income and expenditure account and copy of the cash book for FY 2010-11.

4.9. On perusal of the saving bank account statement maintained with Indusind Bank and remand report submitted by the AO, the claim of the assessee that the total cash deposits was Rs. 14,26,500/- only and not Rs. 22,36,500/- as stated by the AO in the order is found to be correct.

4.10 However, the claim of the assessee that total gross receipts of Rs. 19,46,220/- during the year under consideration were from the transport business and source of cash deposits in his bank account were out of these receipts is not found to be acceptable in the absence of any supporting documentary evidence to that effect and also various discrepancies rightly pointed by the JAO in his remand report such as

a) the bank interest earned by the assessee of Rs. 1,678/- is not taken into account in the income;

b) the assessee had not submitted any documentary evidence for receipt of freight.

c) The assessee had furnished copy of affidavit from a truck owner, Sh. Ramavtar Yadav only but his vehicle was registered on 04.05.2010 only, whereas the assessee had shown freight receipts of Rs. 2,38,880/- from 01.04.2010 to 04.05.2010 but no details/evidence was submitted for this period.

d) Further it is not specified how many other trucks were used by the assessee. If other trucks were used, then details of other trucks and booking made for them were not provided by him.

e) As per affidavit of Ramavtar Yadav, he booked vehicles through the assessee. But no time period or amount of booking was specified. It is nowhere specified in the affidavit that the truck was booked through the assessee during the year under consideration. No details of booking made during the year along with documentary evidence (like time period, amount received, route of booking, persons for whom booking made etc.) were specified.

f) The assessee submitted cash book for the period under consideration. However, no documentary evidence was submitted by the assessee to explain different entries made in this cash book. In his cash book, the assessee has shown freight receipts only during three months of August, September and October, 2010 (30.06.2010 to 05.11.2010), however, no transport charges were paid during this period. It is relevant to mention here that cash of Rs. 11,26,500/- (out of total cash deposits of Rs. 14,26,500/-) was deposited in his bank account during these months. Further, in the above referred cash book, the assessee had shown receipts from loan & advances of Rs. 200,000/- during the month of October, 2010, however, no details about persons, from whom such loans had been received, has been submitted along with documentary evidence. It is relevant to mention here that cash of Rs. 5,00,000/- (out of total cash deposits of Rs. 1426500/-) was deposited in his bank account during October, 2010. The assessee had shown opening cash balance of Rs. 1,35,568/-, however, no documentary evidence was submitted by the assessee to justify the same. Therefore, the cash books submitted is not reliable and verifiable.

4.11 The assessee has not responded to the notice issued by the JAO during the remand proceedings nor filed any rejoinder/comments on the findings in the remand report. The primary onus lies on the assessee to produce documentary evidence to explain about the nature and source of cash deposits in his bank accounts. As stated above, the appellant's claim that the cash deposits are out of business receipts is not acceptable. Therefore, it is clear that the appellant failed to discharge his primary onus during assessment proceedings, remand proceedings as well as appellate proceedings.

4.12 In view of the above facts and circumstances of the case and above discussion, I am of the considered view that the assessee had not explained satisfactorily the nature and source of gross receipts of Rs. 19,46,220/-, which includes cash deposited of Rs. 14,26,500/- in his bank account during the year

under consideration. Therefore, Rs. 19,46,220/- shall be considered as deemed to be income of the appellant u/s 69A of the Act. Further, the interest received in his bank account of Rs. 1,678/- shall also be considered as income from other source. Accordingly, above grounds of appeal are partly allowed.

5. In the result, the appeal is treated as Partly Allowed."

5. In the appeal filed before the ld. CIT(A) though the additional evidence was considered but the same were not appreciated and the addition was sustained in major part of the cash deposited by the assessee. Thus, the assessee not satisfied with the finding of the ld. CIT(A) preferred the present appeal before us. To support the various grounds so raised by the assessee, ld. AR appearing on behalf of the assessee has filed the written submissions in respect of the various grounds raised and the same is reproduced herein below.

"The appellant respectfully begs to submit following facts and details for your honor's kind consideration in support of grounds of appeal already submitted :

- Background and action of the Ld. Assessing Officer and CIT(A) –

Since the appellant's total income for AY 2012-13 was below the basic exemption limit, he did not file his ITR for the relevant year. The AO on noticing that the appellant had made cash deposits aggregating Rs.22,36,500/- in his bank account on the basis of AIR information, presuming the same to be his escaped income, issued notice u/s 148. The notices having not been served on the assessee, compliance of the same could not be made. Consequently, scrutiny proceedings were completed u/s 144 r.w.s.147 and was accordingly assessed on 21.11.2019 at an income of Rs.22,36,500/- creating a demand of Rs.15,13,960/- The Ld.CIT(A) sustained the addition to the extent of Rs.19,46,220/- being the gross receipts from business shown by the assessee as deemed income u/s 69A, and further also directed to consider the interest income of Rs.1678/- as income from other sources.

- Brief facts of the case-

The appellant is engaged in the business of plying of trucks after hiring them from the market. During the later part of the year, one of his relatives purchased a new truck, which the appellant most often used for his business. He received the freight in cash which was occasionally deposited in his SB account with IndusInd Bank, Shahpura. The AO had information that the appellant had deposited Rs.22,36,500/-. The AO while finalizing the assessment made no further inquiry, and blindly relying on the AIR information, completed the assessment, holding the cash deposits to be appellant's income. Quite interestingly, the AO in the order has observed that the cash deposits in the bank account are Rs.19,91,500/- but made an addition for Rs.22,36,500/- The appellant provided all details at the appellate stage which included the cash book, bank statement, Income & Expenditure account, supporting affidavits, but the same did not find favour with the CIT(A). The CIT(A) presumed the entire receipts shown by the appellant in his Income & Expenditure A/c to be deemed income u/s 69A, ignoring the vital fact that the case was reopened to bring to tax the cash deposited into his bank account by the assessee as his unexplained income and the AO had made the addition on account of unexplained cash deposited into bank..

- Submission on the grounds of appeal :

Re : Gr. No. 1 & 2 The assumption of jurisdiction by the AO by issue of notice u/s 148 dated 28.03.2018 is bad in law as it is based on incorrect facts and consequently the order passed by the AO in furtherance thereof is bad in law, illegal and void-ab-initio. That the Notice issued u/s 148 of the I.T. Act, 1961 by Income Tax Officer, is without satisfaction as defined u/s 147 and U/s 151(1) of the I.T. Act, 1961 and therefore the assessment may please be quashed.

1.1 The AO reopened the case of the assessee on the basis of AIR information that Rs.22,36,500/- in cash has been deposited by him in his bank account and no ITR for the relevant year has been filed by him. Apart from this, the AO had no other material or information. He did not make any further inquiry, whatsoever. On this basis, he formed a reason to believe that income of the appellant to this extent has escaped assessment. But the basic fact that assessee is not eligible for filing return of income was not taken into account and therefore, there was no application of mind while recording the reasons for reopening.

1.2 It may be mentioned that the cash deposits in a bank account of an assessee may not necessarily be his income in all cases. The case was taken up simply for verifying the return. The mute question which arises is - Can reopening be done on the basis of AIR Information? The AO has access to a number of AIR information. These may provide information about money spending from Credit card, cash deposited in Bank, Investments made in Mutual funds, etc. Can AO do reopening on such basis? No, he cannot do so, because on this information

he has merely just a suspicion that income has escaped assessment. Addition made solely on the basis of AIR information is not sustainable in law as held in the cases of ANS Law Associates, in ITA No. 5181/Mum./2012 dated 5.12.14 (Mum)/ DCIT vs. Shree G. Selva Kumar in ITA No.868/Bang/2009 decided on 22.10.10 and Aarti Raman vs. DCIT in ITA No.245/Bang/2012 decided on 05.10.12.

1.3 As the reasons show that the AO wholly relied on AIR information for reopening the case of the assessee. He wanted to inquire the source of the cash deposits made in the bank account by the assessee. Information regarding cash deposited with the bank is not a prima facie belief that cash deposited is income of the assesse without having tangible material in possession of the assessing officer. There has to be tangible material in the possession of the Assessing Officer on which he forms his belief that income has escaped assessment. This is applicable before pre amended period earlier to 1.4.2021. Only on the basis of information without having tangible material the reopening is bad. Mere cash deposited information is not sufficient, not a prima facie belief that income is from undisclosed sources The Assessing Officers forms a false opinion regarding cash deposited by the assessee with Saving Bank Account as income of the assessee from undisclosed sources. There seems to be no reason to believe that the cash deposited by the assessee to his Saving Bank Account is income of the assessee from some sources not disclosed to the department. The Assessing Officer is not justified as AIR information is not sufficient for forming reasons to believe by the Assessing Officer regarding reopening of the assessment u/s 147 and issue of notice u/s 148 of the Act. There is no material with Ld. AO at the time of framing of reasons to believe. There existed no live link between the material and escaped income as there was no material with Ld. AO, even no bank statement. Reason to believe is nothing but reason to suspect. There are instances that the income of the assessee being a small businessman is never chargeable to tax. Clause (a) of Explanation 2 of section 147 is applicable when income of the assessee is chargeable to tax and even then he has filed no return of Income. The initiation of proceedings u/s 147 of the Act is based on no material, no formation of belief of escapement of Income is there. This is only unmindful act of the Ld. AO. In this situation the assessment framed is bad in law and spirits. Then, the reasons to believe escapement of income need to spell out all the reasons and grounds available with the Ld. AO for reopening the assessment. The reasons must also paraphrase any investigation report, which may form the basis of the reasons and any enquiry conducted by the Ld. AO thereon, as also the conclusions thereof. After 1.4.1989, the Assessing Officer has power to re-open, provided there is “tangible material” to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief and escapement of income . The appellant relies on the judgment of High court of Delhi in the case of “Signature Hotels (P) Ltd. 338 ITR 51 (Delhi)” where in it was held that: “*The reasons and the information referred to were extremely scanty and vague. There was no reference to any document or statement except AIR information. The AIR could*

not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The AIR information was not a pointer and did not indicate escapement of income. Further it was apparent that the assessing officer did not apply his own mind to the information and examine the basis and material of the information. If the assessing officer accepts the plea on the basis of vague information in a mechanical manner. The commissioner also acted on the same basis by mechanically giving approval; therefore, proceedings under section 148 were to be quashed.

1.4 The thrust of the reasoning would show that he wants to make an enquiry about the cash deposits. No doubt, for reopening of an assessment, he has to just form a prima facie opinion and not to arrive at a firm conclusion, but the formation of a prima facie opinion should also depict escapement of income. In the case of CIT v. Indo Arab Air Services (2016) 130 DTR 78/ 283 CTR 92 (Delhi)(HC) it was held that *mere information that huge cash deposits were made in the bank accounts could not give the Ld. AO prima facie belief that income has escaped assessment*. The Ld. AO is required to form prima facie opinion based on tangible material which provides the nexus or the link having reason to believe that income has escaped assessment. The belief of the Ld. Assessing Officer should be based on some specific and tangible material for the purpose of reopening of the assessment. It is mere suspicion of the assessing officer based on incorrect facts that income chargeable to tax has escaped assessment. The issue was covered in the favour of the assessee by order of ITAT, SMC Delhi in the case of Tajendra Kumar Ghai ITA Nos. 970,971/Del/2017 . After 1.4.1989, the Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. As held in ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. appeal no. 2830 of 2007 Tangible material has to be relied on for reopening of the assessment.

1.5 The Ld. Assessing Officer has made no application of mind at the time of recording of the reasons and sending it to the PCIT for approval who in turn has also not applied his mind. The assessee relies on the judgment in the case of Harmeet Singh, Delhi Vs. ITO, New Delhi ITA No. 1939/Del/2016 A.Y. 2008-09 where in stated that *the reopening the assessment purely on the ground that the cash deposited with the bank is income of the assessee is purely a doubt that it is income of the assessee not a confirmed finding, not any tangible evidence with the ITO to form the opinion that the income of the assessee has escaped assessment. The reopening is bad enough*. In the absence of any tangible material, in the case of the assessee in hand, the reopening and issue of the notice u/s 148 is bad and hence prayed to make the entire assessment null and void. *When the assessment proceedings u/s 147 are initiated on the fallacious assumption that the bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee, the proceeding is neither countenanced, nor sustainable in law* as held in ITAT, Amritsar Bench in case of Amrik Singh vs. ITO 159/ITD 329 (Amritsar)

Reasons do not disclose escapement of income and that mere cash deposit in bank account is not sufficient to presume that it is a case of escapement of income. The assessee relies upon the following judgements: i) Shri Bhajan lal vs ITO, Ward 2, Narnaul, Haryana dated 20.09.2018 ITAT Delhi ii) Smt Swati Verma, New Delhi vs ITO, Noida dated 01.08.2018 ITAT Delhi iii) Shri Jagat Singh, Noida vs ITO, Ghaziabad dated 04.09.2018 ITAT Delhi With these observations the conclusion is made that the reopening only on the basis of AIR information is bad , there has to be tangible material with the Assessing Officer and enquiries conducted thereby , otherwise the reopening is bad.

1.6 Further, the alleged information provided by the Bank in its AIR has been accepted as gospel truth without any verification by the A.O. The law postulates the A.O to have reason to believe. Blind acceptance of the information furnished by the Bank cannot form reasons leading to the belief by the A.O. of any escapement of income. The A.O. has to independently apply his mind to the information received and arrive at the belief that income has escaped assessment. Reopening on the basis of information provided by other person or other officer is bad-in-law as held in the case of CIT v. Smt. Laxmi Mehrotra [2014] 41taxmann.com 427(All.) Reassessment proceedings in this case have been initiated mechanically on basis of information supplied by Bank.

1.7 The facts of the present case are exactly identical to the case of Maniben Amrutlal Patel Vs ITO. In this case also the assessee had not filed her ITR as her income was below the taxable limit. The AO on the basis of AIR information that the assessee had deposited Rs.16,38,600/- issued notice of reassessment and completed the assessment u/s 144 r.w.s.147. ITAT Ahmedabad allowed the appeal of the assessee quashing the reassessment notice and the consequent assessment as well.

1.8 The assessee finally relies of the following decisions in support of his case-

- Bir Bahadur Singh Sijwali vs. ITO ITA 3814/Del/11 ITAT-Delhi
- Sunrise Education Trust vs. ITO (Guj. HC)
- ITO vs. Shri Girishkumar Mohanlal Puruswani ITA No. 405 to 407/Rjt/2016, ITAT – Rajkot
- Ashish Natvarlal VAshi vs. ITO (ITAT – Surat) ITA 3522/Ahd/2016
- Mariyam Ismail Rajwani vs. ITO ITA No. 676/Ahd/2016 (ITAT –Ahd)
- Dadasaheb Vithoba Navale vs. DCIT, ITA No. 255/Pun/2019 and ITA 266/Pun/2019, ITAT- Pune
- Lalchand Mehrumal Jagwani vs. ITO, ITA No. 1240/Pun/2019, ITAT-Pune

Re : Gr. No. 3, 4 & 5 That the Ld.CIT(NFAC), has partly sustained the addition to the extent of Rs.19,46,220/- without considering the submissions made by the appellant, which is against the principal of natural justice and therefore the addition may please be deleted.

That the Ld.CIT(NFAC) has erred in law and on facts in confirming the addition to the extent of Rs.19,46,220/- holding it to be deemed income u/s 69A.
The learned AO has erred in law as well as facts in confirming the addition of Rs.19,46,220/- u/s 69A, not appreciating the fact that the cash deposited in the bank was only to the extent of Rs.14,46,220/-.

2.1 The appellant very humbly submits that the assessee ventured into the business of plying of trucks in FY 2009-10. He hired the trucks from the market and plied them. Before this, the appellant was in the business of supply of building material. In FY 2009-10 as well as 2010-11, the assessee being new to the business, he did not have any taxable income, so he did not file his ITR for the relevant assessment years. After learning the intricacies of the transportation business, he purchased two trucks in FY 2011-12 and carried on the transportation business, which continues till date. Since then, he has been filing his ITRs under 44AE.

2.2 It may be mentioned that the case of the appellant was also reopened for AY 2012-13 on the same issue, i.e. cash deposits into the bank account. The Ld.AO completed the assessment u/s 143(3) r.w.s.147 accepting the returned income. The business during the relevant year was the same, i.e. plying of trucks. The only difference was that from this year, he plied the trucks as owner. This supports the case of the appellant that his source of income is from plying of trucks and whatever cash is deposited is out of transportation receipts.

2.3 The Ld.CIT(A) has not rejected the books. As a matter of fact, he has accepted the total freight receipts reflected in the cash book but at the same time has denied the benefit of expenses recorded in it and has gone on to presume the entire gross receipts as the income of the assessee. It is a trite law that any document/books have to be accepted as a whole. The Revenue can not be allowed to rely on the part favorable to it and ignore the one going against it. The very cash book containing the entries of freight receipts also shows freight payment. The same cash book further shows cash deposited and cash withdrawal from bank, which is further corroborated by bank statement.

2.4 In this regard, it is submitted that the Ld. CIT(A) has clearly taken a double stand in as much as he has accepted the freight receipts found mentioned in the cash book as existing while on the other hand he does not accept the expenses found mentioned in the same cash book claimed as source by assessee being working as transporter, meaning thereby that the Ld. CIT(A) has capriciously and without any basis accepted only part of the entries appearing on in the cash book which showed freight receipts and allowed him to make illegitimate addition; and he has rejected the other part of the same cash book which constituted the expenses of the business. In this regard, it is humbly submitted that the Ld. CIT(A) has committed a gross error in relying upon the cash book partially, accepting only the debit entries and ignoring the credit entries without any basis in view of the well established law that a document has to be read as

a whole and cannot be broken into parts as per the convenience or sweet will of the Assessing Officer/CIT(A). In this regard, reliance is placed on the following case law:
Glass Lines Equipments Co. Ltd. V/s CIT 253 ITR 454 (Guj.):
Interpretation of documents - Documents must be read as a whole. It is a well settled canon of interpretation that a document has to be read as a whole" it is not permissible to accept a part and ignore *the rest of the document.*

2.5 The assessee has maintained complete books of accounts. He has duly recorded the freight receipts and the corresponding freight payments along with other expenses, supported by vouchers. Each and every freight receipt is vouched. As is customary in case of transportation business, the freight has been received in cash from the customers. Further, the payment to the truck owner(s) is also made in cash, who file their ITRs under the presumptive scheme. The receipts from customers, keeps on accumulating and is deposited in the bank account as per the convenience of the assessee. Complete books of accounts and supporting vouchers are maintained by the assessee. Cash deposited in bank account has been generated out of freight receipts/loans obtained. It is an undisputed fact that neither the AO, nor the Ld.CIT(A) has doubted the figures of gross receipts, their only objection is as to the nature and source of the receipts. None of the authorities have rejected the books of accounts of the assessee, which means that the receipts of the assessee have been duly accepted by them. The only allegation of the authorities is that *no documentary evidence is submitted by the assessee to explain different entries made in the cash book.*

2.6 The entries in the books of accounts along with supporting vouchers are in themselves documentary evidence. The Income tax Act nowhere specifies to record the complete details of the customers (their ID) who make cash payments for any services/goods. In normal course of scrutiny proceedings, the expenses of business are doubted but here we have a case where the receipts are being doubted. The assessee is being called upon to prove that the receipts are from transportation, by producing the customers who paid freight. The assessee has produced the books, the entries made wherein along with relevant vouchers support his case. He has produced an Affidavit from the person from whom the truck was hired. The Affidavit has ben ignored without examining the deponent. It is arbitrary on the part of CIT(A) to discard the evidence produced and to make the addition holding the receipts to be unexplained.

2.7 It may be mentioned that the comments made by the AO in his remand report, which unfortunately could not be responded to, and the reliance placed by the Ld.CIT(A) on it, is arbitrary, contrary to the evidence produced by the assessee and based on surmises and conjectures. The point wise counter comments of the appellant are as under –
a) *The bank interest earned by the assessee is not taken into account* – The AO as well as the Ld.CIT(A) has overlooked the Income & Expenditure A/c submitted by the assessee. The impugned amount of interest of Rs.1678.13 has

been duly included and accounted for, while working out the income of the assessee.

b) *The assessee has not submitted any documentary evidence for receipt of freight* – The cash book evidencing receipt of freight was provided, which mentioned the voucher number against each receipt.

c) *No details of freight receipts from 01.04.2010 to 04.05.2010 were submitted* - The cash book evidencing receipt of freight was provided, which mentioned the voucher number against each receipt.

d) *Details of other trucks used and booking made for them not provided* – No such details were kept by the assessee. - The cash book evidencing receipt of freight was provided, which mentioned the voucher number against each receipt.
e) No details of cash loans of Rs.2,00,000/- was provided. Cash of Rs.5,00,000/- was deposited during the month of October, 2010 – The cash loans have been obtained from different parties and are reflected in the cash book. As regards the deposit of Rs.5,00,000/- into the bank account of the assessee, sufficient cash balance on the date oif these deposits is available as per cash book of the assessee.

f) *No transport charges have been paid during the month of August, September and October, 2010 and No evidence of opening cash balance has been submitted* – From the month of July, apart from the truck of Shri Ramavtar Yadav, no other truck was used for plying. Ramavtar Yadav is a relative of the assessee. He had borrowed certain amount from Ram Sahay Jat. He asked the assessee to hold up his payments against freight and make lump sum payment to Ram Sahay Jat. In view of these facts, no regular/periodical freight payments were made during the months of August, September and October, 2010. The assessee had filed ITRs from AY 2001-02 to AY 2009-10, under the presumptive tax scheme (44AF-Supply of Building material). He was not required to maintain books of accounts. Looking to the above facts, accumulation of cash of Rs.1,35,568/- shown as opening cash balance can not be considered to be excessive or disproportionate.

2.8 It may be mentioned that, the case of the assessee was reopened to examine the cash deposits made by him in his bank account. The AO on the basis of AIR information added the amount of Rs.22,36,500/- as unexplained deposits in assessee's bank account, where as in his assessment order itself, the AO has held that the cash deposit made by the assessee is Rs.19,91,500/- (which is factually incorrect) In this view of the matter, the AO ought to have made an addition of Rs.19,91,500/- only. Before Ld.CIT(A), it was submitted that the assessee has deposited only Rs.14,26,500/- in his bank account, which was also confirmed by the AO in his remand report. Therefore, in view of the reasons for reopening and the remand report of the AO, the Ld.CIT(A) ought to have taken this amount into consideration if he had to confirm the addition u/s 69A for

cash deposits. But he added the entire freight receipts u/s 69A, which was obviously, not the reason for reopening the case. Reliance in this regard is placed on the case of CIT v. Jet Airways (I) Ltd. [2010] 195 Taxman 117 (Bombay) and Gujarat High Court in the case CIT v. Mohmed Juned Dadani [2013] 30 taxmann.com 1 (Gujarat), to contend that that when no addition is made on the ground on which reopening of assessment is based, the CIT(A) could not make additions on some other grounds which did not form part of reasons recorded by the AO.

2.9 Without prejudice to the above, the CIT(A) has made the addition u/s 69A of the Income tax Act. In this regard, definition of, Section 69A of I-T. Act is reproduced below:

"Unexplained money, etc.

69A. *Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other 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 other 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 other valuable article may be deemed to be the income of the assessee for such financial year."*

(a) As per plain reading, the following conditions must be fulfilled for applicability of section 69A:

i) Assesse is found to be owner of any money, Bullion, Jewellery etc.

ii) Such Money is not recorded in the books of accounts, if any maintained by him for any source of income, AND

iii) Assesse offers no explanation or explanation is found not satisfactory by AO

(b) As per language of section, Section 69A can be invoked only when the assessee has not recorded such money in the books of accounts, and offers no explanation or unsatisfactory explanation. Both the condition given in point no 2 and 3 are cumulative and satisfaction of either of condition does not automatically trigger rigours of section 69A.

(c) When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give a meaning which would cause violence to the provisions of the statute, as held in Britania Industries Ltd. vs. C.I.T. (2005) 278-ITR-546 at 547 (SC). It is a well settled principle of law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intention.

(d) If the construction of a statutory provision on its plain reading leads to a clear meaning, such a construction has to be adopted without any external aid as held in C.I.T. vs. Rajasthan Financial Corporation (2007) 295-ITR-195. A taxing Rules of Interpretation of Tax Statutes statute is to be construed strictly : in a taxing statute one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. In interpreting a taxing statute the court must look squarely at the words of the statute and interpret them. The provisions of a section have to be interpreted on their plain language and not on the basis of apprehension of the Department. It is cardinal principle of interpretation that a construction resulting in unreasonably harsh and absurd results must be avoided.

(e) The cardinal rule of construction of statutes is to read the statute literally that is, by giving to the words used by legislature their ordinary natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. It is a settled principle of rule of interpretation that the Court cannot read any words which are not mentioned in the Section nor can substitute any words in place of those mentioned in the section and at the same time cannot ignore the words mentioned in the section. Equally well settled rule of interpretation is that if the language of statute is plain, simple, clear and unambiguous then the words of statute have to be interpreted by giving them their natural meaning as observed in Smita Subhash Sawant vs. Jagdeshwari Jagdish Amin AIR 2016 S.C. 1409 at 1416.

(f) In other words, we can say that when the assesse has recorded such money in his books of accounts then no explanation is required to be offered for the purpose of section 69A. Addition u/s 69A can be made only when such money is not recorded in the books of accounts and no satisfactory reply is furnished by the assessee. The assessee has duly recorded the freight receipts in his cash book and it is out of the accumulated cash balance appearing in the cash book, that the impugned amount was deposited in banks.

(g) In a decision in the case of Teena Bethala v/s ITO (ITA No 1383/Bang/2019) dated 28/08/2019 , the Ld. Bangalore bench had delivered that : *On a reading of section 69A (supra), it is clear that the onus is upon the AO to find the assessee to be the owner of any money, bullion, jewellery or valuable article and such money, bullion, jewellery or valuable article was not recorded in the books of account, if any, maintained by the assessee for any source of income. In these circumstances, the AO can resort to making an addition under section 69A of the Act only in respect of such monies / assets / articles or things which are not recorded in the assessee's books of account. In the case on hand, the cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been field before the AO. In these circumstances, it is evident that the AO*

has not made out a case calling for an addition under section 69A of the Act. Probably, an addition under section 68 of the Act could have been considered; but then that is not the case of the AO. The assessee, apart from raising several other grounds, has challenged the legality of the addition being made under section 69A of the Act. In support of the assessee's contentions, the learned AR placed reliance on the decision of the ITAT – Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. in ITA No. 2292/Mum/2016 dated 23.02.2018, wherein the Bench at para 6 thereof has held that addition under section 69A of the Act cannot be made in respect of those assets / monies / entries which are recorded in the assessee's books of account. In my considered view, the aforesaid decision of the ITAT – Mumbai Bench (supra) is squarely applicable to the facts of the case on hand, where the entries are recorded in the assessee's books of account. In this view of the matter, I am of the opinion that the addition of Rs.6,30,000/- made under section 69A of the Act is bad in law in the facts and circumstances of the case on hand and therefore delete the addition of Rs.6,30,000/- made there under. The AO is accordingly directed.

(h) In view of the above decision(s), the addition made/sustained by the Ld.CIT(A) deserves to be deleted.

2.10 Alternatively, it is submitted that if the gross receipts of business, instead of cash deposited into bank account is considered for working out the taxable income of the assessee, 8% of the same may be brought to tax, in view of section 44AD.

In view of the above submission, it is requested that the addition sustained by the CIT(A) may be deleted and the appeal of the humble assessee be allowed."

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S.No.	Particulars	Page No.
1.	Copy of IndusInd Bank Statement From 1st April 2010 to 31^{5}t March 2011.	1-2
2.	Copy of Income and Expenditure Account of Shri Mali Ram Yadav for the Year End 31' March 2011.	3
3.	Copy of Cash Book of Shri Mari Ram Yadav for the Year End 31st March 2011.	4-8
4.	Copy of an Affidavit in the name of Shri Ramavtar Yadav S/o Shri Prabhu Dayal Yaday.	9
5.	Copy of Registration Certificate of Vehicle Number RJ 14 GD 2779.	10

6.	Copy of Aadhar Card of Shri Ramavtar Yadav S/o Shri Prabhu Dayal Yaday.	11
7.	Copy of decision of Hon'ble ITAT, Ahmedabad in the case of Maniben Amrutlal Patel vs. ITO	12-17
8.	Copy of decision of Hon'ble ITAT, New Delhi in the case of Bir Bahadur Singh Sijwali vs. ITO	18-22
9.	Copy of Assessment Order of AY 2012-13.	23-24

7. The ld. AR of the assessee during the hearing of the appeal submitted that the ld. CIT(A) though admitted the additional evidence but his finding is not to accept the freight income offered by the assessee. As regards the proceeding before ld. AO the ld. AR of the assessee submitted at Bar that assessee has not been served the notice u/s. 148 and 142(1) of the Act and therefore, he could not explain the fact that income of the assessee from all the sources is below the maximum amount not chargeable to tax. Even the ld. CIT(A) has not appreciated the facts of the case and therefore, contended the assessee be given a chance to deal with the facts of the case before the ld. AO.

8. On the other hand, the ld. DR relied on the orders of the lower authority but at the same time has not objected to the prayer of the assessee to give fair chance to lead the evidence in the interest of justice.

9. We have heard the rival contentions and perused the material placed on record. The brief fact of the case is that the assessee has deposited a sum of Rs. 22,36,500/- into the bank account maintained by him. As alleged the notice issued u/s. 148 and subsequent notices issued u/s. 142(1) and 144 were not served to the assessee. In the appeal before the ld. CIT(A) the assessee has submitted additional evidence though admitted but were not considered as the assessee could not further substantiate the receipt. The ld. AR of the assessee alternatively submitted to tax the receipt under the presumptive taxations if the merits of the evidence is not considered. Thus, we note that the assessee is deprived of justice and has not given a fair chance so as to determine his income chargeable to tax. Considering these peculiar facts of the case of the assessee we considered the force in the arguments of the ld. AR of the assessee. Therefore, in the interest of equity and justice the assessee is directed to place on record all the facts related to his income so as to justify the cash deposited by him in the bank account to the file of the ld. AO. At the same time ld. AO is directed to consider the claim of the assessee in accordance with law and that too after allowing reasonable opportunity of being heard to the assessee. Thus, we set aside the issue to the file of the ld. AO who will decide the issue afresh by providing one more opportunity of hearing to the assessee. However, the

assessee will not seek any adjournment on frivolous ground and remain cooperative during proceedings before the ld. AO.

10. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. AO independently in accordance with law.

In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open court on 19/07/2024.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 19/07/2024
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Mali Ram Yadav, Shahpura
2. प्रत्यर्थी / The Respondent- ITO, Behror
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 513/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar