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

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

आयकर अपील सं./ITA. No. 529/JPR/2024
निर्धारण वर्ष/Assessment Years : 2017-18

Sh. Ashok Kumar Verma M/s Ashok Construction Company, Chomehla, Chomehla, Jhalawar.	बनाम Vs.	The ACIT Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABFPV6185M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Nikhelesh Kataria (C.A.)
राजस्व की ओर से/ Revenue by : Shri Anoop Singh (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 08/08/2024
उदघोषणा की तारीख/Date of Pronouncement : 17/09/2024

आदेश/ ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee aggrieved from the order of the Ld. CIT(A), National Faceless Appeal Centre, Delhi dated 30.03.2024 [hereinafter referred to as "CIT(A)/NFAC"] for the assessment year 2017-18, which in turn arise from the order dated 15.12.2019 passed under section 143(3) of the Income Tax Act,1961 [Here in after referred as "Act"] by the ACIT/DCIT, Circle-1, Kota.

2.1 The assessee has marched this appeal on the following grounds:-

"1.1 The order passed u/s 143(3) is bad in law and on the facts of the present case for the lack of jurisdiction and other reasons and hence the same may please be quashed.

2.1 The Id. CIT(A) erred in holding that assessee did not submit any written submission or arguments despite specific submissions brought on record on dt.9-11-2022 & 28-3-2023 and hence, order of Id. CIT(A) is against principle of natural justice and prejudice to the assessee and hence, no adverse inference is called for from the order of Id. CIT(A).

3.1 The Id. AO erred in law as well as on the facts of the case in applying the provisions of section 69A of the Act though the same has no application in the facts of the present case and Id. CIT(A) erred in sustaining the same and hence, consequent addition is bad in law and be deleted.

3.2 The Id. AO erred in law as well as on the facts of the present case in making addition u/s 69A of the cash disclosed in the regular business of the assessee and Id. CIT(A) erred in confirming the consequent addition and hence the same may please be deleted.

3.3 The Id. AO erred in law as well as on the facts of the present case in alleging manipulation of cash book which is incorrect and then accepting the same books for making of assessment of business income, hence, the action of the Id. AO is contradictory and consequent addition is also bad in law and hence, the Id. CIT(A) incorrectly sustained the addition and hence directed to be deleted.

3.4 The Id. AO erred in law as well as on the facts of the present case in changing the head of income from business income to income from other sources without rejecting books of accounts and hence the consequent addition is bad in law and Id. CIT(A) erred in sustaining the same and hence the same may please be quashed.

3.5 Rs.3122500/- The Id. AO erred in law as well as on the facts of the present case in making the addition on account of unexplained cash though the same stood fully explained and Id. CIT(A) erred in confirming the same and hence, the same is prayed to be deleted.

4. Rs.243672/-The Id. AQ erred in law as well as on the facts of the present case in assessing deemed income of interest @ 12% on interest free loan provided by assessee and Id. CIT(A) erred in confirming the same and hence, the same is prayed to be deleted.

5. The assessee prays your goodself indulgence to add, amend, modify or delete all or any ground of appeal on or before the date of hearing."

3. The brief facts of the case of the assessee that the return of income was e-filed by the assessee on 31.10.2017 declaring total income of Rs.24,22,100/- from income from business & profession and income from other sources. The return was selected for scrutiny under CASS, therefore, notice u/s 143(2) were issued to the assessee on 21.08.2018 and 28.09.2018 which were duly served through e-mail by ITBA on 21.08.2018 & 28.09.2018 respectively and served upon the assessee by registered post. Due to change in incumbent, fresh opportunity of being heard was given vide notice u/s 129 of the IT Act, on 07.08.2019. Notice u/s 142(1) and questionnaire were also issued to the assessee on 13.08.2019, 15.10.2019 and 25.11.2019 which were duly served to the assessee through e-mail. In compliance with the notice issued u/s 142(1), the assessee has submitted his reply on e-proceeding module on various dates. Further, notice u/s 142(1) was issued to the assessee online on 29.11.2019 to furnish the details of some persons for examination from whom cash has been received against work done. In compliance to notice issued the assessee furnished the details of persons from whom the cash transaction was made during the year under reference along with written submission, cash book, bank statements of related accounts and other details whatsoever which were examined on test check basis by the ld.

Ao. The assessee is engaged in the business of civil construction in the name and style of M/s Ashok Construction Company at Chomehla, Jhalawar.

During the year under reference, the assessee has deposited cash amounting to Rs. 22,32,000/- in State Bank of India and Rs. 8,90,500/- in ICICI Bank during the demonetization period between 08/11/2019 (from 8 PM) to 31/12/2019.

3.1 The ld. AO noted that the abnormal cash deposition of Rs. 31,22,500/-, the assessee furnished the reply that his son executed some private work to start his career as Contractor as he executed private work in the name of his father for which the cash was received. Further, the assessee was asked vide notice u/s 142(1) dated 13/08/2019 to furnish the comparative chart of cash received during the demonization period, FY 2015-16 and 2017-18 and asked to furnish the details of date wise cash receipt in old denomination. In response to the said notice, the assessee replied that the assessee has not deposited any cash in the bank account in the FY 2015-16 and 2017-18. In respect of details of date wise cash receipt during the period of demonetization period, the assessee replied that as a contractor he has executed civil work to different private persons

during the period starting from financial year to the date of demonetization and the amount which was collected and remained in the hand till the start of demonetization, was deposited in bank as lump sum.

3.2 The ld. AO noted that on perusal on the bank statement of State Bank of India of the assessee it was found that the assessee has deposited an amount of Rs. 22,32,000/- as cash on 12/11/2016 however on perusal of the cash book which was furnished online by the assessee it was found that the assessee has transferred the cash of Rs. 22,32,000/- from cash book to bank on 03/12/2016. On perusal of the cash book it was also found that the debit balance of cash book as on 08/11/2019 was 11,75,821/- only. How can it possible that assessee deposits Rs. 22,32,000/- though the debit balance of the cash book is Rs. 11,75,821/- only. It means the assessee has manipulated the cash book and also furnished the incorrect information/particulars before the department. The assessee has received the old currency which was not a legal tender after the date of demonetization period. It is clear that the assessee M/s Ashok Construction Company has taken the amount as cash in the old currency which was not a legal tender after issuance of order of demonetization. For verification of the statement of some persons from whom the cash

amount was taken by the assessee was recorded in which some persons have stated that they have given the old currency.

3.3 The ld. AO further noted that the statements it is revealed that the assessee has manipulated the books of accounts, cash book and managed his unaccounted money of Rs. 31,22,500/- through some persons in the name of construction work. On being asked about the agreement of construction work which were done by M/s Ashok Construction Company, no one has furnished any agreement whatsoever in respect of construction work as no agreement was executed for constructed of work between the said persons and M/s Ashok Construction Company. On being asked about the receipt of the payment of cash from M/s Ashok Construction Company, either no any receipt was given to the persons or not available with the person.

3.4 In online reply, the assessee has furnished the reasons during filing of return of income that the assessee has received the amount against work done is prior to the initiation of demonetization period however as per cash book of the assessee and statement recorded from some persons as mentioned above shows that the assessee has received cash amount after the initiation of demonetization period i.e after 08/11/2016. Apart

from this, in the reply the assessee has stated vide his reply that the company has not received cash against work in the financial year 2014-15 & 2017-18. In view of above-mentioned facts, it is revealed that the amount of Rs. 31,22,500/- which was deposited as cash during the financial year 2016-17 was the unaccounted money of the assessee which has not been disclosed properly and the assessee has mispleaded the facts about the cash receiving from the persons for escaping from the tax payment. Hence, the amount of Rs. 31,22,000/- is treated as unaccounted money deposited into bank account in old currency note hence added back the same to the returned income of the assessee u/s 69A of the IT Act.

3.5 During the year under reference, it was found that the assessee has given the interest free unsecured loan of Rs. 20,30,602/- (Rs. 13,93.684/- to Sh. Vikrant Rana and Rs. 6,36,918/- to Sh Harish Kumar Ji) whereas the assessee has paid the interest on loan. Therefore, the interest to the extent of Rs.2,43,672/- @ 12% per annum on 20,30,602/- was added back to the total income of the assessee.

4. Aggrieved from the above order of the Assessing Officer, assessee preferred an appeal before the ld. CIT(A). Apropos to the grounds of the

appeal so raised by the assessee, the relevant finding of the ld. CIT(A) is reiterated here in below:-

> "6.1 From the Assessment Order, it is evident that the appellant has deposited cash in the denomination of Rs 1000 and Rs. 500 in Specified Bank Notes of an amount of Rs. 31,22,500/- during the demonetisation period. During the appellate proceedings, in the grounds of appeal and the statement of facts, the appellant has stated to have deposited cash of Rs. 31,22,500/- of demonetized notes during the demonetization period out of the contractual work done during that period and out of the proceeds received in specified denomination notes for which work has been performed in the past. However, no explanation with corroborative evidence was furnished by the appellant during the appellate proceedings in support of this claim. Therefore, the amount of cash deposited in SBNs giving specific details by the AO in the assessment order is taken to be the figure of cash deposited in the SBNs during the said period. Further, the appellant was neither able to substantiate its statement that the cash deposited was out of services nor able to produce any documentary evidence in support of his submission. Thus, identity and creditworthiness of the creditors and the genuineness of the transaction were not found to be established to the satisfaction of the AO as evident from the assessment order. After due consideration of all the facts brought on record, it has been categorically stated by the AO that during the demonetization period the appellant has deposited Rs. 31,22,500/- with the denomination of specified notes i.e., Rs.1,000/- and Rs.500/- in the Current Account. The appellant failed to offer an explanation to the satisfaction of the AO or furnish any supporting evidence such as stock register, delivery of goods etc. Accordingly, the AO invoked the provisions of section 69A of the Income Tax Act and treated the amount of cash deposit of Rs. 31,22,500/- as unexplained money.
>
> 6.2 From the assessment order it is apparent that the AO made an addition of Rs. 31,22,500/- as unexplained cash deposits in the bank accounts during the demonetization period stating that during the year under consideration, there was a cash deposit during the demonetization period i.e. from 09/11/2019 to 30/12/2019 of Rs.

31.22,500/- in the bank account held by the appellant besides other deposits/credits. Though ample opportunities were given to the appellant, he failed to furnish any written submission. Therefore, for failure by the appellant to offer any explanation with regard to the source of the deposit, the said amount is liable to be assessed as unexplained money u/s 69A of the I.T. Act, 1961.

6.3 The receipt of the specified bank notes is not legal tender because the activity of the appellant as carrying out the construction work on contractual basis has not come within the exempted category for the following reasons: -

> "1. The appellant cannot accept the demonetized currency i.e., SBN of Rs. 1000 & Rs.500 denomination from 09.11.2016 onwards, as the same were not a legal tender with certain exemptions as notified in the Gazette Notification of Ministry of Finance in No. 2653 dated 8th November 2016. In this notification, it has been clearly notified that the Central Government declared that the bank notes of existing series of denominations of the value of five hundred rupees and one thousand rupees (hereinafter referred to as the specified bank notes), shall cease to be legal tender on and from the 9th November 2016.
>
> 2. Sec 17, Sec 22 and Sec.26 of the Reserve Bank of India Act, 1934, are relevant to the issue at hand. Section 17 of the RBI Act says that making and issuing bank notes shall be one of the businesses of the Reserve Bank of India. As per section 22 of the RBI Act, RBI shall have the sole right to issue bank notes. Section 26 says that subject to sub-section (2) of Sec.26, every bank note shall be a legal tender in any place in India in payment for the amount expressed therein and it shall be guaranteed by the Central Government. While sub-section (2) says that the Central Government on the recommendation of the Central Board (it is the board of RBI directors) by notification in the Gazette of India may declare any series of banknotes to cease to be legal tender from the date as notified in Gazette and for a term as specified in the notification."

6.4 On 8th November 2016 Central Government, through Gazette Notification No.2652 dated 8.11.2016, declared that from 9th November 2016, Rs.500 and Rs.1000 (Specified Bank Notes) ceased to be legal tender and the SBN Notes after 09.11.2016 are not valid. The appellant's case does

not come under the exempted category as notified by the RBI and therefore, the appellant is not allowed to receive the old SBN notes for doing the monetary transaction and enter the same into his books of account.

6.5 As the appellant continued to receive the illegal currency l.e., specified bank notes which ceased to be legal tender w.e.f. 09.11.2016 and deposited in the bank account, to that extent the AO rightly treated the same as an unexplained cash deposit u/s.69A of the Act and taxed the same u/s. 115BBE of the Act.

6.6 Admittedly the appellant has deposited specified bank notes in the demonetized cash notes in the denomination of Rs. 1000 & Rs.500. The appellant is barred from dealing in any illegal tender and the appellant cannot accept the demonetized specified bank notes even during his activity because it is completely barred by the Central Government of India declaring that the bank notes of existing series of denomination of Rs. 1000 & Rs.500 shall cease to be legal tender on or from 09.11.2016. This has been notified by the Central Government in the Gazette Notification of the Ministry of Finance vide No.2652 dated 08.11.2016. Once the Central Government has notified that the denomination of Rs. 1000 & Rs.500 notes is not legal tender w.e.f. 09.11.2016, nobody can engage in any activity through this currency, hence, the AO has rightly added the amount to that extent of Rs. 31,22,500/- u/s. 69A of the Act. Reliance is placed on the decision of Hon'ble ITAT in the case of Raju Ravichandran Namakkal Vs ITO, Ward-2, Namakkal vide ITA no 493/Chny/2023 dated 16.06.2023, regular bench decision in ITA No. 698/Chny/2022 dated 7/2/2023 and decision of Hon'ble ITAT Hyderabad in the case of Vaishnavi Bullion Pvt Ltd vs ACIT. In view of the facts of the case and position of law, I find justification to uphold the order of the assessing officer to the tune of Rs. 31,22,500/- in SBNs. Moreover, this amount of Rs. 31.22,500/- also remained unexplained even during the appellate proceedings as the appellant did not furnish the supporting documentary evidence. Hence, I am not inclined to interfere with the action of the AO in making the addition of Rs. 31.22,500/- Accordingly, the above grounds of appeal are dismissed.

Hence, Grounds of appeal No. 1 and 2 are found to be not maintainable. Accordingly, the same are hereby dismissed. found

Ground No. 3

7. On perusal of the assessment order and the statement of facts filed by the Appellant, it is found that the issue in dispute in the impugned appeal concerns the addition of Rs. 2,43,672/- being interest calculated by the AO in interest-free loan given by the appellant for the year under consideration. It is evident from the assessment order that the appellant has paid interest on the loan taken by him which is claimed as an expense against the income for the year under consideration and has also provided interest-free loan of Rs. 13,93,684/- to Mr. Vikrant Rana and Rs. 6:36.918/- to Mr. Harish Kumar Ji, both aggregating to Rs. 20,30,602, It is further evident from the assessment order that the notice under section 142(1) of the Income Tax Act, 1961 dated was issued to the appellant asking the appellant to file various details /information/documents in connection with the interest-free loan given to these parties. However, the assessee did not file any response.

7.1 During the appellate stage, the appellant has not provided any written submissions in support of the grounds of appeal or the statement of facts. It is evident that despite being afforded multiple opportunities, at the assessment stage and even at the appellate stage, the appellant has not been able to provide satisfactory explanations in support of the grounds of appeal or the statement of facts.

7.2 After due consideration of all the facts available on record, the appellant's arguments are untenable due to the specific findings in the assessment order and the absence of evidence provided by the appellant to substantiate the claims made in the Statement of Facts.

7.3 At the appellate stage, the appellant has not furnished any written submission in support of his claim. No arguments have been advanced by him in his statement of facts and grounds of appeal to rebut the applicability of the deeming provisions by the AO. The appellant has chosen not to furnish a cogent explanation of the expenditure claimed by it in the return of income despite ample opportunity and time allowed during the appellate proceedings. In such circumstances, the undersigned is left with no alternative but to presume that the appellant has no further submissions in support of his averments made in the grounds of appeal. Accordingly, the appeal is being decided keeping in view the facts brought on record by the AO in the assessment order and by the appellant in the grounds of appeal and statement of facts.

74 Based on the material available on record, the appellant's contentions are not acceptable because of specific findings in the assessment order about no evidence being adduced by the appellant. In the absence of any cogent material to explain the reason for the interest free loan given by the appellant against the interest bearing loan as taken by the appellant, the stand of the AO cannot be faulted. The appellant failed to provide the reason for giving an interest free loan during the assessment proceedings and even in the appellate proceedings. It is a trite law that once the appellant fails to discharge the onus cast on him.

7.5 Based on the facts mentioned above, detailed discussion in the assessment order by the AO and in the absence of any written submission by the appellant, I am not inclined to interfere with the decision of the AO.

7.6 Because of the facts mentioned above, I do not find any infirmity in the decision of the AO and I am not inclined to interfere with the decision of the AO.

Hence, Grounds of appeal No. 3 is found to be not maintainable. Accordingly. the same is hereby dismissed.

5. As the assessee did not receive any favour from the appeal so filed before ld. CIT(A). The present appeal is filed against the said order of the ld. CIT(A) before this tribunal on the grounds as reiterated in para 2 above. To the support the contention raised the ld. AR of the assessee relied upon the written submission filed before the ld. CIT(A). The said submission so relied reads as under:

Submission of ld. CIT(A)1-10 page of paper book

6. To drive home to the contention raised in the written submission ld. AR of the assessee has filed a detailed paper book containing following evidence:

S. No.	Particulars	Pages
1.	Copy of Written submission before Ld. CIT(A)	1-10
2.	Copies of responses submitted before the ld. AO	11-38
3.	Copy of cash book for the period from 08/11/2016 to 31/12/2017	19-36
4.	Copy of return of income and computation for the AY. 2017-18	37-40
5.	Copy of tax audit report and financial statements for the AY 2017-18 dt. 29/10/2017	41-58
6.	Copy of return of income and computation for the AY. 2016-17	59-60B
7.	Copies of ledgers of debtors for AY 2016-17	61-75

6.1 To the support the contention raised the ld. AR of the assessee filed the following case laws:-

S. No.	Particulars	Pages
1.	Income Tax Officer vs. Surabhi Gold ITA No. 372/Chny/2023 dt. 05.04.2024 (Chennai)(ITAT)	1-41
2.	Shri Narendra Kumar Khandelwal vs. ITO in ITA No. 568/JP/2014 dt. 26.07.2022 (JP)(ITAT)	42-61
3.	Mohd. Manzoor vs. ITO 37 NYPTTJ 1383 (Anr)(ITAT)	62-74
4.	Mahesh Kumar Gupta vs. ACIT 223 TTJ 393 (JP)(ITAT)	75-96

7. The ld. AR of the assessee in addition to the written submission so filed vehemently argued that the assessee is engaged in the business of Civil Contractor and the receipt shown for an amount of Rs 2,15,01,455 is not disputed by the revenue but merely the assessee has deposited the SBN in the bank account made an addition of Rs. 31,22,500/- in the hands of the assessee. The same income cannot be taxed twice as the cash deposited into the bank account is forming part of the receipt already reflected in the books of accounts of the assessee and the said books of accounts are audited. The said books has not been rejected by invoking the provision of section 145(3) of the Act. The ld. AO also erred in making the addition u/s. 69A of the act as the receipt is already recorded and reflected in the books of account and both the bank accounts are duly forming part of the books placed on record. That book has not been rejected. Even note no. 7 disclosed the SBN recorded in the books as per audited accounts. To drive home to this contention the ld. AR relied upon the judicial precedent.

8. Per contra, the ld. DR relied upon the order of the lower authorities

9. We have heard the rival contentions and perused the material placed on record. The bench noted that in this appeal the assessee has 9 grounds effectively to deal with two addition one for the amount deposited in the bank account in demonization period for an amount of Rs. 31,22,500/- and disallowance of interest of Rs. 2,43,672/- made by the ld. AO and confirmed by the ld. CIT(A).

As regards the addition for an amount of Rs. 31,22,500/- the assessee contends that impugned sustained addition represents the amount realised on account of the contract work recorded in the regular books of accounts of the assessee. Those books of accounts are audited as per the provisions of the Income tax Act. There are no adverse remarks in the books of accounts maintained by the assessee. The ld. AO has not rejected those books of accounts while examination of the said books of account and based on the information so called for also not found any defects in the records so maintained by the assessee. The work contract so made by the assessee is duly accepted and offered for tax and that contract receipt have already been accepted. There cannot be a double addition while

considering that work contract receipt as part of the records and the profit of the same is already subjected to tax and making again the cash deposited into the bank account as unexplained money as per provision of section 69A of the Act is not permitted without rejecting the book results and without reducing the income from the books so maintained by the assessee. Thus, the same income cannot be taxed twice, one as contract income and another considering the cash deposit as unexplained. Even ld. CIT(A) has not considered that the ld. AO has not rejected the books as per section 145(3) of the Act. As is evident from the orders of the lower authority that the assessee has produced all the details that has been required by the ld. AO and they have not found the records defective merely the ld. AO and the ld. CIT(A) made suspicions on the records and did not considered the contract income and cash from that as genuine thus, the reasons advanced should not be a reason or basis of making a separate addition to the receipt already recorded in the books of account. Thus, at this stage it would be better go through the provision of section 145 which reads as under :

> **Method of accounting.**
> **145.** (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with

either cash or mercantile system of accounting regularly employed by the assessee.
(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income.
(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.

9.1 As it is evident that the provision of section 145(3) can be invoked in the following circumstances:

- When the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee.
- When the method of accounting provided in Section 145 (1) has not been regularly followed by the assessee.
- When the accounting standards notified under Section 145 (2) have not been regularly followed by the assessee.

9.2 From the observations recorded in the order of the lower authority none of the conditions are satisfied and thus as is not clear from the finding of the lower authority that how the books of account regularly maintained and audited are not correct. The ld. AO made the addition u/s. 69A of the Act which reads as follows:

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.

As is clear that section 69A does not impower the ld. AO to add the amount already recorded in the books of account of the assessee. We get support of the view from the decision of the co-ordinate bench decision of Delhi benches wherein on the similar facts addition was directed to be deleted in the case of Yogesh Gupta Vs. ACIT reported at [2024] 159 taxmann.com 1396 (Delhi - Trib.) where it has been held that

> **7.** We have heard the parties and perused the materials available on record. During the assessment proceedings, the AO was of the opinion that there is an abnormal increase in the sales with decrease in profitability compare to previous year, therefore, total cash amounting to Rs.27,00,000/- deposited during the demonetization period has been treated as unexplained investment and made addition u/s 69A of the Act. It is specific case of the assessee that the year under consideration was the first year in operation of the assessee's business, but the Ld. AO had committed error by comparing the fictitious sales of previous year without any basis. It is observed that the assessee was maintaining cash books and also regular books of accounts, at no point of time, the AO doubted the regular books of account of the assessee and without finding any fault in the books of account of the assessee, the Ld. AO proceeded

> to make addition u/s 69A of the Act. When the assessee maintained and produced the books of account and the cash books before the Ld. AO by offering the explanation and by submitting the copies of VAT returns to justify the sales and corresponding receipts of cash books deposited in bank, the Ld. AO without even disputing the books of account, committed an error in making addition u/s 69A of the Act, therefore, the addition made by the AO is not sustainable, hence, the addition made by the AO u/s 69A of the Act which was confirmed by the CIT(A) is hereby deleted.
>
> **8.** In the result, the appeal filed by the assessee is allowed.

Based on the above observation ground no. 3,4,5,6 & 7 raised by the assessee is allowed.

10. Ground no. 8 raised by the assessee relates to the disallowance of notional interest claim to the extent of Rs. 2,43,672/ made in the hands of the assessee. The brief facts related to the addition is that the assessee has advanced money to his son on 01-11-2016 for an amount of Rs. 12,61,908. Whereas assessee has availed the bank loan on 09.02.2017 the ld. AO linked that loan without appreciating the fact the assessee has advanced the sum to his son before taking the loan and thus there is no nexus to the loan amount and interest claimed.

Before us since these factual aspect has not been disputed the ld. CIT(A) has dismissed that ground merely the assessee has

not filed any written submission. Since this fact is not disputed we direct the ld. AO delete that addition of Rs. 2,43,672/-. Based on that discussion ground no. 8 raised by the assessee is allowed.

11. Since we have allowed the grounds on merit the technical ground no. 1 & 2 becomes educative in nature and does not require adjudication. Ground no. 9 general in nature does no require adjudication.

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

Order pronounced in the open Court on 17/09/2024.

Sd/- Sd/-

(राठोड कमलेश जयन्तभाई) (डॉ.एस.सीतालक्ष्मी)
(RATHOD KAMLESH JAYANTBHAI) (Dr. S. Seethalakshmi)
लेखा सदस्य / Accountant Member न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 17/09/2024.
*Santosh
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:
1. अपीलार्थी / The Appellant- Sh. Ashok Kumar Verma, Jhalawar.
2. प्रत्यर्थी / The Respondent- ACIT, Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 529/JPR/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar