

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AGRA (SMC) BENCH, AGRA**

**BEFORE : SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No. 104/Agr/2024  
Assessment Year: 2017-18**

Mr. Kamlesh Narang, House No. 8, Ratan Colony, Jiwajiganj, Lashkar, Gwalior-474001 (M.P.)	<b>v.</b>	Income-tax Officer, Ward 1(3), Aayakar Bhawan City Center, Gwalior-474001, M.P.
<b>PAN :AAWPN0418P</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	S/Sh. Rajendra Sharma & Manuj Sharma, Adv.
Revenue by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	01.01.2025
Date of pronouncement	28.01.2025

**ORDER**

This appeal in ITA No. 104/Agr/2024 for the assessment year 2017-18 has arisen from the appellate order dated 31.01.2024 [DIN & Order No. ITBA/NFAC/S/250/2023-24/1060307935(1)], passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi, which appeal in turn has arisen from the assessment order dated 09.12.2019 passed by Assessing Officer u/s. 143(3) of the Income-tax Act, 1961(Order No. ITBA/AST/S/143(3)/2019-20/1021942080(1)).

2. Grounds of appeal raised by the assessee in the Memo of appeal filed with ITAT, Agra Bench, Agra as well as additional grounds of appeal raised by the assessee during the course of proceedings before ITAT reads as under :

1. That On the fact and in the circumstances of the case the order passed by the Hon'ble Commissioner of Income-tax (Appeals), Income Tax Department ("CIT(A)") u/s 250 of the Income Tax Act, 1981 ("the Act") is arbitrary, illegal, unjustified, without jurisdiction, bad in law and against the principal of natural justice hence void ab initio.

2. That on the fact and in the circumstances of the case the Hon'ble CIT(A) has grossly erred, both facts and in law, in dismissing the appeal filed by the Appellant being aggrieved by the assessment order passed by the Income-Tax Officer, Ward 1(3), Gwalior ("the AO") u/s 143(3) of the Act without providing sufficient opportunity of being heard.

3. That on the fact and in the circumstances of the case Hon'ble CIT(A) has grossly erred, both facts and in law, in confirming the order passed by the Ld. AO u/s 143(3) of Act on December 8,2019 and assessed income at Rs. 22,44,198/- by making addition in the returned income of Rs. 11,85,478/- u/s 69A of the Act as unexplained money.

4. That on the fact and in the circumstances of the case Hon'ble CIT(A) has grossly erred, both facts and in law, in confirming the order passed by the Ld. AO u/s 143(3) without considering the fact that the Ld. AO erred in making addition on arbitrary basis without providing any opportunity of being heard with regards to the reason of addition stated in Assessment Order dated 09/12/2019. The AO has made an addition of Rs. 11,85,478 stating that such amount of opening cash in hand was not stated in the schedule of Assets and Liabilities as closing cash in hand as on 31.03.2016 in ITR-1 SAHAJ of A.Y. 2016-17 as filed on 22.09.2016 and hence stated in the order that our claim of opening cash in hand as on 1st April, 2016 is contradictory as per the ITR filed which is absolutely wrong on the part of the AO as the liability to fill the details in the schedule of Assets and Liabilities arises only when the Income is more than Rs 50,00,000 which is clearly mentioned on the top of Asset and Liability schedule in ITR-1 but in this case the Total Income of A.Y. 2016-17 was Rs 4,77,100 only. hence there was no requirement as per Income Tax Law to report cash in hand in schedule of Assets and Liabilities, which clearly states that the argument of AO that claim of Rs 11,85,478 is contradictory as per ITR filed for A.Y. 2016-17 is indeed wrong, unjustified and bad in law.

5. That on the fact and in the circumstances of the case Hon'ble CIT(A) has grossly erred, both facts and in law, in confirming the addition of opening cash in hand made by the Ld. AO by invoking section 69A Unexplained Money read with Section 115BBE of the income tax act, 1961 without considering the fact that the Appellant have duly explained the source of money was Cash in hand as on 1st April 2016 which is evident from the Balance Sheet as on 31-03-2016 submitted during assessment proceedings.

6. That on the fact and in the circumstances of the case Hon'ble CIT(A) has grossly erred, both facts and in law, in confirming the addition of opening cash in hand made by the Ld. AO by invoking section 69A Unexplained Money read with Section 115BBE of the income tax act, 1961 without considering the fact that the Appellant is a 57-year-old woman and had been earning income from stitching since a very long time and have been regularly filing income tax returns and the opening cash in hand represents balance of her accumulated savings.

7. The Appellant craves leave to add, alter, modify or amend the above grounds of Appeal.”

**Additional legal Ground No. 8-**

"8. That the appellate order passed by the learned NFAC dated 31.01.2024 is bad in law being passed not in accordance with the provisions of Section 250(6) of the Income Tax Act and also without disposing of the specific ground taken as per 'ground No. 5' against invoking of provisions of Section 69A of the Income Tax Act. That the appellate order passed dated 31.01.2024 is bad in law, liable to be set aside."

**Additional legal Ground No.9.**

"9. That while passing of the appellate order dated 31.01.2024, the learned NFAC have not considered the submissions and not adjudicated the grounds taken by the appellant regarding invoking of Section 69A of the Income Tax Act, that the provisions of Section 69A of the Income Tax Act are not attracted in the case of the appellant, the order passed by learned NFAC dated 31.01.2024 without adjudicating of specific ground is bad in law, addition made by the AO, sustained by learned NFAC is liable to be deleted."

3. Brief facts of the case are that the assessee filed her return of income on 21.03.2018 declaring income of Rs.10,58,720/-. Said return of

income was processed by Revenue u/s. 143(1) of the Act. Case of the assessee was selected by Revenue for framing limited scrutiny assessment under CASS to examine the cash deposits during the year. Statutory notices u/s. 143(2) as well as 142(1) were issued by the Assessing Officer to the assessee. It was noticed by the AO that the assessee has deposited cash in her bank account as under :

Sr. No.	Bank Name	Account No.	Aggregate gross amount credited in the account
1.	Punjab National Bank	0291000100113215	95,04,190/-

3.2. The Assessing Officer observed that the assessee has deposited huge amount of cash of Rs.95,04,190/- in her bank account during the year under consideration. The assessee was asked by the AO to explain the cash deposits. Assessee was engaged in the business of job work of stitching from home. The assessee submitted that the assessee has deposited cash of Rs.96,54,190/- in the bank accounts during the year under consideration, of which Rs.80 lakhs have been deposited from the income declared under IDS-2016. The assessee submitted copy of Form No. 4 of IDS. The AO accepted this contention of the assessee, and the matter attained finality. It was further submitted by the assessee that the balance amount of Rs.16,54,190/- was deposited in cash in bank

accounts of the assessee out of the savings of the previous years and income earned during the financial year 2016-17. With respect to amount of Rs.16,54,190/- deposited with the bank in cash, the sources of cash deposits were explained by the assessee as under :

Rs.11,85,478/- : Opening cash balance in hand as on 1<sup>st</sup> April, 2016.  
Rs.3,90,000/- : Income from job work of stitching from home.  
Rs.1,20,000/- : Income from rent received in period before the cash deposit.

3.3 The assessee explained that the assessee is 57 years old woman and had been earning income from stitching since long time and regularly filing her return of income. It was submitted that the cash in hand possessed by her as on 01.04.2016 of Rs.11,85,478/- was accumulated from her earnings and that she was able to save money from earning from previous years. Assessing Officer observed that the assessee has claimed an amount of Rs.11,85,478/- as opening cash balance in hand as on 01.04.2016 while the assessee has filed return of income for the assessment year 2016-17 in ITR-1 (SAHAJ FORM) on 22.09.2016 with total income of Rs.4,77,100/-. Assessing Officer observed that as per schedule-AL (assets and liabilities), the assessee has not shown any cash in hand as on 31.03.2016 and the assessee is claiming opening cash balance of Rs.11,85,478/- as on 01.04.2016 as a device to justify the cash deposited in her bank account, which is not supported by any evidence. The AO observed that the assessee does not have any

explanation for nature and source of the amount of Rs. 11,85,478/- being cash deposited by her in her bank accounts. The Assessing Officer invoked the provisions of section 69A read with section 115BBE and made additions of Rs.11,85,478/- to the income of the assessee being credited in cash in assessee's bank account as unexplained money.

4 Assessee filed first appeal with Id. CIT(Appeals) and raised as many as 8 grounds of appeal, wherein the assessee challenged the addition made both on merits as well as on legal grounds. The Ld. CIT(Appeals) dismissed the appeal of the assessee by observing that there was no evidence or proof before the Assessing Officer in respect of the claim of the assessee of opening cash in hand as on 01.04.2016 amounting to Rs.11,85,478/-.Assessee has filed balance sheet as at 31.03.2016 during the assessment proceedings ,to explain her case. CIT(Appeals) observed that assessee's accounts are not audited and the balance sheet has been prepared on standalone basis. No reliance can be placed on such a self made document to accept the assessee's claim of opening cash in hand as on 01.04.2016 and the Id. CIT(Appeals) disbelieved the balance sheet filed by the assessee. CIT(Appeals) also observed that the claim of assessee is devoid of merits keeping in view the consumption expenditure of the assessee in respective years.

5. Still aggrieved, the assessee has filed an appeal with the Tribunal. The assessee has raised as many as 7 grounds of appeal in the memo of appeal filed with the Tribunal. Further the assessee has raised two more additional grounds No. 8 & 9 during the proceedings before the Tribunal.

5.2 When this appeal was called for hearing before the Bench, Id. Counsel for the assessee submitted that the assessee has raised two additional grounds, which are legal grounds and goes to the root of the matter and same may be admitted in the interest of justice. Learned CIT(Appeals) has not adjudicated ground No. 5 raised by the assessee in her appeal. It was submitted that this ground is a legal ground challenging the invocation of section 69A with respect to additions being made by the AO. My attention was also drawn to the assessment order as well as CIT(Appeals)'s appellate order, and page No. 15 of the paper book of the assessee, which is balance sheet of the assessee as at 31.03.2016 ( assessment year 2016-17) filed by the assessee before the Assessing Officer showing cash in hand of Rs. 11,85,478.75 . The assessee's counsel also drew my attention to ITR's filed for the assessment year(s) 2015-16 and 2016-17. Assessee has also submitted that the appellate order of Id. CIT(Appeals) is not in consonance with

section 250(6), as the CIT(A) has not adjudicated the legal ground raised by the assessee as to the invocation of section 69A of the Act.

5.3. Learned Sr. DR, on the other hand, submitted that there is cash deposit of Rs.96.54 lakhs, out of which Rs.80,00,000/- was declared under IDS-2016, which was accepted by the department. It was submitted that it is the amount of Rs.11,85,478/-, which the assessee has claimed to be the opening cash balance in hand as on 01.04.2016, which was not accepted by the department as no explanation/evidence to that effect was submitted. The Assessing Officer has doubted the same, as the assessee could not give proper explanation for such cash in hand and the same was not declared by the assessee while filing return of income.

5.4 Learned AR in rejoinder submitted that the assessee has raised legal challenge to the addition made by invoking the provisions of section 69A. It was submitted that for the preceding year, the Revenue has invoked the provisions of section 147/148 of the Act. It was further submitted that the assessee has not maintained any books of account. Learned CIT(Appeals) has accepted the balance sheet, but has not given credit for cash in hand of Rs.11,85,478/- as on 01.04.2016, which was the lifelong savings of the assessee. Rs. 80 lakhs were surrendered in IDS-2016 scheme which was accepted by the department and Rs.11,85,478/-

was part of the balance sheet, which was not accepted by the Id. AO and CIT(Appeals).

5.5 Ld. Sr. DR submitted that section 148 was invoked with respect to preceding year and is not relevant for the present proceedings.

6. I have considered rival submissions and perused material on record. I have observed that the assessee filed her return of income on 21.03.2018 declaring income of Rs.10,58,720/-. The return of income filed by the assessee was processed by Revenue u/s. 143(1) of the Act. Case of the assessee was selected by Revenue for framing limited scrutiny assessment under CASS to examine the cash deposits during the year. Statutory notices u/s. 143(2) as well as 142(1) were issued by the Assessing Officer to the assessee. The assessee is engaged in the business of job work of stitching from home. The assessee participated in assessment proceedings. There was total cash deposit of Rs.95,04,190/- in the bank account of the assessee with Punjab National Bank. The total deposits made by the assessee in banks accounts were to the tune of Rs. 96,54,190/-. The assessee explained that Rs.80 lakhs have been declared under IDS-2016. The said declaration was accepted by Revenue. Balance amount of Rs.16,54,190/- was sought to be explained by the assessee from the following sources :

Rs.11,85,478/- : Opening cash balance in hand as on 1<sup>st</sup> April, 2016.

Rs.3,90,000/- : Income from job work of stitching from home.

Rs.1,20,000/- : Income from rent received in period before the cash deposit.

6.2 Assessing Officer accepted the explanation of the assessee with respect to cash deposit of Rs.3,90,000/- being income from job work and also Rs.1,20,000/- being rent received by the assessee and deposited by way of cash in bank account. Assessing Officer, however, disbelieved the explanation of the assessee so far as opening cash in hand of Rs.11,85,478/- is concerned as on 01.04.2016. The assessee has sought to explain the same by filing balance sheet for financial year 2015-16. The said cash balance of Rs. 11,85,478/- is reflected as closing cash balance as on 31.03.2016 in the said balance sheet. It is an admitted position that the assessee is not maintaining books of account. It is also admitted position that the assessee has not declared the said cash in the return of income filed for the assessment year 2016-17. The assessee has sought to explain the said opening cash in hand as on 01.04.2016 by filing balance sheet as on 31.03.2016 ,and it is submitted that this is out of past savings earned in the earlier years. Both the authorities below have disbelieved the said contentions of the assessee. So far as the contention of the assessee that there was no obligation to declare said cash in hand in the ITR, as the assessee's income is below Rs.50 lakhs, is not acceptable, as the liability of the assessee to file

schedule-AL, i.e., statement of assets and liabilities, arise only when the income is above Rs.50 lakhs provided the assessee does not have income from business or profession, but in the instant case the assessee is having income from business of job work of stitching. Attention is drawn to the Explanation to section 139, wherein under clause (f), where regular books of account are not maintained by the assessee, the return of income is to be accompanied by statement indicating amounts of turnover or gross receipts, gross profits, expenses and net profit of business or profession and the basis on which such amount has been computed and also disclosing the amount of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year. The assessee has not disclosed cash in hand as on 31.03.2016 in the return of income filed for assessment year 2016-17. The Income-tax Act is governed by preponderance of probabilities which has to be seen in context of factual matrix and circumstances surrounding the assessee. A reasonable, fair and honest assessment is required to be made based on factual matrix and prevailing circumstances. The assessee has sought to explain that the opening cash balance as on 01.04.2016 was out of past earnings and past savings. The assessee has also claimed that the assessee is engaged in the business of job work of stitching from home, for a very long time and regularly filing her return of income with

department for last several years. The Assessing Officer and CIT(A) have simply disbelieved the contentions of the assessee without making fair, reasonable and honest assessment based upon the factual matrix and circumstances surrounding the assessee and the explanation given by the assessee. It was incumbent on the authorities below to have made fair, honest and reasonable assessment of the availability of cash in hand as on 31.03.2016 held by the assessee based upon the entire factual matrix of the case and the circumstances prevailing. The assessee is also required to submit the complete details of income earned, ITR filed for the preceding years before the authorities below so that fair, reasonable and honest estimation can be made. The primary onus is on the assessee. Further, I have observed that the assessee has raised legal grounds questioning the invocation of section 69A while making the addition by the Assessing Officer which stood confirmed by Id. CIT(Appeals). The said ground of appeal is not adjudicated by Id. CIT(A). While making reasonable, fair and honest assessment of cash in hand held by the assessee as on 31.03.2016 which was sought to be explained by the assessee to have been utilized by her for deposit in her bank accounts, the AO may require to make necessary enquiries and verifications. Thus, on the facts and circumstances of the case, I set aside the orders of the authorities below and restore the matter back to

the file of the Assessing Officer for de-novo assessment after giving reasonable opportunity to the assessee. I clarify that I have not commented on the merits of the issues in this appeal. The appeal is allowed for statistical purposes. I order accordingly.

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

***Order pronounced in the open court on 28.01.2025.***

***Sd/-***

**(RAMIT KOCHAR)  
ACCOUNTANT MEMBER**

Dated: 28.01.2025

\*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra