

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

ITA No.390/Ind/2023
Assessment Year:2017-18

ACIT-1(1) Indore	<u>बनाम/</u> Vs.	Ashok Kumar Jain, 501,Pushpratan Diamond Colony Indore
(Assessee/Appellant)		(Revenue/Respondent)
PAN:ABTPJ1306N		
Revenue by	Shri Ashish Porwal, Sr. DR	
Assessee by	Shri Ranjan Agrawal, AR	
Date of Hearing	10.02.2025	
Date of Pronouncement	25.02.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 28.08.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 26.12.2019 passed by learned DCIT/ACIT-2(1), Indore ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the revenue has filed this appeal.

2. The background facts leading to present appeal are such that the assessee-individual filed return of income of AY 2017-18 declaring a total

income of Rs. 21,21,390/-. The case was selected under limited scrutiny to examine (i) cash deposits during the year, (ii) cash withdrawals, and (iii) deduction against income from other sources. The AO issued notices u/s 143(2)/142(1) which remained uncompiled by assessee. The AO also made it clear to assessee that failure to comply with notices would invite best judgement assessment even then there was no response from assessee. Ultimately, the AO gave one more chance to assessee to which the assessee filed part reply on 20.11.2019. Thereafter, vide notice dated 04.12.2019, the AO again asked assessee to explain as to why the cash deposited in Bank A/c be not considered as unexplained money u/s 69A if no compliance is made to establish source of cash deposits but still the assessee failed to comply with this notice also. Ultimately, from the Bank Statements called from different banks u/s 133(6), the AO found that a total of Rs. 1,13,11,000/- was deposited in different banks during the previous year 2016-17. Accordingly, the AO treated deposit of Rs. 1,01,11,000/- as unexplained after giving credit of cash withdrawal of Rs. 12,00,000/- made by assessee from bank on 08.11.2016 and made addition of Rs. 1,01,11,000/- u/s 69A. Aggrieved, the assessee carried matter in first-appeal.

3. During first-appeal, the assessee filed submission which is reproduced by CIT(A) in Para 4 of impugned order. The assessee also filed additional evidences in terms of Rule 46A of Income-tax Rules, 1962. The

CIT(A) passed order deleting the addition made by AO. Aggrieved by order of CIT(A), the revenue has filed this appeal before us.

4. We have heard learned Representatives of both sides and carefully perused the orders of lower-authorities. Ld. DR for revenue submitted that the case of assessee was selected for limited scrutiny to examine three points one of which was "Cash deposit during the year". During scrutiny proceeding, the assessee has not responded to the notices of AO. Only at last the assessee filed one reply which was also found by AO as part reply. In the interest of justice, the AO again provided an opportunity to assessee vide notice dated 04.12.2019 to explain the source of cash deposit with a clear indication that the cash deposited would be treated as unexplained money u/s 69A in case of non-compliance but the assessee still remained non-response. In these circumstances, the AO treated the cash deposited in Bank A/c as unexplained and made addition. During first-appeal, the CIT(A) has reversed AO's action and given relief to assessee on the basis of additional evidences without giving any opportunity to the AO to examine those evidences which is a violation of Rule 46A(3) of Income-tax Rules, 1962. That apart, the Ld. AR has also filed some more additional evidences before ITAT also in a separate "Paper-Book-B". Ld. DR submitted that the only course available to this Tribunal in these facts, is to remand this case back to the lower-authorities for an apt adjudication. Ld. DR also proposed that it would be better to restore this case at the level of AO so that the AO can adequately verify the evidences of assessee and take a proper decision.

While Ld. AR for assessee supported the order of CIT(A), he could not controvert the submission as well as proposal of Ld. DR. Faced with this situation and taking into account the submissions of Ld. DR, we are inclined to remand this case back to the file of AO for a detailed examination of assessee's evidences and thereafter passing an apt order. Needless to mention that the AO shall give necessary opportunities to assessee which the assessee shall avail without seeking unnecessary adjournments. Ordered accordingly.

5. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced by putting on notice board as per Rule 34 of ITAT Rules, 1963 on 25/02/2025

Sd/-

Sd/-

(DINESH MOHAN SINHA)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 25/02/2025

Patel/Sr. PS

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

By order

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