

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.4830/Del/2024, A.Y. 2017-18**

<b>Assistant Commissioner of Income Tax, Circle- 34(1), Civic Centre, E-2 Block, 2<sup>nd</sup> Floor, New Delhi</b>	<b>Vs.</b>	<b>Raj Bajwa, Ashok Vihar, 390, SFS Flats, Phase-IV, New Delhi PAN: AECPB8559B</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Pancham Sethi, CA
Respondent by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	18/02/2025
Date of Pronouncement	18/02/2025

**ORDER**

**PER AVDHESH KUMAR MISHRA, AM**

This appeal for the Assessment Year (hereinafter, the 'AY') 2017-18 filed by the Revenue is directed against the order dated 23.08.2024 passed by the Commissioner of Income Tax (Appeals), NFAC, New Delhi [hereinafter, the 'CIT(A)'].

2. The Revenue, vide two grounds, challenged the deletion of addition of Rs.1,33,18,000/- made under section 69A of the Income Tax Act, 1961 (hereinafter 'the Act').

3. The brief facts of the case are that the respondent assessee filed his Income Tax Return (hereinafter, the 'ITR') on 28.02.2018 declaring income of Rs.23,23,700/-. The case was picked up for limited scrutiny for verification cash deposits made in the bank account in the FY 2016-17 including demonetization period. The Assessing officer (hereinafter, the 'AO') provided six opportunities of being heard to the assessee to explain the said cash deposits made in the bank account. However, the assessee did not ensure any compliance during the assessment proceedings. Therefore, the AO had no option except to complete the assessment ex parte under section 144 of the Act. Consequentially, the AO held the cash deposits aggregating to Rs.1,33,18,000/- as unexplained under section 69A of the Act and taxed it accordingly.

3.1 Aggrieved, the assessee filed appeal before the CIT(A), who deleted the entire addition of Rs.1,33,18,000/- observing as under: -

*“10.1 In the assessment order, the A.O. has stated that the appellant had made cash deposits of Rs.1,33,18,000/- during FY 2016-17. The A.O. has observed that the assessee failed to substantiate the source of cash deposits in the bank account No. 10007796011 and 5791060225 held with IndusInd Bank and Citi Bank respectively and for the facts and the reasons elaborated in the assessment order, proceeded to make the addition of the entire amount of Rs 1,33,18,000/ u/s.69A of the Act.*

*10.2 During the appellate proceedings, the appellant has made written submission which has been extracted in the preceding para. The appellant has also furnished various details/submission/documents.*

*The appellant has also uploaded copy of registration certificate of trucks, Cash receipt details along-with above written submission. The appellant agreed that during the course of assessment proceedings she could not file a few details as called for by the Assessing Officer relating to the cash deposits. The appellant produced the pending details during the course of appellate proceedings, which could not be furnished before the Assessing Officer earlier due to several reasons as mentioned in her reply including ill health of parents, non familiarity with e-proceedings as it was the first year of assessment proceedings, problem on e-filing portal on 11.12.2019 and system not allowing to upload the reply on 12.12.2019 and prayed for admission of the additional evidence. The controversy in the present case relates to additions on account of cash deposits in bank account as stated above. The appellant has now submitted that the documents and evidences are available to corroborate the source of cash deposits which could not be submitted before the AO in the assessment proceedings due to above reasons. As these amounted to new evidences, a remand report was called for from the Assessing Officer with the direction to verify the documents/materials and peruse the written submissions and submit his comments on the findings which the AO failed to do.*

*10.3 It is noted that the AO has made entire addition of cash deposits of Rs. 1,33,18,000/-, cash deposits during the FY 2016-17, under section 69A of the Act. In the appellate proceedings, the appellant, in order to prove the source of such cash deposits, uploaded written submission, incorporating supporting evidences. The issue is essentially factual in nature and thus wholly dependent on examination of facts/evidences threadbare. Considering the above facts, nature of additional evidence and the reasons for not being able to file some of the supporting evidence before the AO during the assessment proceedings, the additional evidences filed during the appellate proceedings already remanded to the AO giving him the necessary opportunity and for the sake of natural and substantive justice, the evidences are admitted under Rule 46A and considered for taking into account on merits.*

*10.4 In view of several judgments of the Hon'ble Supreme Court, the First Appellate Authority i.e. CIT(Appeal) is vested with plenary powers*

*in disposing of an appeal, and that the powers of CIT(Appeal) is coterminous and coextensive with that of the Assessing Officer. It is trite that scope of powers vested with CIT(A) under Section 251 are co-terminus with that of AO exercising quasi-judicial functions. The CIT(A) is not only the appellate authority but also possess the power of adjudicating authority similar to that of an AO. The powers of inquiry thus, in a sense, run concurrently. It is true that the CIT (A) as first appellate authority has conterminous powers over the sources of income constituting the subject matter of the assessment, except the power to tackle new sources of income not considered by the Assessing Officer, and can do what the Assessing Officer can do and can direct the Assessing Officer to do what he has failed to do, as held by the Supreme Court in the case of Commissioner of Income-tax, U.P. v. Kanpur Coal Syndicate, (1964) 53 ITR 225. The Karnataka High Court in Sri Shankar Khandasari Sugar Mills vs. CIT (1992) 193 ITR 669 has held that "an appeal is but a continuation of the original proceeding and what the Income-tax Officer could have done, the appellate authority also could do."*

*10.5 In this case, the appellant filed her return of income on 28.02.2018 declaring an income of Rs.24,83,695/- comprising income from business and profession of Rs.10,20,000/- from plying of goods carriers, income from house property of Rs.8,37,822/- and income from other sources of Rs. 6,25,873/-(interest income). As per appellant, she was engaged in the business of plying of trucks. The appellant has contended that she deposited of cash proceed of her business activity of Rs. 1,33,18,000/- at different dates throughout the year in her bank accounts. The appellant has submitted that she had total ten trucks during the year under consideration having RC No. HR55X5115, RJ14GF1047, DL1GC3427, DL1GC2323, DL1GC2320, DL1GC2319, DL1GC4610, DL1GC6471, DL1GC5366, RJ14F1061 which was used for plying purposes. The appellant has further stated that freight received in cash from the operation was regularly deposited in bank account and the same practice has been followed by the appellant from last several years. The appellant has also furnished the copy of cash book extracts.*

10.6 I have perused the detailed submissions made by the appellant during the appellate proceedings, wherein the appellant had tried to controvert the various reasons given by the AO to support the addition made u/s 69A of the Act and the appellant has also cited the various judicial pronouncements to support his grounds that no such addition was called for. I find that the A.O. has made the addition of Rs.1,33,18,000/- on account of cash deposits in the bank account during the FY 2016-17, which as per the appellant are out of plying of trucks forming part of the gross receipts (turnover) of the appellant as recorded in the books of account and the deposits in cash are out of the cash balance available in the cash book. It is noted that as against the cash deposits of Rs.1,33,18,000/- the appellant has recorded Gross receipts from this business of Rs.2,10,75,774/-. It is also observed from the assessment order that the appellant had not deposited the cash in one or two go but had made cash deposits on as many as 34 instances during the whole part of the year (3 or 4 times during each month of the year) and the amount of each cash deposits ranges from 3 Lacs to 6 Lacs. On perusal of bank statement, it is also observed that the appellant has been making regular withdrawals and this is also supported by the account extracted in the appellant's reply as above.

10.7 Since the Gross Receipts of Rs 2,10,75,774/- have been shown for the financial year 2016-17 being year under consideration, which is more than the amount of cash deposits, I find force in the contention of the appellant. The appellant has not only deposited cash in the current year but also in the earlier years and has also explained the reasons for deposits. The corresponding gross receipts were recorded in the books of accounts and also duly offered in IT return. On perusal of the written submission of the appellant and ITR for AY 2017-18, it is clear that the appellant has recorded the Gross receipts of plying business in the books of accounts and the cash receipts, which is part of above gross receipts, are reflected in the cash book and based on the cash balance available, the appellant has deposited the cash in the bank account during FY 2016-17.

10.8 It is observed from the assessment order and written submission of the appellant that while on one hand the AO has accepted the

*business income from this business declared in return of income for AY 2017-18 and on the other hand treated the entire cash deposits during the FY 2016-17 as unexplained money u/s. 69A of the Act. The action of the AO has resulted in double addition as the above cash deposit amount already forms part of the gross receipts reported in the books of account based on which the appellant has filed its return of income. In the given facts of the case, such an action of the AO cannot be sustained as such.*

*10.9 On considering the facts of the case, the assessment order and the written submission filed by the appellant from time to time and the supporting documents filed and the various judicial pronouncements as relied upon by the appellant and for the reasons elaborated in the preceding paras above, I find that the addition of Rs.1,33,18,000/- on account of unexplained money u/s.69A of the Act cannot be sustained and is directed to be deleted. The grounds of appeal are allowed.”*

4. The Ld. Senior Departmental Representative (hereinafter, the ‘Sr. DR’) submitted that the AO had provided sufficient opportunity of being heard to the assessee for explaining the source of said cash deposits. However, the assessee did not ensure any compliance as a tactical way to avoid investigations. Hence, the AO had rightly taxed the said cash deposit of Rs.1,33,18,000/-. It was further submitted that during the appellate proceeding, the assessee produced various additional evidences justifying the source of said cash deposits in his bank accounts as detailed in para 10.2 of the impugned order, which was sent to the AO by the Ld. CIT(A) for submitting the remand report after enquiry/verification/investigations. However, the AO failed to submit any remand report. Hence, the CIT(A)

decided the case on merit. The Ld. Sr. DR prayed for remitting the matter back to the AO for verification/examination/enquiry/investigations.

5. On the contrary, the Ld. Authorized Representative (hereinafter, the 'AR') placed reliance on the factual finding of the Ld. CIT(A) and submitted that the Revenue had not brought any material on the record to controvert the specific finding of the Ld. CIT(A); hence, he prayed for setting aside the impugned order by deleting the addition of Rs.1,33,18,000/-. He further, contended that the AO, on one hand, had already accepted the returned income/gross business receipts and assessed income embedded therein and on other hand, he had also taxed the part of the business receipts as unexplained deposits under section 69A of the Act. It was contended that it was nothing but a case of double taxation. The Ld. AR further submitted that the respondent assessee, engaged in the business of plying of trucks, had 10 trucks as detailed in para 10.5 of the impugned order which were plied on hire. The receipts thereof had been deposited on various dates throughout the year. The business receipts from plying of truck were Rs.2,10,75,774/-. Out of the said receipts, cash of Rs.1,33,18,000/- was deposited in bank account in 34 tranches ranging from Rs.3,00,000/- to Rs.6,00,000/- per day. The Ld. CIT(A) held that the said cash deposits of Rs.1,33,18,000/- were made out of the gross business receipts and the

business receipts had not been ever doubted and questioned by the AO. Hence, he allowed the appeal.

6. We have heard both parties and have perused the material available on the record. Undisputedly, the assessee owns trucks as detailed on page 09-12 of the impugned order. These trucks have been plied throughout the year. It cannot be ruled out that the freight cannot be received in cash. It is surprising to note that the AO has accepted the freight received through the banking channel and doubted the freight receipts in cash. Such contradiction is prima-facie does not seem to be justified. The freight received in cash has been deposited throughout the year (page 2-4 of the assessment order). The issue before us is that whether the freight received in cash can be taxed as business income and also as unexplained deposits under section 69A rws 115BBE of the Act. The AO has failed to bring any corroborating material on the record to buttress his inference that the freight received in cash claimed to be deposited in bank accounts are non-genuine.

7. Before us, the Revenue has not placed any material to demonstrate that the freight received in cash shown as business receipts by the appellant assessee are fictitious/bogus. The books of account have not been rejected by the AO. The AO has not doubted/questioned the books results. Further, the AO has taxed the net profit of the said truck plying



business as business income by accepting the income as per the ITR and making addition thereon. we are of the considered view that the AO is not justified in taxing the income embedded in the business receipts from truck plying as business income and also part of the said business receipts from truck plying as unexplained deposits because it tantamount to double taxation. The impugned order of the Ld. CIT(A) is well reasoned and we do not find it fit to interfere with. Accordingly, we are of the considered view that the addition of Rs.1,33,18,000/- under section 69A of the Act is uncalled for. We therefore, uphold the order of the Ld. CIT(A).

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in open Court on 18 February, 2025

Sd/-

**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)**  
**ACCOUNTANT MEMBER**

Dated: 18/02/2025  
*Binita, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI