

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA Nos: 102, 103 & 104/RPR/2025

(निर्धारण वर्ष Assessment Year:2017-18)

M/s JMD Crusher, C/o Ganpati Saw Mill, Industrial Estate Jagdapur- 494001, CG	V s	Income Tax Officer, Ward-Jagdapur, Income Tax Office, Beside Jhankar Talkies, Kumharpara, 492001,CG
PAN: AAHFJ6082E		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Yogesh Sethia, CA
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	20.03.2025
घोषणा की तारीख/Date of Pronouncement	:	21.03.2025

आदेश / ORDER

Per bench:

The captioned appeals are filed by the assessee against the respective orders passed by Commissioner of Income Tax (Appeals), NFAC, Delhi (in short "Ld. CIT(A)" dated 09.12.2024, all pertains to the Assessment Year 2017-18, arises from the orders passed by Assessing Officers, National Faceless Assessment Centre, Income Tax Department, Delhi (in short "Ld. AR"), u/s 147 r.w.s. 144 r.w.s.. 144B, 270A and 271AAC(1) dated 24.03.2022, 22.09.2022 and 22.09.2022 respectively.

2. Since the aforesaid appeals pertain to the same assessee against the quantum addition u/s as well as addition against the penalty orders u/s 270A and 271AAC(1) of the Act for the AY 2017-18, involving therein common and interconnected issues, therefore, all are being heard together and decided under this common order.

3. Appeal in ITA No. 104/RPR/2025 has been taken as the lead matter, wherein our observations and decision shall apply *mutatis mutandis* in the remaining two appeals.

4. The grounds of appeal in ITA No. 104/RPR/2025 are as under:

1. *In the facts and circumstances of the case and in law, initiation of re-assessment proceedings under section 147 read with section 148 to 151 of the Income-tax Act, 1961 is bad in law and on facts.*
2. *In the facts and circumstances of the case and in law, the issue of notice under section 148 of the Income-tax Act, 1961 is illegal and without jurisdiction as there is no valid approval for issuing the notice.*
3. *In the facts and circumstances of the case and in law, the Id. Commissioner of Income tax (Appeals) has erred in upholding order of learned Assessing Officer in estimating Net Profit at Rs.37,57,136/- being 8% of credits appearing in Bank Account aggregating to Rs.4,69,64,200/-.*
4. *In the facts and circumstances of the case and in law, the Id. Commissioner of Income tax (Appeals) has erred in upholding order of learned Assessing Officer in making addition of Rs.2,20,34,300/- treating the same as unexplained money u/s 69A of the Act and charging it to higher rate of tax under Sec. 115BBE of the Act.*

5. *The impugned order is bad in law and on facts.*
6. *The appellant reserves the right to add, alter, omit all or any of the grounds of appeal with the permission of the Hon'ble appellate authority.*

5. The brief facts of the case are that the assessee firm had not filed its Return of Income (ROI) for AY 2017-18, therefore, in accordance with the information available in the multiyear NMS Cycles of the ITBA system, which comes under the category of clause 1(iii) of CBDT's instruction dated 04/03/2021 and instruction dated 12/03/2021, hence, considering the case as "Potential cases", it was selected for reopening assessment u/s 147 of the Act. In due course, statutory notices u/s 148 has been issued on 29.03.2021, but assessee failed to comply. Thereafter, notice u/s 142(1) along with questionnaire was issued on 12.10.2021, but again there was no response by the assessee. Subsequently, the case was migrated to Faceless Assessment Scheme, 2019, accordingly, notices u/s 142(1) were issued again on 03.12.2021 and 20.01.2022, but there was no compliance on behalf of the assessee. A final show cause notice issued on 05.02.2022 requesting to comply on 11.02.2022, in response to which the assessee replied with the prayer to provide further time of 15 days, so as to produce the requisite information and to explain the queries raised. However, even after lapse of considerable time the assessee failed to respond, therefore, after

deliberations Ld. AO made an addition u/s 69A on account of unexplained money on account of cash deposits in bank account to the tune of Rs. 2,20,24,300/-, also added estimated profit of 8% on Rs. 4,69,64,200/- on credits appearing in the bank account of the assessee maintained with Bank of Baroda having account no. 101205000067, which is calculated at Rs.37,57,136/-. Further, the interest income in the bank account of the assessee for Rs.50,070/- for which the no response was furnished by the assessee is also added to the income of the assessee under the head "Income from Other Sources".

6. With the aforesaid additions assessed income of the assessee is determined at Rs. 2,58,41,506/-

7. Aggrieved with the impugned additions, assessee preferred an appeal before the Ld. CIT(A), however, the appeal of the assessee is dismissed by the Ld. CIT(A) on account of non-prosecution, after making observations on the merits based on material available before him. The relevant observations/ decision of the First Appellate Authority is culled out as under:

15. During the appeal proceedings, Grounds of appeal, Facts of the case, Assessment order, submission filed by the appellant are perused. There is merit in the assessment order passed by the Assessing Officer in view of the following as under:-

Ground 01 : In this ground of appeal the appellant objected the assumption of jurisdiction by the Ld. AO in framing the assessment u/s 147 of the Income Tax Act 1961 and without complying with mandatory conditions of section 147 to 151 of the Income Tax Act, 1961. The contention of the appellant has been considered. I have gone through the facts and found that the proceedings against appellant were opened u/s 147 of the Income Tax Act, 1961 after obtaining approval from the competent authority. During the course of proceedings, the Assessing Officer issued the notice u/s 148 on 29.03.2021 and duly served upon appellant through speed post and Email to the appellant. In response to the same, appellant has not filed any return of Income.

However, the Assessing Officer issued notice u/s 142(1) on various dates. In response to the same, the appellant has not filed any compliance. Finally, show case notice was issued on 20.03.2022 along with draft assessment order. In response to the same, the appellant neither filed any compliance. It is also seen that the Appellant did not file any objections to the reasons for reopening and continued to participate in the assessment proceedings. The Appellant was required to file the objections on receipt of the same and not to wait till fag end of the assessment proceedings and raise such objections on receipt of draft assessment order.

In view of the discussion, it is pertinent to note that the Assessing Officer has granted ample opportunities for proving the supporting documents. However, the appellant has not furnished any single reply to the notices as discussed supra. After careful perusal of assessment order, it is seen that the reopening is based on cogent evidence and clear facts brought out by the Assessing Officer while recording satisfaction for issuance of notices u/s 148. Accordingly, I do not see any reason to intervene at this juncture as I don't see any anomaly in initiation of assessment proceedings u/s 148 initiated by the Assessing Officer which is based on specific information in the case of the appellant. Therefore, in my considered opinion, the AO is justified in rejecting the objections of the Appellant. Hence, the Ground is noted as disallowed.

Ground 02 : In this ground of appeal the appellant objected the Id. Assessing Officer has erred in estimating Net Profit at Rs.37,57,136/- being 8% of credits appearing in

Bank Account aggregating to Rs.4,69,64,200/-. The contention of the appellant has been considered. I have gone through the facts and found that during the course of appeal proceedings, the assessing officer issued notices to Bank of Baroda for proving the requisite details. In response to the same, the Bank Manager has provided copies of bank statement and same examined by the Assessing officer. On perusal of bank account no. 1012050000067 maintained with Bank of Baroda, it is noted by the AO that other than cash deposits, credits are appearing to the extent of Rs. 4,69,64,200/-. As the appellant has neither filed regular return of income nor in response to notice u/s 148, the appropriate profit on such receipts have not been disclosed. Under such circumstances, the Assessing officer has determined a profit @8% of Rs. 4,69,64,200/- which works out to Rs.37,57,136/- is brought to tax as regular business income.

During the appeal proceedings, no documentary evidences have been submitted by the appellant to verify the claim in spite of multiple opportunities being provided by this office as stated above. In view of above facts and the considering the explanation of the appellant, it is clear that the appellant has failed to justify the transactions based on which addition was made to income during the assessment proceedings. Further considering the replies received u/s 133(6) of the Income Tax Act, 1961 from the Bank Manager, it is clearly evident that the appellant has deposited other than cash to the extent of Rs. 4,69,64,200/- for the said year. Further, the contention of the appellant with regard to credit transactions remains unverified in absence of documentary evidence. It is also noted that the appellant has not filed return of income u/s 139. During the course of proceedings, the Assessing Officer issued the notice u/s 148 on 29.03.2021 and duly served upon appellant through speed post and Email to the appellant. In response to the same, the appellant has not filed any return of income u/s 148 of the Income Tax Act, 1961. The contention of the appellant remained unjustified and unsubstantiated. Hence, the Assessment Order is upheld the ground is noted as disallowed.

Ground 03 : In this ground of appeal the appellant objected the Id. Assessing Officer Id. Assessing Officer has erred in making addition of Rs.2,20,34,300/ treating the same as unexplained money u/s 69A of the Act and charging it to higher rate of tax under Sec. 115BBE of the Act. The contention of the appellant has been considered. I have gone through the facts and found that during the course of appeal proceedings, the assessing officer issued notices to Bank of Baroda for proving the requisite details. In response to the same, the Bank Manager has provided copies of bank statement and

same examined by the Assessing officer. It is also noted by the Assessing officer that the appellant had deposited cash amounting to Rs. 2,20,34,300/- in bank account. The Assessing Officer passed the assessment order and relevant extract reproduced as under:-

04.1. A letter dated 07.02.2022 was issued to Bank of Baroda calling information u/s 133(6) of the I.T. Act in the form of KYC details and copies of bank account statements. In response to the same, the bank has provided copies of bank account statements of a/c numbers 10120500000067 and 10120200007215 for the period F.Y. 2016-17. On perusal of said bank statements of Bank of Baroda, following cash deposits/deposits without any instruments were noted.

S.No.	Account no.	Date of deposit	Amount of deposit(Rs)
1	10120500000067	05.04.2016	40,000/-
2		30.07.2016	5,00,000/-
3		30.07.2016	5,00,000/-
4		18.08.2016	1,50,000/-
5		05.11.2016	2,50,000/-
6		07.11.2016	9,00,000/-
7		21.03.2017	1,00,000/-
8	10120200007215	11.04.2016	50,00,000/-
9		05.08.2016	30,00,000/-
10		06.08.2016	15,00,000/-
11		05.10.2016	50,00,000/-
		Total	1,69,40,000/-

04.1.1. Secondly, as per information available, the assessee during F.Y. 2016-17 has made cash deposits of Rs. 50,94,300/- in the bank account maintained with IndusInd Bank. This information also available on Insight portal.

04.1.2. Apart from above, on perusal of bank account no. 10120500000067 maintained with Bank of Baroda, it is noted that other than cash deposits, credits are appearing to the extent of Rs. 4,69,64,200/-. As the assessee has neither filed regular return of income nor in response to notice u/s 148, the appropriate profit on such receipts have not been disclosed. Under such circumstances, it would be fair and reasonable to determine a profit @8% of Rs. 4,69,64,200/- which works out to Rs 37,57,136/- is also brought to tax as regular business income.

04.2. The assessee has not explained the sources of cash generation of Rs. 1,69,40,000/- deposited in bank accounts maintained with Bank of Baroda and also not explained the sources of cash generation of Rs. 50,94,300/- deposited in the bank account maintained with IndusInd Bank taking the total cash deposits of Rs. 2,20,34,300/-. The assessee has also not disclosed profit on the amounts credited in its bank account other than cash deposits. The assessee has also not provided copies of bank statements inspite of requests made. The assessee has not filed the required documents inspite of sufficient opportunities granted. Apart from the letter dated 11.02.2022, the assessee has not uploaded any supporting documents in support of its say. As the assessee has neither filed its regular return of income as per the provisions of section 139 nor filed return of income in response to notice u/s 148, the cash deposits remains unexplained. In the absence of requisite details and explanations thereof, the entire cash deposits of **Rs. 2,20,34,300/-** are treated as unexplained money within the meaning of section 69A of the I.T. Act and taxed as per the provisions of section 115BBE of the I.T. Act. **As the addition involves addition u/s 69A, penalty proceedings u/s 271AAC of the I.T. Act are initiated separately.**

During the appeal proceedings, no documentary evidences have been submitted by the appellant to verify the claim in spite of multiple opportunities being provided by this office as stated above. In view of above facts and the considering the explanation of the appellant, it is clear that the appellant has failed to justify the transactions based on which addition was made to income during the assessment proceedings. Further considering the replies received u/s 133(6) of the Income Tax Act, 1961 from the Bank Manager, it is clearly evident that the appellant has deposited cash amounting to Rs. 2,20,34,300/- for the said year. It is crystal clear evident that the appellant has failed to justify the source of cash deposits made to bank account. It is also noted that the appellant has not filed return of income u/s

139. During the course of proceedings, the Assessing Officer issued the notice u/s 148 on 29.03.2021 and duly served upon appellant through speed post and Email to the appellant. In response to the same, the appellant has not filed any return of income u/s 148 of the Income Tax Act, 1961. The contention of the appellant remained unjustified and unsubstantiated. Hence, the Assessment Order is upheld the ground is noted as disallowed.

Grounds 04 & 05 : The ground being general in nature does not require separate adjudication.

The appellant during the appeal proceedings also did not made any submission supporting his claims. Hence, I do not have any documentary evidences on record to provide relief to the appellant sought merely through the grounds of appeal.

In this situation, it is for the appellant to furnish submissions with relevant evidence(s), if any, to support the claim. The 'burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Further, if the appellant claims that the addition made should be deleted, the burden is on the appellant to prove it why it should be deleted. Same is the position in case of all allowances, deductions, exemptions, claims or loss etc. Since an appeal is nothing but the claim of the appellant hat he has been unduly unjustifiably taxed or levied fee/interest, it is for the appellant to prove its case. The appellant has not availed the opportunity given to do so by filing documentary proofs or evidences.

The appellant was given notices under section 142(1) of the Income Tax Act, 1961. The appellant neither furnished the details called for nor submitted any documentary evidences which has been clearly brought out by the AO in the Assessment Order. The Assessing Officer was left with no option but to complete the assessment on the basis of material evidences gathered during the assessment proceedings.

During appellate proceedings also there was no response from the appellant. The nature and source of cash deposit and credit transactions needs to be explained to the satisfaction of the assessing officer or the appellate authority. Despite posting the case several times, there was no response. I observe that the

assessing officer had tangible material in his possession to form belief regarding income which had escaped assessment and there is complete lack of information/documentary evidence regarding the transactions done from the appellant's side.

Even otherwise on the merits of the case also, I do not see any reason to differ with the findings of the AO, since no attempt has been made by the appellant to discharge its onus. This case is also adjudicated on merits.

In view of the above discussion, it is held that the source of transaction done by the appellant remain unexplained and needs to be taxed in the hands of appellant. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer.

In the end result, the appeal is DISALLOWED.

8. Dissatisfied with the aforesaid order of Ld. CIT(A) confirming the additions made by the Ld. AO, assessee preferred an appeal before the ITAT, which is under consideration in the present case.

9. At the outset, Shri Yogesh Sethia, CA, Authorised Representative on behalf of the assessee (in short "Ld. AR"), submitted that the order passed by Ld. CIT(A) is an ex parte order, wherein the assessee had requested for adjournment towards the notice dated 07.11.2024, which was not considered by the Ld. CIT(A) and even had not referred to the said application of the assessee in his order. Under such circumstances, the assessee remains under

Bonafide belief that the matter will be adjourned by the Ld. CIT(A) and the assessee would have another opportunity to represent its case, however, without any further opportunity the impugned appellate order has been passed on 09.12.2024. Ld. AR further submitted that the presumption of Ld. CIT(A) that the assessee is not interest in perusing the appeal was under misconception while he had not considered or remain oblivious of the fact that the assessee request for adjournment was there on the portal. Ld. AR prayed that as the reasonable opportunity of being heard is not afforded to the assessee, therefore, the matter may be restored back to the file of Ld. CIT(A) in the interest of justice.

10. Per contra, Dr. Priyanka Patel, (in short “Ld. Sr. DR”), though supported the order of Ld. CIT(A), but agreed with the contention raised by the Ld. AR and did not object, if the matter is restored back for *denovo* adjudication to the file of Ld. CIT(A).

11. We have considered the rival submissions and perused the material available on record. Admittedly, the first notice for response in the appellate proceedings before the First Appellate Authority was issued on 03.11.2022 towards which the assessee requested for adjournment, thereafter the second notice was issued on 14.01.2024, again the assessee requested for

adjournment for which the next date for representation was granted on 07.11.2024, but the assessee yet again requested for adjournment though there was no whisper about this adjournment in the order of Ld. CIT(A). Ld. CIT(A) on the other hand had observed that there was no compliance by the assessee towards the notice dated 07.11.2024.

12. In our considered opinion reasonable opportunities are not afforded to the assessee, as the adjournment application of the assessee was not considered or referred by the Ld. CIT(A), and before us also, there was no rebuttal by the revenue on this aspect, therefore, we find it appropriate, in the interest of justice, that the assessee should be provided with one last opportunity of representing itself before the First Appellate Authority, therefore, the matter is restore back to the files of Ld. CIT(A) with the directions to decide the issues raised in the appeal within the period of 3 months from the date of receipt of this order.

13. Needless to say, that the reasonable opportunity of being heard shall be provided to the the assessee in the set aside appellate proceedings, the assessee is also directed to be vigilant and proactive in assisting the set aside appellate proceedings, failing which Ld. CIT(A) would be at liberty to adjudicate the issues raised by assessee as per the mandate of law.

14. The appeal of the assessee, therefore, is partly allowed for statistical purposes, in terms of our aforesaid observations.

15. ITA No. 102-103/RPR/2025 are regarding penalties u/s 270A and 271AAC(1), which pertains to the aforesaid quantum additions referred in ITA No. 104/RPR/2025 for AY 2017-18, which is remitted back for *denovo* adjudication to the file of Ld. CIT(A), therefore, the remaining two appeals are also restored back to the file of Ld. CIT(A) to decide in terms of our observations in ITA No. 104/RPR/2025 for AY 2017-18. Accordingly, ITA No. 102 and 103/RPR/2025 are set aside to the file of Ld. CIT(A) for fresh adjudication.

16. In combined result, all the captioned appeals of the assessee are partly allowed for statistical purposes, in terms of our aforesaid observations.

Order pronounced in the open court on 21/03/2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 21/03/2025

Vaibhav Shrivastav

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- M/s JMD Crusher, Jagdalpur
2. प्रत्यर्थी / The Respondent- ITO, Ward-Jagdalpur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur