

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER  
&  
MS. KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER  
I.T.A. No. 6874 & 6875/Mum/2024  
Assessment Year: 2016-17 & 2017-18

<b>Arun Ashar</b> 101, 10 <sup>th</sup> Floor Maktangan Sarojini Road Santacruz (W) Mumbai - 400054 [PAN: AAQPA2836A]	Vs	<b>Dy. Commissioner of Income Tax, Central Circle - 2(2), Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Saurabh Soparkar, A/R
Revenue by :	Shri Ram Krishn Kedia, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 26/03/2025  
घोषणा की तारीख /Date of Pronouncement: 28/03/2025

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

I.T.A. No. 6874 & 6875/Mum/2024 are two separate appeals by the assessee preferred against two separate orders of the Id. CIT(A)-48, Mumbai [hereinafter "the Id. CIT(A)"], pertaining to AY 2016-17 & 2017-18.

2. Since the underlying facts in the issues are identical for both the years, the appeals were heard together and are disposed off by this common order for the sake of convenience and brevity. Though quantum may differ.

3. The common grievance relates to the addition made u/s 69A of the Act by the AO in respect of cash alleged to have been received by the assessee as unexplained money.

4. Before embarking upon the facts of the case, it would be pertinent to understand the provisions of Section 69A of the Act came to be inserted by the Finance Act, 1964 *w.e.f.* 01/05/1964 and the same reads as under:-

*"69A. Unexplained money, etc. 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 4 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."*

4.1. The Hon'ble Supreme Court in the case of *D. N. Singh v .CIT (2023) 454 ITR 595 (SC)* has analysed the aforementioned provisions of Section 69A of the Act threadbare as under:-

- "a. The assessee must be found to be the owner;*
- b. He must be the owner of any money, bullion, jewellery or other valuable articles;*
- c. The said articles must not be recorded in the Books of Account, if any maintained;*
- d. The assessee is unable to offer an explanation regarding the nature and the source of acquiring articles in question; or*  
*The explanation, which is offered, is found to be, in the opinion of the Officer, not satisfactory;*
- e. If the aforesaid conditions are satisfied, then, the value of the bullion, jewellery or other valuable article may be deemed as the income of the financial year in which the assessee is found to be owner;*
- f. In the case of money, the money can be deemed to be the income of the financial year;"*

5. In light of the aforementioned analysis, let us now consider the facts of the case which can be understood from the following findings of the AO given at para 4 of his order in AY 2016-17:-

*"During the course of recording statement of Ms. Nayna Pasta at 5C, Ameyanand,*

*Near Kirti College, Prabhadevi, Mumbai u/s 132(4) of the Income Tax Act, 1961 on 30.09.2021, Ms. Nayna Pasta confessed that she had received amount of USD 1,00,000 on 08.02.16 and USD 50,000 on 28.08.16 in India from a person on behalf of Rajiv Saxena. Ms. Nayna Pasta stated that the person came from Ballard Estate Office to deliver the total amount of Rs 1 Cr in cash both the times. Rajiv Saxena had sent a currency note of Rs 10 to her that has to be shown that person to get cash of Rs 1 Cr. Further, she stated that this amount of Rs 1 Cr was received by her on behalf of her brother Pravin Ashar and further gave the same to Arun Ashar. The summary of purpose as explained by Ms. Nayna Pasta in her statement is placed below: "The purpose behind this payment was that Pravin Ashar had incorporated a company namely M/s Citybrook in BVI and over a period of time he had an investment of approx. upto 30,00,000 USD. Further, on the advice of Rajiv Saxena M/s Citybrook shareholding was transferred by Pravin Ashar to Rajiv Saxena and the entire investment fund approx. upto 30,00,000 USD was transferred by Mr. Rajiv Saxena to another company Druz Holdings."*

6. From the aforementioned facts, the entire transactions can be understood which relates to the money given by Mr. Rajiv Saxena to Ms. Nayna Pasta, who is the sister of the assessee who stated that the said money was received by her on behalf of her brother Mr. Pravin Ashar and it was given to the assessee to be given to Mr. Pravin Ashar.

7. We find that each of the parties involved, have confirmed the transactions in their respective statements. Ms. Nayan Pasta, in her statement admitted that she has received the impugned money from Mr. Rajiv Saxena. Mr. Arun Ashar, the assessee, in his statement has accepted to have received the money from his sister for Mr. Pravin Ashar, his brother and has also accepted that the money has been given to the children of Mr. Pravin Ashar and part of the money has been spent by him.

8. On the above facts, coming back to the provisions of Section 69A of the Act, as analysed by the Hon'ble Supreme Court (*supra*), neither Ms. Nayna Pasta nor Mr. Arun Ashar (the assessee), have been found to be the owner of any bullion, jewellery or other valuable article/s and in fact, the assessee has offered an explanation regarding the nature and source of

acquiring the cash in question which has also been examined and accepted by the AO.

8.1. In our considered opinion, if the entire cash transaction is understood in its true perspective, the provisions of Section 69A of the Act, do not apply. The Hon'ble Supreme Court in the case of *D. N. Singh v. CIT (supra)* has *interalia* held as under:-

*"28. Applying the provision to the facts of the case, it is noticed that the points that arise are as follows:*

- I. The question would arise, as to whether the appellant could be treated as the owner of the bitumen;*
- II. The further question would arise, as to whether bitumen could be treated as other valuable articles;*
- III. Thirdly, the question arises, as to how the value of the bitumen is to be ascertained;*
- IV. Whether the ITAT erred in passing contradictory Orders qua the Assessment Years 1995-1996 and 1996-1997, by Orders passed on the same day and whether the facts were the same?*

*29. As regards the first question, viz., whether the appellant could be treated as the owner of the bitumen is concerned, it is indisputable that the appellant was engaged as a carrier to deliver the bitumen, after having lifted the same from the Oil Companies to the various Divisions of the Road Construction Department of the Government of Bihar. Before the Court proceeds to deal with this aspect, we may bear in mind, what this Court held in the decision *Chuharmal's case (supra)*. In the said case, the Court was dealing with wrist watches being seized from the assessee during a search conducted by the Customs Authorities from the bedroom of the assessee. The question fell for consideration, as to whether the principles underlying Section 110 of the Evidence Act, 1872, would assist the Revenue to conclude that a person, in possession, could be treated as the owner. This Court held, *inter alia*, as follows:*

*"6. ... In other words, it follows from well settled principle of law that normally, unless contrary is established, title always follows possession. In the facts of this case, indubitably, possession of the wrist-watches was found with the petitioner. The petitioner did not adduce any evidence, far less discharged the onus of proving that the wrist-watches in question did not belong to the petitioner. Hence, the High Court held, and in our opinion rightly, that the value of the wrist-watches is the income of the assessee."*

*30. After referring to the Judgment of the High Court of Bombay reported in *J.S. Parkar v. V.B. Palekar [1974] 94 ITR 616*, which dealt with seizure of gold, the Court, held as follows :*

*"6. ... There a contention was raised that the provision in section 110 of the Evidence Act where a person was found in possession of anything, the onus of proving that he was not the owner was on the person who affirmed*

*that he was not the owner, was incorrect and inapplicable to taxation proceedings. This contention was rejected. The High Court of Bombay held that what was meant by saying that the Evidence Act did not apply to the proceedings under the Act was that the rigour of the rules of evidence contained in the Evidence Act, was not applicable but that did not mean that the taxing authorities were desirous in invoking the principles of the Act in proceedings before them, they were prevented from doing so. Secondly, all that section 110 of the Evidence Act does is that it embodies a salutary principle of common law jurisprudence which could be attracted to a set of circumstances that satisfy its condition."*

**31.** *The said view has been followed by this Court in CIT v. K. Chinnathamban [\[2007\] 162 Taxman 459/292 ITR 682/7 SCC 390](#). Therein the Court inter alia held:*

*"8. ... The High Court has rightly held that the expression "income" as used in Section 69-A of the Act, has wide meaning which meant anything which came in or resulted in gain."*

**32.** *It may be noticed that Section 15 of the Carriage by Road Act, 2007, which repealed the Carriers Act, 1865, provides as follows:*

*"15 Right of common carrier in case of consignee's default.*

- (1) *If the consignee fails to take delivery of any consignment of goods within a period of thirty days from the date of notice given by the common carrier, such consignment may be deemed as unclaimed: Provided that in case of perishable consignment, the period of thirty days shall not apply and the consignment shall be deemed unclaimed after a period of twenty-four hours of service of notice or any lesser period as may be mutually agreed to by and between the common carrier and the consignor.*
- (2) *In the case of an unclaimed consignment under sub-section (1), the common carrier may,*
  - (a) *if such consignment is perishable in nature, have the right to sell the consignment; or*
  - (b) *if such consignment is not perishable in nature, cause a notice to be served upon the consignee or upon the consignor if the consignee is not available, requiring him to remove the goods within a period of fifteen days from the date of receipt of the notice and in case of failure to comply with the notice, the common carrier shall have the right to sell such consignment without any further notice to the consignee or the consignor, as the case may be.*
- (3) *The common carrier shall, out of the sale proceeds received under sub-section (2), retain a sum equal to the freight, storage and other charges due including expenses incurred for the sale, and the surplus, if any, from such sale proceeds shall be returned to the consignee or the consignor, as the case may be.*

(4) *Unless otherwise agreed upon between the common carrier and consignor, the common carrier shall be entitled to detain or dispose off the consignment in part or full to recover his dues in the event of the consignee failing to make payment of the freight and other charges payable to the common carrier at the time of taking delivery."*

33. *Therefore, under section 15, if the consignee fails to take delivery of any consignment of goods within thirty days, the consignment is to be treated as unclaimed. The period of thirty days is declared inapplicable to perishable consignments, in which case, a period of twenty-four hours' notice or any lesser period, as may be agreed between the consignor and the common carrier, suffices. In the case of perishable consignment, following such notice, the consignment can be sold. In a case where the goods are not perishable, if there is failure by the consignee to remove the goods after the receipt of a notice of fifteen days from the carrier, the common carrier is given a right to sell the consignment without further notice. Section 15(3) enables the carrier to retain a sum equal to the freights, storage and other charges, due, including expenses incurred for the sale. The surplus from the sale proceeds is to be returned to the consignor or the consignee. Section 15(4) clothes the carrier with a right to sell in the event of failure by the consignee to make payment of the freight and other charges, at the time of taking delivery.*

34. *This Court, in this case, is dealing with the assessment years 1996-1997. The law applicable was contained in the Carriers Act, 1865. It is unnecessary for us to dwell further, as it is not the case of either party that the appellant had become the owner of the bitumen in question in a manner authorised by law. On the other hand, the specific case of the appellant is that the appellant never became the owner and it remained only a carrier. However, as noticed, if it is found that there has been short delivery, this would mean that the appellant continued in possession contrary to the terms of contract of carriage.*

35. *In Mohan B. Samtani's case (supra), the appellant, who was found in possession of a package, which, when opened at the airport, contained a bronze idol of Nataraja and its pedestal, was sought to be roped in as owner with the aid of Section 69A of the Act :*

*"6. From the facts on record, there cannot be any dispute that the consignor was the State Trading Corporation of Sikkim and the consignee was the Chogyal of Sikkim and the assessee was a representative of the State Trading Corporation of Sikkim. The assessee also claimed that the Chogyal of Sikkim was the owner and, under his verbal instruction conveyed through his A.D.C., he arranged for despatch thereof by signing the papers. In fact, the Chogyal also claimed ownership of the said packages on the basis of the letter by the Under Secretary of the Chogyal of Sikkim addressed to the Assistant Collector of Customs dated May 30, 1973. The Chogyal was the head of an independent State at the relevant time and it was necessary, if the claim for ownership of the Chogyal is to be disputed, to have the said letter verified by obtaining the original from the customs authorities. Merely because the packages were presented before the customs authority, it does not ipso facto prove the ownership of the assessee of the goods.*

*7. In our view, it has not been established or found that the assessee is the owner of the said idol and pedestal. On the contrary, the said letter dated May 30, 1973,*

*addressed to the Assistant Collector of Customs shows that the Chogyal is the owner of the said articles. Under such circumstances, there is no reason to hold the assessee liable and to add Rs. 80,000 being the value of the said articles to his income."*

8.2. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax vs. Anoop Jain [2020] 424 ITR 115 (Delhi)*, had the occasion to consider a similar issue and held as under:-

- “■ *As far as the assessee is concerned, the Assessing Officer could not establish the source of the deposit and there was no evidence to support his claim that the amount had been collected from members of the public. [Para 27.3]*
- *The question to be asked is whether the assessee was able to satisfactorily explain the source of the credit entry of Rs. 1.03 crore appearing in his bank account. It must be recalled that while this was the starting point, during the course of assessment the Assessing Officer found that the assessee had received 13 pay orders aggregating to Rs. 5.17 crores from the SCB, during the financial years in question and mostly between December, 1991 and February, 1992. All these POs were utilised by him for purchasing units and shares from different banks and mutual funds. [Para 29]*
- *The explanation offered by assessee was that all 13 POs were received from DCC, a broker and the purchase of units and shares were done by him on behalf of DCC and then the same were sold back to DCC after earning normal brokerage. The Assessing Officer found that all 13 POs were actually tainted POs relating to the Securities Scam of 1992 and that they had been issued by the SCB under extraordinary circumstances. The SCB had informed the ACIT that it had been a victim of a massive fraud perpetrated in 1992 by certain brokers in collusion with certain ex-employees of the SCB to siphon out funds from the bank. It was also informed that the SCB had filed an FIR with CBI in which JP, an ex-employee was named as one of the accused and all the above referred 13 POs were part of total 15 POs fraudulently issued by JP. [Para 30]*
- *It must be noticed here that even during the course of the assessment proceedings the Assessing Officer required the assessee to show cause as to why the said sum of Rs. 1.03 crore should not be added to his total income under section 69A. The assessee filed a petition before the Commissioner under section 144A challenging the above proposal. [Para 31]*
- *The direction sought by the assessee from the Additional Commissioner was that the Assessing Officer should put to the assessee, the material gathered by him on the basis of which the addition was proposed to be made. In the said order the Additional Commissioner noted the fact that the Assessing Officer of JP had held that there was an apparent case of financial quid pro quo against JP and had already added a sum of Rs. 5.68 crores, equal to the amount of said 15 POs, as JP's income from other sources. It was noticed therein that 13 out of these 15 POs were received*

*by the assessee and were utilised by him for purchasing the units and shares from different banks. [Para 32]*

- *According to the Additional Commissioner the above facts appeared to be sufficient justification to the Assessing Officer to suspect the assessee's claim that the transactions relating to 13 POs of SCB were normal business transactions. He started investigation to find out the truth. The Additional Commissioner set out the gist of the evidence collected by the Assessing Officer but added that it was not exhaustive nor was it possible for him to describe it fully due to time constraint. [Para 33]*
- *However, it was concluded that prima facie there appeared to be a collusion between the assessee and DDC in obtaining the 13 POs from the bank SCB through a financial quid pro quo with its manager JP. The objective behind the collusion appeared to be to invest heavily in the booming stock market prior to the Budget of 1992 and make a big and quick profit on sale of the shares subsequently. [Para 34]*
- *When the matter went back to the Assessing Officer, he referred to the order of the Commissioner where the attention was drawn to the Assessing Officer to the decision of the Tribunal, Delhi in ITO v. DC Rastogi [\[1991\] 39 ITD 490](#). The Assessing Officer then proceeded to hold that the assessee had acquired a pay order of Rs. 1.03 crore from the bank SBC 'after a financial quid pro quo of an equal amount'. On this very basis he added the amount to the income of the assessee. On the same basis he further concluded that the amount constituting the remaining 12 POs should also be added to the income of the assessee. [Para 35]*
- *Thus it is seen that the very basis for making the additions is the inference drawn by the Assessing Officer that the assessee had received the above POs and spent the monies for purchase of shares and units as a result of some 'financial quid pro quo'. [Para 36]*
- *There are certain facts that stand out which showed that the aforementioned amounts received by the assessee as POs did not belong to him. The assessee was only a conduit through whom the amounts were floated. One of the essential conditions in section 69A is that the assessee should be the 'owner of the money' and it should not be recorded in his books of account. This was a pre-condition to the next step of the assessee offering no explanation about the nature and source of the acquisition of such money. [Para 37]*
- *In the instant case the evidence placed before the Assessing Officer clearly indicated that the broker confirmed that the draft of Rs. 1.03 crore was given by him to the assessee and that the transactions of purchase of units were done by the assessee on his behalf. Books of account maintained by the broker confirmed the above statement. [Para 38]*
- *Added to this is the fact that CBI recovered securities and cash worth Rs. 4.73 crore from the broker and he claimed that these were held on behalf of the wife of the SCB bank manager JP, who was the proprietor of SMI. This was to be read with the statement of JP, an employee of the bank SCB, stating that the drafts worth Rs. 5.69 crore were issued by him on instructions of a stock broker HPD. [Para 39]*

- *The two letters issued by the SCB to the Assessing Officer clearly state in regard to the cheque of Rs. 1.03 crore issued in favour of SBH that as per the records 'there were no written instructions from assessee to this effect.' They also confirmed that the money was not received back by the SCB. The letter dated 25-8-1995 in this regard is even more detailed. [Para 40]*
- *This obviously meant that the above POs had been issued without obtaining any corresponding deposit of money into the SCB by anyone else. Certainly the assessee did not seem to have been involved at all. The addition of the sum of Rs. 5.17 crore to the income of the bank manager JP by his Assessing Officer is another significant aspect. The said addition was part of the larger sum of Rs. 5.69 crore added to his income. The question of adding the same amount in the hands of the assessee clearly was not permissible. [Para 41]*
- *As rightly noted by the Commissioner (Appeals) there was no evidence to show that the 24 cheques stated to have been issued by the assessee on behalf of the broker, DDC were utilised by the assessee and were meant for the benefit of the assessee. [Para 43]*
- *In other words, there was nothing to show that the assessee had benefited in any way from any of the above transactions. As regards the test of human probabilities if there was no evidence whatsoever to the contrary it could have been resorted to draw certain inference. [Para 44]*
- *However, in the instant case there appears to be overwhelming evidence to show the involvement of the broker, DDC acting on behalf of the wife of JP, the manager of the SCB, for her proprietary concern SMI. The CBI also did not choose to proceed against the assessee and that discounts the case of any collusion between the assessee and the DDC along with the manager JP. It does appear that the assessee was at the highest used as a conduit by the other parties and did not himself substantially gain from these transactions. [Para 45]*
- *In that view of the matter, the concurrent view of both the Commissioner (Appeals) and the Tribunal that the addition of the aforementioned sum to the income of the assessee was not warranted, does not call for interference. The question of law framed is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue. The appeal is accordingly to be dismissed. [Para 46]*

8.3. Considering the facts of the case in totality, we find that cash was given by Mr. Rajiv Saxena to Ms. Nayna Pasta, who gave cash to Mr. Arun Ashar (the assessee), who gave it to the children of Mr. Pravin Ashar. This is the undisputed chain of transaction as emanating from the assessment order itself. Therefore, we do not find any merit in the impugned addition

made u/s 69A of the Act and the same is directed to be deleted for both the assessment years under consideration.

9. In the result, appeals of the assessee are allowed.

**Order pronounced in the Court on 28<sup>th</sup> March, 2025 at Mumbai.**

**Sd/-**

**(MS. KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Sd/-**

**(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER**

Mumbai, Dated 28/03/2025

*SC SP*

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

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2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
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Assistant Registrar  
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