

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.34/RPR/2025

निर्धारण वर्ष / Assessment Year : 2016-17

Kamal Kishor Agrawal HUF
159, Shiv Ashis, Opp. Pandey Nurshing Home,
Samta Colony, Raipur (C.G.)-492 011
PAN: AADHK4707P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(2), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prafulla Pendse, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 07.04.2025

घोषणा की तारीख / Date of Pronouncement : 09.04.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

The captioned appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)/NFAC, Delhi dated 06.11.2024 for the assessment year 2016-17 as per the following grounds of appeal:

“1. That the order of Ld. CIT(A) is bad in law as well as on facts and the entire addition of Rs.40,00,000/- sustained by the Ld. CIT(A) are bad in law and accordingly liable to be deleted.

2. In the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in sustaining addition of Rs.40,00,000/- under section 68 of the income tax act, contrary to the provisions of Law; because maintenance of books of accounts is a sine-qua-non for making such addition under section 68 and when the income is declared under section 44AE, the appellant is not liable to maintain any books of accounts.

3 That the Ld. CIT(A) has grossly erred in confirming the addition of Rs.40,00,000/- in respect of cash deposits in bank account by wrongly treating purchase and cancellation agreements as bogus solely for the reason that no entry was sand in the Notary register, though the execution of notarial was never denied by the Notary nor the transaction was ever denied by the seller.

4. That the CIT(A) has grossly erred in confirming the addition of Rs.40,00,000/-without appreciating the evidence placed on record and by wrongly placing reliance on the principles laid down in CIT vs Durga Prasad More 82 ITR 540 (SC), which are not applicable to the facts of the instant case.

5 The above grounds are independent and without prejudice to one and another.

6. The appellant craves leave to urge, add, amend, alter, enlarge, modify, substitute, delete or withdraw any of the ground or ground and to adduce fresh evidence at the time of hearing of the appeal.”

2. In this case, the A.O had made addition of Rs.40 lacs u/s.68 of the Income Tax Act, 1963 (for short 'the Act'). It was noted by the A.O during the assessment proceedings that as per the submission of the assessee, it had received an amount of Rs.40 lacs in cash as refund from Shri Amit Kumar Agrawal which was given by the assessee as advance during the financial year 2014-15 regarding some land transaction. That later on, agreement to sale of the plot was cancelled by mutual consent. In order to ascertain the genuineness of the claim of the assessee that such amount of Rs.40 lacs was received from Shri Amit Kumar Agrawal, summons u/s. 131 of the Act was issued to the said person and his statement was recorded on oath. Notice u/s. 133(6) of the Act was also issued to Shri C.P Sharma, Notary who had executed those two agreements i.e. (i) agreement to advance; and (ii) agreement to refund.

3. In reply to the said notice issued u/s.133(6) of the Act, Shri C.P Sharma, Notary replied stating that there was no entry of this agreement in his notary register which were executed as agreement by Kamal Kumar Agrawal HUF (i.e. the assessee herein) and Shri Amit Kumar Agrawal. That regarding the statement recorded from Shri Amit Kumar Agrawal, it was noted by the A.O that as admitted himself by Shri Amit Kumar Agrawal i.e. he was not even present before the notary either on 19.03.2018 or on 17.04.2018 (as per reply to Question No.11 and Question No.12) for executing those agreements. It was therefore held by

the A.O after examination of facts that the entire story has been concocted made up and is an afterthought and accordingly, it was held that the amount of Rs.40 lacs was nothing but the unaccounted money of the assessee deposited in its bank account. This finding has been upheld by the Ld. CIT(Appeals)/NFAC.

4. At the time of hearing, the Ld. Counsel for the assessee could not prove the genuineness of the source of the Rs.40 lacs deposits. He could not produce any evidence with regard to the alleged transaction with Shri Amit Kumar Agrawal that the amount of Rs.40 lacs in question which has been added is the same amount of Rs.40 lacs which he had refunded back to the assessee. There is no accountability placed on record from Shri Amit Kumar Agrawal regarding the validity of the source of the said cash deposits. Also, the Ld. Counsel could not prove the genuineness of the transaction considering the statement of the notary i.e. Shri C.P Sharma and also statement of Shri Amit Kumar Agrawal denying his presence before the notary as evidenced from the replies to Question No.11 and Question No.12 as per record.

5. The Ld. Sr. Departmental Representative (for short 'DR') heavily relied on the findings of the sub-ordinate authorities and prayed that the addition may be confirmed.

6. I have carefully considered the submissions of the parties herein and documents placed on record. The Ld. Counsel for the assessee claims that the amount in question i.e. Rs.40 lacs is the same amount which has been refunded from Shri Amit Kumar Agrawal. However, there had been no enquiry conducted by the Ld. CIT(Appeals)/NFAC in terms with Section 250(4) and (6) of the Act to verify these contentions. In the interest of natural justice, one final opportunity should be given to the assessee so that the ground verification is done in this case at the level of the Ld. CIT(Appeals)/NFAC calling for a remand report from the A.O by which, the scales of justice would be maintained. Meaning thereby that the demand will remain as it is and at the same time, the assessee will get an opportunity to substantiate before the Ld. CIT(Appeals)/NFAC regarding the genuineness, as claimed by the assessee. The Ld. CIT(Appeals) also may obtain a remand report from the A.O and pass a speaking order in terms with the mandate of the statute enshrined u/s.250(4) and (6) of the Act. In view thereof the order of the Ld. CIT(Appeals)/NFAC is set-aside and remanded back to its file as per aforestated directions. The Ld. CIT(Appeals)/NFAC shall pass an order within three months from receipt of this order. Also, it is directed that this being the final opportunity, the assessee shall comply with the hearing notices issued by the Ld. CIT(Appeals)/NFAC and file necessary evidence and documents before him and represent its case on merits.

7. As per the above terms, the grounds of appeal raised by the assessee stands allowed for statistical purposes.

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

Order pronounced in open court on 09th day of April, 2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 09th April, 2025.

SB, Sr. PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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