

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No.64/Agr/2023
Assessment Year: 2017-18

Shashi Rani, 6/90, Prakash Nagar, Police Line Road, Agra.	Vs.	Income-tax Officer, Ward 1(2)(4), Agra.
PAN : BBHPR4383J		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	25.03.2025
Date of pronouncement	29.04.2025

ORDER

Per Sunil Kumar Singh, Judicial Member:

This appeal has been preferred by assessee against the impugned order dated 17.03.2023 passed in Appeal no. CIT(APPEALS)-1, AGRA/10460/2019-20 by the Ld. Commissioner of Income-tax(Appeals)/National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment Year [A.Y.] 2017-18, wherein learned CIT(A) has confirmed the addition of Rs.18,00,200/- made by Assessing Officer u/s. 69A of the Act.

2. None responded for the assessee. Perused records and heard Learned Departmental Representative for the Revenue.

3. Briefly stating, the facts are that the assessee is a non-filer. However, on the basis of information available with the department, it was found out that the assessee deposited Rs.9,00,100/- in her post office saving bank account No. 3437952676 and Rs.9,00,100/- in another account No. 3425033097 totaling to Rs.18,00,200/- during the demonetization period between 09.11.2016 to 30.12.2016. The assessee did neither file return of income u/s. 139 nor respond to the notice u/s. 142(1) issued by the Assessing Officer. Hence, Assessing Officer proceeded to make assessment u/s. 144 of the Act. During the proceedings, various statutory notices were issued but no response was filed by the assessee. However, in response to show cause notice dated 21.09.2019, the assessee replied as under :

"the assessee had deposited a total sum of Rs. 18,00,200/- in Post Office Savings Accounts Nos. 3437952676 and 3425033097, during demonetization period, out of which Rs. 18,00,000/- comprised of demonetized currency. The amount so deposited in cash was kept with the assessee since the time of assessee's marriage which took place on 29.11.2008. Also, gifts were received on the occasion of assessee's marriage from friends and relatives to the tune of Rs. 18,06,401/-, out of which Rs. 18,00,000/- comprised of demonetized notes. These Rs 18,00,000/- were deposited in cash."

Accordingly, assessee admitted of having deposited aforesaid amount in the aforesaid account numbers. Assessee also filed copy of affidavit dated 27.09.2019 in support of her reply dated 21.09.2019. Further, when the Assessing Officer issued a query letter dated 18.10.2019 through notice u/s. 142(1) asking the assessee to submit bank accounts along with PAN of all relatives and friends since 29.11.2008 along with source of income and details of household expenses and movable and immovable assets held by the assessee and her family members. In spite of complying the query letter issued by the Assessing Officer, the assessee made another detailed submission dated 25.11.2019 with a new story stating that the assessee was engaged in the shoe business since financial year 2008-09. The Assessing Officer being dissatisfied with two contrary responses, assessed total income of the assessee u/s. 144 of the Act as Rs. 18,00,200/- as unexplained investment/credits u/s. 69A of the Act.

4. The assessee could not get favourable order from the first appellate authority, who confirmed the assessment order dated 09.12.2019.

5. The assessee has preferred this appeal on the following grounds :

“1- Because upon the facts and in overall circumstances of the case, the order passed by the Ld. CIT(A) dismissing the Appeal filed and confirming the order passed by the Ld. AO is bad in law, illegal and against the principles of natural justice.

2- Because upon the facts and in overall circumstances of the case, the order passed by the Ld. CIT(A) dismissing the Appeal filed and confirming the order passed by the Ld. AO is bad in law, illegal as the same has been passed by the CIT(A) without considering the submission made during the course of Appellate proceedings.

3- Because upon the facts and in overall circumstances of the case, the order passed by the Ld. CIT(A) dismissing the Appeal filed and confirming the order passed by the Ld. AO is bad in law, illegal as the same has been passed by the CIT(A) without considering the Cash book submitted during the course of Appellate proceedings. Nor there is any whisper of having gone through the 'Cash book' filed during appellate proceedings.

4. BECAUSE upon the facts and in overall circumstances of the case, the order passed by the CIT(A) dismissing the Appeal filed and confirming the order passed by the Ld. AO is bad in law and illegal. As per provisions of section 69A of the Act onus was on the revenue to prove that the investment made by the Appellant was her undisclosed income, which the Assessing officer failed to discharge.

5- Because, upon the facts and in overall circumstances of the case, the addition of Rs 18,00,200/- made u/s 69A by the Ld. Assessing Officer and confirmed by the Ld. CIT(A) is illegal, bad in law and against the facts. Because the Appellant has explained in detail the source of her income along with necessary evidences in support, which have not been considered by the CIT(Appeals).”

6. None responded for the assessee. Heard learned DR for the Revenue and perused the records.

7. The small issue for consideration under appeal is as to whether learned CIT(Appeals) has erred in confirming the addition of Rs.18,00,200/- made u/s. 69A of the Act made vide assessment order. We have perused the records. The instant case relates to the rejection of alternate and inconsistent pleas of the assessee. As far as the income-tax matters are concerned, an assessee can take different stands at different times, but

cannot take contrary stands in the same case. Hon'ble Supreme Court in Amar Singh vs. Union of India [2011] 7 SCC 69 has held as under :

“50. This court wants to make it clear that an action below is not a game of chess. The litigant who goes to court and invokes its writ jurisdiction must go with clean hands. He cannot prevaricate and take any consistent positions.”

Similar view was taken by Hon'ble Apex Court in Joint Action Committee of Airline Pilots Association of India vs. DG of Civil Aviation [2011] 5 SCC 435 as under :

“12. The doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity.

Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.”

8. The impugned order also depicts the details of summary of turnover and profit derived there from along with details of cash in hand as per cash books, which need no repetition. The facts of the instant case are very peculiar, as the assessee, before taking second inconsistent and contrary stand in respect of shoe business has not mentioned even a word as to under what circumstances, she was compelled to take the first stand of depositing the aforesaid sums in her two post office accounts out of the gifts from her marriage dated 29.11.2008. It is a clear case of artificial stand taken by the assessee without any explicit, cogent, convincing and

reasonable explanation. We, therefore, do not find any error or infirmity in the impugned order passed by Id. CIT(Appeals). Hence, aforesaid issue is decided against the appellant/assessee and in favour of the respondent/Revenue.

9. In the result, appeal is dismissed.

Order pronounced in the open court on 29.04.2025.

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Sd/-

**(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

Dated: 29.04.2025

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra