

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**

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

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

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

**आयकर अपील सं. / ITA No: 244/RPR/2025**

(निर्धारण वर्ष Assessment Year: 2020-21)

Dy. Commissioner of Income Tax-1(1), 32/32 Bungalow, Hudco, Bhilai, Durg-490006, C.G.	V s	Rashmi Lakhotia, 31-42, Industrial Growth Centre, Borai, 491001, C.G.
<b>PAN: AAWPL6582G</b>		
(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	:	15.05.2025
घोषणा की तारीख/Date of Pronouncement	:	21.05.2025

**आदेश / ORDER**

**Per Arun Khodpia, AM:**

The captioned appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"] passed under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 13.02.2025, for the Assessment Year 2020-21, which in turn arises from the order of Assessing Officer, Assessment Unit, Income Tax Department (in short "Ld. AR") u/s 143(3) r.w.s. 260 r.w.s. 144B of the Act, dated 30.11.2023.

2. The grounds of appeal raised by the revenue are extracted as under:

1. *Whether on the facts and in the circumstances of the case the Ld. CIT(A) was justified in deleting the addition u/s 69 of the Income Tax Act, 1961 of Rs. 43,07,915/- on account of undisclosed immovable properties ?*
2. *Whether on the facts and in the circumstances of the case the Ld. CIT(A) was justified in deleting the addition u/s 69A of the Income Tax Act, 1961 of Rs. 2,11,26,015/- on account of undisclosed cash balance?*
3. *Any other ground which may be adduced at the time of hearing.*

3. Briefly stated, the assessee herein is an individual having income from house property, business, capital gains and other sources. The assessee filed her ITR on 14.01.2021, declaring total income of Rs.35,44,15,730/-. The case of assessee was selected for complete scrutiny through 'CASS' on the following reasons:

- (i) Expenditure of personal nature,
- (ii) High creditors / Liabilities,
- (iii) Unsecured loans.

During the assessment proceedings, deliberating on the aforesaid issues, it is observed by the Ld. AO that there was a difference of Rs. 2,11,26,015/- in the cash and bank balance of the assessee, as shown in her books of accounts as against the same declared in asset and liability details under the

schedule AL of the ITR, therefore, an addition u/s 69A was proposed. Another issue for which the addition is proposed u/s 69 was that there was a difference in the value of immovable property of the assessee, which was shown with mismatch in figures in the books of account vis-à-vis schedule AL in the ITR and the assessee was unable to explain the same by way of furnishing documentary evidence. Therefore, the difference of Rs. 43,07,915/- was proposed to be added back to the income of the assessee u/s 69 of the Act. Regarding aforesaid two issues, the assessee has tried to explain before the Ld. AO that the amounts declared in the ITR are inadvertently shown wrongly and, also the figures as per books of accounts are higher, therefore, no addition u/s 69 or 69A was called for. The reply of the assessee was taken into consideration by Ld. AO; however, he did not find it convincing, therefore, he made the aforesaid two additions, and the assessed income of the assessee has been enhanced to Rs. 37,98,79,660/-.

**4.** Aggrieved with the aforesaid additions, assessee preferred an appeal before Ld. CIT(A). In the appellate proceedings, Ld. CIT(A) discussed the issue after contemplating upon the material available on record and submissions of the assessee and have, thus, allowed the ground of appeal of the assessee with the observations that for the purposes that section 69 of the Act, the Ld. AO has to first see whether the investments made are

recorded in the books of accounts maintained by the assessee, if any. If the investments are recorded in books of accounts, provisions of section 69 do not apply. If the investments are not recorded in the books of accounts maintained by the assessee, if any, addition can be made u/s 69 provided other conditions as laid down under the said section are also simultaneously met. Ld. CIT(A) also observed that Ld. AO was required to reject the explanation of the appellant in a speaking manner. With such observations, Ld. CIT(A) held that the addition was wrongly made by Ld. AO u/s 69 of the Act, without establishing that the provisions of section 69 are applicable in the present case. In view of such inference drawn by Ld. CIT(A), the relevant ground of appeal raised by the assessee was allowed and the addition has been vacated. Similar findings were followed by Ld. CIT(A) *qua* the addition u/s 69A and the addition made was deleted.

**5.** Dissatisfied with the aforesaid decision by Ld. CIT(A), the department is in appeal before us.

**6.** At the outset, Dr. Priyanka Patel, Ld. Sr. DR, representing the revenue submitted that the decision of Ld. CIT(A) is not acceptable, as the First Appellate Authority had only emphasized upon and observed that the additions are made under wrong sections and the requisite conditions of the impugned sections are not met / fulfilled by the Ld. AO. It is argued by the Ld.

Sr. DR that as Ld. CIT(A) has powers coterminous with that of Ld. AO, thus, if he had found certain discrepancies or any anomaly in the order of Ld. AO, it was well within his jurisdiction to rectify the same or to restore the same back to the file of Ld. AO for necessary modifications. If there were lapses in the order of Ld. AO *qua* the description in the order making it a non-speaking order, Ld. CIT(A) by himself or through Ld. AO could have ensured to effect necessary corrections or to remove any irregularity. It is also incumbent upon the First Appellate Authority to investigate the matter on merits, instead of deleting the additions only on the count of adding it under a wrong section by the Ld. AO. If there are reasons to sustain the additions on merits irrespective of the section which Ld. AO had chosen, the merits of the facts should have been discussed, deliberated upon and the addition should have been sustained. However, in the present case, Ld. CIT(A) had not exercised any such powers, even no clarifications by way of the remand report have been sought from Ld. AO, therefore, the decision of Ld. CIT(A) regarding the additions cannot be tenable in the eyes of law, thus, the same is liable to be reversed. Ld. Sr. DR further submitted that in totality of facts, simply stating that the section is wrongly adopted by the Ld. AO, therefore, the addition cannot be sustained, would show evasive action of the first appellate authority, which is not justified and not fair, since the requisite details are before the Ld. CIT(A), and if further clarification was required,

necessary inquiries could have been conducted by him at his own or through the Ld. AO to reach at the logical conclusion, as to whether the difference found in the amounts of immovable and movable assets in the books of account of assessee and in her ITR constitutes any income or not, which was surfaced on account of incorrect or non-declaration by the assessee. With such submission, it was the prayer by Ld. Sr. DR that order of Ld. CIT(A) is liable to be set aside and the additions made by the Ld. AO deserves to be sustained, in absence of any plausible explanation along with corroborative evidence by the assessee.

7. Per contra, Ld. AR of the assessee submitted that all the necessary facts were submitted before the Ld. CIT(A), however it was considered fit by the Ld. CIT(A) to decide the issue on the basis of the legal ground regarding applicability of section which the Ld. AO had wrongly adopted, therefore, there was no requirement for the First Appellate Authority to look into the merits of the facts once the additions were vacated. It is further submitted by the Ld. AR that it was the call of Ld. CIT(A) to decide the issue for which the assessee should not be penalized with further proceedings, accordingly, the appellate decision which is decided in favor of assessee shall be upheld. Ld. AR further conceded that in case the matter is restored back to the file of Ld. CIT(A), the assessee would not have any grievance.

8. Having heard the rival parties and on perusal of material available on record. Under the factual matrix of the present case, admittedly, the fact is that there are differences in the amounts declared by the assessee in her ITR in asset and liability schedule as compared to the figures in her books of accounts. Such differences are considered as unexplained cash credit by Ld. AO in the hands of the assessee as the inaccurate / mismatching figures are declared by the assessee. When the matter is taken up by the Ld. CIT(A), the additions are deleted by the Ld. CIT(A), keeping himself to deliberate upon only to the extent of mistake committed by the Ld. AO that the additions are made under wrong provisions / sections. Accordingly, it was held that the addition could not have been made as the terms and conditions prescribed in the said section are not satisfied. Herein, we may observe that there are sufficient facts before the Ld. CIT(A) to investigate the merits of the issues. Now the question arises as to whether an addition made under the wrong section should have been sustained, if the same was to be done under any other section or the addition was made under a misconstrued understanding of the facts, thereby cannot be made under any of the provision of the Act. However, such exercise is incumbent on the Ld. CIT(A) to conclusively attain the justified answer. It is pertinent to note that the First Appellate Authority has been empowered by the law to take all such actions akin to the Assessing Officer. In the present case, since no such actions are taken by

Ld. CIT(A), maybe by way of necessary inquiries or by directing for a report from Ld. AO. The decision of Ld. CIT(A), therefore, does not constitute a valid outcome. In view of such observations, in our considered opinion, the matter needs further verification as to whether the additions made by the Ld. AO though they are made under wrong section of the Act but are sustainable on merits or not under any other provision of the Act. Whether or not the differences surfaced consist of the characteristics to constitute taxable income in the hands of assessee, which are not declared by her but the same represents taxable income under the mandate of law, if yes, then the additions are to be made under the correct section.

**9.** In view of aforesaid facts and circumstances, we are of the considered view that the matter needs to be restore back to the files of Ld. CIT(A) for *denovo* adjudications of the grounds of appeal raised by the assessee before him in terms of our aforesaid observations and to decide the issue in accordance with the provisions of law within a period of 3 months from receipt of this order.

**10.** Needless to say, the assessee shall be afforded with reasonable opportunity of being heard in the set aside appellate proceedings. The assessee as conceded through its authorized representative before us, also directed to cooperate and assist proactively in the set aside proceedings,

failing which the Ld. CIT (A) would be at liberty to decide the case in accordance with the mandate of law.

11. In result, appeal of the assessee is allowed for statistical purposes, in terms of over aforesaid observations.

Order pronounced in the open court on 21/05/2025.

**Sd/-**  
**(PARTHA SARATHI CHAUDHURY)**

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 21/05/2025

*Vaibhav Shrivastav*

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant- Dy.CIT-1(1), Bhilai, Durg
2. प्रत्यर्थी / The Respondent- Rashmi Lakhotia, Durg
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