

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 365/JPR/2025  
निर्धारण वर्ष /Assessment Year : 2018-19

Budh Kunwar 1, C/o Ganesh Khad Bhandar, Atru Road, Khanpur, Jhalawar.	बनाम Vs.	The ITO, Ward-2(2), Kota.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: CCRPK2045N		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by : Sh. Sharwan Kumar Gupta, Adv.  
राजस्व की ओर से /Revenue by: Sh. Gautam Singh Choudhary, JCIT  
(through V.C.)

सुनवाई की तारीख /Date of Hearing : 27/05/2025  
उदघोषणा की तारीख /Date of Pronouncement: 28/05/2025

आदेश /ORDER

**PER: Narinder Kumar, Judicial Member**

Appellant-assessee has challenged order dated 24.01.2025, passed by Learned CIT(A), National Faceless Appeal Centre, Delhi (in short "NFAC") u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), as thereby appeal preferred against assessment order dated 29.03.2023, pertaining to the assessment year 2018-19, stands dismissed.

Vide above said assessment order, total income of the assessee was computed by the Assessing Officer as under:-

Sl. No.	Description	Amount (in INR)
1.	Income as per return of income filed	8.86.050/-
1.	Income as computed u/s 143(1)(a)	NA
1.	Income as per return u/s 148	Not filed
1.	<b>Variation as discussed above proposed to be added u/s 69</b>	<b>16,80,740/-</b>
1.	Total income/loss determined as per the above proposal	25,66,790/-

2. Arguments heard. File perused.
3. As noticed above, the Assessing Officer made an addition of Rs. 16,80,740/-. On the other hand, in return of income, the assessee had declared income of Rs. 8,86,050/-.
4. Record reveals that assessment was opened u/s 147 of the Act, on the basis of specific information, due to the following reasons:-

“During F.Y. 2017-18 the assessee had received commission from Company M/s Future Maker Life Care Pvt. Ltd., Hissar at Rs. 16,80,740/- from the ponzi scheme run by the said company during F.Y. 2017-18 but not shown in return of income and claimed other expenses of Rs. 14,40,000/- against this receipt during the F.Y. 2017-18 under consideration relevant A.Y. 2018-19.”
5. The assessee did not submit any reply to the notice u/s 148 of the Act issued on 31.03.2022. However, she submitted reply to the notice dated 09.01.2023 issued u/s 142(1) of the Act. Even thereafter, two notices u/s 142(1) of the Act were issued to the assessee on 31.01.2023 and

25.02.2023, besides a show cause notice dated 10.03.2023. Ultimately, the assessment order came to be passed.

6. In brief, the case of the appellant-assessee as put forth in reply to the notice dated 09.01.2023, was that during the year under consideration she had received commission to the tune of Rs. 16,80,740/- from M/s Future Maker Life Care Pvt. Ltd., and further that she had shown this income by way of commission in the Profit and Loss Account, in the audited financial statement, and also in the Income Tax Return, against column of "sale of service".

The assessee further claimed to have paid to the said company a sum of Rs. 14,40,000/- through cheque and that it was against the said payment, the above said company paid her the aforesaid amount of Rs. 16,80,740/-.

7. However, the Assessing Officer was not satisfied with the reply furnished by the assessee.

The Assessing Officer made an addition of the entire amount of Rs. 16,80,740/-, by observing in the manner as under:-

"The assessee neither could produce details of work performed by her against which she had earned commission income neither she could furnish confirmation of account from future Maker Life Care Pvt Ltd. She also failed to submit clarification from future Maker Life Care Pvt Ltd. that payment made by them is not commission income but interest earned on investment in ponzy scheme and they have not debited the amount of Rs 16,80,740/- claiming it as expenses. In

the circumstances the amount of Rs 16,80,740/- is nothing but undisclosed commission income of the assessee and is proposed to be added as undisclosed income from other sources.”

**4.6 Conclusion drawn:** Assessee has received commission from Company M/s Future maker Life Care Pvt. Ltd., Hissar at Rs. 16,80,740/- from the ponzi scheme run by the said company during F.y. 2017-18 but treated it as business income and claimed other expenses of Rs. 14,40,000/- against this receipt. From the discussion it is concluded that the assessee has misreported her income by claiming commission income of Rs 16,80,740/- as business income. Consequently receipt of Rs 1680740/- is being added to the total income of the assessee as undisclosed commission income.”

8. Ld. AR for the appellant has submitted before us a paper book with certificate that the documents mentioned therein were also submitted before the Assessing Officer in support of the claim that the above said amount of Rs. 14,40,000/-, was paid by the assessee to the aforesaid company by way of cheque, through SBI Branch, Khanpur and against this, the company paid to the assessee the above said amount of Rs. 16,80,740/-.

Ld. AR has referred to the ITR for the assessment year 2018-19 where, in column No. 38 meant for “other expenses”, the assessee reflected a sum of Rs. 14,40,000/- having been paid to Future Maker Life Care Pvt. Ltd. -above named company; that in column No. 6 of the ITR, the assessee reflected receipt of Revenue of Rs. 16,80,740/- on account of sale of services. The contention is that these entries go to show that the assessee had reflected in return of income the aforesaid amounts.

When we advert to copy of notice issued under clause (b) of section 148A of the Act, it transpires that the allegation leveled by the department against the assessee was that she had shown in the return of income a sum of Rs. 14,40,000/-, as other expenses, but she had not shown in his return an income of Rs. 16,80,740/-, by way of commission received from the said company. From said particulars furnished by the assessee in the return, we find merit in the contention raised by Ld. AR for the appellant that the assessee had reflected both the amounts i.e. Rs. 14,40,000/- and Rs. 16,80,740/- in the return of income of the year under consideration.

Therefore, we are of the opinion that opening of the case u/s 147 of the Act on the ground that the assessee had not shown income of Rs. 16,80,740/- in the return of income, was not based on a just and sound reasoning.

9. As regards the other ground that the assessee had claimed the above said amount of Rs. 14,40,000/- as "other expenses", Id. AR for the appellant submitted that in Form 26AS, payment of Rs. 16,80,740/- made by the above named company to the assessee was reflected with the amount(s) of tax deducted u/s 194H of the Act on different dates.

10. Ld. DR for the department has not disputed deduction of TDS by the above named company on the payments made to the assessee on four dates, as reflected in Form 26AS.

Ld. AR for the appellant has submitted that in order to avoid any mismatch, in Income-tax return, the assessee reflected the above said amount of Rs. 16,80,740/- under the column "sale of services" as reflected by the above named company.

11. The fact remains that in the return, the assessee reflected the receipt of the aforesaid income of Rs. 16,80,740/- from the above said company, and also a sum of Rs. 14,40,000/- as the amount paid by her to the above said company, but, even then the Assessing Officer, without any just ground, made addition of the entire amount of Rs. 16,80,740/- and that too without considering the aspect of expenses incurred by the assessee.

In the given facts and circumstances, the Assessing Officer should have accepted the return submitted by the assessee and acted in accordance with law.

### **Conclusion**

12. In view of the above discussion, we find that the Assessing Officer was not justified in opening of the matter u/s 147 of the Act, when the assessee had already reflected both the amounts in his return. Assessing

Officer to take into consideration the amount paid by the assessee to the abovesaid company and allow deductions as per rules, and recalculate the amount of total income.

## Result

13. As a result, this appeal is allowed and the impugned order passed by the Ld. CIT(A), and the impugned assessment order passed by the Assessing Officer are hereby set aside.

Assessing Officer to give effect to this decision.

File be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on 28/05/2025.

Sd/-

(राठौड़ कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur

दिनांक / Dated:- 28/05/2025

\*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Budh Kunwar, Jhalawar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(2), Kota.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 365/JPR/2025)

Sd/-

(नरेन्द्र कुमार)  
(NARINDER KUMAR)  
न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar