



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

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No. 220/RJT/2023

(निर्धारणवर्ष / Assessment Year: (2015-16)

(Hybrid Hearing)

Narendra Dharamdas Gidwani, Plot No. 29, Survey No. 193/1, Maitru Residency Meghpar Borichi, Anjar, Kutch, Gujarat - 370110	Vs.	The Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi, Income Tax Department, Ministry of Finance, Government of India
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AKMPG6386M		
(Appellant)		(Respondent)

Appellant by : Shri Chiranjeev Tandon, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR
Date of Hearing : 26/03/2025
Date of Pronouncement : 09/06/2025

आदेश / ORDER

PER D. M. SINHA, JM:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2015-16, is directed against the order passed under section 147 R.W.S. 144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 27.03.2023, which in turn arises out of an order passed by the Assessing Officer u/s 147 r.w.s. 144B of the Act, on 02.03.2022.



2. Grounds of appeal raised by the assessee are as follows:

1) *1 That Impugned Order dated March 27, 2023 has been passed without application of mind as learned appellate authority has merely reiterated allegations of notice and confirmed assessment order without considering submissions of Appellant made in first appeal, evidence on record and provisions of law.*

2. *That Impugned Order dated March 27, 2023 does not provide reasons in support of the findings and conclusion recorded therein. Thus, Impugned Order is unreasoned and cannot be termed as speaking order, accordingly passed in violation of principles of natural justice.*

3. *That learned first appellate authority has erred in holding that addition of INR 1,80,000/- under Section 69A of the Income Tax Act. The Appellant purchased vehicle by making cash payment of INR 1,80,000/- to Kiran Motors Ltd. The Appellant made payment of INR 80,000 in cash from his own personal saving and rest INR 1,00,000/- was paid in cash as received by Appellant from wife Mrs. Sushmaben N. Butani as gift. The Appellant vide Letter dated January 23, 2022 and February 14, 2022 provided detailed explanation regarding the same to assessing officer along with an affidavit of wife Mrs. Sushmaben Butani substantiating the gift of INR 1,00,000/- in cash by her to the Appellant. Further, the Appellant also provided bank account statements of himself and his wife Mrs. Sushmaben N. Butani to the assessing officer during adjudication proceedings. Thus, addition of INR 1,80,000/- is unjustified under Section 69A of Income Tax Act*

4. *That assessment order and Impugned Order is passed beyond scope of show cause notice dated February 8, 2022. In notice, it was proposed for addition of INR 80,000/- in assessable income of appellant for assessment year 2015-16, however, in assessment order, the learned authority confirmed addition of INR 1,80,000/- under Section 69A of Income Tax Act and the said assessment order has been confirmed by learned appellate authority vide Impugned Order dated March 7, 2023. Thus, Impugned Order dated March 27, 2023 deserves to be quashed and set aside on this ground alone.*

5. *That Id. Appellate Authority has erred in holding that there is violation of Section 26955 of Income Tax Act regarding INR 1,00,000/- received by appellant from wife. It is an established judicial principle that transactions between close relatives specially husband-wife are outside the purview of Section 269SS of Income Tax Act. Thus, there is no violation of Section 269SS, accordingly, no penalty is imposable under Section 270A and 271D of Income Tax Act."*

3. On the direction of the Tribunal, the summarized grounds has submitted on 12.03.2025.

"I Tandon & Associates ["Firm"] is writing this letter on behalf and under instructions of Appellant Narendra Dharamdas Gidwani.



2. As per instructions of the Hon'ble Tribunal given on last date of hearing ie. January 29, 2025, we are submitting the summarized grounds of appeal in 4 sets for and on behalf of the Appellant. Next date of hearing in subject appeal is March 26, 2025.

3. In view of the above, your goodself is requested to kindly accept the above-mentioned documents on record and oblige.

4. In case your goodself require any further information, please do contact us.”

5. At the outset, we notice that the appeal filed by the assessee is late by 29 days. The assessee filed condonation of delay supported by the Affidavit. The assessee filed an application for condonation of delay, relevant para of the affidavit is reproduced as under:

“10. The Applicant received copy of Impugned Order on April 4, 2023.

11. It is submitted that Applicant - Mr. Narendra Dharamdas Gidwani do not have knowledge about the proper legal remedy and could not get the proper legal advice on time, hence could not prefer the appeal within prescribed time limit. The Applicant submits that immediately on receipt of legal advice from CA and consultant to file the appeal, the Applicant arranged for the necessary documents and immediately preferred the subject Appeal without any further delay.

12. In the instant case, the Impugned Order was received by the Applicant on April 4, 2023 and as per Section 253(3) of the Income Tax Act, 1961 the Appeal has to be filed within a period of 60 days from the date of receipt of the Impugned Order. The limitation period of 60 days expired on June 3, 2023. Thus, there is delay of only 29 days in filing Appeal by the Applicant which may kindly be condoned in the interest of justice under Section 253(5) of the Income Tax Act, 1961.”

6. After hearing the rival contention of both the parties, we perused the reason for late filing of appeal as submitted in the application for condonation of delay. That we find that there is sufficient cause for filing of the appeal not in time. There is no mistake of the assessee, and the delay is not deliberate. In view of the situation, we condoned the delay.



7. Brief facts of the case that the Appellant is an individual assessee employed with the private company. The Appellant is a salaried person and has been filing return of income regularly. The appellant filed return of income for assessment year 2015-16 on September 4, 2015. Thereafter, the assessing officer issued Notice under Section 148 of the Income Tax Act, 1961 [IT Act] on March 31, 2021. In response, the Appellant vide Letter dated April 15, 2021 requested the authority for reasons for re-opening of assessment. However, the assessing officer did not reply. The Appellant filed same return on April 16, 2021 in response to Notice under Section 148 of IT Act. That assessing officer issued Notice under Section 143(2) read with 147 of IT Act thereby calling upon the Appellant to provide explanation about the cash payment of INR 1,80,000/- made to Kiran Motors Ltd. for purchase of vehicle. In response, the Appellant vide Letter dated January 23, 2022 stated that Appellant has paid INR 80,000/- in cash from his own personal savings and the remaining INR 1,00,000 was given as gift by his wife Smt. Sushmaben Butani. Subsequently, the assessing officer vide Letter dated January 25, 2022 requested the Appellant to provide the bank account statement of appellant and his wife along with a justification of INR 1,00,000 gift given by wife. In response, the Appellant submitted the bank account statements with an affidavit of wife specifically stating that the gift of INR 1,00,000/- was given to Appellant out of love and affection with free will. The Assessing Officer vide Show Cause Notice alleged that it is not known as to why the Appellant made payment in cash when he is having a savings bank account, hence the amount of INR 80,000/- is to be treated as unexplained money under Section 69A of IT Act. Further, the gift provided by wife comes under purview of provision of Section 269SS of IT Act, accordingly, the income of the Appellant should be assessed at INR 3,00,500/- and penalty under Section 270A for underreporting of income and 271D of the IT Act for violation of Section 269SS should be imposed on the



wife of Appellant. The Assessing Officer vide said show cause notice called upon the Appellant to show cause as to why the income should not be assessed at INR 3,00,500/-with necessary evidence.

i. The Appellant vide Letter dated February 14, 2022 submitted that the Appellant was having cash balance and gave the same to car-show room for purchase of vehicle. Further, the gift of INR 1,00,000/- received from wife is out of her free will. The provision of Section 269SS of IT Act are applicable only for loan or deposit, in the instant matter, the gift is provided by wife to the Appellant (husband), therefore, provisions of Section 269SS of IT Act are not applicable. The amount of INR 1,80,000/- was paid out of own savings of lifetime for purchase of car for utility of family. The Appellant vide said letter requested the assessing officer to close the proceedings.

8. The Assessing Officer vide Assessment Order dated March 2, 2022 made with the following observations: -

“it is seen that the assessee has also not explained the source of cash balance with him and his wife. It is not known why they have made payment in cash to the car show room, as it is also not acceptable that salaried person like assessee is keeping sizable amount of cash with him.

<i>7. In view of the above, the total income of the assessee is computed as under :-</i>	
<i>Returned Income</i>	<i>Rs. 2,20,500/-</i>
<i>Cash payment made to be considered as Unexplained money u/s 69A of the Act</i>	<i>Rs. 1,80,000/-</i>
<i>Total Income</i>	<i>Rs. 4,00,500/-</i>

9. That being aggrieved the Appellant filed an appeal in Form 35 before the First Appellate Authority Commissioner of Income Tax (Appeals) thereby challenging the Assessment Order dated March 2, 2022 on basis of the grounds mentioned therein. The Commissioner of Income Tax (Appeals),



vide Order dated March 27, 2023 confirmed the Assessment Order dated March 2, 2022 on basis of the following observation:-

“4.4 Even during the appellate proceedings more or less appellant has reiterated the same explanation with regard to cash payment of Rs. 1,80,000/-. It is important to note that source of the cash has to be explained in clear terms. The appellant has failed to give any concrete/satisfactory explanation about the source of cash Rs. 1,80,000/-. There is hardly any documentary proof with appellant which can be explained the source of such cash at his home. The explanation that Rs. 80,000/- is from old saving is not palatable because no salary person will keep such amount at home. Similarly, the source of Rs. 1,00,000/- gifted by his wife is still not supported by any concrete evidence. Thus, it is seen that the appellant has failed to give satisfactory explanation to the source of cash payment of Rs. 1,80,000/- in view of the above facts, the addition of Rs. 1,80,000/- was made u/s 69A as unexplained money. In my considered opinion the action of the AO with regard to invocation of section 69A and addition of Rs. 1,80,000/- is correct in the eyes of law as appellant has failed to give satisfactory explanation with source of cash payment. Accordingly, I hereby confirm the addition of Rs. 1,80,000/- made u/s 69A of the IT Act. Therefore, these grounds of appeal are dismissed.

5. In result, the appeal of the appellant is hereby dismissed

10. Being aggrieved by Impugned Order dated March 27, 2023, the Appellant filed an appeal before the Tribunal.

11. During the course of hearing, the Ld. AR of the assessee submitted that the addition of Rs. 1,80,000/- made payment in cash to Kiran Motors Ltd. for purchased of vehicle (Car), however, Rs. 80,000/- was personal saving of assessee's from salary income, and rest Rs. 1,00,000/- was gifted by wife to the assessee, and the affidavit of bank statement also furnished to the department. The Ld. AR of the assessee requested that the addition of Rs. 1,80,000/- may kindly be deleted.

12. On the other hand, Ld. DR for the revenue, relied upon the order of the Ld. CIT(A) and objected to the prayer of the Ld. AR.



13. We have heard both the parties and perused the material available on record. We noted that the addition of Rs. 1,80,000/- was made in assessment order an unexplained money u/s. 69A of the Act. The total addition of Rs. 1,80,000/- out of Rs. 80,000/- was saving of assessee's salary income, and rest Rs. 1,00,000/- gift received from wife of assessee, and affidavit of assessee's wife was placed on record.

i. The learned Commissioner of Income Tax (Appeals) has only reiterated findings of assessment order that the Appellant has failed to provide necessary explanation for source of cash, hence the addition of INR 1,80,000/ under Section 69A of IT Act is correct. Such finding by the learned First Appellate Authority vide Impugned Order without any material evidence against the Appellant clearly shows lack of application of mind on part of the learned First Appellate Authority while passing the Impugned Order.

ii. Ld. Authority observed that the Appellant has failed to provide necessary explanation regarding the source of cash. Further, the Id. Authority also observed that there is no documentary proof for the same. In this regard, it is submitted that saving in cash form by middle class category is a customary practice. The Appellant has specifically stated in his submissions that he had paid 80,000/- from his own saving. Further, rest 1,00,000/- was given as gift by his wife. In this regard, the wife of appellant has already tendered an affidavit on oath stating that she had given 1,00,000/- in cash to her husband.

iii. The income of the Appellant has been increased with 1,80,000/- merely on the ground that the Appellant has not provided necessary explanation for the source, hence income is liable to be added in terms of Section 69A of IT Act. However, without countering and even objecting to the explanation given by Appellant, the id. Authority has observed that the Appellant has not provided necessary explanation for source of cash. The Id. Authority has not



placed on record any objection or contrary evidence against the contention of appellant) Without countering to the contentions of Appellant, the Id. Authority cannot merely reject the contention of Appellant and increase the income of Appellant by terming the same as unexplained money without providing any material evidence against the same assessment order without discharging the burden of proof under law. By merely making allegation in the Notice and confirming the same.

iv. In assessment order and Impugned Order, the Department cannot shift burden of proving taxability and liability to pay income Tax on the assessee when there is not even a shred of evidence to support such allegation. The learned Authority vide the impugned Order has simply confirmed the INR 1,80,000/- in assessable income under Section 69A of IT Act without providing any justification and corroborative evidence on record in support thereof.

v. That the show cause notice proposed for increment of assessable income with INR 80,000/-. However, in the Assessment Order dated March 2, 2022 the id. Authority has confirmed addition of INR 1,80,000/-in the assessable income under the IT Act. The Id. Authority cannot bypass the allegations and propositions made in the show cause notice. The Id. Assessing authority was duty bound to adjudicate within the propositions made in the show cause notice. The said assessment order has been confirmed by the First Appellate Authority without even considering the submission of Appellant in this regard.

vi. The Impugned Order dated March 27, 2023 in utter disregard of principles of natural justice wherein without discussing grounds taken by the Appellant in the first appeal, the Id. The Impugned Order cannot be termed as a speaking order and passed to the foundation of the principles of natural justice. The principle of natural justice inter-alia has two essential



ingredients, firstly, the person who is likely to be adversely affected by action of authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind.

vii. The Id. Assessing officer invoked Section 69A of IT Act in complete disregard to the established principles of law, equity and judicial pronouncements on the issue. In appellate proceedings, the Id. First Appellate Authority without even discussing and countering to the grounds of appeal raised by the Appellant, confirmed the assessment order merely on basis of observation that the Appellant has not provided explanation regarding source of cash payment.

viii. In the Impugned Order dated March 27, 2023, the Id. First Appellate Authority has observed that the Appellant failed to give necessary explanation for source of cash, accordingly, the Id. Authority confirmed the addition of INR 1,80,000/- under Section 69A of the IT Act as per the assessment order dated March 2, 2022

(a) Relevant extract of the impugned Order dated March 27, 2023 is reproduced as under-

4.4. It is important to note that source of cash payment has to be explained in clear terms. The appellant has failed to give any concrete/satisfactory explanation about the source of cash Rs. 1,80,000/- There is hardly any documentary proof with appellant which can be explained the source of cash at home. The explanation that Rs. 1,80,000/- is from old saving is not palatable because no salary person will keep such amount at home. Similarly, the source of Rs. 1,00,000/- gifted by his wife is still not supported by any concrete evidence. Thus, it is seen that the appellant has failed to give satisfactory explanation to the source of cash payment of Rs. 1,80,000/ in view of the facts, the addition of Rs. 1,80,000/- was made u/s 69A as unexplained money. In my considered opinion the action of the AO with regard to invocation of Section 69A and addition of Rs. 1,80,000/ is correct in the eyes of law as appellant has failed to give satisfactory explanation with the source of cash payment. Accordingly, I hereby confirm the addition of Rs. 1,80,000/ made u/s 69A of IT Act. Therefore, these grounds of appeal are dismissed”



(b) In view of the above findings, it is inferred that the Id. First Appellate Authority has observed that explanation provided by Appellant is not acceptable as salaried person will not keep such cash at home. Further, the Appellant has not provided evidence in respect to the source of Rs. 1,00,000/- gifted by wife of the Appellant. The Id. First Appellate Authority confirmed the addition of INR 1,80,000/- in assessable income under Section 69A of IT Act on the ground that the Appellant has not provided necessary explanation for source of cash payment.

(c) Before making detailed submission in this regard, it is important to refer to relevant extract of Section 69A of the IT Act as under: -

"Unexplained money, etc.

69A. 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 Income-tax 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."

(d) In view of the above provision, it is inferred that Section 69A of IT Act is applicable when there is unexplained money, etc., and which are not recorded in the books of account of the assessee and maintained by the assessee for any source of income. Further, in case the assessee offers no explanation or if explanation provided is unsatisfactory in opinion of assessing officer, then, provisions of Section 69A will be applicable. Therefore, there are two pre-conditions for invocation of Section 69A of Income Tax Actie. (a) unexplained money not recorded in books of account and (b) no explanation or explanation provided is unsatisfactory in opinion of authority. In the instant case, the assessee being an individual salaried person is not liable to maintain any books of accounts. The Appellant has filed return of income for assessment year 2015-16. Further, the Appellant



vide Letter dated January 23, 2022 and February 14, 2022 provided necessary explanation regarding the source of cash payment of INR 1.80,000/-

ix. The Appellant paid INR 80,000/- in cash from his own personal saving. Further, the Appellant received INR. 1,00,000/- in cash from wife Mrs. Sushmaben N. Butani, detailed explanation along with an affidavit of wife Mrs. Sushmaben Butani substantiating the gift of INR 1,00,000/- in cash by her to the Appellant. Further, the Appellant also provided bank account statements of himself and his wife Mrs. Sushmaben N. Butani to the assessing officer.

x. We note that assessee has purchased vehicle by making cash payment of Rs. 1,80,000/-. The Ld. Counsel explained the source stating that Rs. 80,000/- in cash was from his personal past savings. Further, Rs. 1,00,000/- was received by him from his wife as a gift. The assessee has not explained the source of gift of Rs. 1,00,000/- received from his wife Mrs. Sushmaben N. Bhutani, that is the assessee has not explained the source of Rs. 1,00,000/- which was gifted by his wife by making a gift deed, therefore, capacity of the donor (wife) to make such gift of Rs. 1,00,000/- has not been proved by the assessee. The gift deed is a self-serving document, hence, cannot be relied.

Taking into account, there above facts and circumstances, we are of the view that 20% of Rs. 1,80,000/- should be added in the hands of the assessee, which comes to Rs. 36,000/-, which will take care of



inconsistencies in the documents submitted by the assessee. Hence, we direct the AO to make disallowance in the hands of assessee at Rs. 36,000/-.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 09 -06-2025

Sd/-
(A. L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 09/ 06/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

(True Copy)

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot