

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.306/RPR/2025  
निर्धारण वर्ष / Assessment Year : 2019-20

Harikishan Agrawal  
C/o. Agrawal Gupta & Associates,  
1<sup>st</sup> Floor, Masnet-6, Sector-1,  
Near Shankar Nagar, Vidya Mandir School,  
Shankar Nagar, Raipur-492 004 (C.G.)  
PAN: ADIPA5211C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Central Circle-1, Raipur (C.G.)

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 17.06.2025

घोषणा की तारीख / Date of Pronouncement : 20.06.2025

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

This appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 19.03.2025 for the assessment year 2019-20 as per the grounds of appeal on record.

2. The brief facts of the case are that the assessee is a resident individual. In this case, search u/s.132 of the Income Tax Act, 1961 [ for short 'the Act') was conducted as cash of Rs.74,98,000/- and a gold like metal was intercepted by the police, which was requisitioned u/s.132A of the Act by executing warrants on 22.05.2018. The case was centralized to the O/o. ACIT(Central)- 1, Raipur u/s.127 of the Act, vide order dated 05.11.2020 of the PCIT-1, Raipur. The assessee filed return of income for the year under consideration on 30.09.2019 declaring total income of Rs.21,35,210/-. Accordingly, all the statutory notices were issued and served on the assessee. In this case, the RPF (Crime Intelligence Branch), Raipur on 21.05.2018 informed the Income Tax Department that cash of Rs.74,98,000/- along with a gold like metal was found from Shri Devanand Behera, S/o Shri sukamuni Behera, R/o Kantabanji, Ward no.- 10, District-Balagir (Odisha), while coming from Kantabanji. Accordingly, summons u/s. 131(1A) of the Act was issued by DDIT(Inv.)-1, Raipur and served on Shri Devanand Behera and his statement was recorded on oath.

During the course of recording of statement, Shri Devanand Behera, stated that this cash was given to him by Smt. Poonam Chand Agrawal, R/o Kantabanji, Ward No.-9, Near Bangumunda Railway Phatak, District-Balangir (Odisha) for further handing over to Shri Hari Kishan Agrawal, Samta Colony, Raipur, while the gold like metal, he stated that the metal was handed over to him by M/s S.R Jewellers, Near Daily Market, Kantabanji for further handing over to Shri Rahul Kochar of M/s Kochar Jewellers, Nahata Market, Sadar, Raipur. Accordingly, Survey u/s 133A of the Act was conducted on 21.05.2018 at two premises related to Shri Hari Kishan Agrawal at Shop-123, Samta Shopping Arcade, Samta Colony, Raipur and another at M/s Kochar Jewellers, Sadar, Raipur pertains to Shri Rahul Kochar. But, the source of cash amounting to Rs.74,98,000/- and gold like metal held by the RPF, Raipur remains unexplained. Consequently, PDIT(Inv.), Raipur issued and executed the warrant of authorization u/s.132A(1) to Inspector of RPF, SECR, Raipur in the cases of Shri Harikishan Agrawal and M/s Kochhar Jewellers and the same was seized on 22.05.2018 from o/o RPF, Raipur.

3. During the course of search proceedings, the statement of the assessee was recorded on oath on 21.05.2018 wherein he had admitted that the entire cash found from possession of Shri Devanand Behera of Rs.74,98,000/- belongs to him. Again, in reply of question -9, he stated

that the entire amount of Rs.74,98,000/- was not recorded in the books of account of his firm or in individual books. On this issue, the explanation of the assessee was called for as to why the same should not be treated as unexplained credit u/s. 68 of the Act for the year under consideration. In the response to above assessee has submitted his reply before the AO. The AO perused the reply of the assessee and found that the assessee categorically denied and retract the statement recorded u/s. 131(1A) of the Act in connection with survey operation u/s.133A of the Act dt.21.05.2018, which is not accepted by the AO. Since, the statement of the assessee was recorded on oath on 21.05.2018 wherein he had admitted that the entire cash found from possession of Shri Devanand Behera of Rs.74,98,000/- belongs to him. Again, in reply of question 9 of his statement dt.21.05.2018, the assessee clearly stated that the entire amount of Rs.74,98,000/- was not recorded in books of account of his firm or in individual books and he duly accepted that the same as his undisclosed income. The relevant portion of the statement is scanned in assessment order page no. 6 & 7. Hence, the A.O added a sum of Rs.74,98,000/- in the total income of the assessee for the year under consideration. Further, During the course of search operation, LPS-04 (page no. 12 & 13) was seized from the premises of the assessee, which is scanned in assessment order page no. 9. The assessee was asked about the said loose papers reflecting the transactions, the assessee has

submitted that page no. 12 & 13 of LPS 04 are rough sheets and do not relate to transactions of the assessee. However, for the sake of peace of mind, the assessee offered the said amount of Rs.66,000/- depicting in the loose papers as his unexplained income. The assessee himself offered the amount of Rs.66,000/- as his unexplained income for the year under consideration. Therefore, the A.O completed the assessment u/s 143(3) of the Act and added a sum of Rs.74,98,000/- on account of unexplained money u/s. 69A of the Act & Rs.66,000/- on account of unexplained income.

4. That being further aggrieved, the assessee carried the matter in appeal before the first appellate authority. The Ld.CIT(Appeals)/NFAC provided several opportunities to the assessee. However, the assessee miserably failed to comply with any of the said hearing notices which resulted in an ex-parte order passed by the Ld.CIT(Appeals)/NFAC. For the sake of completeness, the relevant Paras of the order of the Ld. CIT(Appeals)/NFAC is culled out as follows:

“The appeal was fixed for hearing on 17.12.2024. In response to the hearing dt. 17.12.2024, the assessee has submitted a request for adjournment on 17.12.2024. The request for adjournment is as under: -

The appellant is out of station and could not able to meet with the counsel for the issue. It is requested to grant at least 15 days of adjournment. Sorry for the inconvenience caused.

The request of the assessee was considered. Hence, the case was adjourned till the next hearing date and the next hearing

date was fixed for hearing on 24.02.2025 vide this office notice dt.18.02.2025. Again, no reply was received from the assessee on the due date. Due to huge pendency of old appeals & Hon'ble Board's guidelines for prompt disposal of appeals pertains to various category, further adjournment cannot be granted. Therefore, one last opportunity is being given and the final opportunity is accorded by fixing the hearing of the case on 17.03.2025 vide this office notice dt. 10.03.2025. When none attended nor any other request for adjournment were received. It is quite evident from the chronology of event that despite several opportunities being granted from time to time, there has been absolutely no compliance on part of the appellant to give detailed explanation regarding ground of appeal taken for the year under consideration. This clearly shows that the appellant is not keen to pursue the above-mentioned appeal.”

5. In this regard, the Ld. Sr. DR has fairly conceded that the matter may be adjudicated denovo on merits before the first appellate authority providing one final opportunity to the assessee.

6. We have heard the submissions of the parties herein and carefully considered the contents in the documents/material available on record. As per the aforesaid examination of the entire spectrum of the matter in the interest of natural justice, we deem it fit and proper to provide one final opportunity to the assessee to represent his case on merits before the Ld. CIT(Appeals)/NFAC.

7. In the overall spectrum of the ex-parte order being passed due to non-compliance by the assessee before the Ld.CIT(Appeals)/NFAC, we refer to the order of the ITAT, “Division Bench”, Raipur in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur, IT(SS)A**

**Nos.1 to 6, 8 & 9/RPR/2025, dated 20.03.2025** wherein the Tribunal had dealt with similar issue on the same parameters of ex-parte order passed by the Ld. CIT(Appeals)/NFAC and remanded the matter back to the file of the Ld. CIT(Appeals)/NFAC. That as per similar terms we order accordingly.

8. However, the striking facts emanating from records in this case are that the RPF (Crime Intelligence Branch), Raipur on 21.05.2018 informed the Income Tax Department that cash of Rs.74,98,000/- along with a gold like metal was found from Shri Devanand Behera, S/o Shri sukamuni Behera, R/o Kantabanji, Ward no.-10, District-Balagir (Odisha), while coming from Kantabanji. Accordingly, summons u/s. 131(1A) of the Act was issued by DDIT(Inv.)-1, Raipur and served on Shri Devanand Behera and his statement was recorded on oath and as per the statement he stated that this cash was given to him by Smt. Poonam Chand Agrawal, R/o Kantabanji, Ward No.-9, Near Bangumunda Railway Phatak, District-Balangir (Odisha) for further handing over to Shri Hari Kishan Agrawal, Samta Colony, Raipur, while the gold like metal, he stated that the metal was handed over to him by M/s. S.R Jewellers for further handing it over to M/s. Kochar Jewellers.

9. Be that as it may, the Ld. Counsel for the assessee submitted that the assessee is a hawala trader and is earning commission from such

transactions and therefore, the money which was stated to be of the assessee was actually to be handed over to some other person and that he would have just got some commission in lieu of such services. After hearing the submissions, it was queried by the Bench whether any Enforcement Directorate (ED) proceedings or action of PMLA Act has been conducted in the case of the assessee to which, the Ld. Counsel submitted in negative. Therefore, these facts are not regular facts which are coming in every day to day in any business or profession. Rather these are facts relating to interception and confiscation by the authorities where money, jewellery are being confiscated, detected and the person is held accordingly if there is any violation of relevant statutes. Therefore, it is now the onus on the part of the department to conduct necessary enquiry and verification to see whether any tax evasion is committed by the assessee or any colorable device adopted by the assessee to defraud the revenue, in such case, the entire addition have to be sustained in the hands of the assessee since fraud vitiates everything including natural justice.

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

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

Order pronounced in the open court on 20<sup>th</sup> day of June, 2025.

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

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

रायपुर/ RAIPUR ; दिनांक / Dated : 20<sup>th</sup> June, 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, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

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