

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.799/Ind/2024 (AY: 2017-18)

Kala Jain Prop. Roopchand Kishanlal, 20 Marothiya Bazar, Indore (PAN: ABVPJ2141D)	बनाम/ Vs.	Income Tax Officer, NFAC, Delhi
(Appellant)		(Respondent)
Assessee by	Shri Venus Rawka & Ms. Era Rawka, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	26.06.2025	
Date of Pronouncement	30.06.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the "**Act**" for sake of **brevity**) before this Tribunal. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2024-25/1068119476(1) dated 29.08.2024 passed by the Ld. CIT(A) which is hereinafter referred to as the "**Impugned order**". The

relevant Assessment Year is 2017-18 and the corresponding previous year period is from 01.04.2016 to 31.03.2017.

2. **FACTUAL MATRIX**

2.1 That as and by way of an assessment order made **u/s. 147 r.w.s. 144B of the Act**, the total assessed income was computed at **Rs.15,58,560/-**. **The returned income was Rs.6,58,560/-**. **Addition of Rs.9,00,000/- was made.** That the aforesaid assessment order bears No.ITBA/AST/S/147/2021-22/1041664587(1) and that same is dated 25.03.2022 which is hereinafter referred to as the **"impugned assessment order"**.

2.2 That the assessee being aggrieved by the **"impugned assessment order"** prefers first appeal **u/s 246A of the Act** before the Ld. CIT(A) who by the **"impugned order"** has dismissed the appeal of the assessee on the grounds and reasons stated therein.

2.3 That the assessee being aggrieved by the **"impugned order"** has preferred the instant second appeal before this Tribunal and has raised following grounds of appeal in Form No.36 **against** the **"impugned order"** which are as under:-

"1. That the Ld. CIT (A) erred in law and facts of the case and Confirmed the addition made by Assessing Officer of Rs. 9,00,000/- u/s 69A and taxed the same u/s 115BBE without

considering the facts and explanation submitted by the assessee. The addition therefore made by Assessing Officer and confirmed by CIT(A) is totally wrong and illegal on facts.

2. That the Ld. CIT failed to appreciate the fact regarding the issue of notice u/s 148. Thus the reopening of case is bad in law.

3. That the appellant craves to leave, add, alter or amend any of the ground at or before hearing”.

3.

Record of Hearing

Delay

3.1 The hearing in the matter took place before this Tribunal on 26.06.2025 when the Ld. AR for and on behalf of the assessee at the outset and at the threshold stated that there is a delay of **10 days** in preferring the instant appeal before this Tribunal and that the said delay be condoned as there is **sufficient cause** for the condonation of delay. It was urged by him that the **“impugned order”** is dated 29.08.2024, the last date for filing the instant appeal was 28.10.2024. However the same was e-filed on 28.10.2024 but there was delay in uploading the same and that the same got finally uploaded on 07.11.2024. The challan is however dated 25.10.2024. Per contra Ld. DR stated that the revenue has no objection if delay is condoned. After hearing both sides and after carefully perusing the condonation of delay application along with affidavit in support thereof we are

of the considered opinion that the assessee **has shown sufficient cause** for the condonation of delay. Accordingly we condone the delay and admit the appeal. Appeal taken up for hearing.

3.2 The Ld. AR then submitted before this tribunal that the assessee is in the business of **grocery/grocery store at Marothiya Bazar, Indore** which is run in the name and style of **M/s Roopchand Kishanlal Kirana Merchant**. The assessee's source of income is from the grocery store. Originally the store at Marothiya Bazar was being run by Smt. Dakha Bai Jain who died on 16.02.2016. However her PAN number was not uploaded on the bank account. The said business of store was however succeeded and currently it is run by **Mrs. Kala Jain the assessee** herein. That sum of **Rs.9 lakhs** came to be deposited during the period of **demonetization**. The business of the assessee is such that lot of cash is generated while running the grocery store. The **cash book** of the assessee is **audited one** and the relevant bank account is duly disclosed of bank of Baroda (BOB). Attention was invited to page 17-18 of paper book filed from which it was pointed out that on 18.11.2016 sum of Rs.9 lakh was deposited. Basis page 34 (paper book) the cash book it

was contended that Rs.9 lakh is clearly reflected as cash deposited which was audited. Attention of the bench was also invited to page 5 para 3 of the **“impugned assessment order”** which reveals that Smt. Dakha Bai Jain died on 16.02.2016 and her PAN number with bank was not changed. Since the business is taken over by the assessee Mrs. Kala Jain, the deposit of Rs.9 lakh is by the assessee only. Attention was invited to page 15 of paper book to demonstrate that reply dated 05.03.2022 in response to notice dated 15.02.2022 u/s 142(1) of the Act was filed. Attention was also invited to para 7 of reply wherein it was stated that **“complete cash book” for Financial Year 2016-17 is enclosed.** Copy of acknowledgement was not filed with the paper book. The Ld. AR then contended that the **“impugned order”** is illegal and bad in law as cash book was **audited one.** Cash is involved is apparent from cash book and nature of the business itself (grocery store). The books of accounts **are not rejected by Ld. A.O.** The business income of the assessee is **accepted by Ld. A.O without any variation.** Internal page 9 of the **“impugned order”** was also discussed wherein the Ld. CIT(A) has stated that acknowledgement dated 05.03.2022 on portal

shows **no evidence was attached** and that observation of Ld. A.O that no details are furnished by assessee in response to notice dated 15.02.2022 are irrelevant.

3.3 Per contra Ld. DR for the revenue has contended that the **“impugned assessment order”** is correct in law and on the facts. From the paper book filed it is not emerging clearly that whether reply dated 15.02.2022 was filed before Ld. A.O or not. Page 6 and page 8 of paper book which are assessee’s reply dated 29.01.2022 and 09.03.2022 respectively there are no attachment therein. The Ld. DR contended that full and complete picture is not shown by the assessee to the Tribunal. The Ld. DR then asserted that even if the requisite documents as claimed by the assessee is taken to have been filed it would be in the fitness of things to remand the matter back to the file of Ld. A.O as the assessee **has not filed complete cash book as observed by Ld. CIT(A) in the “impugned order”**. The Ld. DR finally prayed for remand of the case back to the Ld. A.O to pass a fresh order on *denovo basis*.

4. Observations, findings & conclusions.

4.1 We now have to decide the legality, validity and the propriety of the “**impugned order**” basis records of the case and rival contentions canvassed before us.

4.2 We have carefully perused the records of the case as presented to this Tribunal by both Ld. AR & Ld. DR to determine the legality, validity of the “**impugned order**” basis law and by following due process .

4.3 We are of the considered opinion that in the “**impugned order**” there were certain handicaps which prevented the Ld. CIT(A) to analyse the over all gamut of the case which was before him in the first appeal and same is reflected in para 4.2. Internal page 9 of the “**impugned order**” wherein following is observed by Ld. CIT(A):- ***“It is also observed from ITBA CPC-2.0 Module that the appellant did not furnish all the requisite details, as sought by the Ld. A.O during the assessment proceedings and the appellant has furnished an acknowledgement dated 29.02.2022 only during the appellate proceedings, which has only an attachment or written reply dated 29.01.2022. Further the acknowledgment dated 05.03.22 available on***

ITBA shows that the appellant did not attach any written submission or evidences with the on line reply on 05.03.2022. Therefore the A.O has rightly recorded in the assessment order that no requisite details had been furnished by the appellant in response to notice dated 05.02.2022”.

4.4 In view of aforesaid and so also in view of submissions made by Ld. DR we are of the considered view that in both the orders of the lower authorities below i.e. the Ld. A.O and the Ld. CIT(A) income of the assessee is not computed in a manner known to law. This tribunal desires computation of the real income of the assessee exigible to tax in accordance with law by following due process. We therefore in the peculiar facts and circumstances of the present case and so also by perusing the pages 19 to 23 of paper book filed noticed that full cash book is not even placed before us which is claimed to be an audited one by the assessee and therefore we set aside the **“impugned order”** and remand the case to Ld. A.O for passing a fresh order on *denovo basis*. The assessee has placed before us on our direction during hearing acknowledgement No.294634931050322 evidencing full

cash book filed (after hearing). Be that as it may the assessee is directed to place all replies with accompaniments so far filed by him on portal once again and to ensure that all replies with the accompaniments are on record of Ld. A.O before he proceeds to adjudge and adjudicate the case. The assessee is also at liberty to file additional reply and submissions if they so desire before fresh adjudication commences before Ld. A.O on *denovo basis*.

5. Order

5.1 In the premises, we set aside the “**impugned order**” as and by of remand back to Ld. A.O on *denovo basis*.

5.2 In the result appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 30.06.2025.

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore
दिनांक/ Dated : 30/06/2025
Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore