

**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.448/Ind/2024**  
**Assessment Year:2017-18**

Kamal Kishor Lakhena, Shri Nath Sadan, Teh Ke Samne, Davana Road, Thikri, Barwani (Assessee/Appellant)	<b><u>बनाम/</u></b> <b><u>Vs.</u></b>	ITO, Sendhwa  (Revenue/Respondent)
<b>PAN: AAQPL4153K</b>		
Assessee by	Ms. Nisha Lahoti & Shri Vijay Bansal, 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 B.M. Biyani, A.M.:**

Feeling aggrieved by order of first appeal dated 21.03.2024 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT(A)-3, Kolkata ["CIT(A)"] which in turn arises out of assessment-order dated 18.11.2019 passed by learned ITO, Sendhwa ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

*"1. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the assessment order u/s 143(3) which is*

*contrary to the material on record and provisions of the Act, unjust and bad in law.*

*2. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the addition made u/s 69A r.w.s. 115BBE of Rs. 10,38,000 as unexplained money more particularly when the source of deposit of cash is duly explained.*

*3. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the addition made u/s 69A r.w.s. 115BBE of Rs. 10,38,000 as unexplained money without considering the submissions on record in proper perspective.*

*4. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the addition made u/s 69A rws 115BBE of Rs. 10,38,000 as unexplained money without giving reasonable opportunity of being heard."*

2. Heard the learned Representative of both sides and case record carefully perused.

3. The dispute in present case relates to the addition of Rs. 10,38,000/- made by AO and upheld by CIT(A) u/s 69A of the Act treating the cash deposit made by assessee in a/c with State Bank of India on 03.12.2016 during demonetization period as unexplained money. The assessee was a Govt. employee who retired from service on 31.10.2015. During scrutiny proceeding, when the AO show-caused assessee to explain the source of impugned deposit, it was submitted by assessee that he received funds on retirement and by utilizing the funds so received, purchased a land from his brother Shri Vimal Kumar. Subsequently, the deal of purchase was cancelled and the assessee received refund of Rs. 10,21,000/- on 01.12.2016 from his brother which was thereafter utilized for making impugned deposit of Rs. 10,38,000/- in bank a/c. The AO has, however,

noted his objection that the assessee did not furnish purchase-agreement or any other documentary evidence (Para 5 of assessment-order).

4. Ld. AR for assessee submitted that the copy of purchase-agreement is available at Page No. 35-36 of Paper-Book. On a query by bench as to whether this purchase-agreement was filed to AO, Ld. AR initially referred the letter dated 14.11.2019 filed by assessee to AO during scrutiny-proceeding, copy at Page No. 14-17 of Paper-Book, in an attempt to show that the assessee narrated the details of purchase of land, cancellation of deal and refund of money by brother. But from this submission, shown by Ld. AR, it is not spelled out that the purchase-agreement was filed to AO. Going further, at the end of the letter, there is a list of five documents enclosed with the letter but even in that list, the purchase-agreement is not mentioned. When these aspects were shown by bench to Ld. AR, the Ld. AR immediately accepted that the purchase-agreement would not have been filed to AO. So far as the cancellation of deal of purchase and refund of money by brother is concerned, Ld. AR submitted that a confirmatory affidavit of assessee's brother is placed at Page No. 37-38 of Paper-Book but on perusal by bench, it is observed that the said affidavit is dated 11.02.2021. Ld. AR instantly submitted that this affidavit was neither filed to AO nor to the CIT(A). In fact, Ld. AR went on submitting that no submission was made from assessee's side during first appellate

proceedings and the CIT(A) has passed impugned order of first-appeal by merely discussing the facts noted by AO in assessment-order.

5. Replying to above, Ld. DR for revenue submitted that in such a situation when the vital documents (Purchase-agreement and Affidavit of brother as discussed earlier) were not submitted before AO and further no submission was even made before CIT(A), the evidences submitted by assessee are in the nature of 'new/additional evidences' and therefore the only possible remedy could be to remand this case back to the file of AO for a fresh adjudication after examining evidences.

6. Ld. AR agreed to the proposal made by Ld. DR.

7. In view of above discussion and the consensus arrived at by learned Representatives of both sides, we are inclined to remand this matter back to the file of AO for adjudication afresh, at the risk and responsibility of assessee. The AO shall give necessary opportunity of hearing to assessee and pass an appropriate order uninfluenced by his earlier order. The assessee is directed to make a complete submission before AO with supporting evidences. The assessee is also directed to remain vigilant and ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law. Ordered accordingly.

8. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 30/06/2025

Sd/-

(PARESH M. JOSHI)  
JUDICIAL MEMBER  
Indore

दिनांक /Dated : 30/06/2025

Patel/Sr. PS

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

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

By order  
Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore