

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT
MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.278/Ind/2024 (AY: 2016-17)

Income Tax Officer 2(1),Bhopal	<u>बनाम/</u> Vs.	Purushopttam Gupta, 102, Aishbagh Road, Aishbagh Road, Berkhedi, Huzur, Bhopal (PAN: AEPPG4505B)
(Appellant/Revenue)		(Respondent/Assessee)
Assessee by	Shri H. Chimnani, AR	
Revenue by	Shri Anoop Singh, CIT-DR	
Date of Hearing	10.06.2025	
Date of Pronouncement	08.07.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the Revenue Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the “**Act**” for sake of **brevity**) before this Tribunal. The Revenue is aggrieved by the order bearing Number ITBA/NFAC/S/250/2023-24/1060613547(1) dated 07.02.2024 passed by Ld. CIT(A) u/s 250

of the Act which is hereinafter referred to as the "**Impugned order**". The relevant Assessment Year is 2016-17 and the corresponding previous year period is from 01.04.2015 to 31.03.2016.

2.

FACTUAL MATRIX

2.1 That the return of income for the Assessment Year 2016-17 was filed by the assessee on **22.05.2017** declaring total income at **Rs.3,03,200/-**.

2.2 That the case of the assessee was selected for **limited scrutiny under CASS for the reason "Large cash deposit in bank account"**.

2.3 That the notice u/s 143(2) of the Act was issued on 10.08.2018 fixing the date of hearing on 27.08.2018 which was served upon the assessee electronically as well as through speed post.

2.4 Notices u/s 142(1) along with questionnaire were issued on 29.08.2018, 15.11.2018 and 14.12.2018 which were also served upon the assessee.

2.5 That in compliance to notices issued u/s 143(2) and 142(1) of the Act from time to time online submissions supported with documents, bank statements etc. were made and kept on record.

2.6 That the written reply as per questionnaire submitted by assessee were examined by **test check basis**.

2.7 That as per **AIR information** available with the Revenue, the assessee had **deposited cash amounting to Rs.3,60,66,220/-** in **his two saving bank accounts i.e. SBI and HDFC Banks**.

2.8 That however the assessee in his return of income for Assessment Year 2016-17 under **presumptive basis** has shown gross receipts at **Rs.2,24,242/-** and his **presumptive income at Rs.1,90,606/-**.

2.9 To verify the source of cash deposit made by the assessee during the year, vide **Notice u/s 142(1) dated 29.09.2018** the assessee was asked to furnish the following by 15.10.2018 which is as under: -

1. All the Cash deposit/ Saving Investment made during the year for the A.Y. 2016-17. Explain the **source of cash deposit made during the year supported with cash book,**

bank book and cash flow statement to explain the source of cash deposited on various dates in bank account maintained by you.

2. Please furnish gross Profit/Net Profit margins shown with corresponding turnover for the last 3 year including current year in the following format: - Turnover, Goss profit (before depreciation), GP margin (before depreciation), Net profit, N.P. margin. Reasons for short fall in Gross profit margin, if any may be explained with supporting evidences.

3. Month-wise details of opening stocks, purchase, sale and closing stock of different materials -indicate quantity and value wise.

2.10 That however the assessee neither filed **any written reply nor requested adjournment.**

2.11 That the assessee had mentioned only the bank account in **his return of income which was S.B. A/c No.53002862651 maintained with State Bank of India.** However the assessee was having another bank account with the **HDFC Bank, Bhopal which he has not mentioned in his return of income.** The assessee had also made huge cash deposit to the tune of

Rs.1,82,42,300/- in this bank account maintained with **HDFC Bank**, Bhopal. The bank statements of the assessee were called for u/s 133(6) of the Act and upon examination it was found that the assessee had made cash deposit to the tune of **Rs.3,60,66,220/-** in his aforesaid **two saving bank accounts** maintained with **SBI and HDFC Banks** at Bhopal, Madhya Pradesh.

2.12 That further the **assessee vide Notice u/s 142(1) dated 15.11.2018** was asked to furnish the following by 23.11.2018 which is as under: -

You have failed to comply with this Notice u/s 142(1) dated 29.09.2018. Further, you are requested to submit the following along with your reply in response to Notice u/s 142(1) dated 29.09.2018 latest by 23.11.2018 positively.

1. On perusal of your ITR your gross receipts are shown as Rs. 2,24,242/- and profit as Rs. 1,90,606/-. Your case was selected under CASS for scrutiny for large cash deposited during year. **Further, on perusal of ITS report it was found that you have made Cash deposit to the tune of Rs. 3,60,66,220/- during the year.**

2. What is the source of cash deposit made in your bank account to the **extent of Rs. 3,60,66,220/-** during the year **(Rs. 1,84,42,300 with HDFC Bank Account and Rs. 1,76,23,920/ with State bank of India)**. The amount of cash deposited by you is not in consonance with your business receipts. Kindly Substantiate **you claim of source of cash deposited with documentary evidence, failing which entire amount of Rs. 3,60,66,220/- will be treated as unexplained** cash credit found credited in your **bank account** and will be added to your **total income**.

The assessee failed to make compliance of the Notice issued u/s 142(1) and further a Notice u/s 144 was issued on **03.12.2018** proposing ex-parte assessment and addition of Rs. 3,60,66,220/- to his total returned income as unexplained cash deposit.

2.13 That the assessee in response has submitted the following: -

1. "As per the AIR Information with respect to PAN my case was selected for assessment based on deposited cash amounting to Rs. 3,60,66,220/- during the financial year 2015-16 (Rs. 1,84,42,300/-with HDFC bank and Rs.

1,76,23,920/- with state bank of India) With respect to the above 1 respectfully submit the following:

My wife Smt. Alka Gupta (PAN: AEPPG455A) is the proprietor of M/s Alka Gupta Sales and My son Mr. Tarun Gupta (PAN: AMFPG0230K) is the proprietor of M/s Tarun Trading Company engaged in the wholesale business of trading of RCM consumer products, selling of mobile recharge vouchers etc. Both are regular in filing income tax returns. Due to the nature of business maximum part of sale of both the firms' is in cash only. Both the firm sells recharge vouchers to retailers and collect cash from these retailers on daily basis. To avoid the heavy cash deposit charges both the firms appoint me as collecting agent on some commission basis. I used to collect cash and deposit in my saving accounts on daily basis on behalf of both the firms and immediately transfer the same to firms' respective bank accounts".

2. "I have a saving account in HDFC Bank at Hamidia Road Branch in Bhopal (M.P.) (A/c No. -50100019871,640). During the Financial Year 2015-16 1 have deposited the

collected cash on behalf of M/s Tarun Trading Company to the tune of Rs. 1.84 42,300/- and amount transferred to M/s Tarun Traiding Company during the financial year 2015-16 2015-16 is Rs. 1,83,26,000/-. (Copy of Bank Statement and Cash flow is attached herewith). I have a saving account in State Bank of India at Barkheddi Branch in Bhopal (M.P.) (A/c No.53002862651). During the Financial Year 2015-16, 1 have deposited the collected cash on behalf of M/s Alka Gupta Sales to the tune of Rs. 1,75,239201-and amount transferred to M/s Alka Gupta Sales during the financial year 2015-1,6 is Rs. 1,83,26,000/-. (Copy of Bank statement and cash flow is attached herewith) On the basis of above facts and corresponding transfer/withdrawals entries in the bank statements of both accounts (Bank statement attached herewith) it can be clarified that all the deposited cash of Rs. 3,60,56,220/- is not my own receipts whereas I have routed the collected cash through deposits & transfers made to both the firms mentioned above in their respective accounts using my saving accounts in the capacity of an

intermediary i.e. collecting agent. Apart from this I have no other business. I have filed my income tax return for A. Y. 2016-17. In which I have correctly shown gross commission receipts of Rs. 2,24,242 which is around 0.62% of total cash deposit i. e. Rs. 3,60,66,220/-. Also I incurred some travelling and other expenses in cash amounting to Rs. 33,636/-to collect and deposit this amount during the financial year 2015-1-6. Hence the net income from commission after deduction of expenses is Rs. 1,90,605/- which has been properly shown in Income Tax Return for A.Y. 2016-17."

2.14 That following is recorded in the assessment order:-

Here it is important to mention that the assessee himself has submitted that he has only acted as collection agent for both the parties and the cash deposited in his bank account is not related to his business. He neither poses any valid license to conduct himself as collection agent nor furnished any documentary evidence as submitted in support of his claim.

2.15 That in notice **u/s 142(1) dated 14.12.2018** the assessee was called upon to furnish following: -

Further the assessee was asked to provide the following vide this office Notice u/s 142(1) dated 14.12.2018 which is as follows. In continuation with your reply you are further requested to submit your response to following: -

1. Provide certificate in respect to TDS deducted on commission.
2. Submit Ledger copy of Alka Gupta sales and Tarun Trading Company in support of your claim.
3. Provide Documents (Gumastha) in name of your name to do business as Commission Agent.
4. Submit Audit report of Alka Gupta sales & Tarun Trading Co.
5. Provide rationale behind you receiving cash in your account on behalf of Alka Gupta sales & Tarun Trading Co.

2.16 That in response to the aforesaid requisitions made by the Revenue the assessee submitted the following which is reproduced below: -

As per section 194H of the Income Tax Act, 1961 an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limit specified under clause (a) and (b) of Section 44AB during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct under income tax under this section.

On the basis of provisions of the above section it can be clarified that M/s Alka Gupta Sales and M/s Tarun Trading Company were not liable to deduct TDS on the amount of commission paid or payable to Mr. Purusottam gupta during the Financial Year 2015-16 because total sales, gross receipts, or turnover from the business or profession carried on by both the firms didn't exceed the monetary limit specified under clause (a) and (b) of Section 44AB during the financial year 2014-15 which is immediately preceding the financial year 2015-16. Hence the question of certificate in respect of TDS deducted in commission does not arise."

2.17 That it is recorded in the assessment order as under: -

To verify the claim of the assessee in support of assessee's reply regarding Non-deduction of TDS the ITR and other details were verified in respect of M/s Alka Gupta Sales and M/s Tarun Trading Company. The assessee submitted that he had received and deposited Rs. 1,84,42,300/- on behalf of M/s Tarun Trading Company. Shri Tarun Gupta had filed his ROI for A.Y. 2016-17 on presumptive basis and Gross receipts was shown at Rs. 3,96,511/-. Presumptive Income shown by Shri Tarun Gupta for A.Y. 2016-17 was at Rs. 3,17,209/--Smt. Alka Gupta who was proprietor of M/s Alka Gupta Sales has submitted her audited books of accounts, but no TDS was deducted.

2.18 That with regard to gumastha licence assessee has submitted as under:-

"I was working as commission agent only for firms mentioned above only because that I am well converse with the business in which these firms are engaged. I have stopped the same after the financial year 2015-16. I don't

have any established firm or office to run the business of commission. Also, most of the commission agent and broker working individually don't get themselves registered under the shop and establishment act. Under the same impression and due to the lack of awareness, I also didn't get registered myself under the shop and establishment act and hence I can't produce the registration certificate under shop and establishment act (Gumastha) before you. I earned the commission income from these firms during the financial year 2015-16 and declare the same in my income tax return."

2.19 That during the course of the assessment proceedings Shri Tarun Gupta proprietor of M/s Tarun Trading Co. and Smt. Alka Gupta of proprietor of M/s Alka Gupta Sales were called by issuing summons u/s 131 and their statements were recorded. **They were unable to answer the questions asked and they answered that all the activities related to business were looked by Shri Harsh Gupta who is elder son of Shri Purushottam Gupta and Smt. Alka Gupta. Shri Harsh Gupta has admitted in answer to Q.No. 11 that no TDS was**

deducted on payment of commission to Shri Purushottam Gupta because he was not having knowledge in this regard. Further in his reply to Question No. 4 and 5, he admitted that the turnover was approx 4-5 crore in respect of M/s Tarun Trading Company but he did not have any specific answer as to why the M/s Tarun Trading Co. failed to get its books of accounts audited.

2.20 That the reply's/replies of the assessee were not accepted by Ld. A.O due to following reasons:-

1. The assessee could not produce any valid legal document to justify his claim as working as Commission agent.
2. No TDS was deducted u/s 194H of the IT Act on payment of commission to the assessee from M/s Tarun Trading Company and of M/s Alka Gupta Sales.
3. The business conducted in the name of M/s Tarun Trading Company and of M/s Alka Gupta Sales are all family run business of the assessee, Shri Purushottam Gupta and this story has been put forward as an afterthought. There was no business requirement to appoint Shri Purushottam Gupta as commission agent. Business of

Collection/Collecting Agent is where there is a need to approach customers/clients and receive money after time lag. This business is not such business and the whole story is cooked up.

4. Income Tax Returns of Shri Purushottam Gupta and all his family members were filed after the period of demonetization.

5. The bank accounts of Shri Purushottam Gupta were not truly disclosed in his ITR. The assessee had mentioned only one bank account in his Return of Income which was saving bank account no. 53002862651 maintained with State bank of India. However, the assessee was having another bank account with HDFC Bank, Hamidia Road, Bhopal which he had not mentioned in his return of income. The assessee had also made huge cash deposit to the tune of Rs. 1,84,42,300/- in his bank account maintained with HDFC, Bank, Hamidia Road, Branch.

6. As per the statement of Shri Harsh Gupta, the turnover of M/s Tarun Trading Co. was approx. 4-5 Crore. However, the gross receipts as per ITR was shown

at Rs.3,96,511/- for A.Y. 2016-17. The assessee himself had stated in his submission that he had received Rs. 1,84,42,300/- on behalf of M/s Tarun Trading Co. The books of Tarun Trading Company were not audited, and turnover shown was contradictory to turnover stated.

7. The commission stated is unrealistically low which again shows that it is not genuine. The assessee had filed his ROI for A.Y. 2016-17 to justify cash deposited in successive years by him and entities related to him.

8. The assessee has filed his ROI for A.Y. 2016-17 on 22.05.2017 the period after demonetization The assessee further filed his ROI for A.Y. 2017-18 on 31.03.2018 wherein he had mentioned cash deposit to the tune of Rs. 37,70,700/- with State Bank of India and Rs. 1,29,00,000/- with HDFC, Bank during demonetization. Huge cash were also deposited by Shri Tarun Gupta proprietor of M/s Tarun Trading Company during the period of demonetization and proceedings against him pending before this office.

2.21 That in view of the above premises as and by way of an assessment order u/s 143(3) the assessee's total income exigible to tax was computed and assessed at Rs.3,63,69,420/-[(Income as per ROI Rs.3,03,200/- plus Rs.3,60,66,220/- (unexplained cash credit u/s 69A of the Act)] (supra). That the aforesaid assessment order bears Number: ITBA/AST/S/143(3)/2018-19/1014439711(1) and is dated 20.12.2018 which is hereinafter referred to as the **"impugned assessment order"**.

2.22 That the assessee being aggrieved by the **"impugned assessment order"** prefers first appeal u/s 246A of the Act before Ld. CIT(A) who by the **"impugned order"** has **deleted** the addition of Rs.3,60,66,200/- and has allowed the appeal of the assessee on grounds and reasons stated therein.

2.23 That the Revenue being aggrieved by the **"impugned order"** has preferred the instant appeal before this Tribunal and has raised following ground against the **"impugned order"** which are as under:-

"1. On the facts and circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.3,60,66,220/- made by the Assessing Officer on account of unexplained cash credit made in the bank accounts of the assessee u/s 69A of the I.T. Act, 1961 without appreciating enquiry made by the Assessing Officer during the course of assessment proceedings".

3.

Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 10.06.2025 when the Ld. DR for and on behalf of the Revenue appeared before us and interalia contended that revenue has raised one sole ground only which we have already recorded as aforesaid. Revenue is seriously prejudiced by the **“impugned order”** and hence this appeal by the Revenue before us. At the outset it was brought to our notice that assessee has two saving bank accounts which fact is not disputed, one is with SBI & another with HDFC both at Bhopal, MP. That there are heavy cash deposit in both these accounts **which fact too is admitted**. Once this is a admitted position it becomes incumbent upon the assessee to explain the sources of such heavy cash deposit in both the saving bank account. The assessee, in law **owes an explanation to Revenue to satisfactorily explain as to from where he got such huge cash amount which came to be deposited in his two saving bank accounts (supra)**. That during the course of the assessment proceedings the assessee has miserably failed to offer to Ld. A.O **any plausible explanation worth a credence** along with any documentary

evidence that as to how such huge cash amount came to be deposited in his two-saving bank account one with SBI & other with HDFC. The questionnaire put to him under notice(s) (supra) were not answered in any satisfactory manner from which legitimate money sources could be explained. It was therefore contended that the assessee has miserably failed to offer any explanation regarding cash credits in his both saving accounts in any credential manner **to full and complete satisfaction of Assessing Officer**. The Ld. DR has reasoned that if the assessee is **"cash collection agent"** as is sought to be projected during the assessment proceedings then why has he not produced any licence if any required to do such work of cash collection agent/agency. The assessee has miserably failed to establish the type of cash collection business he does (Hard core business activity). The Ld. DR then contended that if any cash collection business he has done then it was incumbent upon him to have given the **names of entities from whom he collected such huge sums of money in cash**. The assessee has besides not produced any license of cash collection agent/agency has also not produced any agreement and or contract on record. The

assessee has well-orchestrated a story that he used to do cash collection agent/agency business for and on behalf of one M/s Alka Gupta sales whose sole proprietor is assessee's wife and another M/s Tarun Trading Company which is sole proprietary concern of his son Tarun Gupta. These two sole proprietors of these two concerns (supra) are of his wife and son and are engaged in the business of selling mobile recharge vouchers including wholesale business of trading RCM consumer products. However, no material details of such business are stated and or disclosed before the Assessing Officer **including details of persons/entities with whom such business was carried out.** No TDS was ever deducted by such entities too, despite huge turnovers which are in crores. The Ld. DR also emphasized that cash deposit in S.B account is not in dispute but simultaneously assessee has failed to disclose names of debtors and their even simple bare particulars much less material particulars. The Ld. DR then contended that what is most surprising aspect of the present case is that in mobile recharging vouchers business including RCM products (wholesale business) besides details of customers/entities with whom

business was done **why there is at all a necessity/essentiality of a commission agent/agency which fact too is not at all explained by the assessee in any manner whatsoever during the course of proceedings including appellate one.** Even the business of “**wholesale**” as contended of RCM consumer products is simply just not explained. The assessee has not disclosed the HDFC bank account details of income in his ITR which is a serious suppression and concealment of material fact. No satisfactory explanation about non-disclosure of such account in ITR is given or furnished. The Ld. DR then contended that during proceedings that Harsh Gupta also son of assessee came to be implicated by Tarun Gupta proprietor of M/s Tarun Trading Co & Smt. Alka Gupta proprietor of M/s Alka Gupta Sales as the person in-charge of their business wherein he too admitted that no TDS was deducted on payment of commission to the assessee. Failure of get books account audited by M/s Tarun Trading Co despite turnover of 4 to 5 crores was too admitted. No answers were given to pointed questions. The Ld. DR then contended that basic criteria about details of sales, who were debtors are not provided at all despite opportunities. **The broad criteria about**

identity, genuineness and credit worthiness are all not provided or sufficiently explained perse, besides that no TDS, no license, no agreement/contract are shown all these factors shows that a orchestrated story is coined which has no legs to stand. The Ld. DR then emphatically contended that in so far as Alka Gupta sales are concerned in **audit report no past turnovers are shown which speaks volumes about assessee and his family members.** Party wise ledger account despite Ld. A.O requesting were not provided too. Finally, it was stated that CIT(A) has ignored above vital facts contended today which are all based on records of the case in the inquiry held and hence the **“impugned order”** should be set aside and order of Ld. A.O should be upheld.

3.2 Per contra Ld. AR appearing for and on behalf of the assessee had contended that the **“impugned order”** is just and proper. It is not liable to be interfered with by this Tribunal. At the outset it was contended by the Ld. AR that basis page 44 of PB which is copy of assessment order in respect of assessee for Assessment Year 2010-11 those facts stated therein clearly shows that no new story is concocted or created in an

orchestrated manner. There is thus no new business model as alleged by Ld. DR. It was next contended by Ld. AR that what assessee receives is commission charges. He does not get any recovery amount for himself. It was urged that merely because no TDS amount is deducted business model cannot be faulted with, or doubted and controverted. Since assessee's turnover is less there is no service tax liability for rendering commission agent/agency services. That the assessee has received **"commission"** as **"commission agent"** from these two entities i.e M/s Tarun Trading Co & M/s Alka Gupta Sales only. Further in order to carry out the business as **"commission agent"** there is no requirement in law to obtain any license or registration with any authority. There is no requirement for gumastha license under shops and establishment Act. Assessee only deals with two parties (supra). Further it is a family arrangement hence no contract. One concern belongs to his wife and another his son. In the assessment order case is made out on the basis suspicion only. Section 69A speaks about sources of money only and it is incorrectly invoked by Ld. A.O and rightly set aside by Ld. CIT(A). **However, particulars of debtors are not given remains true,**

during the course of proceedings. Commission agency charges received by assessee is too meager a sum. Ld. AR raised few sentimental arguments with regard to the assessee and his family members too. It was also stated that 10 lakh vouchers (recharge) were unsold as Jio came in. CIT(A) has passed order after carefully perusing Ld. A.O assessment order.

3.3 In rejoinder arguments Ld. DR for revenue stated that acceptance of previous A.O order for Assessment Year 2010-11 is not at all relevant in the fiscal **statues as each year is a distinct and a separate year. Further principles of Res Judicata are not applicable to fiscal statutes particularly laws relating to income tax.** In the present case a **detailed enquiry** as per law is made which is not followed by Ld. CIT(A) and its fruitful results. In the earlier order of Ld. A.O relied upon by Ld. AR no detailed enquiry as is made in the instant case was ever carried out/spelt out. Upon a clarificatory query by Bench that the previous order of Ld. A.O for Assessment Year 2010-11 is under section 147/148 of the Act and why it should not be given any weightage. The Ld. DR for the Revenue stated that in fiscal statute Ld. A.O is not bound even if previous assessment order

for Assessment Year 2010-11 is under Section 147 as each year is a distinct and a separate year. Principles of Res Judicata are just not applicable to fiscal statute to repeat and reiterate again. The Ld. A.O in the instant case has taken cognizance of overall facts and circumstances after conducting a detailed inquiry in lawful manner which are all reflected in the assessment order and has given his logical reason which cannot be faulted with at all. The plea of balance sheet and profit and loss account of M/s Alka Gupta Sales who deals in mobile handsets, mobile vouchers (recharge), RCM wholesale activities are for banking purposes is all false and, in any event, has no bearing on the case. The Ld. DR clarified at the end of the hearing that there is no material on record within the meaning of Section 69A of the Act how the money in cash was procured, against what, and from whom, as volume of cash is too high. The Ld. AR has not placed on record a systematic history of assessee's business and his past business history of his family members with material particulars to inspire confidence and credence. Further what kind of purchases were made are also not spelt out/not proved. Ld. DR also contended

that assessee as commission agent/agency cannot file return u/s 44AB of the Act. After that hearing was concluded.

4. **Observations, findings & conclusions.**

4.1 We now have to adjudge and adjudicate the present appeal filed by the revenue on basis of the records of the case and contentions canvassed before us during the course of hearing. In brief we have to decide the legality, validity and the propriety of the **"impugned order"**.

4.2 We have carefully perused the records of the case as presented to this tribunal by both Ld. AR and Ld. DR to determine the legality, validity of the **"Impugned Order"** basis law and by following due process of law.

4.3 We basis records of the case, after hearing and upon examining the contentions are of the considered opinion that in the **"impugned order"** the Ld. CIT(A) has grossly erred in law. The cash money is undisputedly deposited **in two saving bank accounts** i.e. SBI & HDFC (supra). It has gone un-rebutted by the assessee that only one account i.e. of SBI was reported and disclosed in his ITR whereas the HDFC account was not disclosed and reported in ITR. Huge amount of cash was deposited in

HDFC Bank aggregating to Rs.1,82,42,300/- and Rs.1,76,23,920/- with SBI bank. Both this account belongs to the assessee which is too an undisputed fact. The aggregate cash deposit **figure is staggering to Rs.3,60,66,220/-** and that too in hard cash. We reproduce below as under Section 69A of the Act as under: -

“Un explained money etc.

69A. Wherein 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 money, bullion, jewellery or other valuable article or the explanation offered by him is not in the opinion of the Assessing 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.

By virtue of Section 69A of the Act (supra) assessee is admittedly the owner of money as huge hard cash deposit of Rs.3,60,66,220/- have been found to have been deposited in both **S.B A/c** (supra) (out of which one is not even disclosed i.e. HDFC one) belongs to assessee which fact is undisputed. It is not the case of the assessee that such huge amount of cash was

deposited in his two saving accounts by someone else. It is an admitted position that huge amount cash (supra) was deposited by the assessee himself in both these accounts. Under these facts it can safely be said that assessee is **owner** of such money (cash deposit). The assessee has stated time and again during the course of the proceedings both before the original as well as at 1st appellate stage that such a huge cash deposit belongs to Mrs. Alka Gupta his wife who is carrying out business as sole proprietor of M/s Alka Gupta Sales and his son Tarun Gupta who is sole proprietor of M/s Tarun Trading Company. They are into wholesale business of trading of RCM consumer products, selling of mobile recharge vouchers etc. They sell recharge vouchers to retailers and collect cash from these retailers on daily basis. That in order to avoid heavy cash deposit charges both the sole proprietary firms have appointed assessee as **“collecting agent”** on some commission basis. That the assessee used to collect cash deposits and deposit the same in to his two saving accounts on daily basis on behalf of both the sole proprietary firm and used to immediately transfer the same to the firm's respective bank accounts. This explanation of the assessee did

not find favours of the Ld. Assessing Officer and that he was not satisfied within the meaning of Section 69A of the Act where explanation offered by assessee must be a satisfactory explanation. We therefore hold that mere explanation that huge cash deposit in the accounts of assessee to the extent of Rs.3,60,66,220/- in fact belongs to his wife sole proprietary firm and his son's sole proprietary firm **perse** is not an explanation which can said to be a satisfactory explanation within the meaning of Section 69A of the Act which stipulates that explanation offered should be of such a nature that it should satisfy the opinion of Ld. Assessing Officer. We hold that it is nowhere pleaded and contended by the assessee at any level of proceedings expressing that explanation given by assessee is satisfactory and that opinion of Ld. A.O on satisfaction is erroneous and/or arbitrary. The material ingredients of Section 69A of the Act are not at all contended, pleaded and argued by the assessee expressly. We hold that explanation offered by assessee should be satisfactory in the opinion of Assessing Officer and if Assessing Officer holds otherwise to the explanation offered then it becomes more incumbent upon the assessee to

explain, plead and argue that it was but incumbent upon the Ld. A.O to have accepted their explanation as it was satisfactory and opinion of Ld. A.O is erroneous and arbitrary.

4.4 While examining the records of the case we notice that assessee has taken a plea that money in cash was deposited in his two-saving bank account as firms of his wife and son (supra) were required to pay heavy cash deposit charges to their banker's hence in order to avoid those charges cash money came to be deposited in his two saving bank accounts (supra). We are of the considered view that the explanation within the meaning of Section 69A should be an affirmative explanation so much so that Ld. A.O is positively satisfied in holding a positive opinion. In brief explanation offered should reasonably satisfy Ld. A.O. We therefore hold that material ingredients of Section 69A is totally ignored by the 1st appellate authority while passing the **"impugned order"**.

4.5 Basis records of the case we hold that job of a collecting agent and/or commission agent is to charge his or her commission generally upon sales **as is a commercial practice** but in the instant case the assessee besides charging his

“**commission**” is also depositing huge cash amounts in his saving bank account with HDFC & SBI which perse shows that such arrangements are not prudent arrangements even in **commercial sense** or **popular sense**. Basis this we have no hesitation in holding that the assessee cash deposits in his two saving bank accounts are nothing but his own money and that he has failed to offer any plausible explanation worth a credence within the meaning of Section 69A so that Ld. A.O could draw an affirmative opinion about a satisfactory explanation regarding sources of cash deposit earned as and by way of a legitimate business transactions. We disagree with the analogy about “**family arrangement**” as contended, canvassed by the assessee. If each individuals are separate legal entity with PAN before tax authorities having different occupations in their respective fields then each of them are liable to explain his or her sources of income independently of each other. It is a case when father is questioned about his income, he says income belongs to wife and son, where simultaneously wife is having a separate PAN and files her return in sole proprietary capacity and so also son who

is filing return in sole proprietary capacity i.e. M/s Alka Gupta Sales & M/s Tarun Trading Company respectively.

4.6 We basis record of the case holds that assessee's explanation within the meaning of Section 69A is not acceptable explanation as his explanation instead of explaining about his commission agency fee/charges is speaking about income of his wife and son even though they are having separate PAN Nos when questioned whereas his ITR is silent on it and further HDFC account is not disclosed therein. Once assessee has filed his return of income and has projected himself out to be a commission agent he must give explanation only about his commission income. When huge amount of money is found to have been deposited by revenue it is not open for him to demonstrate for sake of giving an explanation that all cash deposit belongs to his wife and son (M/s Alka Gupta Sales & M/s Tarun Trading Co.). Unsatisfactory explanation is given about huge source of deposit of cash amount. We are of the considered view that legitimate explanation which should satisfy the Ld. A.O as satisfactory is expected and not any explanation which has no legs to stand.

4.7 We hold that No TDS is deducted by M/s Alka Gupta Sales and so also by M/s Tarun Trading Company. This is an admitted position. We also hold that despite huge collection of cash no business details, names of customers (debtors) from whom such huge amounts were collected are spelt out despite requisition of the same by the revenue. We hold that on one hand assessee is holding himself out, as a commission agent and on other hand he is simultaneously projecting himself that all cash deposit belongs to his wife and son's sole proprietary firms (supra) which is not a satisfactory explanation in law. It is not open for assessee to blow hot and cold when questioned. Assessee is expected to give a straight answer as basis his explanation Ld. A.O has to "**form**" an opinion in quasi-judicial manner to arrive at a conclusion whether assessee's explanation is satisfactory or not. Whether such explanation is to be accepted or not within the meaning of Section 69A of the Act.

4.8 We sake of repetition reiterates that assessee explanations given during the assessment enquiry where two-fold one that he is a commission agent/collection agent and derives income as agency commission/collection fee as a consideration for

rendering his services and another that money within the meaning of Section 69A belongs to his wife and son's sole proprietary firm (supra). Money is collected in cash from debtors of sole proprietary firm's and are deposited in his saving bank account of SBI & HDFC and then transferred to sole proprietary firm accounts. No TDS is deducted. Names of debtors are not disclosed so on and so forth which are all from the records. We therefore are of the considered view that Ld. A.O has rightly formed an opinion that such explanation is not satisfactory with regard to sources of money. The ultimate source from whom money is collected in cash to staggering amount of Rs.3,60,66,220/- ought to have been disclosed by the assessee and assessee has miserably failed to do so. The burden of proof is on assessee and assessee has not been able to discharge the burden. Merely stating that money belongs to his wife and son though deposited in to his two-saving bank account and then retransferred to wife and son's sole proprietary firm account just to save bank cash collection charges is not sufficient proof in law in the absence of any material documents basis which such huge amount of cash was collected. The Ld. CIT(A) has failed to

appreciate factual aspect of the case and has erroneously passed the **“impugned order”** contrary to material on record. The **“impugned order”** is therefore without any merits.

4.9 We hold that **“impugned order”** is based on erroneous appreciation of material on record. It has failed to appreciate entire gamut and facts and circumstances of the case. The explanation of the assessee must be from the depth of truth, and it should not be a make believe version. In the instant case a make-believe version is stated and analogy is drawn that on earlier years such explanations have been accepted by Revenue even under Section 147 proceedings. We are in complete agreement with the view of Ld. CIT-DR that each year in a fiscal law is a distinct year and that principles of Res Judicata does not apply to fiscal statutes. We further concur with the assertion of the Ld. DR that facts in the earlier years were not investigated and enquired so deeply as in the instant case. Basis perusal of documents we concur with the assertion of Ld. CIT-DR. We too hold that doctrine of Res Judicata is not applicable to fiscal statute as it is already a well settled law, with the catena of decisions of Apex Court.

4.10 We say that during the course of hearing held on 10.06.2025 reliance was placed on assessment order dated 30.12.2019 and this document was shown to us across bar of Tarun Gupta which too shows a meager income of Rs.2,48,755/- u/s 144 of the Act. This document perse has no relevance before staggering cash deposit of Rs.3,60,66,220/-. The purpose of showing this assessment order dated 30.12.2019 for Assessment Year 2017-18 when relevant assessment year under consideration is 2016-17 does not stand to reason. What is the nature of analogy is being drawn is not spelt out.

4.11 We basis ITR of assessee for Assessment Year 2016-17 observe and hold that assessee has declared his business as a person in **"service sector"** industry and his trade name is **"Mobile Point, Mobile Recharge Vouchers"**. His gross turnover u/s 44AD is Rs.2,24,242/-. His presumptive income u/s 44AD is Rs.1,90,606/-. Income chargeable under business is Rs.1,96,000/-. **In financial particulars** Sundry debtor are Rs.18,654/- sundry creditors are Rs.6226/- amount of total stock in trade is Rs.20,300/- and the amount of cash balance is Rs.33,213/-. **In financial particulars of business** there is not

even a whisper of two sole proprietary firm's (supra) which perse speaks volume about assessee and his explanation that whopping amount of Rs.3,60,66,220/- belongs to his wife and son's two proprietary firms. No details of such entities are furnished, and revenue is kept in dark with regard to cash deposits in two saving bank account i.e. SBI & HDFC. Had the explanation of assessee was true and correct such particulars would have appeared not forming part of his income. Needless to state true and material particulars are required to be stated in ROI. We basis cash flow statement on page 8 of PB also notice cash flow of Rs,51,26,169/-, Rs.65,126,169/- from wife's sole proprietary firm to assessee's account.

4.12 We basis SBI account page 10 to 14 of PB also notice financial flow from assessee to M/s Alka Gupta Sales. Thus, we hold that if assessee as per his ITR is a service provider as commission agent whose income should be strictly as per declaration in ITR should be commission income why such huge amounts are first deposited in cash, then transferred and credited into M/s Alka Gupta Sales account and son's firm

account. Explanation thus offered is rightly rejected by Ld. A.O and Ld. CIT(A) has thus erred in law.

4.13 The Ld. AR on page 43,44 of PB has placed on record assessment order of assessee for Assessment Year 2010-11 dated 30.10.2017 to demonstrate that business model explained is not new and said business model is accepted by department. The Ld. DR has seriously disputed this assessment order in his rejoinder and has rightly contended that each year in income tax laws is distinct and separate. The concept of promissory estoppel is not applicable. As stated above (supra) we concur with views of Ld. CIT-DR.

4.14 We basis perusal of the record also observe that assessee in his explanation with regard to sources of huge cash deposit in to his two-saving account i.e. SBI & HDFC banks have not come up with clean hand before revenue/the exchequer is as much as in the ITR on record for the year under consideration only one bank account of SBI was disclosed and another bank account with HDFC bank was not disclosed. This is an admitted position and not disputed. Under these circumstances the financial antecedent of assessee is rightly questioned by the Ld. A.O and

Ld. CIT(A) has failed to appreciate this crucial aspect of non-disclosure in the "impugned order" and has erroneously allowed the 1st appeal of the assessee. Needless to repeat and reiterate that cash deposit was found in both saving accounts (supra).

4.15 We basis perusal of the records also notice and observe that revenue in the instant appeal has raised one question which is broad enough to encompass within its ambit and scope the entire enquiry conducted by Ld. A.O to adjudge and adjudicate the real income of the assessee exigible to tax. The assessee owes a plausible and a satisfactory explanation to the revenue by virtue of law. Even the explanation offered has not been justified with any tangible material on record worth a credence that staggering cash amount to the tune of Rs.3.70 crore approximately has suffered taxation in the hands of other assessee's who are having distinct PAN Number respectively. Be that as it may law contemplates explanation of assessee only with regard to ownership of money found in his accounts which are from explainable sources. In taxation law sources should be properly explained satisfactorily. In the instant case who are debtors, their names, identity, genuineness of transactions etc. are not at all

shown proved. Revenue has taken strong objection, and we agree with contentions of Ld. CIT-DR on this aspect.

4.16 We observe that which major ingredients are not satisfied which the Ld. DR has contested strongly in the hearing which are identity, genuineness and creditworthiness. None is proved by the assessee and this crucial aspect is totally ignored by Ld. CIT(A) in the **"impugned order"**. Generally, in income tax laws in respect of several transactions burden of proof is on the assessee to establish identity, genuineness and creditworthiness as and by way of several documentary evidence but none is shown by the assessee. Hence basis criteria which are **foundational** in nature is just not satisfied and Ld. CIT(A) ought to have seen and appreciated such a foundational criteria but unfortunately Ld. CIT(A) has ignored this aspect consequently **"impugned order"** is bad in law and illegal.

4.17 We concur with the argument of Ld. CIT-DR that in so far as M/s Alka Sales (assessee wife's sole proprietary firm) is concerned **no past turnover of such firm is mentioned in audit report.** We have carefully perused page 55 of PB and we

notice and observe that no past turnover of previous years are mentioned. We therefore hold that this is a crucial factor which goes against the assessee's explanation and Ld. CIT(A) in the **"impugned order"** has failed to appreciate such a crucial factor which establishes that money in two bank accounts is of assessee only and there is a complete failure to give suitable explanation to Ld. A.O and that **he is rightly not satisfied by explanation offered by assessee during the course of assessment proceedings**. Under these circumstances Ld. CIT(A) ought not to have allowed the 1st appeal of the assessee u/s 250 of the Act.

4.18 We further basis perusal of records also notice and observe that it was incumbent upon the assessee to have given in his explanation the party wise ledger account in support to justify his explanation which was too sought by Ld. A.O during the original assessment proceeding but the same was not provided. We therefore hold that assessee has failed to give plausible explanation with any documentary evidence in support thereof consequently we upheld **"impugned assessment order"** and set aside **"impugned order"** on this count too.

4.19 We observe that during the course of hearing an issue arose whether assessee is cash collection agent of his wife and son (sole proprietary firms and supra) and whether to carry out such activity any license is required and whether there is any contract in writing authorizing assessee to collect money of debtors of two sole proprietary firm. In this regard we hold that since assessee has explained in his explanation during the course of assessment proceedings that besides earning commissions fee/charges he collected cash in crores and deposited the same in his account obviously goes to show that assessee is real owner of money and in absence of any evidence deeming fiction comes into play as assessee owes an explanation about its sources which he has failed to give to full and complete satisfaction of Ld. A.O in a manner known to law. We therefore hold that assessee is owner of money. The assessee has collected it and the money was collected in hard cash in crores and Ld. A.O has rightly rejected his explanation u/s 69A of the Act and Ld. CIT(A) has erred in law in the **"impugned order"**.

4.20 We also observe that since huge amount of cash deposits are found in two saving bank account of the assessee the

assessee in law by virtue of Section 69A owes a just and plausible explanation to the revenue as to how he has got such huge amount that too is cash deposited by him in his two bank accounts. The level of explanation regarding “**sources**” must be reasonable, just and proper which should in the opinion of Ld. A.O should be satisfactory.

4.21 The assessee in the instant appeal gives explanation that such huge amount of cash found in his accounts has been collected from debtors of his wife and son’s sole proprietary firms (supra). However, assessee has miserably failed to give list of such debtors when sought and requisitioned by revenue

4.22 That during the inquiry, the assessee has produced his wife and son, who were too examined by revenue but they both have miserably **failed to give any explanation about their debtors.** Hence even upon examination of sole proprietors of two firm’s (supra) names of debtors from whom money was procured and then deposited in cash in saving bank accounts (supra) have not surfaced. Sources have remained unexplained.

4.23 Further both the sole proprietor's of two firms named by assessee have brought in to picture one Mr. Harsh Gupta who too further could not give any plausible explanation **about sources**. We hold that in brief nothing is explained regarding sources. Hence money belongs to assessee and is deemed to be income of assessee only. Assessee has not explained satisfactorily for the sources of cash deposit but has failed. No legal document is produced to justify claim of working as commission agent/collecting agent. Necessity/essentiality of a commission agent is not explained at all. The Ld. DR has pointed out a valid issue and we concur with him. No past turnover of M/s Alka is shown in audit report. M/s Tarun is not audited despite huge turnover of 3-4 crores. Bank account of HDFC was not disclosed in ITR.

4.24 In the premises drawn we hold that Ld. CIT(A) has erroneously set aside the **"impugned assessment order"** without any cogent material, grounds, evidence. We set aside the **"impugned order"** and upheld **"impugned assessment order"** as the same is valid and proper. The Ld. AR has failed to tarnish the **"impugned assessment order"** on any cogent material

whatsoever. The **"impugned assessment order"** is well reasoned and speaking and is also based on material on record.

5. Order

5.1 In the premises set out herein above the **"impugned order"** is set aside and **"impugned assessment order"** is upheld.

5.2 In the result appeal of the revenue is allowed and **"impugned order"** is set aside.

Order pronounced in open court on 08.07.2025.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 08/07/2025

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