

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.242/RPR/2025

निर्धारण वर्ष /Assessment Year: 2013-14

Raghvendra Singh Thakur,
H.No.238, Sarona,
Tatibandh, Raipur,
492001,
Chhattisgarh
PAN: AKBPT7616E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-4(1), Raipur, Central,
Revenue Main Building,
492001, Chhattisgarh.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekas S. Sharma, CA

Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 08.07.2025

घोषणा की तारीख / Date of Pronouncement : 14.07.2025

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

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 05.02.2025 for the assessment year 2013-14. The grounds of appeal raised by the assessee are as follows:

“1. On the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in making addition of Rs.11,59,670/- being 1/3 of Rs.34,79,000/-on account of cash deposited in Oriental Bank of Commerce as unexplained income by invoking Section 69r.w.s 115BBE of the Income Tax Act, 1961 and the Learned CIT (Appeals), National Faceless Appeal Centre. Delhi has erred in confirming the same as the addition is contrary to facts, law and legislative intent inasmuch as the cash deposited belonged to the partnership firm of the assessee which was substantiated by documentary evidences that were disregarded by Ld. AO as well as Ld. CIT(Appeals), hence, it is prayed that the addition of Rs.11,59,670/- confirmed by the Learned CIT (Appeal) may kindly be deleted.

2. On the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in making addition of Rs.9,600/-by denying exemption under the head "Income from Salary" on account of Transport Allowance and the Learned CIT (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the same as the addition is contrary to facts, law and legislative intent inasmuch as the claim was well within the limit prescribed u/s 10(14)(ii) disregarding the documentary evidences submitted in support of the aforesaid claim made by the assessee, hence, it is prayed that the disallowance of Rs.9,600/- confirmed by the Learned CIT (Appeal) may kindly be deleted.

On the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in making addition of Rs.32,385/- by denying exemption under the head "Income from Salary" on account of

House Rent Allowance and the Learned CIT (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the same as the addition is contrary to facts, law and legislative intent inasmuch as the conditions specified u/s 10(13A) have been met and is well within the limit prescribed u/s 10(13A) disregarding the documentary evidences submitted in support of the aforesaid claim of the assessee, hence, it is prayed that the disallowance of Rs.32,385/- confirmed by the Learned CIT (Appeal) may kindly be deleted.

3. On the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in disallowing the business loss of Rs.2,77,735/- in Travel Agency business and the Learned CIT (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the same as the disallowance is contrary to facts, law and legislative intent inasmuch the books of accounts, computation of income and other relevant documents furnished to substantiate the said business activity as well as the resultant loss were not objectively considered, however, the loss so incurred is out of genuine business, hence, it is prayed that the set-off of loss of Rs.2,77,735/- may kindly be allowed.

4. On the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in disallowing deductions claimed under chapter VI-A u/s 80C of the Income Tax Act, 1961 amounting to Rs.78,220/- being Rs.18,220/- on account of Life Insurance Premium and Rs.60,000/- on account of Tuition Fees and the Learned CIT (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the same as the disallowance is contrary to facts, law and legislative intent, hence, it is prayed that the disallowance of Rs.78,220/- confirmed by the Learned CIT (Appeal) may kindly be deleted.

5. The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal.”

2. As per the aforesaid grounds of appeal, Ground No. 4 is consequential and Ground No. 5 is general in nature.

3. That with regard to the Ground No.1, *i.e.*, the addition made of Rs.11,59,670/- being 1/3 of Rs. 34,79,000/- on account of cash deposited

in the Oriental Bank of Commerce, the AO's finding is extracted as follows:

"3. On perusal of records, it reveals that assessee has filed written submissions stating therein that during F.Y. 2012-13 he was partner in the Firm M/s Gulab Thakur Fuel Station (Pan AAKFG5685M) and received salary from M/s Vicon Motor Cycle & M/s Scooter India Pvt. Ltd. He was also doing business of Sales & Purchases of Second Hand Vehicles. Further, it was stated that during the year under consideration two Bank Accounts were maintained by the assessee one as Single holder A/c in SBI and another Joint holder A/c in Oriental Bank of Commerce at Tatibandh Branch, Raipur. It is also stated by the assessee that during F.Y. 2012-13 Cash of Rs.34,79,000/- was deposited in the joint Bank Account in Oriental Bank of Commerce and the cash was deposited in Oriental Bank of Commerce on different dates by making withdrawals from the firm's Account and having own cash by all the three partners. Copy of Audited balance sheet, Profit & loss A/c along with copy of Form No.16 issued by M/s Motor Cycle & Scooter India Pvt. Ltd & computation of income.

4. Since no return of income for F.Y. 2013-14 was filed, therefore, notice u/s 142(1) dated 20.08.2021 by fixing the proceedings for 25.08.2021 was issued by the calling the following information:-

"please refer to your reply filed on 20.04.2021 in respect of pending Asstt. Proceedings for A.Y. 2013-14.

In this connection, please confirm whether you have filed return in response to Notice issued u/s 148 dated 06.03.2020 for A.Y. 2013-14. If yet, please furnish the copy of acknowledgment duly verified.

Further, in your explanation it is stated that you were partner of M/s Gulab Thakur Fuel Station, Raipur during F.Y. 2012-13 relevant to A.Y. 2013-14. Therefore, please furnish copy of partnership deed & any other supporting document.

Vide para-4 of reply dated 05.04.2021, it is stated that on 12.05.2012 Rs.9,00,000/- were deposited and you have deposited Rs.3,00,000/- out of own cash. Please furnish documentary evidence in support of your contention.

Further, it is stated that an amount of Rs.6.20 Lakh, 7.50 Lakh, 6.23 Lakj & 5.86 Lakh were deposited on 11.06.2012, 15.06.2012, 18.06.2012 & 21.06.2012 from withdrawal made from the firm. But no supporting documentary evidence has been filed.

As per computation of income prepared by you, you have claimed loss of Rs. 2,77,735/- against commission income from sale & purchase of vehicles. But no documentary evidence filed in support of your claim.

Further you have claimed exemption of Rs.9600 & HRA Rs.32385/- against salary income from Vicon. Please furnish evidence of your claim.

Please furnish the above information on or before 25.8.2021 & also note that no adjournment & incomplete reply will be accepted.”

Since assessee has failed to file any reply on the above query, therefore, assessment in this case is proposed to complete with the following observation:

I) As per computation of Income & Form No. 16 filed in support of his contention, the assessee had received Salary of Rs. 3,21,750/- from M/s Vicon Motorcycles Scooter India Pvt Ltd, out of which claim of Rs. 41,985/- was made under the head Transport Allowance & House Rent allowance as exemption. But no evidence for this claim was filed. Therefore Income under the head Salary is assessed at Rs. 3,21,750/-

(Add: Rs. 321750/-)

II) As per computation of Income assessee has claimed Remuneration & interest Rs. 3,34,038/- against which assessee has further claimed loss of Rs. 277735/- on account of Profit & Loss from Sale of Vehicles. As referred above assessee has not filed any supportive document/ evidence therefore Income under the head Profit & Gain from Business is assessed at Rs. 334038+277735-Rs. 611773/-

(Add: Rs. 6,11,773/-)

III) Further assessee has claimed Interest on FDR Rs. 803/- under the head Income from other sources. The same is assessed at Rs. 803/-.

(Add: Rs. 803/-)

iv) Vide reply filed on 05.04.2021 in respect of Cash deposits made during F.Y. 2012-13 in Oriental Bank Of Commerce as a joint Account holder is reproduced as under:-

"Quas-4- Source of cash deposits in bank account made during the year along with documentary evidence.

Response-Cash deposits in bank account made during the year along with documentary evidence.

During the year cash has been deposited in JOINT saving account number 14342011014335 held in the name of partners of M/s Gulab Thakur Fuel Station namely-

1. Janak Singh Thakur
2. Arvind Singh Thakur
3. Raghavendra Singh Thakur

Cash deposit details along with source there of

Date of deposit	Cash deposit value	Source	Proof of Source	Utilization of cash deposit
12-05-2012	9,00,000/-	Own cash in hand of Rs. 3 lakhs of each of three partners	Audited balance sheet of the firm along with partners capital account	Transfer to firm account as partner contribution.
11-06-2012	6,20,000/-	Withdrawal by all three partners from the firm.	Audited balance sheet of the firm along	RTGS to BPCL for purchase of Diesel and Petrol for the

			with partners capital account.	firm.
15-06-2012	7,50,000/-	Withdrawal by all three partners from the firm	Audited balance sheet of the firm along with partners capital account.	RTGS to BPCL for purchase of Diesel and petrol for the firm.
18-06-2012	6,23,000/-	Withdrawal by all three partners from the firm	Audited balance sheet of the firm along with partners capital account	RTGS to BPCL for purchase of Diesel and petrol for the firm.
21-06-2012	5,86,000/-	Withdrawal by all three partners from the firm	Audited balance sheet of the firm along with partners capital account.	RTGS to BPCL for purchase of Diesel and petrol for the firm.

Explanation- it is clear from above table that the except the first deposit all other deposit has been made received by partners from the firm and deposited to their joint saving account which is further transferred to BPCL for purchase of diesel and petrol”

6. Since no explanation along with supportive documents has been filed by the assessee with regard to Cash deposits of Rs. 34,79,000/- as called for vide notice u/s 42(1) dated 20.8.2021. Perusal of earlier reply filed by the assessee reveals that he is one of the joint holders who had made cash deposits of Rs. 3479000/- in Oriental Bank of Commerce 14342011014335. Therefore, for the sake of natural Justice 1/3rd of Rs. 34,79,000/- Rs. 11,59,670/- is treated as his Unexplained Income. u/s 69 of the Income tax and added back to the taxable income of the assessee & charged u/s 115BBE of income tax Act.

(Add: Rs. 11,59,670/-)

4. Similarly, on this issue the Ld. CIT(A)/NFAC had observed and held as follows:

“5. Decision: The first ground of appeal raised by the appellant relate to addition of Rs.11,59,670/- made on account of unexplained cash deposit in appellant's bank account. Briefly stated fact of the case is that, the AO was in possession of information that during the relevant previous year appellant has deposited cash of Rs.34,79,00/- In the joint account held by him with oriental bank of commerce however has not filed return of income for the relevant previous year. The case of the appellant is therefore re-opened u/s 147 of the I.T. Act by issue of notice u/s 148 of the I.T. Act. The appellant failed to file return of income even in response to notice issued u/s 148 of the I.T. Act. In response to notice issued u/s 142(1) of the I.T. Act appellant submitted that the said cash deposit of Rs.34,79,000/- on different dates was by making withdrawals from the firm's account and having own cash by all the partners. This submission filed by the appellant was not found satisfactory to the AO. Since the said bank account is a joint account of the appellant with other two individuals, the: AO made addition of Rs.11.59,670 being 1/3rd of the total cash deposits of Rs.34.79.000/ in the said bank account

5.1 During appellate proceedings also the appellant also made same written submission as submitted before the AO. Appellant also filed copies of bank statement and partnership deed in support of submission made. The written submission and documentary evidences provided by the appellant have been carefully perused and considered.

5.2 The first cash deposit of Rs.9,00,000/- was made on 12.05.2012, the source of which as submitted by the appellant is out of own cash in hand of Rs.3,00,000/- each of three partners. The appellant however brought no evidence on record to show that an amount of Rs.3,00,000/- In cash was in hand of the appellant before the date of deposit. Therefore source of this cash deposit of Rs.3,00,000/- in the hands of appellant remained un-explained.

5.3 The nature and source of next cash deposit of Rs.6,20,000/-, Rs.7,50,000/-, Rs.6.23,000/- and Rs.5,86,000/- made on 11.06.2012, 15.06.2012 18.06.2012 and 21.06.2012 respectively are stated to be out of withdrawals by all the three partners from the partnership firm. Appellant filed copies of partner's capital-account with the firm M/s, Gulab Thakur Fuel Station from where it is seen that each of the

partners have made withdrawals of about Rs. 10,00,000/- from the partnership firm. Other than this evidence the appellant has not provided any details or documentary evidences to establish on record that the source of cash deposit is out of cash withdrawals from said partnership firm. It can be noted from the details given earlier that huge amount of cash total amounting to Rs. 25,79,000/- was deposited within a short span of 10 days with interval of couple of days in-between. It is further noted from the details provided by the appellant and copy of bank statement that this entire cash deposit has been transferred to BPCL towards purchase of diesel and petrol for the firm. First of all, appellant has not provided date-wise details of amounts withdrawn from the partnership firm and also failed to bring on record any evidence to show that such withdrawal is in cash. The appellant further failed to prove the nexus of such cash withdrawals from the partnership firm, with, the said cash deposited in the bank account. It is further not known as to why the appellant was required to make the payment to BPCL in his individual capacity towards purchase of diesel and petrol for the firm and why the firm is not making payment to BPCL for purchase of diesel and petrol. The appellant has also brought no documentary evidence on record to show the treatment given by the firm in its books of accounts for payment made by partners towards purchase of petrol and diesel on its behalf. Considering all these facts the explanation given by the appellant is found not satisfactory, I therefore concur with the view of the AO that the nature and source of this cash deposits also remained unexplained. The addition of Rs 11,59,8707 made by the AO in the Impugned assessment order is therefore upheld. The ground of appeal raised by the appellant thus stand dismissed.”

5. At the outset, on this issue, it is noted that the AO had made addition u/s.69 of the Act which refers to unexplained investment. However, in this case, the assessee had neither purchased nor sold any moveable or immovable property, nor had invested in any such property. In fact, the verification of facts as emanating from the assessment order as well as the findings of the Ld. CIT(A)/NFAC all pertains to and revolves on un-explained cash deposits by the assessee which resulted in addition of 1/3 of the total deposit since the account was in the name of three

persons, including the assessee, so as per his share 1/3 of the said deposit was added as the assessee was unable to prove the nature and source of such cash deposit. In this periphery of investigation and addition made by the department, the correct provision of law to have been applied is Section 69A of the Act, which deals with unexplained money, bullion, jewelry or other valuable article for which the assessee offers no explanation about the nature and source of acquisition of such money, bullion, jewelry or other valuable article etc. The wrong application of provision of law to the facts and circumstances of the case regarding a particular assessee tantamount to non-application of mind by the assessing officer. This itself vitiates and makes the addition *void ab initio*, since there is no application of mind, much less than any satisfaction arrived at by the AO. In a recent decision of the Co-ordinate Bench of Delhi in the case of **Sanjeev Kumar c/o M/s Raj Kumar & Associates vs. ITO Ward 2(3)(2), Bulandshahr**, reported in **2023(10) TMI 1027-ITAT Delhi** on the same issue of applying wrong provision of the Act, it was observed and held as follows:

“14. In view of foregoing discussion, I reach to a logical conclusion that the complete cash book statement clearly explains the source of cash deposit to the bank account of assessee, wherein the assessee has not only included cash receipts as salary and capital withdrawal from two partnership firms M/s Umang Beverages and M/s Mohan Oil & Cattle Feed and a cash salary from Bihar Milk Foods Pvt. Ltd. and has also reduced the amount of drawings for household expenses. The copy of return of income of wife of assessee Smt. Shalini and father of assessee Shri Kalu Mal co-jointly established that the other family members of

assessee are also earning and contributing towards household expenses. Therefore, in my humble understanding the source of cash deposit during demonetization to the bank account of assessee is properly explained by the assessee by way of self speaking documentary evidence and explanation. Secondly, the AO has made addition u/s 69 of the Act which pertains to unexplained investments, whereas the assessee has not made any investment either in movable or any immovable property during the relevant period by way of using cash amount. The Ld.CIT(A) though has given credit of 25% of Impugned cash deposit confirming the remaining part of addition but there is no logic of this segregation. From the relevant operative part of first appellate order, I also note that the Ld.CIT(A) has upheld the part addition without mentioning any charging section and impliedly adopting section 69 of the Act in the line of assessment order. Therefore, respectfully following the proposition rendered by the Hon'ble Jurisdictional High Court of Allahabad in the case of *Sarika Jain (supra)*. I have no hesitation to hold that the addition made by the AO by mentioning incorrect and irrelevant charging section is not sustainable and valid being bad in law. Accordingly, grounds of assessee are allowed and AO is directed to delete the entire addition.

15. In the result, appeal of the assessee is allowed.”

6. Similarly, in the decision of Hon'ble High Court of Allahabad in the case of ***Smt. Sarika Jain Vs. The Commissioner of Income Tax, Bareilly and Another***, reported in ***(2018) 407 ITR 254 (All)*** which decision was referred to and applied in the earlier decision of the Co-ordinate Bench of Delhi (*supra*), the Hon'ble High Court of Allahabad held as follows:

“In the present case, it is apparent that the subject matter of the dispute all through before the Tribunal in appeal was only with regard to the addition of alleged amount of the gift received by the appellant-assessee as his personal income

under Section 68 of the Act and not whether such an addition can be made under Section 69-A of the Act.

In view of the above, it can safely be said that the Tribunal travelled beyond the scope of the appeal in making the addition of the said income under Section 69-A of the Act. It may be worth noting that the Tribunal has recorded a categorical finding that "it is clear that under the provisions of Section 68, the addition made by the Assessing Officer and sustained by the CIT (Appeals) cannot be sustained, meaning thereby that the Tribunal was of the opinion that the Assessing Officer and the CIT (Appeals) committed an error in adding the aforesaid amount in the income of the appellant-assessee under Section 68 of the Act.

In view of the above, when the said income cannot be added under Section 68 of the Act and the Tribunal was not competent to make the said addition under Section 69-A of the Act, the entire order of the Tribunal stand vitiated in law

Accordingly, we answer the question of law, as framed above, in favour of the appellant-assessee and against the Revenue and hold that the Tribunal was not competent to make any addition under Section 69-A of the Act and as the same was subject matter of the appeal before it."

7. Considering the aforestated legal principles and on examination of the facts and circumstances, the addition made u/s 69 of the Act is uncalled for and void *ab initio*. The AO is directed to delete the said addition from the hands of the assessee. Ground No.1 stands allowed. With regard to other remaining Ground No. 2 and 3, the parties conceded that the matter may be remanded to the file of the Ld. AO for detailed factual verification.

8. Having heard the submissions of the parties, Ground No. 2 and 3 are remanded to the file of the AO for adjudication as per law complying with principles of natural justice.

9. To sum up, Ground No. 1 of the appeal is allowed.

10. Ground Nos. 2 and 3 are allowed for statistical purposes. Ground No.4 is consequential and Ground No.5 is general.

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

Order pronounced in open court on 14th day of July, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 14th July, 2025.

SB, Sr. PS

आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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