

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.258/RPR/2025

निर्धारण वर्ष / Assessment Year : 2009-10

Shri Dayaram Agrawal
H-1, Shankar Nagar, Rajeev Nagar,
Raipur-492 007 (C.G.)
PAN: ACGPA8622C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-3(1),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Bikram Jain, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 19.06.2025

घोषणा की तारीख / Date of Pronouncement : 18.07.2025

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

This appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 10.02.2025 for the assessment year 2009-10 as per the grounds of appeal on record.

2. The brief facts as emanating from the assessment order are extracted as follows:

“2. Brief facts of the case are like this, it was found that a person named Shri Dinesh Kumar Jain maintained a current bank account with the HDFC Bank, Devendra Nagar, Raipur vide A/c No. 01522000016673. In this account there were cash deposits during the previous year (FY 2008-09) of Rs.29.76 Lakhs. It was also gathered from inquiries that the proceeds were withdrawn by cheques or transferred to M/s. Bharat Mercantile Corporation. The address of the Shri Dinesh Kumar Jain [PAN-A1JPJ0420G] actually belongs to assessee, it was also learnt from Bank in compliance to queries during inquiries that the apart from address even the mobile number provided for availing SMS alert facility belonged to assessee. Statement of assessee u/s.131A was recorded by the DDIT (Inv)-II, Raipur wherein he stated that Shri Dinesh Kumar Jain was his tenant some time back. Assessee however, could not reply satisfactorily about the use of his mobile number and address by Shri Dinesh Kumar Agrawal in the bank. Assessee also denied having possession of any documentary details of Shri Dinesh Kumar Jain like rent agreement, any identity proof obtained or any other whereabouts etc. It was also recorded in his statement that M/s. Bharat Mercantile Corporation is a supplier to the business of Shri Arvind Agrawal who is the son of the assessee. In light of the above it may be safely concluded that there was a nexus between assessee, Shri Arvind Agrawal and Shri Dinesh Kumar Jain wherein the former is the beneficiary.

3. In light of the above discussion and considering the material on record as well as the findings of inquiry (before

and after the assessment proceedings) it is seen that the cash deposits of Rs.29.76 Lakhs made in the current bank account with HDFC Bank, Devendra Nagar, Raipur vide A/c No. 01522000016673, were unexplained and attract the provisions of Section 69. Accordingly, the amount of Rs.29.76 Lakhs is hereby added to the income of the assessee as unexplained investment. The assessment in hands of assessee is on substantive basis since he is the direct complicit and beneficiary of this entire devise. In a separate order the same amount, is also added in the hands of Shri Dinesh Kumar Jain on protective basis. Penalty proceedings u/s 271(1)(c) are being initiated separately for concealment.”

3. As evident from the aforesaid, the A.O had made addition u/s.69 of the Income Tax Act, 1961 (for short ‘the Act’) with regard to unexplained money i.e. cash deposits of Rs.29.76 lacs made with HDFC Bank. The entire trail of examination by the A.O is with regard to the nature and source of the cash deposits. The correct provision for addition and bringing the amount to tax should have been Section 69A of the Act i.e. unexplained money, bullion, jewellery or other valuable article etc. whereas, in this case, the A.O has invoked Section 69 i.e. unexplained investment. There is nothing emanating from the facts that the assessee had made investment or sold any movable or immovable property. The only issue was determining the nature and source of the cash deposits and finally the addition should have been made as per provision of Section 69A of the Act which the A.O had faulted with due to non-application of mind, has invoked incorrect provision of law regarding unexplained investment in the case of the assessee. As examined this provision does

not arise from the facts of the assessee's case. It is strange also that the first appellate authority i.e. the Ld. CIT(Appeals)/NFAC while upholding the findings of the A.O on the other hand has invoked Section 69A of the Act, therefore, there is no consistency regarding orders of the sub-ordinate authorities.

4. At this stage, I may herein observe that similar issue has been dealt with by the **ITAT, Raipur "SMC" Bench** in the case of **Raghvendra Singh Thakur Vs. ITO-4(1), Raipur, ITA No. 242/RPR/2025, dated 14.07.2025** observing as follows:

"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 aforesaid 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.....”

5. Respectfully following the aforesaid order, I hold that the addition made by the A.O u/s. 69 of the Act is uncalled for and void *ab initio* and hence, the A.O is directed to delete the said addition from the hands of the assessee.

6. As per the above terms grounds of appeal raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in open court on 18th day of July, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 18th 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 Pr. CIT-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