आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.379/RPR/2025

निर्धारण वर्ष / Assessment Year : 2018-19

Saroj
W/o. Ashok Kumar Jaiswal
Pondi Bachra, Korea-497 449 (C.G.)
PAN: ETZPS9075K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax-1,
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Yogesh Sethia, CA
Revenue by : Shri Ram Tiwari, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.06.2025

घोषणा की तारीख / Date of Pronouncement : 23.07.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the Ld. Pr. Commissioner of Income Tax, Raipur-1 (for short 'Pr. CIT") passed u/s.263 of the Income Tax Act, 1961 (for short 'the Act') dated 11.03.2025 for the assessment year 2018-19 as per the grounds of appeal on record.

2. At the outset, the Ld. Counsel for the assessee submitted that there has been non application of mind by the Pr. CIT while he has passed order u/s. 263 of the Act assuming revisionary jurisdiction regarding the case of the assessee. In this regard, it was brought to the notice of the Bench that at Para 5 of the order of the Ld. Pr. CIT, he mentioned that the FAO was required to initiate penalty u/s. 270A(2)(b) r.w.s. 270A(3)(i)(b) of the Act for under reporting of income. However, at Page 3 of the same paragraph, he mentioned that in the case of the assessee, it is clear from the return of income for A.Y.2018-19 which was scrutinized by the FAO and accordingly, clause (c) of sub-section (2) of Section 270A of the Act would be applicable in the present case. So therefore, on one hand the Pr. CIT observed that the A.O was required to initiate penalty u/s.270A(2)(b) of the Act and on the same breath he concludes that the provision of Section 270A(2)(c) of the Act was applicable in the case of the assessee.

3. At this juncture, we take guidance from the following judicial pronouncements regarding the result emanating due to non-application of mind by the quasi-judicial authority. 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 assesses 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."

4. 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."

5. Reverting to the facts of the present case, it is clearly evidenced that there was non-application of mind by the Pr. CIT while resorting to revisionary jurisdiction and passing order u/s. 263 of the Act since the penalty initiated as directed by the Pr. CIT was as per Section 270A(2)(b) of the Act whereas he concludes that so far as the assessee is concerned, provisions of Section 270A(2)(c) of the Act shall apply. Respectfully following the aforesaid decision since there has been non application of mind by the Pr. CIT, therefore, the order passed by Pr. CIT is held to arbitrary, bad in law and void ab initio and hence, quashed. We order accordingly.

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 the open court on 23rd day of July, 2025.

Sd/-	Sd/-
ARUN KHODPIA	**PARTHA SARATHI CHAUDHURY**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 23rd July, 2025.
SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / 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, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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