

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.717/Ind/2024 (AY: 2017-18)

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| Rupesh Jaiswal, 111, Azad Marg, Dist. Dhar, Tehsil Dharampuri, Dharampuri (PAN: AKOPJ7192C) | बनाम/ Vs. | Income Tax Officer, Indore |
| (Appellant) | | (Revenue) |
| Assessee by | | Shri Venus Rawka & Ms. Eva Rawka, ARs |
| Revenue by | | Shri Anoop Singh, CIT-DR |
| Date of Hearing | | 22.07.2025 |
| Date of Pronouncement | | 28.07.2025 |

आदेश / O R D E R

Per Paresh M Joshi, J.M:

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the “**Act**” for sake of **brevity**) before this Tribunal. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2024-25/1066805901(1) dated **18.07.2024** passed by the Ld. CIT(A) u/s 250 of the Act which is hereinafter referred to as the “**Impugned order**”. The relevant Assessment Year is 2017-18

and the corresponding previous year period is from 01.04.2016 to 31.03.2017.

2. FACTUAL MATRIX

2.1 That as by way of an Assessment Order total income of the assessee exigible to tax was computed and assessed at **Rs.3,39,68,475/- u/s 147 r.w.s. 144/144B of the Act.** The assessee had not filed his return of income for the assessment year 2017-18. The revenue basis verification of ITBA details of the assessee had found that the assessee had made **cash deposit of Rs.2,07,70,475/-** and had made **cash withdrawal of Rs.1,31,98,000/-** during the financial year 2016-17. Thus the department had a definite information that the assessee had **deposited/withdrawn** the above said **cash amount** from his bank account in Union Bank of India, Branch Patidar Complex, Dhamnod.

2.2 That a **notice u/s 148 of the Act on 25.03.2021** was issued and delivered to the assessee through his e-mail id rkjnco@yahoo.co.in on the same day. That the assessee failed to respond to the notice issued. **A notice u/s 142(1) of the Act was issued on 02.12.2021** and delivered to the assessee on the

same day through his e-mail id. As the assessee did not respond, further notices u/s 142(1) of the Act had been issued on 01.02.2022 and 15.02.2022 and the notice had been served on the assessee through his e-mail id rkjnco@yahoo.co.in. It was therefore noticed that the **assessee was not cooperating** with the authorities despite opportunities.

2.3 A show cause notice **u/s 144 of the Act** was issued on 03.03.2022 which was replied to by the assessee along with his saving bank account and current account held in the Union Bank of India. After the careful consideration of the assessee's reply, the Ld. A.O did not accept the same. That in response to the show cause notice along with draft assessment order issued on 26.03.2022, the assessee uploaded his reply along with cash flow details which **was not having any narration for the transaction of every day for the financial year relevant to the assessment year 2017-18 under consideration.**

2.4 Therefore the unexplained cash deposit and withdrawal to the tune of Rs.3,39,68,475/- (Rs.2,07,70,475/- + Rs.1,31,98,000/-) was treated as unexplained money **u/s 69A of the Act** and brought to tax u/s 115BBE of the Act.

2.5 That the aforesaid order bears No. ITBA/AST/S/147/2021-22/1041907689(1) and same is dated 29.03.2022 which is hereinafter referred to as the **“impugned intimation order”**.

2.6 That the assessee being aggrieved by the aforesaid **“impugned assessment order”** prefers first appeal **u/s 246A of the Act** before the Ld. CIT(A) who by the **“impugned order”** has dismissed the 1st appeal of the assessee on grounds stated therein. The core ground and reasons for dismissal are reproduced below:-

“7. Discussion and Findings:

The appellant did not file his return of income for AY 2017-18. Based on definite information regarding cash deposits and withdrawals, the AO initiated reassessment proceedings under Section 147 by issuing a notice under Section 148. The reassessment proceedings were initiated correctly as per the provisions of the Act. The appellant did not respond to the initial notices issued under Section 142(1). It is observed that the notices were sent to the appellant's email ID, which he later claimed was not regularly updated. However, it is the appellant's responsibility to ensure that the contact details provided to the tax authorities are accurate and updated. The AO made multiple attempts to reach the appellant, and sufficient opportunities were provided to comply with the notices. The appellant provided an explanation for the cash deposits and withdrawals, claiming they were related to his business of providing finance to farmers. The appellant submitted bank certificates, cash book, ledger of debtors, and confirmation from farmers. However, the AO found the explanations unsatisfactory. The bank certificates merely stated that the appellant had an account through which he provided loans, but did not corroborate the specific transactions under scrutiny. The cash book and ledger of debtors provided did not convincingly explain the substantial cash deposits and

withdrawals, leading to the AO's conclusion that the transactions were not satisfactorily explained. The primary condition for invoking Section 69A is that the money must be found to be owned by the assessee and not recorded in the books of accounts. While the appellant argued that the transactions were recorded, the AO found discrepancies and lack of detailed narration for each transaction. The AO's application of Section 69A is justified as the appellant failed to offer a satisfactory explanation regarding the nature and source of the money deposited and withdrawn. The case laws cited by the appellant, including SMT. Teena Bethala v/s ITO and CIT vs. Kulwant Rai, emphasize the requirement of entries not being recorded in the books of accounts for invoking Section 69A. However, in this case, the AO determined that the transactions were inadequately explained despite being recorded, thereby justifying the application of Section 69A. The AO's reliance on Section 69A is further supported by the nature and pattern of transactions which did not align with the business activities as claimed by the appellant. The appellant's argument for the application of the peak credit theory is noted. However, the AO's assessment of the unexplained money was based on the total deposits and withdrawals, which remained inadequately explained. The peak credit theory applies when there is a continuous cycle of deposits and withdrawals within a short span, indicating a circulation of the same money. In this case, the appellant failed to demonstrate that the transactions followed such a pattern convincingly. Therefore, the AO's methodology in treating the total amount as unexplained money is upheld.

After carefully considering the facts of the case, submissions made by the appellant, and the findings of the AO, it is concluded that the addition made by the AO under Section 69A of the Act is justified. The appellant failed to satisfactorily explain the nature and source of the substantial cash deposits and withdrawals. The AO provided sufficient opportunities for compliance and explanation, which the appellant did not adequately utilize. The addition of Rs.3,39,68,475/- made by the AO under Section 69A is upheld. The appeal filed by the appellant, is hereby dismissed.

8. In the result, appeal of the assessee is dismissed”.

2.7 That the assessee being aggrieved by the “impugned order” has preferred the instant second appeal before this Tribunal and

has raised following grounds of appeal in Form No.36 against the “**impugned order**” which are as under:-

“1. That the Ld. CIT (A) erred in law and facts of the case and Confirmed the addition made of Rs.3,39,68,475/- as unexplained money u/s 69A by Assessing Officer without considering the facts and explanation submitted by the assessee the addition made by Assessing Officer and confirmed by CIT(A) is totally wrong and illegal on facts.

2. That the Ld. CIT (A) failed to provide proper opportunity on notice were issued upon the wrong e-mail id, the assessee belongs to a town and he had no e-mail-id with him.

3. That the appellant craves to leave, add, alter or amend any of the ground at or before hearing”.

3. Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 22.07.2025 when the Ld. AR for and on behalf of the assessee submitted that the assessee is an **individual** and that he **facilitates loans to the farmer’s community through bank and by other means.** He generally gives **petty loans** to the farmers which is given in **cash.** The assessee has **multiple accounts** in which there are **withdrawals** in **cash** which are given to farmers. The Ld. AR has placed on record of this Tribunal a paper book containing pages 1 to 114. It was submitted that pages from 1 to 70 are replies to Ld. A.O and pages from 71 to 100 are reply to show cause notice dated 26.03.2022. It was contended that in the “**impugned**

assessment order” both the cash deposit as well as cash withdrawals are added which is incorrect and wrong. That the Ld. Assessing Officer in the **“impugned assessment order”** has not given any adequate finding. He finally prayed that even the Ld. CIT(A) has not considered this factual aspect in the first appeal and has erroneously upheld the **“impugned assessment order”** by passing the **“impugned order”**. Under these circumstances the Ld. AR pleaded and prayed that the matter be relegated back to the file of Ld. A.O so that he can examine this **serious mistake of adding both cash deposit and cash withdrawal**. The Ld. AR made a **vain** attempt to pitch in **peak credit theory** also. Upon perusing the paper book at page 11 the bench noticed that there is a Union Bank of India statement of account for the period 01.04.2016 to 31.03.2017 in the name of **“M/s Shree Sai Nath Electronics & Electricals”** and therefore a query was raised to the Ld. AR that in his arguments made earlier in the hearing that the assessee is a facilitators of loans to farmers whereas it is **perse** found that Union Bank of India Bank statement is that of some commercial entity. In reply the Ld. AR stated that the assessee also carries out the business

in the name and style of **“M/s Shree Sai Nath Electronics & Electricals”**. The bench then pointed out that why this fact was not disclosed on earlier occasion of the hearing to which he stated that he is not much aware about the assessee activities as not briefed adequately by the counsel who had referred the matter to him. Be that as it may we record our displeasure to such dubious way of arguments on part of Ld. AR and same is not in good taste. We have adequately admonished him to take care henceforth and to take up work before ITAT seriously. Per contra the Ld. DR appearing for the revenue submitted that under the circumstances the **“impugned order”** be set aside and matter be relegated back to Ld. A.O so that he can neatly and meticulously examine the case afresh basis material on record and submissions now canvassed.

4. Observations, findings & conclusions.

4.1 We now have to decide the legality, validity and the propriety of the **“Impugned Order”** basis records of the case and rival contentions canvassed before us.

4.2 We have carefully perused the records of the case.

4.3 We basis records of the case and after hearing and upon examining the contentions are of the considered opinion that the **“impugned order”** which was **u/s 144 of the Act** needs to be set aside and is **accordingly set aside** back to the file of Ld. A.O with a direction that he shall now examine the case on *denovo basis* afresh and direct the assessee to place all the material information about his **dealings** to the Ld. A.O who shall neatly and meticulously examine the issue in hand as it strongly appears that the assessee is carrying out other activities more than what was stated before us i.e. facilitators to loan given to farmers. The assessee is directed to give full and complete details about his activities to the Ld.A.O truthfully and honestly so that real nature of his income, its nature and sources are adequately established/ascertained and correct amount of his income exigible to tax is computed and assessed in a manner known to law.

5. Order

5.1 In the premises, drawn up by us, we set aside the **“impugned order”** and remand the case to Ld. A.O on *denovo basis* with direction as aforesaid. The assessee is directed to

cooperate with department and not to seek any unnecessary adjournments on flimsy grounds.

5.2 In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 28.07.2025.

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 28/07/2025

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