

आयकरअपीलीयअधिकरण, रायपुर न्यायपीठ,रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य एवं श्रीअरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 312/RPR/2025

(निर्धारण वर्ष Assessment Year: 2016-17)

Santoshi Arora, Arora Complex, Durg Road, Bemetara-491335, C.G.	v s	Income Tax Officer, Krishna Talkies Road, Risali- 490006, C.G.
PAN: AGDPA9986G		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri S. R. Rao, Adv.
राजस्व की ओर से / Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	23.07.2025
घोषणा की तारीख / Date of Pronouncement	:	29.07.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"], passed under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 29.03.2025, for the Assessment Year 2016-17, which in turn arises from the assessment order u/s 147 r.w.s. 144B of the Act, dated 25.03.2022, passed by Assessing Officer, National Faceless Assessment Centre, Delhi (in short "Ld. AO").

2. The grounds of appeal raised by the assessee are as under:

1. *The Learned NFAC has not justified in confirming addition Rs. 4,93,480/- in regard to cash deposit in bank by learned A. O. in facts, law and circumstances of the case.*
2. *The assessee has reserved right to add, amend or Omit the ground of appeal.*

3. The brief facts are that the case of assessee was reopened u/s 147 and the assessment was completed on 23.03.2022, wherein the income of assessee has been enhanced on account of addition *qua* unexplained cash deposits u/s 69A amounting to Rs. 4,93,479/- .

4. Aggrieved with the aforesaid addition, assessee preferred an appeal before the Id. CIT(A) , wherein the assessee have made submissions that the facts of assessee's case are identical to the issue decided in assessee's own case for assessment year 2017-18 by ITAT, Raipur.

5. However, such contention of assessee was not accepted by the Ld. CIT(A) and have dismissed the appeal of assessee with the following observations:

- 5.3 I have considered the response of the appellant. No written submission is filed. The appellant has mainly relied on order of the Hon'b'e ITAT in its case for AY 2017-18. However, it is noted that the said order is based on facts of AY 2017-18 and cannot be automatically applied to give relief in this appeal. The facts are different in this case as will be clear from the subsequent discussion.*

5.4 *The AO has not accepted Rs. 7,00,000/- withdrawn on 02.12.2014 from SBI KCC account as a valid source of cash availability as the gap between the two transactions is too long. Further a perusal of bank statement clearly indicates that there was no cash withdrawals from KCC account on 02.12.2014 and that amount of Rs. 7,00,000/- was in fact transferred to another account of the assessee. From information submitted by the appellant before the AO on 09.03.2022, it is seen that the said amount was in fact transferred to assessee's saving account no. 10773099299 in SBI and that it was utilized for making cheque payment of Rs.11,34,000/- on 04.12.2014. Moreover, KCC account is an loan account. By claiming that Rs.7,00,000/- withdrawn from the account on 02.12.2014 was used for repayment of same loan after a gap of 15 months on 3 / 4 march 2016, the appellant is claiming that the loan was not used for intended purpose (agriculture) and that she just kept the amount as it is with her for 15 long months.*

6. Dissatisfied with the aforesaid dismissal by the Ld. CIT(A), assessee preferred an appeal before us which is under consideration.

7. At the outset, Ld. AR representing the assessee submitted an application for admission of Additional Ground, the same is extracted as under:

**BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR.**

Name of the Appellant : Santoshi Arora
Arora Complex, Durg Road,
Bemetara (CG)

Appeal No. : ITA-312/RPR/2025

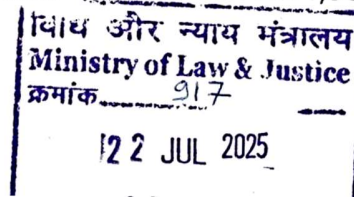
Date of Hearing : 21/07/2025

**APPLICATION FOR ADMISSION OF ADDITIONAL
GROUND OF APPEAL**

May it please your honours,

In connection with above matter it is humbly and respectfully submitted as under:-

1. That appellant filed return of income for A.Y.2016-17 on 08/03/2017 u/s.139 of the Income-tax Act, 1961 declaring total income at Rs.3,37,370/- besides agricultural oncome of Rs.6,08,021/-.
2. That re-assessment proceedings were initiated by the Ld. Assessing Officer after recording reasons that the appellant has not filed its return of income for the assessment year under consideration.
3. That aggrieved by assessment order passed on 25/03/2022 u/s.147 r.w.s. 144B of the Income-tax Act, 1961, undersigned appellant filed appeal before Ld. Commissioner of income-tax (Appeals), National Faceless Appeal Centre (NFAC) and it came to be dismissed.
4. That further aggrieved, above appeal has been preferred before the Hon'ble Tribunal. The impugned issue relates to addition of cash deposit in bank account of Rs.4,93,479/- u/s.69A of the Act.



5. That on being so advised, the Appellant prays the Hon'ble Tribunal to admit the additional legal ground of appeal challenging the initiation of re-assessment proceedings.
6. That since issue goes to the root of the matter and has strong bearing on his tax liability, it is humbly prayed that the Hon'ble Tribunal may be pleased to admit the same as additional ground of appeal in the light of law laid down by Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs CIT [(1998) 229 ITR 383 SC] for favour of kind adjudication in the interest of justice.

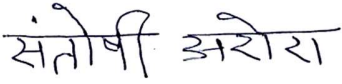
**BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

Name of the Appellant	Santoshi Arora Arora Complex, Durg Road, Bemetara (CG)
PAN/Status/Asst. Year	AGDPA9986G/Ind. /2016-17
Appeal No.	ITA No.312/RPR/2025

ADDITIONAL GROUND OF APPEAL

"In the facts and circumstances of the case and in law, the initiation of re-assessment proceedings is in violation of provisions of section 148, 149 and 151 of the Income-tax Act, 1961 without fulfilling stipulated conditions laid down in the Act in so far as the initiation is based on wrong facts as the satisfaction was recorded starting with the premise that the appellant did not file return of income which is contrary to fact that appellant had in fact filed return of income u/s.139 of the Act which was duly processed u/s.143(1) of the Act."

Place: Raipur
Date: 21/07/2025


 (Santoshi Arora)
 Appellant

8. Referring to the aforesaid additional ground, it was the submission by Ld. AR that reopening assessment order was passed without complying the provisions of Section 147 r.w.s. 144B of the Act. As the additions stipulated therein, thereby are without fulfilling the stipulated conditions of the reopening assessment.

9. To substantiate the aforesaid contention, Ld. AR drew our attention to the copy of reasons recorded in the case of assessee, the same are culled out hereunder for the sake of completeness of facts:

1. Brief details of the assessee

The assessee is an individual and has not filed its return of income for the assessment year under consideration.

2. Brief details of information available.

In this case as per credible information, the assessee has made cash deposits during the F.Y. 2015-16 relevant to A. Y. 2016-17 amounting to Rs.17,11,000/-. The same is treated to be unexplained cash credit in absence of any documentary evidence and is an escaped assessment.

3. Analysis of information.

As the assessee has not produced any documentary evidence, Rs. 17, 11,000 / - is treated to be unexplained credit and is an escaped assessment.

4. Enquires made as sequel to information.

The assessee has made cash deposit during the F. Y. 2015-16 relevant to A.Y. 2016-17 amounting to Rs. 17,11,000/-. In absence of any documentary

evidence, the same is treated to be unexplained cash credits and is an escaped assessment.

5. Findings

In view of provisions of clause (a) of explanation 2 to section 147 of the Income Tax Act, it is a case of escapement of taxable income which is to be assessed to tax.

6. Basis of forming reason to believe and details of escapement of income

In view of the facts, I am of the opinion that the income of the assessee is exceeded the maximum amount which is not chargeable to tax and also the fact that the total credits during the F. Y. 2015-16 relevant to A. Y. 2016-17 are Rs. 17,11,000/ (cash deposit), the assessee has not produced any documentary evidence, the amount of Rs. 17,11,000/- is treated to be unexplained credit and is an escaped assessment. Accordingly, the deeming provisions of clause (a) of explanation 2 to section 147 is attracted in this case and, it is a fit case of escapement of income for the financial year under consideration. In view of the above, I have reason to believe that the income to the extent of Rs. 17,11,000/- is chargeable to tax for A. Y. 2016-17 which has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961.

7. Applicability of the provisions of section 147 / 151 to the facts of the case.

Accordingly, the proposal to issue notice u/s 148 for the A.Y 2016-17 is being submitted in the case of the assessee for kind perusal and necessary approval as per the provisions of section 151 of the Income Tax Act 1961.

Certify that the above case is covered as a potential case in the clause, i.e. (iii)(a) of Para-1 of the CBDT Instruction dated 04/03/2021.

10. Apropos, the aforesaid reasons recorded by Ld. AO, Ld. AR drew our attention to point no. (i) of the reasons recorded, wherein it is noted by the Ld. AO that the assessee had not filed its Return of Income for the assessment year under consideration. Refuting to such information, it is clarified that the assessee had filed its Return of Income on 08.03.2017 i.e., before the issuance of notice u/s 148 of the Act dated 28.03.2021, therefore, the fact mentioned by the Ld. AO was a wrong fact contrary to the facts on record. It is submitted that, the initiation of re-opening proceedings based on wrong facts vitiates the entire reopening proceedings and the assessment passed on the foundation of such illegal proceedings is liable to be quashed. Ld. AR further drew our attention to point no. (v) of the reasons recorded (extracted supra), wherein the Ld. AO has invoked provisions of clause (a) of explanation 2 of Section 147 of the Income Tax Act, which is applicable only, if any return of income has not been furnished by the assessee, therefore, even the provisions of Act has been wrongly picked up by the Ld. AO, which shows that there was a total misapplication of mind by the Ld. AO, therefore on that count also assessment framed u/s 147 r.w.s. 144B of the Act dated 25.03.2022 is liable to be quashed.

11. To support the aforesaid contention, Ld. AR placed his reliance on the judgment in the case of **Johari Lal (H.U.F.) vs. CIT (1973) 88 ITR 439 (SC)**, wherein Hon'ble Supreme Court while dealing with the question of law "*Whether the reopening of the case by the Income-tax Officer by the issue of a notice under section 3 of the Indian Income –tax Act fell within the ambit of section 34(1)(a) of the Act or under section 34(1)(b) of the Act?*", has held as under:

In the instant case, as seen earlier, the Income-tax Officer did not choose to proceed under section 34(1)(a). Consequently, he may or may not have recorded the reasons as required by this section nor do we know whether those reasons were submitted to the required authority and his sanction obtained on the basis of those reasons. This court also has ruled that the Commissioner or the Board of Revenue, while granting sanction will have to examine the reasons given by the Income-tax Officer and come to an independent decision and the authority in question should not act mechanically. From the material on record there is no basis to hold that those requirements had been fulfilled. Possibly they could not have been fulfilled because the Income-tax Officer proceeded only on the basis of section 34(1)(b) and not on the basis of section 34(1)(a). He himself had declined to proceed on the basis of section 34(1)(a) for whatever reason it may be. Therefore, it was not open to the Tribunal to justify the proceedings taken by the Income-tax Officer under section 34(1)(a). The Tribunal could not have initiated proceedings under section 34(1)(a). If the Tribunal converts the proceedings into one under section 34(1)(a) then the conditions prescribed in section 34(1)(a) cannot be satisfied.

12. Ld. AR further placed his reliance on the decision of ITAT, Raipur in the case of **Devendra Singh Dhoat vs. ITO, Ward-1, Korba 2022 (9) TMI 295-ITAT, Raipur**, wherein it has been held by the Tribunal that:

Reopening of assessment u/s 147- validity of the jurisdiction that was assumed by the A.O. u/s. 147 – non-application of mind by AO – Reopening initiated as assessee had not filed his return of income for the year under consideration - Held that – Considering the reasons on the basis of which the case of the assessee was reopened u/s. 147 we find, that as stated by the Ld. AR, and rightly so, the same are based on a fallacious and misconceived fact that the assessee had not filed his return of income for the relevant AY 2012-13.

13. Ld. AR also placed his reliance in the following judgments:

- (i) *In the case of Preeti Bhardwaj vs. Income Tax Officer, Ward-29(3), Noida, dated 22.03.2024, in ITA No. 78/DEL/2024 AY 2017-18, Delhi Bench “SMC”, New Delhi*
- (ii) *In the case of Smt. Vinatha Madhusudan Reddy vs. The Assistant Commissioner of Income Tax, Circle- 3(2)(1), Bangalore, dated 24.08.2018, in ITA No. 257/Bang/2018 A Y 2014-15, “C” Bench : Bangalore*

14. In backdrop of aforesaid submission, it was the prayer by Ld. AR that since the reopening assessment in the instant case was framed without recording the reasons in accordance with the mandate of law, which are fallacious and misconceived in terms of fact and law, therefore, the assessment framed on the basis of such factually incorrect reasons cannot stand in the eyes of law. The same, therefore, is liable to be struck down.

15. Per contra, Ld. Sr. DR placed his reliance on the order of Authorities below and have submitted a report received from the Ld. AO dated. 22.07.2025, the same is culled out as under:



Government of India
Ministry of Finance: Department of Revenue
Office of the Income Tax Officer-1(3), Aayakar Bhawan,
Near Atmanand English Medium School, Krishna Talkies road, Raisal,
Bhilai, Distt: Durg-490006(C.G)
Email- bhilai.ito1.3@incometax.gov.in

F.No.:ITO-1(3)/BHI/ITAT-report/25-26

Dtd. 22.07.2025

To,

The Joint Commissioner of Income Tax(Sr.DR)
ITAT, Raipur

Madam,

Sub: Calling for report in the case of Santoshi Arora,ITA No.312/RPR/2025 ,PAN-AGDPA9986G- AY. 2016-17-reg-

Kindly refer to letter F.No. JCIT-ITAT/ RPR/Misc/2025-26 Dated 22.07.2025 on the above subject wherein comments has been called for wrt the grounds of appeal and paper book page no.5 & 6 raised by the assessee before Hon'ble ITAT Bench.

(i) The additional ground of Appeal submitted as above is *"In the facts and circumstances of the case and in law, the initiation of reassessment proceedings is in violation of provisions of section 148, 149 and 151 of the Income-tax Act, 1961 without fulfilling stipulated conditions laid down in the Act in so far as the initiation is based on wrong facts as the satisfaction was recorded starting with the premise that the appellant did not file return of income which is contrary to fact that appellant had in fact filed return of income u/s.139 of the Act which was duly processed u/s.143(1) of the Act."*

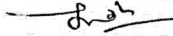
In this regard the comment is as under:

On perusal of the system it is seen that the assessee had filed belated ITR in Form-4 u/s 139(4) of the Act. declaring total income at Rs. 3,37,370/- which includes income from house property at Rs. 3,36,000/- and income from other sources at Rs. 1,59,880/-.

The issue of AO mentioning in the first point of reasons recorded for opening as *assessee did not file return of income for the A.Y. under consideration*, may kindly be treated as typographical error and the same may be overlooked as this issue is no where mentioned in the assessment order.

Therefore, it is respectfully prayed that the Hon'ble ITAT should not admit the additional evidence.

Yours faithfully,


(Indhu Abhilash)
Income Tax Officer-1(3), Bhilai

Copy to:-

The Joint Commissioner of Income Tax, Range-1, Bhilai for favour of information.

Income Tax Officer-1(3), Bhilai

16. We have considered the rival submissions, perused the material available on record and case laws relied upon by the assessee. Admittedly, the issue herein is no more *res integra*, as the same is covered by various judgments referred to (supra). In present case, on perusal of reason certain errors have been pointed out by the Ld. AR, and rightly so as the same are not in accordance with facts on record and by invoking the correct provision of the Act.

17. Considering the aforesaid facts and circumstances, we are of the considered view that the case of assessee was reopened u/s 148 based on fallacious and misconceived facts and further invoking the provision which is contrary to the facts on record. Accordingly, it is a case of clear non-application of mind to the material available before Ld. AO, so it can be safely held that the belief formed and recorded in the reasons for reopening of assessment by the Ld are suffering with errors. Accordingly, the consequential assessment framed by the Ld. AO u/s 147 r.w.s. 144B dated 25.03.2022 cannot be sustained and is liable to be quashed on the said account itself. The additional ground of appeal, therefore, raised in the present case by the assessee is allowed in terms of our aforesaid observation.

18. As we have quashed the assessment in terms of our aforesaid observation on account of non-application of mind by the Ld. AO in recording the reasons for reopening, therefore, we refrain to deliberate and adjudicate the other contentions that have been advanced by the Ld. AR as regards non-sustainability of the additions *qua* the merits of the case, the same therefore, rendered as academic only.

19. In result, the appeal of assessee is allowed. in terms of our aforesaid observation.

Order pronounced in the open court on 29/07/2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर / Raipur; दिनांक Dated 29/07/2025
Vaibhav Shrivastav

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- Santoshi Arora
2. प्रत्यर्थी/ The Respondent- Assessing Officer-1(3)
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

//True copy//

आदेशानुसार/ BY ORDER,

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