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.352/RPR/2025
निर्धारण वर्ष /Assessment Year : 2017-18

Nisha Nanwani
Shail Villa, Flat No.502,
Block-C, Maruti Life Style,
Kota-492 001 (C.G.)
PAN: ATEPN5440L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Yogesh Warlywani, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 30.07.2025
घोषणा की तारीख / Date of Pronouncement : 30.07.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 30.03.2025 for the assessment year 2017-18 as per the grounds of appeal on record.

2. The relevant facts in this case are that the assessee had made cash deposits of Rs.11,65,000/-in the bank account of Bank of Maharashtra during demonetization period from 09.11.2016 to 30.12.2016 as per the order of A.O. Thereafter, statutory notices were issued to the assessee by the A.O to explain the nature and source of such cash deposits. The assessee had uploaded her reply on 10.12.2019 a/w. inflow of cash deposited in the bank and subsequent transfer from bank regarding the utilization of fund for booking of hotels, flight booking etc. as per her regular business activities. That after considering these submissions the A.O has held as follows:

> "It is pertinent to mention here that the assessee was not authorized to take/receive demonetized currency during demonetization period on various dates totaling to Rs.8,94,000/-. The assessee has shown an amount of Rs.3,50,000/- as received from pre-demonetization period i.e. on 8/11/2016 which was deposited on 10/11/2016 in the bank account. Considering the above facts of the case an amount of Rs.5,44,000/- [Rs.8,94,000/- minus Rs.3,50,000/-] is treated as unexplained money u/s. 69A read with Section 115BBE of the Income Tax Act, 1961, for the year under consideration and added to the total income

of the assessee and tax is payable under section 115BBE of Income Tax Act, 1961"

3. From the aforesaid, it is evident that as per A.O total cash deposits in demonetized currency during the demonetization period was Rs.8,94,000/-. The assessee had shown an amount of Rs.3,50,000/- as received during pre-demonetization period which was deposited in the bank account during the demonetization period. Thereafter, A.O makes a blunder by treating the amount of Rs.5,44,000/- [Rs.8,94,000/- (-) Rs.3,50,000/-] as unexplained money of the assessee and adding the same u/s. 69A of the Act. The fact of the matter is that by self-admission of the A.O as he had observed from the details on record that it was only Rs.3,50,000/- that was received by the assessee during pre-demonetization period and was deposited during demonetization period. There is no finding by the A.O that Rs.5,44,000/- was received prior to demonetization period and deposited during demonization period. The addition, if any, should have been made only with regard to the amount that was deposited during the demonization period i.e. Rs.3,50,000/-. However, the A.O had deducted Rs.3,50,000/- from the total deposit of Rs.8,94,000/- thereby treating the entire balance amount of Rs.5,44,000/- as undisclosed money in the hands of the assessee and added u/s. 69A of the Act, whereas there is no allegation by the A.O that the said amount i.e. Rs.5,44,000/- were deposited during the

demonetization period. Meaning thereby, the addition, if any, should have been made only with regard to the amount deposited during the demonetization period i.e. Rs.3,50,000/- and not for the amount Rs.5,44,000/-. This is a clear case of non-application of mind by the quasi-judicial authority. The quasi-judicial authority are authorized to dispense justice both substantive and equitable. Substantive justice refers to the person on whom tax liability are to be imposed, whereas, equitable justice refers to the proper application of mind considering the facts and circumstances of the case.

4. In this case, as has been examined aforesaid that the addition, if any, should have been made of Rs.3,50,000/- and not Rs.5,44,000/- which has been incorrectly made by the A.O. In this regard, I refer to the following judicial pronouncements where for non-application of mind, the addition have been deleted from the hands of the assessee.

5. 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 "non-application of mind" had 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."

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. Further, **ITAT, "SMC" Raipur Bench** in the case of **Raghvendra Singh Thakur Vs. The Income Tax Officer, Ward-4(1), Raipur ITA No.242/RPR/2025, dated 14.07.2025** on the similar facts and circumstances has held and observed 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 immoveable 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 assesse 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 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."

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....."

8. Respectfully following the aforesaid judicial pronouncements and on examination of the facts on record, the additions made in the case of the assessee u/s. 69A of the Act is misplaced and uncalled for, arbitrary and bad in law. Accordingly, the A.O is directed to delete the same from the hands of the assessee.

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

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

Order pronounced in open court on 30th day of July, 2025.

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

रायपुर / Raipur; दिनांक / Dated : 30th 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, "**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