

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.46/RPR/2024

निर्धारण वर्ष / Assessment Year : 2011-12

Pradeep Kumar Khandelwal
10/683, Sector Balaji Nagar,
Shivnand Nagar, WRS Colony,
Raipur-492 008 (C.G.)
PAN: BJYPK5882N

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekaas S Sharma, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 01.08.2025

घोषणा की तारीख / Date of Pronouncement : 01.08.2025

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

This is a remand matter from the Hon'ble Jurisdictional High Court from appeal preferred by the assessee u/s.260A of the Income Tax Act, 1961 (for short 'the Act').

2. That at the first round of appeal, the Tribunal had not condoned the delay of 309 days in filing of the appeal before it. The Hon'ble Jurisdictional High Court answering the substantial question of law in favour of the assessee, held that since sufficient cause has been shown by the assessee-appellant regarding the delay of 309 days in filing appeal before the Tribunal, therefore, such delay is condoned. The relevant paras are extracted as follows:

“5. We have heard learned Counsels for parties, considered their rival submissions and also perused the record of the case with utmost care and circumspection.

6. Admittedly, there is a delay of 309 days in filing the appeal before the ITAT and for which the appellant/assessee has assigned the reason that the email ID which was given was not the email ID of the assessee, but it was of the erstwhile representative of the assessee and therefore the order could not be communicated and once the order has been communicated, the appeal was preferred.

7. The Supreme Court in the matter of Vidya Shankar Jaiswal (supra) while setting aside the order of this Court rejecting the appeal on the ground of delay, has held that the High Court ought to have adopted justice oriented and liberal approach by condoning the delay.

8. In view of above and also for the reason shown by the appellant/assessee coupled with the fact the revenue did not file any counter-affidavit controverting the reason assigned by the assessee and as such the reason assigned by the assessee for delay in filing the appeal remained uncontroverted, the delay of 309 days occurred in filing the appeal deserves to be and is hereby condoned and the substantial question of law is answered accordingly.

9. The matter is remitted to the ITAT for deciding the appeal on merits, in accordance with law, at the earliest.”

3. As is discernible from the fore-going paragraphs of the order of the Hon'ble Jurisdictional High Court, it had condoned the delay of 309 days and remanded the matter back to the Tribunal to adjudicate afresh in accordance with law and on its own merits.

4. Now coming to the merits of the case, the facts as emanated clearly from the order of the Ld. CIT(Appeals)/NFAC are extracted as follows:

“5. **DECISION:** In this case, the assessment was completed u/s. 147 of the Income Tax Act by the Assessing Officer as cash deposit of Rs.11,31,000/- was not explained during the time of assessment. Hence, addition was done u/s. 69 of the Income Tax Act, 1961.

5.1 The appellant has filed grounds of appeal, statement of fact and written submission before me. It has been claimed that Shri. Babulal Khandelwal sold his rural land and transferred the cash to the appellant as gift. The appellant filed the sale deed and other details, which were sent to the Assessing Officer in the Remand Proceedings.

5.2 The Assessing Officer has submitted the Remand Report dated 15/09/2022. In the Remand Report, it has been mentioned that no gift deed was produced before the Assessing Officer. It has been further mentioned that sale deed has been registered on 18/01/2011, while the cash has been deposited in the account on 12/01/2011 and 14/01/2011. Hence, the Assessing Officer even in the

Remand Proceeding was not satisfied with the source of the cash deposits.

5.3 I agree with the contention of the Assessing Officer. The source of deposit has also not been explained before me in the appellate proceedings. Hence, the order of the Assessing Officer is confirmed, and the appeal of the appellant is dismissed.

6. In the result, the appeal of the appellant is dismissed.”

5. That considering the aforesaid order passed by the first appellate authority as well as the assessment order, it is crystal clear that though the trail of investigation by the A.O is with regard to cash deposits of Rs.11,31,000/-, the A.O had proceeded howsoever to add u/s. 69 of the Act which is with regard to unexplained investment and the correct provision of the Act for making addition is Section 69A of the Act i.e. unexplained money etc. in the hands of the assessee. The Ld. CIT(Appeals)/NFAC had only summarily confirmed the said addition without pointing out any flaw regarding application of wrong provision of the Act by the A.O. That even non application of appropriate provision of law to the facts of the case is a classic example of non-application of mind by Quasi-judicial authority. 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.

6. 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 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.”

7. 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.”

8. 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 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 pertain 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....."

9. Respectfully following the aforesaid judicial pronouncements and on examination of the facts on record, the addition made in the case of the assessee u/s. 69 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.

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

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

Order pronounced in open court on 1st day of August, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 1st August, 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