

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.448/RPR/2025

निर्धारण वर्ष / Assessment Year : 2017-18

Sandeep Singh
Juna Lakhanpur, Lakhanpur,
Surguja-497 116 (C.G.)
Ambikapur
PAN: GESPS5929Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ambikapur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None (Adjournment Application)
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 07.08.2025
घोषणा की तारीख / Date of Pronouncement : 07.08.2025

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 13.11.2024 for the assessment year 2017-18 as per the grounds of appeal on record.

2. At the time of hearing none appeared for the assessee. However an adjournment application has been filed which is rejected. The matter is heard after recording the submissions of the Ld. Sr. DR and on careful perusal of the documents on record.

3. That as per the assessment order, the A.O accepted the cash deposits of Rs.1,29,500/- which pertains to the period before demonetization. Therefore, he restricted the addition from total deposits of Rs.3,60,000/- deducting the said amount of Rs.1,29,500/- which pertains to prior to the demonetization period and thereafter, remaining amount of Rs.2,30,500/- was brought to tax as unexplained money u/s. 69A of the Income Tax Act, 1961 (for short 'the Act') and added to the hands of the assessee.

4. Adjudicating on the said issue at Para.6.4, the Ld. CIT(Appeals)/NFAC referred to the written submission filed by the assessee and therein, the entire amount of Rs.3,60,000/- was mentioned

and explained by the assessee, which however, was not subject matter of dispute before the Department. That finally the Ld. CIT(Appeals)/NFAC immediately in the next para writes as follows:

“The appellant failed to explain the source along with proper documentary evidence and the onus of proving the sources of such deposits lies with the appellant only. Thus, cash deposits of Rs.2,30,500/- remained unexplained.

Keeping in view of the above, I am of the opinion that the A.O has rightly made addition of Rs.2,30,500/- as unexplained money u/s. 69A of the I.T. Act, 1961.”

5. That on one hand, the Ld. CIT(Appeals)/NFAC has referred to the submissions of the assessee wherein the SBN currency is mentioned at Rs.3,60,000/-, whereas, the issue was regarding explaining the source of cash deposits only to the extent of Rs.2,30,500/-. That though finally the Ld. CIT(Appeals)/NFAC holds that such cash deposits of Rs.2,30,500/- remained unexplained but in the foregoing paragraphs, the Ld. CIT(Appeals)/NFAC had considered the entire amount of cash deposits of Rs.3,60,000/- and based his adjudication on this said amount. In other words, even without investigating regarding the nature and source of the cash deposits only to the extent of Rs.2,30,500/- which emanates from the assessment order, he had sustained the addition as is apparent hence without independent application of mind since he has referred to the submissions of the assessee which reveals SBN amounting to Rs.3,60,000/- which was never the subject matter of dispute as per the

assessment order. This is a classic example 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. 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 **Raghendra 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 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 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.”

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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.....”

9. 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.

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 07th day of August, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 07th 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.

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आदेशानुसार / BY ORDER,

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