

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, GUWAHATI**  
**(VIRTUAL HEARING AT KOLKATA)**

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**  
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 212/GTY/2024**  
**Assessment Year: 2021-22**

**Doctor Bawitlung Zothankima,**

Zotlang, Tlangnuam (Part),

Aizawl, Mizoram-796001

[PAN: ABRPZ6310N]

.....**Appellant**

**vs.**

**DCIT, Silchar,**

Aayakar Bhawan, PWD Road,

Silchar, Assam - 788001

..... **Respondent**

**Appearances by:**

Assessee represented by

: Sanjay Mody, FCA

Department represented by

: Subrata Dhar, Addl. CIT

Date of concluding the hearing

: 05.08.2025

Date of pronouncing the order

: 11.08.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. The present appeal emanates from the order under Section 250 of Income Tax Act, 1961 (hereafter “the Act”) passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”], dated 27.08.2024.

2.1 In this case, the assessee is a doctor by profession and derives income from salary, consultancy in a hospital and interest income. The assessee is a member of Scheduled Tribe as defined in Article 366(25) of the Constitution of India. During the course of scrutiny assessment, the appellant submitted a fresh computation of income declaring a gross total

income of Rs. 50,89,974/- and after claiming the deduction of Rs. 1,60,000/- under chapter VI, claimed total income of Rs.49,29,974/- as exempt u/s. 10(26) of the I.T. Act, 1961. The appellant submitted that since his income is exempt u/s. 10(26) of the Income tax Act, 1961, the omission to report any income was unintentional and not for the purposes of evading any tax. The Ld. Assessing Officer concluded that the appellant had failed to claim the exemption of income U/s. 10(26) and various deductions under Chapter -VI(A) while filing his ITR, then there was no scope of filing a revised return nor did the AO have any power to accept the income of the assessee beyond the ITR. Thereafter, the difference of Rs. 23,05,974/- was added back to the total income of the assessee u/s 68 of the Act as unexplained credit.

1.1 Aggrieved with the action of Ld. AO the assessee approached the Ld. CIT(A) where also he could not succeed and even his income was enhanced with the following findings:

*“6.9 There are transfers to appellant's account with Axis Bank totalling Rs. 12,56,899. According to the appellant, the same is from a pharmacy run by the appellant's son at Aizawl called Zo Pharmacy. The appellant has furnished a confirmation from his son. The appellant has also furnished copy of the license to run Pharmacy and also monthly GST returns of the business for FY 2020-21. However, the appellant has not furnished books of accounts of the business showing transfers to the account of the appellant. Therefore, the nature of these receipts is not conclusively established. This amount may be treated as unexplained money u/s 69A of the IT Act.”*

1.2 Further aggrieved, the assessee has filed the present appeal with the following grounds:

*“1. For that the Ld. CIT(A) had erred in law and in facts in making addition of Rs. 12,56,899/- under section 69A as unexplained money on account of deposit in bank account without taking into consideration the submissions made in this regard.*

*2. For that the Ld. CIT(A) had erred in law and in facts in making addition of Rs. 46,900/- and Rs. 6941/- under the head Interest income and Miscellaneous Income respectively by taking wrong calculation of interest from saving banks accounts statements.*

*3. For that the Ld. CIT (A) was not justified in law as well as on facts in denying*

*the benefit of Section 10(26) of the I.T. Act, 1961 to the appellant on the total addition of income of Rs. 13,10,740/-, though the Ld. AO admitted that the appellant has fulfilled all the condition laid down in the said section and the assessee is eligible for exemption u/s. 10(26) of the I.T. Act, 1961.*

*4. For that the appellant craves leave of your honour to take additional ground(s) of appeal or to modify or resign any ground(s) of appeal before or at the time of hearing."*

2. Before us, the Ld. AR fairly admitted that Ground No. 2, pertaining to an addition of Rs. 6,941/-, was not being pressed by the assessee.

2.1 Thereafter, the Ld. AR argued on the basis of written submissions filed before us. It was mentioned that the impugned order was passed by giving inadequate opportunity of being heard. The Ld. AR drew our attention to the notice given to the assessee regarding the proposed enhancement (Rs. 12,56,899/-) as under:

*"There are transfers to appellant's account with Axis Bank totalling Rs.12,56,899. According to the appellant, the same is from a pharmacy run by the appellant's son at Aizawl called Zo Pharmacy. However no proof has been furnished regarding the source of this amount other than a bland letter from appellant's son. The identity and creditworthiness of the creditor is not established. The nature of the receipt is also not conclusively established. Therefore, this amount is to be treated as unexplained money u/s 69A of the IT Act."*

While assailing the action of Ld. CIT(A) in enhancing the income of the assessee, the Ld. AR drew our attention to the case of CIT Vs. Bahadur Hardutroy Motilal Chamaria reported in 66 ITR 443 (SC) and read out the following portion from this order:

*"The principle that emerges as a result of the authorities of this court is that the Appellate Assistant Commissioner has no jurisdiction, under section 31(3) of the Act, to assess a source of income which has not been processed by the ITO and which is not disclosed either in the return filed by the assessee or in the assessment order, and, therefore, the Appellate Assistant Commissioner cannot travel beyond the subject-matter of the assessment. In other words, the power of enhancement under section 31(3) of the Act is restricted to the subject-matter of assessment or the source of income which have been considered expressly or by clear implication of the ITO from the point of view of the taxability of the assessee.....*

*....It is also manifest that the Appellate Assistant Commissioner has considered the amount of remittance of Rs. 5,85,000/- from a different aspect, namely, the*

*point of view of its taxability. But since the ITO has not applied his mind to the question of taxability or non-taxability of the amount of Rs. 5,85,000/- the Appellate Assistant Commissioner had no jurisdiction in the circumstances of the present case to enhance the taxable income of the assessee on the basis of this amount of Rs. 5,85,000 or of any portion thereof. As we have already stated, it is not open to the Appellate Assistant Commissioner to travel outside the record, i.e., the return made by the assessee or the assessment order of the ITO with a view to find out new sources of income and the power of enhancement under section 31(3) of the Act is restricted to the sources of income which have been the subject-matter of consideration by the ITO, from the point of view of taxability. In this context, 'consideration' does not mean 'Incidental' or 'collateral' examination of any matter by the ITO in the process of assessment. There must be something in the assessment order to show that the ITO applied his mind to the particular subject-matter or the particular source of income with a view to its taxability or to its non-taxability and not to any incidental connection. In the present case, it is manifest that the ITO has not considered the entry of Rs. 5,85,000 from the point of view of its taxability and, therefore, the Appellate Assistant Commissioner had no jurisdiction, in an appeal under section 31 of the Act, to enhance the assessment.”*

2.2 Relying on this case law, the Ld. AR stated that the Ld. CIT(A) could not have travelled beyond the findings of the Ld. AO in terms of discovering a new source of income. It was further argued that since the assessee is covered within the provisions of section 10(26) of the Act hence even otherwise, there is no finding that the impugned amount was earned from outside the specified geographical territory.

2.3 The Ld. DR relied on the orders of authorities below.

3. We have carefully considered the rival submissions and have also perused the documents before us. The assessee's challenge regarding the action of Ld. CIT(A) in enhancing the income has to be addressed first. It is seen that in a later case the Hon'ble Apex Court in the case of Nirbheram Deluram reported in 224 ITR 610 (SC) has mentioned as under:

*“The Supreme Court has held in Jute Corpn. of India Ltd. v. CIT [1991] 187 ITR 688 that the declaration of law is clear that the power of the AAC is coterminous with that of the ITO and if that is so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the ITO. The scope of his power is coterminous with the ITO. He can*

*do what the ITO can do and also direct him to do what he has failed to do. Having regard to the aforesaid decision it must be held that the High Court was in error in holding that the appellate power conferred on the AAC under section 251 was confined to the matter which had been considered by the ITO and that the AAC exceeded his jurisdiction in making an addition of Rs. 2,30,000 on the basis of the other 10 items of hundies which had not been explained by the assessee. Therefore, even if it was not held that the sum of Rs. 2,30,000 was added by the AAC as new sources of income, not considered by the ITO from the point of view of assessability, the AAC had jurisdiction or power to add the sum of Rs. 2,30,000 in the facts and circumstances in which he had added the same. Accordingly, the appeal was to be allowed.”*

3.1 Similarly, in the case of S.D. Traders reported in 111 taxmann.com 93 (Allahabad), the following has been recorded:

*“23. The argument of the counsel for the assessee relying upon the decision of the Apex Court in case of Shapoorji Pallonji Mistry (supra), **Rai Bahadur Hardutroy Motilal Chamaria (supra)** (emphasis supplied) and Sardari Lal & Co. (supra) cannot be accepted as the said judgments have their very basis where the Appellate Assistant Commissioner had made addition or deletion on the basis of new source of income, but present case is not of new source of income, as CIT (A) has relied upon the books of accounts submitted by the assessee along with his return and had claimed expenditure made by him in profit and loss account and claim of sundry creditors shown in balance-sheet.*

*24. The Apex Court while dealing with the power of the Appellate Assistant Commissioner under Section 251 of the Act had in case of Nirbherum Deluram (supra) and Jute Corpn of India (supra) had held that power of Appellate Assistant Commissioner is coterminous with that of Income Tax Officer and he can do what the Income Tax Officer can do and also direct him to do what he has failed to do.*

*25. In the present case, the CIT (A) had deleted addition made by the Assessing Officer and had made two additions of the labour charges and sundry creditors on the basis of the profit and loss account, and balance-sheet filed by the assessee along with his return. Thus, there was no new source of income as claimed by the assessee. The case law relied upon by the assessee in case of Sardari Lal & Co. (supra) and Shapoorji Pallonji Mistry (supra) are all distinguishable in the facts of the present case, and the Hon'ble Courts in those cases had only dealt with the situation wherein AAC found new source of income and made additions to the income, while in the present case no such addition was made from any new source of income but from the return so submitted by the assessee himself.”*

3.2 A combined reading of the two case laws cited above reveals that while in the case of Nirbheram Deluram (supra), the case of Rai Bahadur

Hardutroy Motilal Chamaria (supra) has not been cited but for our purpose it is sufficient to understand that the Hon'ble Apex Court has expressed its opinion about the powers vested in the Appellate Commissioner regarding enhancement to income of an assessee. Since, it is a later judgment then this will certainly hold the fort. In the second case of S.D. Traders (supra), the Rai Bahadur Hardutroy Motilal Chamaria (supra) has been distinguished and the principles regarding enhancements to income at first appeal stage have been clearly spelt out. A combined reading of these authorities would show that the Ld. CIT(A) was, in principle, justified in enhancing the income of the assessee especially since a show cause notice was also given within the provisions of section 251(2) of the Act. Be that as it may, it is an admitted fact that the assessee is covered under the provisions of section 10(26) of the Act and any income accruing to him from within the specified geographical territory, would be exempt from taxation. To this extent, we find that there is no finding whatsoever that the impugned amount had its origins outside of the specified territory. In this regard, a cryptic finding has been given in the impugned order that since the assessee did not prove through books of accounts that the amounts from the son's pharmacy business were transferred to the assessee, hence, the addition was being made. It would be understood that in case there was no liability to be subjected to tax as per the provisions of section 10(26) of the Act, then there would be no consequential liability to maintain any books of accounts. However, since the assessee has been filing GST returns then it would be possible to establish the receipts from business and their subsequent transfer to the assessee's bank accounts. Accordingly, we set aside the impugned order and remand this issue back to the file of Ld. AO for examining whether the receipts from the business of pharmacy arose from specified geographical territory or not at all. The assessee would do well to cooperate with the Ld. AO in this regard and present necessary documents. In case

it is established that the pharmacy business is giving rise to receipts from the specified geographical territory then the same would be covered under the provisions of section 10(26) of the Act.

5. With these remarks, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 11.08.2025

Sd/-  
**[Manomohan Das]**  
**Judicial Member**  
Dated: 11.08.2025

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

AK, Sr. PS

*Copy of the order forwarded to:*

1. The Appellant
2. The Respondent
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches