



**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH "DB", JABALPUR**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI, NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos. 104 & 105/JAB/2025
Assessment Years: 2016-17 & 2017-18

Pawan Sthapak 1051, Near Kesharwani College, Gole Bazar, Jabalpur-482001.	v.	ACIT, Central Circle 291 Ramnath Building, Napier Town, Jabalpur- 482002.
TAN/PAN:AJFPS0321Q		
(Appellant)		(Respondent)

Appellant by:	Shri Sapan Usrethe, Adv Ms Apoorva Agrawal, CA		
Respondent by:	Shri Alok Bhura, Sr. CIT(DR)		
Date of hearing:	21	08	2025
Date of pronouncement:	28	08	2025

ORDER

PER KUL BHARAT, VICE PRESIDENT.:

These two appeals, filed by the assessee, against the order of learned Commissioner Income Tax (Appeals), Raipur-3 [hereinafter referred as the "Ld.CIT(A)"] dated 10.02.2025, pertaining to the assessment year 2016-17 & 2017-18 respectively. For the sake of convenience, both the appeals were heard together and are being disposed off by this consolidated order. First, we will take up the appeal of assessee in ITA. No. 104/JAB/2025, pertaining to the A.Y. 2016-17 which is taken as a lead case. The assessee has raised following grounds of appeal:-

"1. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal even though he has no Jurisdiction to pass the order as the appellant have filed the appeal before Commissioner of Income tax (Appeal) Bhopal - 3 under which appellant Jurisdiction lies.

2. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal even though he has no Jurisdiction to pass the order as the appellant has filed the appeal before Commissioner

of Income tax (Appeal) Bhopal - 3 under which appellant Jurisdiction lies and if the case of appellant was transfer to his Jurisdiction it was transferred without giving any opportunity to appellant which is mandatory and hence order passed by the Commissioner of Income tax (Appeal) Raipur - 3 may kindly be quashed.

3. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal without appreciating that case transferred to his office was without any intimation under section 129 to the appellant and learned Commissioner of Income tax (Appeal) Raipur - 3 failed to take into consideration record of past attendance and just to complete hearing early, due to huge pending disposal (being not fault of assessee), dismissed the appeal in a Mechanical manner and without application of mind .

4. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal on the ground of huge pending disposal (being not fault of assessee) and if so, the reply filed by appellant in pending appeals for assessment year 2015 - 16 and 2018 - 19 was not decided till the filing of this appeal which shows the conduct of CIT - A is interested in passing exparte orders and not deciding the appeals on merit intentionally .

5. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal without considering that the assessing officer erred in issuing the notice under section 148 of the Act dated 30.06.2021 under the old provision of section 148 which has been substituted w.e.f. 01.04.2021 and hence notice and proceeding is void being illegal.

6. The learned Commissioner of Income tax (A) Raipur - 3 was not justified in dismissing the appeal without considering that the assessing officer erred in issuing the notice under section 148 of the Act is without Jurisdiction as the approval was taken from incompetent authority and after amendment in section 148 from 01.04.2021 approval should be taken as per section 151 of the IT Act and hence notice and proceeding is void being illegal.

7. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the addition made under section 69B of the IT Act without appreciating that the assessing officer erred in invoking the provision of section 69B of the Act without recording his own satisfaction or dissatisfaction which is the basic ingredient of section 69B of the Act and the addition was wholly made on the basis of DVO report without appreciating the fact that valuation done by the DVO is only estimation.

8. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the addition of Rs. 99,02,248 without appreciating that the assessing officer erred in making the addition of Rs.99,02,248 without considering the fact that the estimation done by the DVO is based on the rates of big and metro cities whereas appellant property is situated at Village Jotpur, near Jabalpur and rates of material and construction are very low.

9. The learned Commissioner of Income Tax (Appeal) Raipur-3. was not justified in confirming the addition of Rs. 99,02,248/- ignoring the fact that

the learned AO had not considered the report of the Chief Commissioner of income Tax approved valuer while framing the assessment order.

10. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the addition of Rs. 99,02,248 without appreciating that the assessing officer erred in making the addition of Rs.99,02,248 as unexplained investment under section 69B without rejecting the books of accounts and without bringing any material or evidence which shows that appellant have invested more than as recorded in the books of accounts.

11. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the addition of Rs. 99,02,248 without appreciating that the assessing officer erred in making the reference to DVO before issuing the notice under section 142(1) of the Act and without bringing any material on record and thus reference to DVO without complying with the basic step of section 142A of the Act which impose the primary duty on AO to record the reason that the value recorded by the appellant is undervalued, is bad in law.

12. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the addition of Rs. 99,02,248 without appreciating that the assessing officer erred in making the addition by simply relying on DVOs report as against which the appellant raised the objection that the rate of construction taken by the DVO is very high as compared to the rates prescribed in the Government Guidelines, rates of similar land in similar location, market rate of construction.

13. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the action of assessing officer in applying the provision of section 115BBE without appreciating that section 69B is not applicable as there is no evidence of making construction in higher rates and provision of section 69B does not apply on deemed addition and on presumption.

14. The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal.”

2. Apropos to the grounds of appeal, the Ld. Counsel for the assessee contended that the impugned order has been passed *ex parte* to the assessee. He contended that the Ld. CIT(A) did not appreciate the facts in right perspective. He contended that the controversy is with regard to the unaccounted investment made by the assessee in hospital building. He contended that the Assessing Officer referred the issue of valuation of investment to District Valuation Officer. He further contended that without considering the facts both the lower authorities have decided the issue without giving effective opportunities to the assessee.

Therefore, he prayed that in the interest of principles of natural justice matter may be remitted to the Assessing Authority.

3. On the other hand, learned Departmental Representative (“DR”) opposed the submissions and supported the orders of the authorities below. He contended that the multiples opportunities were given to the assessee. Therefore, in the absence of the representation on behalf of the assessee, the Ld. CIT(A) was justified in passing the *ex parte* order against the assessee. He contended that the assessee should not be allowed to take advantage of its negligence.

4. We have heard the rival submissions and perused the material available on record. The Assessing Officer has stated in the assessment order that the amount of investment shown by the assessee in his books of accounts is not correct. Therefore, in order to ascertain the actual cost of investment in construction of hospital building, he referred the matter to District Valuation Officer (DVO). The DVO valued the cost of investment at Rs.3,27,17,205/- as against the cost of investment declared by the assessee at Rs.2,28,14,957/-. Hence, the AO opined that the difference in sum of Rs.99,02,248/- is not disclosed by the assessee. Hence, he added this sum of Rs.99,02,248/- in the income of the assessee. However, before the Ld. CIT(A) there was no representation on behalf of the assessee and the Ld. CIT(A) without adverting to the grounds of appeal dismissed the appeal of the assessee *ex-parte* to the assessee. Therefore, looking to the totality of the facts and the material placed before us, we are of the considered view that to sub-serve the principles of natural justice, assessee should be given one more opportunity to

represent his case effectively. We, therefore, hereby set aside the impugned order and restore the assessment to the file of the Assessing Officer to make assessment afresh, after giving proper opportunity to the assessee. Grounds of appeal of the assessee are allowed for statistical purposes.

5. Now, we take up the assessee's appeal in ITA. No.105/JAB/2025 for A.Y. 2017-18. The identical grounds have been taken in the aforesaid appeal. For the sake of clarity, the grounds are reproduced as under: -

ITA. No.105/JAB/2025

"1. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal even though he has no Jurisdiction to pass the order as the appellant have filed the appeal before Commissioner of Income tax (Appeal) Bhopal - 3 under which appellant Jurisdiction lies.

2. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal even though he has no Jurisdiction to pass the order as the appellant has filed the appeal before Commissioner of Income tax (Appeal) Bhopal - 3 under which appellant Jurisdiction lies and if the case of appellant was transfer to his Jurisdiction it was transferred without giving any opportunity to appellant which is mandatory and hence order passed by the Commissioner of Income tax (Appeal) Raipur - 3 may kindly be quashed.

3. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal without appreciating that case transferred to his office was without any intimation under section 129 to the appellant and learned Commissioner of Income tax (Appeal) Raipur - 3 failed to take into consideration record of past attendance and just to complete hearing early, due to huge pending disposal (being not fault of assessee), dismissed the appeal in a Mechanical manner and without application of mind .

4. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal on the ground of huge pending appeals for disposal (being not fault of assessee) and if so, the reply filed by appellant in pending appeals for assessment year 2015 - 16 and 2018 - 19 was not decided till the filing of this appeal which shows the conduct of CIT - A is interested in passing exparte orders and not deciding the appeals on merit intentionally .

5. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal without considering that the assessing officer erred in issuing the notice under section 148 of the Act dated 30.06.2021 under the old provision of section 148 which has been

substituted w.e.f. 01.04.2021 and hence notice and proceeding is void being illegal.

6. The learned Commissioner of Income tax (A) Raipur - 3 was not justified in dismissing the appeal without considering that the assessing officer erred in issuing the notice under section 148 of the Act is without Jurisdiction as the approval was taken from incompetent authority and after amendment in section 148 from 01.04.2021 approval should be taken as per section 151 of the IT Act and hence notice and proceeding is void being illegal.

7. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the addition made under section 69B of the IT Act without appreciating that the assessing officer erred in invoking the provision of section 69B of the Act without recording his own satisfaction or dissatisfaction which is the basic ingredient of section 69B of the Act and the addition was wholly made on the basis of DVO report without appreciating the fact that valuation done by the DVO is only estimation.

8. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the addition of Rs.1,87,70,395 without appreciating that the assessing officer erred in making the addition of Rs.1,87,70,395 without considering the fact that the estimation done by the DVO is based on the rates of big and metro cities whereas appellant property is situated at Village Jotpur, near Jabalpur and rates of material and construction are very low.

9. The learned Commissioner of Income Tax (Appeal) Raipur3. was not justified in confirming the addition of Rs.1,87,70,395/- ignoring the fact that the learned AO had not considered the report of the Chief Commissioner of income Tax approved valuer while framing the assessment order.

10. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the addition of Rs.1,87,70,395 without appreciating that the assessing officer erred in making the addition of Rs. 1,87,70,395 as unexplained investment under section 69B without rejecting the books of accounts and without bringing any material or evidence which shows that appellant have invested more than as recorded in the books of accounts.

11. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the addition of Rs.1,87,70,395 without appreciating that the assessing officer erred in making the reference to DVO before issuing the notice under section 142(1) of the Act and without bringing any material on record and thus reference to DVO without complying with the basic step of section 142A of the Act which impose the primary duty on AO to record the reason that the value recorded by the appellant is undervalued, is bad in law.

12. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the addition of Rs.1,87,70,395 without appreciating that the assessing officer erred in making the addition by simply relying on DVOs report as against which the appellant raised the objection that the rate of construction taken by the DVO is very high as compared to the rates prescribed in the Government Guidelines, rates of similar land in similar location, market rate of construction.

13. *The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in confirming the action of assessing officer in applying the provision of section 115BBE without appreciating that section 69B is not applicable as there is no evidence of making construction in higher rates and provision of section 69B does not apply on deemed addition and on presumption.*

14. *The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal."*

6. The facts are identical in the aforesaid appeal. Ld. Counsels for the assessee and Ld. DR have adopted the same arguments as in ITA. No.104/JAB/2025 in this appeal also. Therefore, we deem it expedient to set aside the impugned order for the same reasoning as were in ITA. No.104/JAB/2025 for A.Y. 2016-17 and same shall apply *mutatis mutandis* to ITA. No. 105/JAB/2025 as contained in para no. 4 of this order. All the grounds of appeal of the assessee are allowed for statistical purposes.

7. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 28/08/2025.

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 28/08/2025

Vijay Pal Singh, (Sr. PS)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

By order

// True Copy//

Assistant Registrar
ITAT, Jabalpur