



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

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

ITA No. 120/JAB/2025
Assessment Year: 2019-20

Apka Faisala Gold Palace Gandhi Chowk Shahdol, Madhya Pradesh-484001.	v.	ACIT-Central Circle 291 Ramnath Building, Napier Town, Jabalpur- 482001.
TAN/PAN:AARFA8456D		
(Appellant)		(Respondent)

Appellant by:	Shri Sapan Usrethe, Ad		
Respondent by:	Shri N. M. Prasad, Sr. DR-1		
Date of hearing:	21	08	2025
Date of pronouncement:	28	08	2025

ORDER

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, by the assessee, is directed against the order of the Learned Commissioner of Income-tax (Appeals), Raipur-3 dated 18.03.2025, pertaining to the assessment year 2019-20.

The assessee has raised the following grounds of appeal: -

"1. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal even though he have 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 have 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 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 transfer 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 and for early huge pending disposal (being not fault of assessee) dismiss 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 without considering the various Judgments of Hon'ble ITAT on the similar issues by not following the Judicial discipline and order passed by higher courts are brushed aside without any cogent reasons and hence order passed by the learned Commissioner of Income tax (Appeal) Raipur - 3 may kindly be quashed on this ground alone.

5. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal without giving any independent finding and only the version of AO was incorporated in the order and appeal was dismissed without giving any finding on the various legal grounds raised during the appellate proceedings.

6. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal without appreciating that application of section 115BBE on the surrendered stock is to be treated as business income and it is settled issue and various judicial pronouncements wherein it was clearly held that income surrendered during survey has to be treated under Business Head

7. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal on the ground that appellant failed to provide any satisfactory explanation regarding the source of investment in the excess stock surrendered during the survey proceedings whereas the amount was duly recorded in the books of accounts and excess stock cannot be treated under the purview of section 115BBE of the IT Act.

8. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal without appreciating the fact that provision of section 69B of the act is not applicable on account of stock and appellant has surrendered the excess stock and not for investment and it was duly recorded in the books of the account.

9. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal without appreciating that the assessing officer erred in treating the excess stock as income from other sources without appreciating that such stock was duly recorded in the books of accounts after survey and including the same in profit and loss account, the return was filed.

10. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal without appreciating that the assessing officer erred in applying the provisions of section 69B of the Act without appreciating that the appellant has duly offered the explanation and such explanation was duly accepted by the AO by accepting returned income.

11. The learned Commissioner of Income tax (Appeal) Raipur - 3 was not justified in dismissing the appeal without appreciating that the assessing

officer erred in applying section 115BBE on the surrendered amount by ignoring the various judicial pronouncements wherein it was clearly held that income surrendered during survey has to be treated under Business Head.

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

2. The assessee is a partnership firm and engaged in trading of Gold/Silver/Diamond and other precious metals jewellery. The assessee had filed its return of income declaring total income of Rs.1,35,17,270/- for the A.Y. 2019-20. A survey u/s 133A of the Income Tax Act, 1961 (“Act”, for short) was carried out by the Revenue on 18.02.2019 at the business premises of the assessee. Consequently, the case was selected for scrutiny through Compulsory Manual Scrutiny Selection. A notice u/s 143(2) of the Act was issued on 26.09.2020 which was duly served upon the assessee. However, the notices u/s 142(1) of the Act were issued on various dates through ITBA portal. In response thereto, the assessee had filed replies to the queries raised by the Assessing Authority. After considering the replies, the Assessing Officer noted that during the course of survey excess stock was found and a sum of Rs.1,05,15,579/- was surrendered in this regard. The Assessing Officer opined that on surrendered amount the assessee ought to have paid taxes as per u/s 115BBE of the Act. Therefore, the Assessing Officer treated the excess stock of Rs.1,05,15,579/- as the investment not fully recorded in the books of account u/s 69B of the Act. Aggrieved by this, the assessee preferred appeal before the Ld. CIT(A). Before the Ld. CIT(A), there was no representation on behalf of the assessee. Therefore, he proceeded to pass an *ex parte* order

against the assessee. Aggrieved by this, the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal, the Ld. Counsel for the assessee has raised multiple grounds including the grounds against validity of the impugned order. He contended that the Ld. CIT(A) failed to consider the submissions of the assessee and utter disregard to the finding precedence proceeded to pass impugned *ex parte* order. Therefore, he prayed that the matter may be remanded back and the authorities below may be directed to provide adequate opportunity of being heard. He submitted that the assessee would co-operate in the proceedings.

4. On the other hand, the Ld. Departmental Representative (DR) opposed the submission of the assessee and supported the orders of the lower authorities. He contended that there is no dispute with regard to the fact that the assessee himself had surrendered the amount during the survey action. Therefore, Ld DR contended that the finding of the lower authorities may be sustained and appeal be dismissed.

5. Heard the Ld. Representatives of the parties and perused the materials available on record. It is seen from the impugned order that the Ld. CIT(A) has dismissed the appeal *ex parte* to the assessee. It is contended on behalf of the assessee that before the Ld. CIT(A) certain submissions were made regarding the reasons for difference of stock. However, the Ld. CIT(A) without considering the same and advertent to the submissions of the assessee passed an *ex parte* order. Therefore, looking to the totality of the facts, we deem expedient to sub-serve the interest

of principles of natural justice set aside the impugned order and restore the grounds to the file of the Ld. CIT(A) to decide it afresh by way of speaking order, after giving adequate opportunity of hearing to the assessee. Hence, the impugned order is hereby set aside and the Ld. CIT(A) is directed to decide the grounds of appeal afresh, after giving adequate opportunity of being heard to the assessee. The assessee is hereby directed not to seek adjournment unless there is any serious exigency and would cooperate in the proceedings. The grounds raised in this appeal are allowed for statistical purposes.

6. In the result, the appeal of the assessee is 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

