

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR
BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.128 & 129/JAB/2023
A.Y. 2010-11

Rajesh Singh, M/s Pharma Deal Agency, Ward No.8, Mauganj, Distt. Rewa, M.P.	vs.	Income Tax Officer, Ward-1, Rewa, M.P.
PAN:ATRPS5702K		
(Appellant)		(Respondent)

Assessee by:	Sh. Devendra Singh, C.A.
Revenue by:	Sh. N.M. Prasad, Sr. DR
Date of hearing:	17.09.2025
Date of pronouncement:	19.09.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.

These two appeals have been filed by the assessee against the order of the ld. CIT(A), dismissing his appeals against the order under section 147 r.w.s. 144 passed by the Assessing Officer on 23.11.2017 for the A.Y. 2010-11 and also the appeal filed against the levy of penalty under section 271(1)(b) on 29.05.2018. As the matter was heard together and the penalty under section 271(1)(b) arises out of the assessment, the two cases are taken up together for adjudication. The grounds of appeal in these two cases are as under:-

ITA No.-128/JAB/2023

"1. That the Ld. Appellate authority CIT (Appeal) has grossly eared on facts and circumstances of the case to confirm the addition of Rs. 29,85,000/-.

2- That the addition of Rs. 29,85,000/-made U/S 69A of IT Act, 1961 which is not based on any concrete finding but was entirely estimated, arbitrary, assumptions & Presumptions and bad in law.

3- That the Assessee crave leaves to raise any other grounds on or before the date of hearing to prove that the order passed is bad.”

ITA No.- 129/JAB/2023

“1. That the Ld. Appellate authority CIT (Appeal) has grossly eared on facts and circumstances of the case to confirm the Penalty of Rs. 30,000/-.

2- That the Penalty of Rs. 30,000/- demanded U/S 271(1)(b) of IT Act, 1961 which is not based on any concrete finding but was entirely estimated, arbitrary, assumptions & Presumptions and bad in law.

3- That the Assessee crave leaves to raise any other grounds on or before the date of hearing to prove that the order passed is bad.”

2. The facts of the case are that the Assessing Officer received information that during the Financial Year 2009-10, the assessee had deposited Rs.25,59,927/- in his account with Union Bank of India. After comparing the investments with the sources of income disclosed by the assessee, the AO initiated proceedings under section 148 of the Income Tax Act. In response to the said notice, the assessee filed a written response on 27.04.2017 in which he requested that his earlier return filed on 19.11.2010 may be considered to be the return filed in response to notice under section 148. Thereafter, the ld. AO issued notices under section 143(2) / 142(1) asking the assessee to explain the issue. The ld. AO records that there was no compliance on the part of the assessee to the various notices issued

by him therefore, he issued a show cause notice asking why the assessment should not be completed under section 144. However, this notice was also not replied to. In the circumstances, the Id. AO proceeded to complete the assessment in a best judgment manner. He observed that the assessee has filed a return for the A.Y. 2010-11 on 19.11.2010 on an declared income of Rs.1,48,123/-. It was seen from the same that the assessee was running a proprietorship concern by the name of M/s Pharma Deal Agency at Mauganj, District Rewa and the total turnover as per the audited books of accounts were Rs.53,43,610/-. The accounts of the assessee had been audited and the audit report had been uploaded on 22.09.2010. Ongoing through the Audit Report, the Id. AO found that the savings bank account no. 418302010005733 at Union Bank of India, had not been entered in the Audit Report. Furthermore, it was found that he was maintaining another savings bank account no. SP10315 at Allahabad Bank, Mauganj, District Rewa, where an amount of Rs.35,16,025/- had been deposited out of which Rs.16,50,000/- had been deposited in cash and the rest had been deposited by transfers. The Id. AO also found that on 2.03.2010, a Cheque No.871549 was deposited in the name of M/s Pharma Deal Agencies. From the same, he came to the conclusion that the transactions in these two bank accounts (amounting to Rs.25,59,927/- and Rs.35,16,025/-) were related to the business of the assessee. He reproduced the balance-sheet of the assessee and the copies of the bank

accounts in his assessment order and found that the deposits in the said bank account were made from sale of medicines and had been transferred to Aharan Medical Agencies from whom the assessee had purchased medicines, but he concluded that the said bank account had been kept outside the books of the assessee and therefore, the sum of Rs.27,73,173/- and also the sum of Rs.35,16,025/- were deposits that were from undisclosed sources. Therefore, he added back a sum of Rs.62,89,198/- to the income of the assessee on this account. Furthermore, he initiated proceedings under section 271(1)(b) for the failure of the assessee to respond to notices under section 142(1).

3. Aggrieved with the said order, the assessee went in appeal to the Id. CIT(A). The Id. CIT(A) on consideration of the assessee's submissions, held that before every payment to vendors / creditors cash was deposited. All the payments were made out of cash deposits and not vice and versa. The Id. CIT(A) held that since this account was not a part of the audit report, there was nothing to show that these cash deposits had been generated from the sales turnover. For this reason, he sustained the addition on account of credits of Rs.25,85,000/- in A/c No.418302010005733 in Union of India as unexplained money under section 69A. Regarding the cash deposits in savings A/c No.10315 in Allahabad Bank, the assessee submitted that the account was used by him, relatives and friends for furnishing the initial deposit for the purpose of auction of a wine shop and since

they were unsuccessful in the same, the fund was returned. The Id. CIT(A) agreed that prima facie the pattern of the account revealed that cash was received for some purpose and subsequently returned and the pattern of transactions broadly matches the explanation of the assessee and certain supporting evidences had also been submitted during appeal and assessment. However, he held that cash deposit of Rs.4,00,000/- on 25.08.2009 remained unexplained therefore, he sustained an addition of Rs.4,00,000/- under section 69A and deleted the rest.

4. Subsequent to the passing of the assessment order, the Id. AO also issued notice for levy of penalty under section 271(1)(b). A show cause notice was issued to the assessee to explain why penalties under section 271(1)(b) amounting to Rs.10,000/- each should not be imposed for defaults of notices under section 142(1) dated 29.06.2017, 7.09.2017 and 25.10.2017. In the absence of any reply, a penalty of Rs.30,000/- was imposed upon the assessee under section 271(1)(b). Aggrieved with this levy of penalty, the assessee went in appeal to the Id. CIT(A). It was submitted that the assessee has filed a return of income which showed a net income of Rs.1,48,123/- from wholesale trade business. The case was reopened for assessment under section 148. The assessee had made a written request to furnish the reasons recorded for reopening of the case under section 148. However, the Id. AO without furnishing the reasons recorded, had proceeded to make the order under section 144, which resulted in depriving the assessee

from his right to object the reasons recorded. Therefore, it was prayed that the failure to make compliance to the notices under section 142(1) was because the ld. AO had not furnished the reasons to believe to the assessee. Accordingly, it was prayed that the penalty may be dismissed. However, the ld. CIT(A) did not agree with this logic, he held that assessee should have shown more respect to the assessment proceedings by at least asking for an adjournment. The non-response to notices shows complete disregard towards laws and rules and even during appeal proceedings, compliance had not been made. Therefore, he confirmed the penalty under section 271(1)(b) of Rs. 30,000/-.

5. The assessee is aggrieved with the additions that have been sustained by the ld. CIT(A) and has accordingly come in appeal. Sh. Devendra Singh, C.A. (hereinafter referred to as the ld. AR) appearing on behalf of the assessee submitted that the assessee was doing business operations through cash credit limit with Allahabad Bank, Mauganj in C.C. A/c No.4168 and from Union Bank of India, Mauganj through Savings A/c No.418302010005733. For accounting and sales tax purposes, he had hired an Accountant for timely filing of returns and maintenance of records. As the matter was handed over to the tax consultant, the assessee was reliant upon him and he was under the bona fide impression that the records were being compiled taking into account all the bank accounts through which he was operating the business. Inadvertently, the assessee's UBI Savings

A/c No.418302010005733, Mauganj was omitted from being taken into account for the preparation of final accounts. However, a copy of the savings bank accounts was enclosed with the details of transactions and it was submitted that Rs.25,84,927/- in cash was deposited into the said UBI account from receipts against the sale made by him during the relevant period. Out of these cash deposits, Rs.20,88,530/- were paid to the suppliers of medicines which was mostly through account payee cheques or bank transfers. The details of the parties were Aristo Pharma Pvt. Ltd., Rajesh Medical Agencies Rewa, Sindh Medical Stores Rewa, Vijay Sales Jabalpur etc,. These were also mentioned in the schedule of creditors in the balance-sheet. The ld. AO had also accepted the fact that the cash that was deposited and transferred through UBI Savings A/c No.418302010005733 were related to the sale of medicines and payments from his account were made to suppliers, from whom medicines were purchased by the assessee. It was submitted that generally trading procedures in business follow a cycle where goods are bought from suppliers and after adding self profit margin, goods are sold to other buyers. Further, payments are realized from debtors, deposited in bank account and then payment is made to creditors, from whom the goods were bought. This cycle was a continuously repeating process for a running business and therefore, the entire sum received in the bank or in cash by a selling businessman could not be his profit, but only the margin was his profit. It was

submitted that in the present case, Rs.25,84,927/- had been deposited in cash in the UBI account and this had not been deposited at one stroke, but spread all over the year. It was submitted that this was the first year of tax audit. Mauganj was a very small Tehsil under Rewa district and the assessee could not be expected to have expert knowledge of income tax provisions and return filing. He had believed in the competence of his Chartered Accountant; that they had performed their work properly and there was no intention on his part to hide any bank account. It was further argued that due to cut throat competition in the wholesale business of medicines, the profit margin is very low. As per tax Audit Report of that financial year, it was only 4.54%. Therefore, taking that said margin to the turnover reflected in the UBI account, the assessee offered Rs.1,17,360/- to tax and prayed that he may be granted relief for the remaining amount as it was not unexplained deposit under section 69A. With regard to the deposit of Rs.4,00,000/- in Allahabad Bank A/c No.10315, the assessee objected to the addition and submitted that the cash deposited by the assessee was received as gift from his father and a copy of the declaration by his father, Sh. Brij Bhushan Singh alongwith a copy of rin pustika of agricultural land owned by Sh. Brij Bhushan Singh was enclosed. Reliance was also placed on the judgment of Sakina Ahmedali Kantawala vs. Income Tax Officer 163 taxman.com 115, that no addition to income under section 69A could be made if the source of income & capacity of the person

is proved with affidavits and other credible evidences. Reliance was also placed on the judgment of the Hon'ble ITAT Bench in the case of Pushpa Rai vs. Income Tax Officer 159 taxman.com 1585 that where cash deposit was proved with the source of income and other evidences, there should be no hesitation in deleting the addition made on account of cash deposit under section 69A.

6. On the other hand, Sh. N.M. Prasad, Sr. DR, pointed out that the assessee had concealed one bank account from the Department and also not made compliance before the AO. Therefore, there was escapement of income and non-compliance to notice. In the circumstance both the quantum and the penalty were deserving of being confirmed. During the course of hearing, the attention of the Id. AR was invited to the observations of the Id. CIT(A) that since the cash deposit preceded the payment to the pharma companies, what was the evidence of the fact of sale of medicines? In response, the assessee sought time to file a copy of his sales register that would, in his opinion prove his sales. Accordingly, the assessee filed a copy of his sales registers as additional evidence before us. Considering the fact that the sales register is a vital document to determine whether the deposits in the bank account at Union Bank of India are explained or not prior to those deposits being assessed under section 69A, we deem it necessary to admit the said sales register for consideration. We note from the same that the assessee has noted down the dates of all the sales made by him to various persons from which it should be

possible for the AO to arrive at a satisfaction whether the cash deposits in the bank account were on account of sales or were unexplained. The assessee has further submitted that he is in a position to also produce the purchase register and invoices raised by the various pharma companies for the purchases and submits that once he is able to satisfy the fact of purchases and sales, then he should only be taxed for the margin. We have duly considered this prayer and after considering the evidences placed before us, we deem it appropriate to restore this matter back to the file of the Assessing Officer for examination of the sale register and any other evidence that the assessee may produce in support of his contention that the deposits in the said Union Bank account are out of sale proceeds of wholesale medicine business and if the assessee is able to produce these to the satisfaction of the Assessing Officer, the Assessing Officer may thereafter determine the profit element of such transactions and bring the same to tax, failing which he may take action as per law. Accordingly, ITA No.128/JAB/2023 is held to be allowed for statistical purposes.

7. On the issue of section 271(1)(b), we find that the assessee had made a request to the ld. AO to supply him with a copy of reasons on which his case had been reopened and the ld. AO had failed to do so. The judgment of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. Income Tax Officer & Ors (2002) Supp (4) SCR 359 is quite clear. If the assessee files a return and

thereafter makes a request to the Assessing Officer for a copy of the reasons to believe, the same have to be provided so as to enable the assessee to object to the initiation of re-assessment proceedings and the ld. AO has to first dispose of these objections before proceeding with the assessment. We note that in the instant case, the ld. AO does not acknowledge the fact of this request for reasons from the assessee and his failure to dispose of the same, but rather proceeded to issue notices under section 142(1). Since this was clearly not in accordance with the said Hon'ble Supreme Court's judgment, we hold that his decision to levy penalty thereafter on non-compliance to issued notices under section 142(1), which should have followed the disposal of objections to reason to believe, is unwarranted and therefore, for this reason, we delete the penalty levied upon the assessee.

8. In the result, appeal in ITA No.128/JAB/2023 is held to be allowed for statistical purposes while appeal in ITA No. 129/JAB/2023 is held to be allowed.

Order pronounced in the Open Court on 19/09/2025.

Sd/-
[KUL BHARAT]
VICE PRESIDENT
DATED: 19/09/2025
Sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.