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.534/RPR/2025
निर्धारण वर्ष /Assessment Year : 2014-15

Adarsh Nursing Institute Private Limited
Behind Sejbahar, Housing Board Colony,
Near Kushabhau Thakre Univeristy,
Datrenga, Raipur (C.G.)-492 013
PAN: AAGCA6544C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-4(1),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 24.11.2025
घोषणा की तारीख / Date of Pronouncement : 27.11.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 07.07.2025 for the assessment year 2014-15 as per the following grounds of appeal:

> "1. The order of the Ld. AO is arbitrary, illegal, excessive, perverse and bad in law.
>
> 2. For that the order passed u/s.143(3) by the Ld. A.O. is bad in law and on facts and all the disallowances/additions made are liable to be deleted in full.
>
> 3. For that the Ld. AO erred in adding a sum of Rs.10,50,000/- u/s.68 on account of cash credits in the accounts of the subscribers' accounts i.e. Shri Ramesh Gandhi & Shri Mayank Agrawal.
>
> 4. The appellant may be allowed the relief prayed for.
>
> 5. For that your appellant craves leave to add, alter, amend, rectify, delete, withdraw and/or otherwise modify all or any of the grounds and/or to adduce evidence on or before the final hearing."

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

3. In this case, the assessee company is engaged in the business of running nursing school and college and filed return of income for A.Y.2014-15 on 06.01.2015 declaring total income of Rs.12,83,980/-.

Subsequently, the case of the assessee was selected for scrutiny assessment and the A.O completed the assessment u/s. 143(3) of the Income Tax Act, 1961 (for short 'the Act') dated 25.12.2016 determining total income at Rs.23,33,980/-. The relevant facts are that the assessee company had received share application money from Directors of the company. The Directors of the company had paid share application money to the company and in this regard, one of the Director, Shri Ramesh Gandhi had deposited an amount of Rs.3,50,000/- in his bank account and similarly, another Director, Shri Mayank Agrawal had deposited Rs.7,00,000/- in his bank account before transferring the same to the assessee company. The A.O was not satisfied with regard to the nature and source of such cash deposits and made addition of Rs.10,50,000/- u/s.68 of the Act as unexplained cash credits in the hands of the assessee.

4. The fact further reveals that the assessee as per its submission had submitted PAN, Aadhar number and address proof explaining the identity. Similarly, regarding creditworthiness, the assessee had submitted balance sheet, ITR a/w. computation details. That with regard to the genuineness, it was submitted that the payments were made by the both the directors through banking channel and share allotment made to the shareholders. That further, shareholders had filed notarized affidavit explaining

genuineness of the transaction. The A.O had disbelieved all these contentions of the assessee solely on the ground that the Directors were having income from salary only during the relevant assessment year and if the house hold expenses were to be deducted, in such scenario, they does not seem to have any balance left for such investment and purchase of shares.

5. The findings of the A.O had been upheld by the Ld. CIT(Appeals)/NFAC. The Revenue authorities have just relied on the fact that during relevant assessment year, Directors of the company were earning salary income only without even going into their savings aspect. The Department has also not brought on record to the fact that when they were filing return of income that during the previous year just preceding the relevant financial year what was the capital accumulation in the hands of the assessee. Nothing has been discussed by the department and they had relied on the income earned during the relevant assessment year, house hold expenses and children education etc. and on the basis of mere suspicion only made the impugned addition. The Ld. CIT(Appeals)/NFAC without following the mandate of the statute and without holding any inquiry on these facts summarily upheld the addition made by the A.O. Therefore, such action of the first appellate authority is termed as 'summary dismissal' without adhering to the principles of law,

hence, the order suffers from arbitrariness and is vitiated. I further observe that even provisions of law has been wrongly applied by the department. Since the entire addition emanates from the non-explaining the nature and source of the cash deposits made by the Directors before transferring the same to the assessee's A/c. for purchasing shares, it is therefore, question of unexplained money and the addition, if at all has to be made that would be done u/s.69A of the Act and not u/s.68 of the Act. This is a clear case 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 assesses 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 **Raghvendra 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 immoveable 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 assesse 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 assesses 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."

6. 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."

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 of Rs.10,50,000/- u/s.68 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 27th day of November, 2025.

Sd/-
(**PARTHA SARATHI CHAUDHURY**)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 27th November, 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.

आदेशानुसार / BY ORDER,

// True Copy //

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