

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

(HYBRID HEARING)

**श्री रवीश सूद , न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.348/VIZ/2025
(निर्धारण वर्ष/ Assessment Year:2021-22)**

Ajithkumar Singu D.No. 8-76-1, Murikipudi Chilakaluripeta Ramachandrapuram Guntur – 522626 Andhra Pradesh [PAN: ETXPS2554D]	Vs.	The Income Tax Officer Ward (International Taxation) Income Tax Office C.R. Building, Annex M.G. Road Vijayawada – 520002 Andhra Pradesh
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Badicala Yadagiri, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	06.11.2025
घोषणा की तारीख/Date of Pronouncement	:	26.11.2025

आदेश /O R D E R

PER SHRI S. BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals)-10, Hyderabad [hereinafter in short "Ld.CIT(A)"] vide Appeal No. CIT(A), HYD-10/10028/2020-21 dated

29.03.2025 arising out of order passed under section 143(3) r.w.s. 144C of Income Tax Act, 1961 (in short 'Act').

2. Brief facts of the case are that, assessee is an individual and Non-Resident Indian (in short "NRI") filed his return of income for the A.Y.2021-22 on 28.12.2021 admitting a taxable income of Rs.3,31,022/-. Assessee also claimed exemption under "Double Tax Avoidance Agreement" (in short DTAA") on salary of Rs.84,00,000/-. Assessee also admitted agricultural income of Rs.3,50,000/- in the return of income filed by him. Subsequently, the case was selected for scrutiny under CASS to verify the claim of large exempt income and notice under section 143(2) was issued on 28.06.2022 by National Faceless Assessment Centre (in short "NFAC"). Later, notice under section 142(1) of the Act dated 12.08.2022 calling for information was issued and served on the assessee. Subsequently, the case was transferred from ITO-WARD-14(1), Hyderabad on 14.11.2022. Since the assessee did not respond to the earlier notices, another notice under section 142(1) dated 18.11.2022 was issued and served on the assessee. Since the assessee did not respond, one more notice under section 142(1) of the Act dated 09.12.2022 was issued and served on the assessee. Assessee responded and submitted information on 12.12.2022. Simultaneously, Ld. Assessing Officer [hereinafter in short "Ld. AO"] also called for information from bank under section 133(6) of the Act. On perusing the information furnished by the assessee, the Ld. AO

noticed the sources for cash deposits made in the ICICI Bank limited and Chaitanya Godavari Grameena Bank amounting to Rs.28,84,400/- and Rs.1,48,00,000/- respectively, said to have been claimed as withdrawal made out of loan taken in United States of America (in short “USA”). Ld. AO observed that the assessee instead of transferring the funds through NRO/NRE Account, the assessee preferred to send monies through Western Union Money Transfer Agency & HiFx Money Transfer Agency. Being not satisfied with the explanation by the assessee, Ld. AO proposing an addition of Rs.1,76,84,000/- under section 69A of the Act as unexplained money issued show-cause notice to the assessee to file his objections. Assessee furnished his reply on 26.12.2022. The Ld.AO observed that there is no nexus between the cash withdrawals through exchange and cash deposited, delay in depositing the cash and exchanging money, and accordingly proceeded to add Rs.1,76,84,000/- as unexplained money under section 69A of the Act. Further, Ld. AO also treated a net agricultural income of Rs.3,50,000/- as income from other sources for which the assessee did not have any objections.

3. On being aggrieved by the additions made by the Ld. AO, assessee filed an appeal before the Ld. CIT(A). The assessee reiterated the similar submissions before Ld. CIT(A). Ld. CIT(A) not being satisfied with the replies of the assessee, as assessee has failed to prove the same with confirmation

letters from the relatives to whom the cash has been transferred, sustained the order of the Ld. AO by dismissing the appeal of the assessee.

4. Aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

“1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.1,76,84,000 made by the assessing officer u/s 69A of the Act towards unexplained cash deposits in the bank account.

3. Any other ground that may be urged at the time of appeal hearing.”

5. Assessee also filed the petition for admission of additional ground as follows: -

“1. The above mentioned appeal was filed against the order dt.29.03.2025 passed by learned Commissioner of Income Tax (Appeals) - 10, Hyderabad. The appeal before the learned Commissioner of Income Tax (Appeals) was in turn filed against the order dt. 16.08.2023 passed u/s 143(3) r.w.s. 144C of the Act by the ITO (International Taxation), Vijayawada.

2. The appellant was a non-resident during the relevant previous year and filed his return of income for the A.Y.2021-22 on 28.12.2021. The case of the appellant was taken up for scrutiny by issue of notice u/s 143(2) on 28.06.2022 by the NFAAC, New Delhi. However, the appellant being a Non-Resident, the jurisdiction lies with the ITO (International Taxation), Vijayawada. Hence, the assessment was completed u/s 143(3) by the ITO (International Taxation), Vijayawada. However, no fresh notice u/s 143(2) was issued by this officer having jurisdiction over the case and the initial notice issued u/s 143(2) on 28.06.2022 is invalid as the NFAAC did not have jurisdiction over the appellant.

3. The aforesaid issue of validity of assessment completed without issue of a valid notice u/s 143(2) of the Act was not raised before the lower authorities, due to inadvertence. However, this issue is purely legal in nature and all the relevant facts are already on record. Hence, the

appellant prays the hon'ble ITAT, Visakhapatnam Bench to kindly admit the following additional Ground of Appeal and pass appropriate orders in the interest of rendering substantial justice.

ADDITIONAL GROUND OF APPEAL

"On the facts and in the circumstances of the case, the assessment completed u/s 143(3) r.w.s.144C of the Act is liable to be quashed as invalid as the assessment was completed without issue of a valid notice u/s 143(3) of the Act."

6. Since the assessee has challenged the validity of the assessment order citing that the assessment was completed without issuing a valid notice under section 143(2) of the Act and this being a legal ground, we admit it and thus first proceed to adjudicate the same.

7. On this issue, Ld. Authorised Representative [hereinafter "Ld.AR"] submitted that initially notice under section 143(2) of the Act dated 28.06.2022 was issued by NFAC whereas the assessment under section 143(3) of the Act was completed by Income Tax Officer, Ward (International Taxation), Vijayawada. Ld.AR submitted that the notice under section 143(2) of the Act dated 28.06.2022 was issued by NFAC was without jurisdiction and no fresh notice under section 143(2) of the Act was issued by Income Tax Officer, Ward (International Taxation), Vijayawada and therefore the assessment framed in pursuance to the invalid notice under section 143(2) of the Act by NFAC is *void abinitio*. On this issue he relied on the decision of the Co-ordinate Bench of Delhi in the case of Vipual Mittal v. DCIT in ITA No. 2850/Del/2019 dated 15.01.2025.

8. On the other hand, Ld. Departmental Representative [hereinafter in short “Ld. DR”] vehemently opposed the admission of the additional ground and argued that the assessee has participated in the assessment proceedings and has raised no objection before lower authorities. Ld. DR further submitted that assessee has to raise its objection within a period of thirty days as provided under section 124(3)(a) of the Act. He also submitted that it is curable as per section 292BB of the Act. He therefore pleaded that the assessment order cannot be quashed.

9. We have heard both the sides and perused the material available on record including the case cited by the Ld.AR. Initially notice under section 143(2) of the Act dated 28.06.2022 was issued by NFAC and subsequently the assessment was framed by Income Tax Officer, Ward (International Taxation), Vijayawada. The main contention of the assessee is that no fresh notice under section 143(2) of the Act by the jurisdictional Assessing officer i.e., Income Tax Officer, Ward (International Taxation), Vijayawada has been issued to the assessee before framing the assessment under section 143(3) of the Act. However, as pointed out by the Ld. DR, assessee has participated in the proceedings consequent to the notices issued under section 142(1) of the Act and has not raised objections before the lower authorities questioning the jurisdiction of the Ld. AO to frame the assessment without issuing of notice under section 143(2) of the Act. The Hon’ble Supreme Court in the case of

DCIT v. Kalinga Institute of Industrial Technology [2023] 151 taxmann.com
434 (SC) held as follows: -

“Where High Court set aside notice issued under section 143(2) in case of assessee on ground that jurisdictional officer had not adjudicated upon returns as jurisdiction had been changed after returns were filed, since records revealed that assessee had participated pursuant to notice issued under section 142 (1) and had not questioned jurisdiction of Assessing Officer, in such case order of High Court could not be sustained.”

10. The Hon’ble High Court of Gauhati in the case of ITO v. Shankar Lall Goenka[2025] 174 taxmann.com 31 (Gauhati), has also made similar observations and held as follows: -

“Assessee is barred from challenging assessment proceedings for first time before Appellate Tribunal on ground of issuance of notice under section 143(2) by Income-tax Officer in light of provisions of section 292BB”

11. The Co-ordinate Bench of Raipur in the case of ITO v. Shree Banke Bihari Infracon (P.) ltd., [2024] 163 taxmann.com 344 (Raipur – Trib.) has also expressed the similar view as follows: -

“II. Section 124 of the Income-tax Act, 1961 - Assessing Officer - Jurisdiction of - Assessment year 2013-14 - Assessee challenged assessment order on ground that notice under section 143(2) was issued by an Assessing Officer who did not have jurisdiction over their case - Whether objection of assessee could not be accepted because assessee had not called in question jurisdiction of said Assessing Officer within specified time frame, as required by section 124 - Held, yes [Para 33] [In favour of revenue]”

12. Respectfully following the above judicial precedents, we are of the opinion that there is no merit in the argument of the Ld.AR challenging the

jurisdiction of the Ld. AO framing the assessment order under section 143(3) of the Act without issuance of notice under section 143(2) of the Act by the Jurisdictional Assessing Officer and hence additional ground raised by the assessee cannot be sustained and therefore dismissed.

13. On merits, Ld.AR argued that the assessee being an NRI and employee in USA has taken a loan of USD 2 Lakhs on 04.01.2020 vide an Approval Disclosure placed in Page No. 31 of the Paper book. He further submitted that this amount was sent through Western Union Money Transfer Agency on various dates to the brothers and cousins of the assessee in India which was later on deposited into his own account held in India. Ld.AR further submitted that the assessee could not transfer the funds to NRE Account as it was inoperative and could not be restored due to COVID restrictions. Ld.AR also invited our attention to page no. 62 of the paper book wherein the documentary evidences regarding the transfer of funds from Western Union Money Transfer Agency is acknowledged. Further he also referred to page no. 77 of the paper book wherein the name of the Pick-up persons and the amount in INR is clearly mentioned in the transfer details documents provided by the Western Union Money Transfer Agency. He therefore submitted that the sources being properly explained there cannot be any addition under section 69A of the Act as unexplained money in the hands of the assessee. Ld.AR also submitted that assessee has produced the cash flow statements as available in paper book in

page no. 80 clearly demonstrating the receipts and date of deposits in the bank account of the assessee. He therefore pleaded that addition made by the Ld. AO is not sustainable and hence prayed for its deletion.

14. Per contra, Ld. DR heavily relying on the orders of the Revenue Authorities vehemently argued that there is no nexus between the cash collected by the relatives of the assessee and the cash deposited into the assessee's account claimed to be done by such relatives. He invited our attention to the order of the Ld. CIT(A) wherein the Ld. CIT(A) has observed that no confirmation from the relatives have been obtained and furnished before the Revenue Authorities. He therefore pleaded that order of the Ld. CIT(A) be upheld.

15. We have heard both the sides and perused the material available on record. The case of the Ld. AO is that the assessee has made deposits amounting to Rs.1,76,84,000/- in the ICICI Bank Limited and Chaitanya Godavari Grameena Bank out of the funds claimed to have been transferred by assessee to the friends and relatives to India through Western Union Money Transfer Agency and HiFx Money Transfer Agency. The contention of the Ld.AO is there are banking channels available for making the transfer of amount in foreign currency, assessee has resorted to transfer the amount through Western Union Money Transfer Agency and HiFx Money Transfer Agency to his friends and relatives, even though the sources of funds has been stated to be

the loan availed by the assessee in USA amounting to USD 2 Lakhs. However, the contention of the revenue is the assessee has failed to establish the nexus between the amount transferred through Western Union Money Transfer Agency and collected by the friends and relatives of the assessee which was later on deposited into the bank accounts with a time delay.

16. Further, as pointed out by the Ld. DR, assessee has also failed to produce any confirmations in the form of affidavits from friends and relatives that the amounts received by them from the assessee has been deposited into the bank accounts of the assessee. Ld. CIT(A) even though accepted the identity of the sources, which was the loan taken by the assessee in USA, observed that the assessee has not proved beyond doubt by producing any documentary evidences confirming the nexus between the money received by the friends and relatives and the same has been deposited into the bank accounts of the assessee.

Ld.CIT(A) held as follows: -

"With regard to the transfer of the amounts from the loan, though the transfers are reflected in the statements of transferring agencies, the receipt of the same by the persons as claimed by the appellant or the person who received the cash in India could not be proved by the appellant on record, though he claimed that they are all his relatives and friends. Hence the observation of the AO in the order,

"However, the assessee has not produced any documentary evidence from the persons who have received money through 'Western Union' and HiFX' and deposited in Banks to verify the genuineness" was not disproved by the appellant even during the appellate proceedings also.

This leads to another question considering that the sources were in USD and the deposits were in Indian currency, then it needs to be answered by the appellant by whom and when the same was converted in to rupee after

receiving from the transfer agents with the reliable documentary evidences which is apparently missing in the case of the appellant. To that extent the genuineness of the transaction as claimed by the appellant is still doubtful and not satisfactorily explained.

Further with regard to the credit worthiness, if at all the relatives and friends who have received those amounts through wire transfer and they only had deposited the same in cash in the bank accounts of the appellant, it is the responsibility of the appellant to prove the same with a confirmation about the same from them. However both at the assessment and appellate proceedings the appellant has not even hinted or uttered a word about that except claiming that those persons are relatives and friends which was in vain for the cause of his case.”

17. We therefore direct the assessee to produce the confirmation letters / Affidavits from the friends and relatives who received the amounts through wire transfer and has deposited the same cash into the bank account of the assessee before the Ld. CIT. We therefore remit the issue to the file of Ld. CIT, directing him to provide one more opportunity of being heard to the assessee to furnish the relevant documents and decide the case on merits based on the information/documents furnished by the assessee. We thereby allow the ground No. 2 statistically.

18. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 26th November, 2025.

Sd/-
(रवीश सूद)

(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 26.11.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Ajithkumar Singu**
D.No. 8-76-1, Murikipurdi
Chilakaluripeta
Ramachandrapuram
Guntur – 522626
Andhra Pradesh
2. राजस्व/ The Revenue : **The Income Tax Officer**
Ward (International Taxation)
Income Tax Office
C.R. Building, Annex
M.G. Road
Vijayawada – 520002
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam