

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.:2419 & 2420/Chny/2025
निर्धारण वर्ष / **Assessment Years: 2013-14 & 2014-15**

Sundaram Subramanian, (rep. by legal heir: S. Sundaram), 2/8, Manimaheser, Isuherary Agraharam, Aranthangi, Pudukkottai – 614 616.	vs.	ITO, Circle -2(1), Trichy.
[PAN: AOXPS-6354-Q] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. Y. Sridhar, F.C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri. Shiva Srinivas, C.I.T.

सुनवाई की तारीख/Date of Hearing : 02.12.2025
घोषणा की तारीख/Date of Pronouncement : 12.01.2026

आदेश / O R D E R

PER S. R. RAGHUNATHA, AM:

These two appeals preferred by the assessee is directed against the two separate orders dated 31.07.2025 passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") Assessee for the Assessment Years (A.Y.) 2013-14 and 2014-15. The said orders emanate from the assessment framed by the National Faceless Assessment Centre (hereinafter referred to as the "AO") u/s.147 r.w.s 144B of the Income-tax Act, 1961 (hereinafter referred to as the

“Act”), vide assessment orders dated 14.03.2022 and 12.03.2022, for the Assessment Year 2013-14 and 2014-15 respectively.

2. The brief facts emanating from the records are that the assessee is an individual and had not filed the Return of Income for A.Y.2013-14 and A.Y. 2014-15. However, as per data available with the Department, the assessee had deposited substantial sums of cash in the Bank Accounts maintained by the assessee during financial years 2012-13 and 2013-14, and in the absence of any Return of Income for the relevant assessment years, the information formed the basis for Reopening of assessment by issue of notice u/s.148 of the Act.

3. Finally, the assessment orders were concluded for the A.Y. 2013-14 on 14.03.2022 and A.Y. 2014-15 on 12.03.2022, resulting in a taxation of income to the tune of Rs.5,86,78,109/- for A.Y.2013-14 and Rs.5,80,50,096/- for A.Y.2014-15. The additions were made u/s.68 of the Act by the AO holding that the source of cash deposited in four bank accounts held by the assessee was unexplained.

4. Aggrieved by the addition, the assessee had preferred an appeal for both assessment years before the Id.CIT(A) by principally contended that the cash deposited relates to the moneylending business activity undertaken by the assessee. Being a cash-intensive business, the withdrawals made earlier to fund the lending were subsequently received and re-deposited, and therefore when the source of cash deposited is proven to be out of withdrawals and to some extent by way of account transfers, the cash deposited cannot be treated as ‘unexplained’.

5. The Id.CIT(A) did not agree with the contention of the assessee and held all the grounds against the assessee on a finding that:

“a) The claim of moneylending business is devoid of merit as the mandatory moneylenders’ license was not furnished and neither were the particulars of the borrowers.

b) Even assuming for argument's sake that the assessee is a moneylender, on an annual income of Rs.5.82 crores for FY 2013-14, if the interest rate of 18% as an average is applied,

c) While the Assessing Officer had treated the cash deposit in the bank account as unexplained credit and brought to tax u/s.68, the appellant had contested the same stating that the addition needs to be treated as void as per the decision rendered by the Hon'ble Bombay High Court in the case of CIT v. Bhaichand H. Gandhi (1983) 141 ITR 67 (Bom). The Bombay High Court had held that Statement of Bank Account is not the Books of Accounts of the assessee therefore the addition made u/s.68 was incorrect and therefore the assessment order is void. To this, though the CIT(A) found that invocation of S. 68 to be legally flawed, since the factual position relating to unexplained cash deposits remains uncontroverted, in exercise of the powers vested u/s.251(1A) of the Act, the said addition was sustained under the correct provision being S.69A of the Act. According to the CIT(A), substantive legal misapplication can be corrected at the Appellate Stage to preserve the integrity of the proceedings.

d) During the course of appellate proceedings, the appellant attempted to argue that only the peak credit has to be taxed, on the assumption that the same cash was being rotated. To this, the CIT(A) clarified the argument to be hollow and legally unsustainable since no credible bank statement analysis, matching withdrawals or cash flow trial was furnished to prove rotation of the same funds was made to apply the peak credit theory.

e) The CIT(A) also did not entertain the ground that the books of accounts has to be rejected u/s.145(3) before concluding the assessment, as according to the CIT(A) the discharge of primary onus cast upon him to substantiate the nature and source of the cash deposits in his bank account was not accomplished.”

6. Accordingly, all the grounds of appeal of the assessee were dismissed. At the same time, the Id.CIT(A) concluded that while the original section invoked by the AO is incorrect, the addition is factually and legally unjustified u/s.69A and accordingly the addition was confirmed under the correct Section of the Act being S. 69A r.w.s 115BBE of the Act. Thus, the appeal of the assessee for both the years was dismissed.

7. Aggrieved by the conclusion drawn by the Id.CIT(A) in the appeals of both the assessment years, the assessee had fostered multiple grounds of appeal and primary among them which were sought to be adjudicated by us are given hereunder:

“i. The Ld. CIT(A) erred in substituting the charging provision from Section 68 to Section 69A without providing specific opportunity of being heard on this new ground, in violation of Section 251(2) of the Act and the principles of natural justice.

ii. The Ld. CIT(A) erred in sustaining the addition despite the fact that the books of accounts including cash book and ledger entries were not rejected u/s.145(3) and thus retain evidentiary value.

iii. The Ld. CIT(A) erred in rejecting the Peak Credit Method without considering withdrawals, inter-account transfers and re-deposits, particularly in a cash-intensive business where full documentation was unavailable due to lapse of time. The appellant prays that the peak credit computation be adopted and assessed income modified accordingly.

iv. The Ld. CIT(A) erred in dismissing the existence of a money-lending business solely on the absence of PANs or formal agreements, ignoring circumstantial, ledger-based and historical evidence including assessments of A.Y.2015-16 and 2016-17 where similar business activity was accepted.

v. The Ld. CIT(A) erred in treating total deposits of Rs.6.02 crore as unexplained without adjusting for withdrawals of Rs.7.74 crore and intra-account transfers of Rs.39,99,000/-, resulting in inflated and arbitrary additions. The appellant prays that the proper reconciliation be allowed and the addition be appropriately revised.

vi. The Ld. CIT(A) erred in dismissing the books of account and ledger entries outright, without finding any specific defects or providing an alternative method for computing income. The appellant prays that the evidentiary value of the books be restored and relied upon."

8. The Id.AR for the assessee Shri Y.Sridhar, FCA, submitted that the books of accounts in the form of cash book, bank book, copies of the bank statements, financials for both the assessment years, the ledger of interest received and interest paid, etc. were furnished before the AO at the time of assessment proceedings and also before the First appellate Authorities.

9. The Id.AR emphasized that the entries in the statement of bank accounts, by way of cash withdrawals and deposits by themselves are self-explanatory on the fact that the transactions are cyclical and therefore treating the entire amount of cash deposited during the years as unexplained was inappropriate.

10. The copies of the assessment orders for A.Y. 2015-16 and 2016-17 which were passed by the jurisdictional AO, the contention that the assessee is engaged in money lending business gets established. In this regard, the attention of this Bench was invited by the AR, the acceptance of the facts by the AO with regard to the following facts:

- a) Nature of business being moneylending undertaken at Aranthangi,
- b) Moneys lent to different debtors which are collected and deposited to the bank, most of it being cash transactions
- c) The amount collected from debtors represents receipt of interest along with principal amount from the debtors,
- d) The amount thus collected again being lent to various parties,
- e) Since there is a rotation of money several times, the money deposited in the bank account exceeds the amount of dues from the debtors at any point of time.

11. The Id.AR argued that if these finding of facts which had resulted in acceptance of the income returned in A.Y.2015-16 and 2016-17 are applied to the disputed assessment years, the claim of the assessee cannot be precluded.

12. The Id.AR further argued that for A.Y.2013-14, the average monthly value of advances is Rs.70.93 lakhs and that of A.Y. 2014-15 is Rs.48.67 lakhs. Even if the finding of the AO that interest at the rate of 18% would normally be the earnings from such moneylending, if these percentage is applied on the average monthly value of advances, the earnings should be of Rs.13.00 lakhs and Rs.9.00 lakhs (approximately) respectively. On the contrary, when the gross interest received and disclosed in the financials for the year stands at Rs.17,66,970/- for A.Y. 2013-14 and Rs.13,61,009/- for A.Y.2014-15, any further intervention to the income disclosed in the revised returns, was submitted to be unsolicited.

13. On the action on part of the Id.CIT(A) to modify the section under which the addition was made from S. 68 (wrongly made by the AO) to S. 69A (corrected by the Id.CIT(A)), the Id.AR stated that the same is not permissible under law and the provisions of section 251(1)(a), and even otherwise, the same cannot be undertaken , without bringing to the notice of the assessee.

14. The Id.AR pushed his cause, by emphasizing that the addition is not sustainable when the books of account were omitted to be rejected by the AO as per section 145(3) of the Act.

15. Finally, the Id.AR brought on record that without prejudice to the procedural irregularities, when the cash book and bank book, substantiate, that the source of cash deposited is out of earlier withdrawals from the same bank account, the source cannot be classified as undisclosed, unless the AO had proved that the cash withdrawn earlier was utilised elsewhere and that the cash deposited subsequently are distinct from the funds withdrawn.

16. Per contra the Id.DR made his strong representation, the order of the Id.CIT(A) needs to be sustained as the source of cash deposited is not properly explained. Moreover, it was argued that as per section 252(1)(a) the Id.CIT(A) has power to substitute the correct section while the powers of AO and Id.CIT(A) are coterminous.

17. We have heard the rival contentions perused the material available on record and gone through the orders of the authorities along with the paper book filed. The appeals pertain to A.Ys.2013-14 and 2014-15 and arise out of reassessment proceedings-initiated u/s.147 of the Act on account of substantial cash deposits in the assessee's bank accounts, in the absence of original returns of income. The core dispute before us revolves around the nature and source of cash deposits, the sustainability of addition u/s.68/69A of the Act, the powers of the Ld.CIT(A) to substitute the charging section, and the applicability of peak credit theory and evidentiary value of books of account.

18. Since facts and grounds are common, both appeals are disposed of by this consolidated order.

19. The AO made additions u/s.68 of the Act treating cash deposits in bank accounts as unexplained credits. It is a settled proposition of law, as laid down

by the Hon'ble Bombay High Court in CIT v. Bhaichand H. Gandhi (141 ITR 67), that bank statements per se do not constitute "books of account" of the assessee for the purpose of section 68 of the Act.

20. We find that the Ld.CIT(A) himself has accepted this legal infirmity and has categorically held that the invocation of section 68 by the AO was erroneous. However, instead of deleting the addition, the Ld.CIT(A) proceeded to sustain the same addition by invoking section 69A, exercising powers under section 251(1)(a)/(1A) of the Act. While it is true that the appellate authority has wide and coterminous powers with that of the Assessing Officer, such powers are not unbridled. Section 251(2) mandates that no enhancement or modification prejudicial to the assessee shall be made without providing a reasonable opportunity of being heard. In the present case the assessee was never put to notice that the addition proposed u/s.68 would be sustained u/s.69A of the Act, the nature of explanation and burden u/s.69A of the Act materially differs from section 68, and the assessee was deprived of an opportunity to specifically address the applicability of section 69A of the Act.

21. The Id.CIT(A) had suo moto concluded that the addition is factually and legally justified u/s.69A of the Act but failed to give an opportunity of being heard before drawing such conclusion. This action on part of the Id.CIT(A) is illegitimate as the same is not permitted under law and violates the provisions of section 251(2) of the Act.

22. Reliance is placed on the decision of the Calcutta High Court in the case of Vishal Jhajharia vs. Assessment Unit, Income-tax Department Faceless Assessment Centre [2024] 164 taxmann.com 781 (Calcutta)[27-06-2024] wherein it was held:

"Where revenue issued a show cause notice to assessee for adding back amount in question as 'unexplained cash credits' under section 68, it could not pass final order by adding said amount as 'unexplained money' under section 69A without giving assessee an opportunity to explain".

23. Therefore, we are of the considered view that the substitution of the charging provision from section 68 to section 69A without issuing a specific show-cause notice violates section 251(2) and principles of natural justice. On this ground alone, the impugned action of the Ld.CIT(A) cannot be sustained.

24. With regard to the finding of fact about nature of business by the AO and Id.CIT(A) that the claim of moneylending business by the assessee is unsupported and the objection raised by the assessee through the corresponding ground of appeal, we find that the Id.CIT(A) erred in assuming that there is no moneylending activity, despite the fact that the entries in the bank account prove its existence in the form of cyclic transactions.

25. Further, the order of the AO passed in A.Y.2015-16 and 2016-17, had clearly accepted this fact and have also appreciated that the cash deposited in the bank account is out of the interest earned on such money lending business and the principal collected from the debtors. Moreover, the profit and loss account and financials demonstrate that the assessee had carried on money lending business and that the interest and money in mode of cash collected from the debtors were only deposited in the bank accounts held by the assessee.

26. It is an undisputed fact that the assessee produced cash book, bank book, ledger accounts, financial statements, and copies of bank statements both before the Assessing Officer as well as before Id.CIT(A). However, neither the AO nor the Id.CIT(A) has rejected the books of account by invoking section 145(3) of the Act. No specific defects, inconsistencies, or falsities have been pointed out in the cash book or ledger entries. It is trite law that so long as books of account are not rejected in accordance with section 145(3), they retain their evidentiary value, and the entries therein cannot be brushed aside summarily. The approach of the lower authorities in disregarding books without statutory rejection is legally unsustainable.

27. Considering this ground, it is found that for making an addition u/s.68 of the Act, it is not mandatory for the AO to reject the books of account u/s.145(3) of the Act. Since, section 68 operates independently, and rejection of books is required only where income is sought to be estimated, or the correctness of accounts as a whole is in dispute. The addition made by the AO, irrespective of its correctness, is not pivoted to the entries in the books of accounts and its accuracy. Moreover, the addition is not made on an estimated basis and therefore, the corresponding ground of appeal of the assessee is dismissed.

28. The assessee has demonstrated that total cash withdrawals during the years exceed the total cash deposits, substantial deposits are preceded by withdrawals from the same or other bank accounts, and there are inter-account transfers amounting to Rs.39.99 lakhs. The Ld.CIT(A) rejected the peak credit theory on the ground that no credible working was furnished. However, the record shows that bank statements and cash book entries were available, evidencing cyclical movement of funds. In a situation where the Revenue does not dispute the fact of withdrawals, there is no finding that withdrawn cash was utilised elsewhere, and the business is admittedly cash-intensive, taxing the gross amount of deposits leads to manifestly inflated and unrealistic additions.

29. The argument of the Id.AR that unless the AO is able to substantiate that the money withdrawn have been utilized elsewhere and does not fund the investment made in the form of cash deposits subsequently, it needs to be necessarily presumed that the cash deposited is sourced out of earlier withdrawals only, more particularly when they are undertaken in the same bank accounts held by the assessee.

30. This legal position has been explained by Karnataka High Court in the case of S.R. Venkatraman vs. CIT reported in 127 ITR 807 (Kar), wherein it has been held that, once the assessee disclosed the source as withdrawals made on a given date from a given bank, it was not open to the revenue to examine as to what the assessee did with that money and it cannot chose to disbelieve

the plea of the assessee merely on the surmise that it would not be probable for assessee to keep the money unutilized.

31. It is settled position of law that when the assessee has given an explanation regarding source of the credit/currency, which is plausible/probable from prudent person point of view, then, it can't be rejected by the AO without having any material to rebut the plausible explanation given by assessee. The Hon'ble Supreme Court in the case of Sreelekha Banerjee & Ors. v. CIT reported in [1963] 49 ITR 112 (SC), observed that:

“the department could not act unreasonably and reject that explanation to hold that it was income. If, however, the evidence was unconvincing then such rejection could be made. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof”.

32. In the present facts of the case, we note that the assessee is into the business of money lending and the cash deposits have been made into the bank accounts out of the collection from the finance debtors (Innums) and earlier cash withdrawals from the bank accounts. However, we note that the interest revenue shown in the profit and loss account is low, when compared to the Finance receivables shown in the Balance sheet. Therefore, in the interest of natural justice and fairplay we are estimating the interest revenue @ 18% per annum of the total receivables shown in the balance sheet as at the end of the respective financial year. Accordingly, we are directing the AO to make following addition to the total income, which is the difference between the Interest @ 18% per annum and the interest income shown in the profit and loss account.

A.Y.	Financial debtors at the end of the year	Interest @ 18% on Debtors	Interest shown in P & L by the assessee	Difference to be added to Income
2013-14	1,03,01,832	18,54,330	13,61,009	4,93,321
2014-15	1,64,68,859	29,64,395	17,66,970	11,97,425

33. In light of the above reasoning and findings, in the present facts of the case and circumstances, we delete the additions made u/s.68 / 69 of the Act and set aside the order of the Id.CIT(A). We direct the AO consider the above-

mentioned difference as additional income to make addition to the declared income of the assessee for the respective assessment years.

34. In the result, both the appeals of the Assessee are partly allowed.

Order pronounced in the open court on 12th January, 2026 at Chennai.

Sd/-

(मनु कुमार गिरि)
(MANU KUMAR GIRI)

न्यायिक सदस्य/**Judicial Member**

Sd/-

(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 12th January, 2026

SP

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF