

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.14/RPR/2026**

**निर्धारण वर्ष / Assessment Year : 2020-21**

Durgawati Panday  
Ward No.9, Mahalpara,  
Baikunthpur, Koriya  
Chhattisgarh-497 335  
PAN: DSIPP8404G

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 1, Ambikapur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prashant Gupta, CA  
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 04.02.2026

घोषणा की तारीख / Date of Pronouncement : 16.02.2026

**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 19.11.2025 for the assessment year 2020-21 as per the following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax Appeals erred in partly sustaining the addition of 10,00,000 u/s. 69A, out of the total addition of Rs.15,00,000 relating to loan received from Shri Pravesh Dwivedi, merely on the ground of alleged insufficiency or creditworthiness. The learned CIT appeals has categorically accepted the identity of the lender and the genuineness of the transaction on the basis of affidavit, ITR and banking records and having done so, the sustenance of balance addition is internally inconsistent, arbitrary and based on conjectures without bringing any adverse material on record. Once primary onus u/s.69A stood discharged, the partial rejection of the same evidence violates settled principles of law. The addition of Rs.10,00,000 is therefore unsustainable and liable to be deleted in full.

2. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax Appeals erred in partly sustaining the addition of Rs.6,61,000, despite accepting availability of explained sources to the extent of Rs.5,00,000. The learned CIT Appeal has acknowledged that the cash deposits were sourced from the opening cash balance, agricultural income, rental income and interest income accumulated over earlier years, yet arbitrarily restricted acceptance to 5,00,000 based on assumptions regarding social stature and alleged probability of cash accumulation. Such partial acceptance, without rejecting books, without disproving sources and without contrary evidence, is contrary to law and violates the rule of consistency. The sustained addition of Rs.6,61,000 is based purely on presumptions and surmises and deserves to be deleted in entirety.

3. The learned Assessing Officer erred in law by passing the final assessment order under section 147 read with section

144B without valid service of a proper show cause notice of proposed variation, as mandated under section 144B xvi. Non-compliance with mandatory faceless assessment procedure renders the impugned assessment order void ab initio and liable to be quashed on this ground alone.

4. The appellant submits that the addition sustained are highly debatable, based on presumptions and contrary to settled legal principles. The appellant has limited means of livelihood, with income mainly from agriculture, rent and interest and is not in a position to bear the burden of the disputed demand. The balance of convenience lies in favour of the appellant and recovery at this stage would cause irreparable hardship. The appellant therefore prays that the entire outstanding demand be stayed still disposal of the present appeal.”

2. Brief facts in this case are that the assessee had taken loan of Rs.15 lakhs from Pravesh Dwivedi. The A.O added this amount in the hands of the assessee for the reason that the assessee was not able to furnish ITR of the said Pravesh Dwivedi and the additions were made u/s. 69A of the Income Tax Act, 1961 (for short ‘the Act’).

3. That before the Ld. CIT(Appeals)/NFAC, the assessee had furnished ITR of the loan creditors i.e. Pravesh Dwivedi for A.Y.2020-21 showing returned income of Rs.4,97,820/-. That on the basis of this ITR, the Ld. CIT(Appeals)/NFAC allowed relief of Rs.5 lakhs and sustained the addition of Rs.10 lakhs in the hands of the assessee as unexplained money u/s. 69A of the Act.

4. I am of the considered view that the A.O had applied wrong provisions of the Act i.e. Section 69A of the Act while making the addition

on the issue since it is a loan transaction and if at all, additions were to be made, it should have been done u/s.68 of the Act i.e. unexplained cash credit in the hands of the assessee. The Revenue should have examined the applicability of Section 68 of the Act to the facts of the assessee's case. Section 69A of the Act on the other hand applies to unexplained money, bullion, jewelry or other valuable article for which the assessee has not furnished any explanation about the nature and source of such money, bullion, jewelry or other valuable article etc. This wrong application of provision of law to the facts and circumstances of the case regarding a particular assessee tantamounts to non-application of mind by the quasi-judicial authority. 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 A.O as well as by the Ld. CIT(Appeals)/NFAC. That 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, 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 assessee 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.”

5. 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."

6. Considering the afore-stated legal principles and on examination of the facts and circumstances, **Ground of appeal No.1** raised by the assessee is allowed and the A.O is directed to provide appeal effect of this order.

7. Further, as regards the issue of cash deposits of Rs.11,61,000/-, the assessee has explained before the Ld. CIT(Appeals)/NFAC as follows:

"...There is opening balance of cash of Rs.9,45,000/- and the rent income of Rs.1.80 lac along with interest income of Rs.1,20,000/- and net agricultural sale receipt of Rs.1,25,000/- (1,90,000-65,000/) which accumulates to total cash available as Rs.14,35,000/-. As per the appellant, it is continuous accumulation of cash for three years. The evidence of agricultural holding has also been furnished."

The Ld. CIT(Appeals)/NFAC without conducting any independent inquiry nor without any proper reasoning sustained the addition of Rs.6,61,000/- i.e. [Rs.11,61,000/- (-) Rs.5,00,000/-] by holding that the theory of accumulation of cash for three years appears to be an afterthought. Thereafter, the Ld. CIT(Appeals)/NFAC goes to the land holding and social stature of the assessee and accordingly, inferred that considering all these Rs.5 lakhs cash during the year should have been available with the assessee and therefore, the remaining amount of Rs.6,61,000/- was sustained and added in the hands of the assessee as unexplained money u/s. 69A of the Act.

8. That on careful consideration of all documents on record, submissions of the parties herein, I find that the assessee has explained the cash balance, rental income and interest income and the net agricultural sale receipts which accumulates to the total cash available at Rs.14,35,000/- and this was the continuous accumulation of cash for three years. Both the quasi-judicial authority had made/sustained the addition only on the basis of guess work and surmises without bringing any cogent evidence against the assessee. The Ld. CIT(Appeals)/NFAC has not conducted any independent enquiry and had simply rejected the contentions raised by the assessee without assigning any reasoning for its decision as per record. The findings are not in terms with Section 250(4) &

(6) of the Act. The Ld. CIT(Appeals)/NFAC had not brought on record any comparative study for the extent of the addition as sustained by it. The assessee on the other hand had duly explained the nature and source of the cash deposits. Therefore, I set-aside the order of the Ld. CIT(Appeals)/NFAC and direct the A.O to delete the additions from the hands of the assessee while giving appeal effect of this order. Thus, the **Ground of appeal No.2** raised by the assessee is allowed.

9. Since the appeal of the assessee is allowed as per afore-stated terms, therefore, other grounds i.e. **Ground of appeal Nos. 3 & 4** becomes academic only.

10. In the result, appeal of the assessee is allowed.

Order pronounced in open court on 16<sup>th</sup> day of February, 2026.

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

रायपुर / Raipur; दिनांक / Dated : 16<sup>th</sup> February, 2026.

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