



**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH "DB", JABALPUR**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI, ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No. 70/JAB/2023
Assessment Year: 2017-18

Ambikesh Kumar Singh Marition School, Ke samne South Karaundiya Sidhi - 486661.	v.	The ITO – Ward Singrauli Singrauli-486886.
PAN:DZAPS6741C		
(Appellant)		(Respondent)

Appellant by:	Shri Gagan Tiwari, C.A.		
Respondent by:	Shri Narendra Mulai Prasad, JC-1		
Date of hearing:	09	02	2026
Date of pronouncement:	19	02	2026

ORDER

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, filed by the assessee, against the order dated 18.03.2023 of learned Commissioner Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred as to "Ld. CIT(A)"] pertaining to the assessment year 2017-18. The Assessee has raised the following grounds of appeals: -

- "1. That on the facts and in the circumstances of the case the order of the learned lower authorities are vitiated on several grounds hence the same may kindly be quashed.*
- 2. That the order of the learned lower authorities passed are unlawful and illegal.*
- 3. That the learned lower authorities were not justified in not allowing proper and meaningful opportunity of being heard.*
- 4. That the various findings of the learned lower authorities are opposed to the facts hence the same may kindly be quashed.*
- 5. That on the facts and in the circumstances of the case the order of the learned assessing officer erred in making and the learned CIT Appeals in confirming the addition on account of cash deposit in bank account of Rs.57,40,900/- u/s 69A r.w.s. 115BBE of the Act as unexplained cash credit.*
- 6. That the above grounds are independent to each other."*

2. The facts giving rise to the present appeal are that in this case, the Assessing Officer ("AO", for short) was having information regarding the cash deposits amounting to Rs.57,40,900/- made in the bank account of the assessee. Therefore, the case was selected for limited scrutiny. Accordingly, notice u/s 143(2) of the Income Tax Act, 1961 ("Act", for short) was issued to the assessee but there was no compliance or representation on behalf of the assessee. Consequently, the AO proceeded *ex parte* to the assessee and framed the assessment u/s 144 of the Act. In the said assessment order, he made an addition of Rs.57,40,900/- to the returned income of the assessee and thereby assessed the total income at Rs.60,56,620/-. Aggrieved by this, the assessee preferred appeal before the Ld. CIT(A), who also dismissed the appeal of the assessee. Now the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal, the Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. For the sake of clarity and ready reference, the written submissions filed by the assessee are reproduced as under: -

1. INTRODUCTION AND BACKGROUND

1. The Appellant, Shri Ambikesh Kumar Singh (PAN: DZAPS6741C), is an individual resident of Sidhi, Madhya Pradesh, engaged in the business of retail trading of Coca-Cola products as a small dealer.
2. The Appellant filed his Return of Income for Assessment Year 2017-18 on 10.09.2017 under Section 44AD of the Income Tax Act, 1961 ('the Act'), declaring total income of Rs. 3,15,720/- vide Acknowledgement No. 205174210100917.
3. The case was selected for limited scrutiny based on Annual Information Return (AIR) data indicating cash deposits in the Appellant's bank account during the Financial Year 2016-17 relevant to Assessment Year 2017-18.
4. The Assessing Officer ('AO') completed the assessment under Section 144 of the Act on 10.12.2019, making an addition of Rs. 57,40,900/- treating the same as unexplained money under Section 69A r.w.s 115BBE of the Act, thereby assessing total income at Rs. 60,56,620/-.
5. Aggrieved by the assessment order, the Appellant filed an appeal before the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ('CIT(A)'), which was dismissed vide order dated 18.03.2023 bearing DIN ITBA/NFAC/S/250/2022-23/1050935059(1).
6. Being aggrieved by the impugned order of the Ld. CIT(A), the Appellant is now before this Hon'ble Tribunal seeking justice and relief from the arbitrary and erroneous additions made by the revenue authorities.

7. **Return of Income Filed:**
The Appellant filed his Return of Income for Assessment Year 2017-18 on 10.09.2017 declaring total income of Rs. 3,15,720/- under the presumptive taxation scheme provided under Section 44AD of the Act. The return was filed electronically vide Acknowledgement No. 205174210100917.

8. **Nature of Business:**
The Appellant is a small retail dealer of Coca-Cola products operating in Sidhi district, Madhya Pradesh. The business primarily involves cash transactions as is customary in the retail trade of fast-moving consumer goods (FMCG) in semi-urban and rural areas.

9. **Bank Account Details:**
The Appellant maintained a Current Account with State Bank of India, Sidhi City Branch, bearing Account Number 35160403315 (IFSC Code: SBIN0012272) for business operations. During the Financial Year 2016-17, the Appellant deposited business receipts in this account.

10. **Cash Deposits and Business Receipts:**
During the Financial Year 2016-17 (relevant to Assessment Year 2017-18), the Appellant made the following deposits in his bank account:

S.No.	Particulars	Amount (Rs.)
1.	Cash Deposits (Business Receipts from Customers)	57,40,900/-
2.	Direct Bank Credits (Digital Payments)	8,29,494/-
Total Business Turnover		65,70,394/-

All these deposits represented legitimate business receipts from customers in the ordinary course of business operations. The cash component is natural and expected in the retail FMCG business, particularly in semi-urban areas where cash transactions predominate.

3. ASSESSMENT PROCEEDINGS

11. Selection for Scrutiny:

The case was selected for limited scrutiny pursuant to information received in the Annual Information Return (AIR) regarding cash deposits of Rs. 57,40,900/- made in the Appellant's bank account during Financial Year 2016-17.

12. Notices Issued:

The following statutory notices were issued by the AO during the assessment proceedings:

S.No.	Section	Date of Issue	Hearing Date
1.	143(2)	13.08.2018	24.08.2018
2.	143(2) (After Transfer)	12.09.2018	25.09.2018
3.	142(1)	05.10.2019	15.10.2019
4.	142(1)	02.11.2019	11.11.2019

5.	Show Cause Notice	26.11.2019	09.12.2019
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13. Transfer of Case:

The case was initially assessed by ITO-1(1), Ujjain and was later transferred to ITO, Ward Singrauli. A fresh notice under Section 143(2) was issued on 12.09.2018 after the transfer.

14. Non-Compliance due to Unavoidable Circumstances:

The Appellant could not attend the hearing dates or respond to the notices issued by the AO due to unavoidable family circumstances. Specifically, the Appellant's sister was admitted to a hospital outside the town, requiring the Appellant's presence and making it impossible to attend to the assessment proceedings.

15. Best Judgment Assessment under Section 144:

In view of the non-compliance by the Appellant, the AO completed the assessment under Section 144 of the Act (Best Judgment Assessment) on 10.12.2019, without affording proper opportunity to the Appellant to explain the source and nature of cash deposits.

4. GROUNDS FOR ADDITION BY THE ASSESSING OFFICER

16. The AO made an addition of Rs. 57,40,900/- under Section 69A of the Act treating the entire cash deposits in the bank account as 'unexplained money'. The AO applied the special tax rate under Section 115BBE of the Act to this addition.

17. The grounds on which the AO proceeded to make the impugned addition are as follows:

- The Appellant failed to respond to any of the statutory notices issued during the assessment proceedings, including notices under Sections 143(2), 142(1), and the show cause notice.
- The cash deposits of Rs. 57,40,900/- during Financial Year 2016-17 appeared to be made to convert undisclosed income into 'clean money' to evade taxation.
- From the transactions in the bank account, the Appellant's business could not be established by the AO.
- The entire cash deposit was therefore treated as undisclosed income of the Appellant and assessed as unexplained money under Section 69A of the Act.
- Such undisclosed income was subjected to tax at special rates according to Section 115BBE of the Act.

18. Consequently, the total income was assessed at Rs. 60,56,620/- as computed below:

Income as per Return filed by Appellant	Rs. 3,15,720/-
Add: Addition under Section 69A	Rs. 57,40,900/-
Total Income Assessed	Rs. 60,56,620/-

19. Penalty proceedings under Section 271AAC and Section 272A(1)(d) of the Act were also initiated separately.

5. FIRST APPELLATE PROCEEDINGS BEFORE THE CIT(A)

20. Appeal Filed:

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Being aggrieved by the assessment order dated 10.12.2019 passed under Section 144 of the Act, the Appellant filed an appeal before the Commissioner of Income Tax (Appeals) on 22.02.2020. The Demand Notice was received by the Appellant on 05.01.2020, and the appeal was filed with a delay of 17 days.

21. Condonation of Delay:

The Appellant submitted an application for condonation of delay of 17 days in filing the appeal. The explanation provided was that the Appellant's sister was admitted to a hospital outside the town, and it was not possible to leave her during this period. The Ld. CIT(A) considered the reasons and condoned the delay in filing the appeal.

22. Migration to National Faceless Appeals Centre (NFAC):

Subsequently, the appeal was migrated to the National Faceless Appeals Centre (NFAC) vide CBDT Notification No. 76 of 2020 dated 25.09.2020.

23. Submissions Made Before the CIT(A):

The Appellant filed online written submissions before the NFAC setting forth the following contentions:

- The Appellant is a small retailer of Coca-Cola products in Sidhi district engaged in legitimate business operations.
- The Return of Income was filed under Section 44AD (Presumptive Taxation Scheme for Small Businesses) declaring income at the prescribed presumptive rate.
- During Financial Year 2016-17, the Appellant received business receipts as follows:

Cash Deposits	Rs. 57,40,900/-
Bank Credits (Digital)	Rs. 8,29,494/-
Total Business Turnover	Rs. 65,70,394/-

- Under Section 44AD, profit should be computed at the following rates on the gross receipts:

8% of Cash Receipts (Rs. 57,40,900/-)	Rs. 4,59,272/-
6% of Bank Credits (Rs. 8,29,494/-)	Rs. 49,770/-
Total Taxable Income	Rs. 5,09,042/-
Income Declared in Return	Rs. 3,15,720/-
Differential Amount	Rs. 1,93,322/-

- The Appellant requested the Ld. CIT(A) to consider this plea and allow the Appellant to pay tax on the differential amount of Rs. 1,93,322/- along with applicable interest.
 - The Appellant clarified that the bank account maintained is a Current Account (not a savings account as mentioned in the assessment order) bearing Account Number 35160403315, IFSC Code SBIN0012272 with State Bank of India, Sidhi City Branch.
 - All cash deposits represented business receipts from customers in cash, which is the normal mode of transaction in the retail FMCG business in the local area.
- 24. Decision by the Ld. CIT(A):**

The Ld. CIT(A) vide order dated 18.03.2023 bearing DIN ITBA/NFAC/S/250/2022-23/1050935059(1) dismissed the appeal filed by the Appellant and confirmed the addition of Rs. 57,40,900/- made by the AO under Section 69A r.w.s 115BBE of the Act.

25. Reasons Given by the Ld. CIT(A):

The Ld. CIT(A) dismissed the appeal on the following grounds:

- The Appellant failed to submit any explanation before the AO during the assessment proceedings to substantiate that the cash deposits were made out of cash sales.
 - Nothing was noticed in the bank statement to show that the cash deposits were made out of cash sales.
 - The cash deposits remained unexplained and hence the addition made by the AO was justified.
 - Despite being given multiple opportunities by the AO, the Appellant failed to comply with statutory notices.
- Accordingly, all grounds of appeal taken by the Appellant were dismissed, and the appeal was disposed of.

6. SUBMISSIONS AND GROUNDS BEFORE THE HON'BLE ITAT

26. The Appellant most respectfully submits that the orders passed by the Ld. AO and Ld. CIT(A) are contrary to law, facts, and natural justice. The Appellant seeks relief on the following grounds:

A. Violation of Principles of Natural Justice

27. The Ld. lower authorities were not justified in not allowing proper and meaningful opportunity of being heard to the Appellant. The non-compliance by the Appellant was on account of unavoidable family circumstances (hospitalization of sister), which was bonafide and genuine. Instead of making reasonable efforts to contact the Appellant or providing alternative opportunities, the AO proceeded to complete the assessment ex-parte under Section 144, which is arbitrary and against the principles of natural justice.

B. Erroneous Addition under Section 69A

28. The addition of Rs. 57,40,900/- under Section 69A as unexplained money is wholly unjustified, illegal, and contrary to facts for the following reasons:

a) Cash Deposits were Business Receipts:

The Appellant is engaged in the retail business of Coca-Cola products, which is predominantly a cash-intensive business. The cash deposits in the bank account represented legitimate business receipts from customers, which were deposited in the regular course of business operations. The AO failed to appreciate this fundamental fact.

b) Return Filed under Section 44AD:

The Appellant had duly filed the Return of Income under Section 44AD (Presumptive Taxation Scheme). This section is specifically designed for small businesses to facilitate ease of compliance. Under this scheme, the Appellant is not required to maintain detailed books of account or prove individual transactions. The scheme itself presumes profit at prescribed rates (8% for cash receipts and 6% for digital receipts) on the gross receipts.

c) **Misapplication of Section 69A:**
Section 69A applies to 'unexplained money' found to be owned by the assessee but the source of which is not satisfactorily explained. In the present case, the cash deposits are not 'unexplained money' but represent business receipts disclosed in the return filed under Section 44AD. The AO wrongly characterized business receipts as unexplained money without any basis.

d) **Business Established through Return and Bank Account:**
The AO's finding that 'business could not be established' is perverse and contrary to record. The Appellant filed a return declaring business income under Section 44AD, maintained a Current Account for business transactions, and regularly deposited business receipts. These facts clearly establish the existence of a bonafide business.

e) **No Basis for Treating as Undisclosed Income:**
The AO made a sweeping assumption that the cash deposits were made to convert undisclosed income into 'clean money' without any material evidence or basis. This is pure conjecture and speculation on the part of the AO, which cannot be sustained in law.

C. Correct Computation of Income under Section 44AD

29. Even if it is assumed that there was some shortfall in the income declared in the return, the correct approach would have been to compute the income under Section 44AD on the basis of gross receipts as follows:

S.No.	Particulars	Amount (Rs.)
1.	Cash Receipts from Business	57,40,900/-
2.	Bank Credits (Digital Payments)	8,29,494/-
Total Gross Receipts		65,70,394/-
3.	Presumptive Profit @ 8% on Cash (Rs. 57,40,900/-)	4,59,272/-
4.	Presumptive Profit @ 6% on Digital (Rs. 8,29,494/-)	49,770/-
Total Income as per Section 44AD		5,09,042/-
5.	Less: Income Declared in Return	3,15,720/-
Maximum Differential Amount (if any)		1,93,322/-

Thus, even on the most adverse interpretation, the maximum addition that could have been made is Rs. 1,93,322/- (representing the shortfall in declaring presumptive profit). The addition of the entire gross receipts of Rs. 57,40,900/- as unexplained money is wholly unjustified and exorbitant.

D. Inapplicability of Section 115BBE

30. Section 115BBE provides for taxation at special rates in respect of income referred to in Sections 68, 69, 69A, 69B, 69C, or 69D. However, this section cannot be applied in the present case for the following reasons:

a) The cash deposits are not 'unexplained money' under Section 69A but represent declared business receipts.

- b) The Appellant has filed return under Section 44AD declaring business income, and therefore the provisions of Section 115BBE cannot be invoked.
- c) The applicability of Section 115BBE is contingent upon satisfaction of Section 69A, which itself is not satisfied in this case.

E. Ex-Parte Assessment is Bad in Law

31. The assessment completed under Section 144 without affording proper opportunity to the Appellant is bad in law. The Appellant's non-compliance was due to genuine family emergency (hospitalization of sister), which was beyond the Appellant's control. The AO should have made reasonable efforts to contact the Appellant or provide alternative opportunities before resorting to ex-parte assessment. The arbitrary exercise of power under Section 144 violates principles of natural justice.

F. Erroneous Finding by CIT(A)

32. The Ld. CIT(A) erred in confirming the addition without appreciating the following:
- The Appellant's business is established by the filing of return under Section 44AD, maintenance of Current Account, and regular business operations.
 - Cash transactions are normal and customary in retail FMCG business, particularly in semi-urban areas.
 - The provisions of Section 44AD do not require maintenance of detailed books of account or proof of individual transactions.
 - The finding that 'nothing was noticed in bank statement to show cash sales' is misplaced since bank statements naturally only show deposits and withdrawals, not the source documentation.

7. PRAYER

In light of the above facts and submissions, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- Set aside the impugned orders passed by the Ld. Commissioner of Income Tax (Appeals) dated 18.03.2023 and the Ld. Assessing Officer dated 10.12.2019.
- Delete the addition of Rs. 57,40,900/- made under Section 69A r.w.s 115BBE of the Income Tax Act, 1961.
- Alternatively, direct the Ld. Assessing Officer to compute the income under Section 44AD on the basis of gross receipts and restrict any addition to the differential amount, if any, between the income computed under Section 44AD and the income declared in the return.
- Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

For this act of kindness, the Appellant shall duty bound forever pray.

4. On the other hand, the Ld. Departmental Representative (DR) for the Revenue opposed the submissions of the assessee and contended that the assessee failed to satisfactorily explain

and substantiate the source of the cash deposits made in the bank account. Therefore, authority below was justified in sustaining the addition.

5. We have heard rival contention and perused the materials available on records. The assessee has filed bank statements of his account showing cash deposits at regular intervals during the year under consideration, along with payments made to Udaipur Beverages Ltd. It is stated that the assessee is engaged in the retail business of Coca-Cola products in Sidhi District, Madhya Pradesh, where transactions are primarily carried out in cash. The assessee has declared profit of Rs. 3,15,720/- u/s 44AD of the Act on a presumptive basis. According to the assessee, the amounts deposited in the bank account represent cash sales as made during the year in the normal course of business, wherein the commodities are largely sold on cash basis. Looking to the totality of the facts of the case, and to sub-serve the interest of substantive justice, we hereby set aside the impugned order and restore the assessment to the file of the Assessing Officer who would verify the claim of the assessee by making necessary inquiry and make assessment afresh, after giving adequate opportunity of being heard to the assessee. Grounds of appeal of the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 19/02/2026.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 19/02/2026

Vijay Pal Singh, (Sr. PS)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
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By order

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Assistant Registrar
ITAT, Jabalpur