

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW
BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.13/LKW/2024
A.Y. 2018-19

Ram Nath Jaiswal, 8/10/190, Naka Muzaffra, Faizabad H.O. Faizabad, Ambedkar Nagar, 224001, U.P.-224001	vs.	Commissioner of Income-Tax (Appeals), Lucknow
PAN: ABRPJ2073L		
(Appellant)		(Respondent)

S.A. No. 1/LKW/2026
(in ITA No. 13/LKW/2024)
A.Y. 2018-19

Ram Nath Jaiswal, 8/10/190, Naka Muzaffra, Faizabad H.O. Faizabad, Ambedkar Nagar, 224001, U.P.-224001	vs.	Deputy Commissioner of Income-Tax (Appeals), Faizabad
PAN: ABRPJ2073L		
(Appellant)		(Respondent)

Assessee by:	Sh. Akash Agrawal, C.A.
Revenue by:	Sh. R.R.N. Shukla, Addl CIT DR
Date of hearing:	22.01.2026
Date of pronouncement:	26.02.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the orders of the Id. CIT(A), NFAC under section 250 of the Income Tax Act, 1961 on 30.11.2023 wherein the Id. CIT(A) has dismissed the appeal of the assessee against the orders of the National e-Assessment Centre passed under section 143(3) of the Income Tax Act on 7.04.2021 in respect of the A.Y. 2018-19 and a stay application filed for stay of balance demand not already collected. The grounds of appeal are as under:-

“1. That the Ld. Commissioner of Income Tax (Appeal) has erred on facts in confirming the addition of Rs. 72,42,831 u/s 69A of the Income Tax Act, 1961 made by the Assessing Officer on the pretext of the Appellant's inability to meet the onus of proving the legitimacy of the cash transaction by overlooking the fact that the said addition was made by the Assessing Officer on account of non-furnishing of copy of sales ledger, cash book and corresponding cash deposits in the bank account but the same were duly furnished before the Commissioner of Income Tax Appeals vide our submission dated 24/08/2023 As such, the addition confirmed is purely on the basis of presumptions and overlooking of facts. Thus, the same deserves to be deleted.

2. That the Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts by confirming the applicability of Section 69A of the Income Tax Act, 1961 by treating the said cash deposit as unexplained money and not recording in books of accounts without appreciating the fact that each and every cash was duly recorded in books of accounts. Further, the Financial Statement was audited by an independent auditor and the same was duly furnished before the Assessing Officer and Commissioner of Income Tax Appeals and thus invoking the provisions of Section 69A as unexplained money to the cash deposits made was not warranted and the addition cannot be sustained.

3. That the Ld. Commissioner of Income Tax Appeals has erred on facts in confirming the addition of 26,72,000 made by the Assessing Officer without appreciating the fact that the said amount was duly corroborated with documentary evidences by the assessee during the time of assessment proceedings only as the entire issue of unexplained investment arose due to cash only whereas each and every periny of cash is accounted for and thus the said addition deserves to be deleted as it is completely justified and corroborated with documentary evidences.

4. That the Ld. Commissioner of Income Tax Appeals has confirmed the assessment order passed by the NeAC despite the fact that NeAC has passed the assessment order in a haste by overlooking the documents/information provided during the course of assessment proceedings and merely mentioning that the onus was on the assessee which is against the law as if the NeAC required any further documents/information, it had time to issue notice and seek the same. As such, the order passed is against the principles of natural justice.

5. That the appellant begs to amend, alter or raise any ground of appeal during the course of appellate proceedings.”

2. The facts of the case are that the assessee e-filed a return of income on 13.12.2018 showing taxable income of Rs. 49,98,542/-. The case was selected for scrutiny on account of high-risk transactions that were reported in STR. As per the STR, it was seen that assessee had deposited cash amounting to Rs. 2,39,04,759/-

in an account with the Oriental Bank of Commerce, Faizabad. Accordingly, the assessee was asked to explain the same. It was submitted that the source was related to liquor retail sale where the sale was made mainly in cash. However, the assessee did not furnish any cash flow statement with the reply and so was again requested to furnish a cash flow statement highlighting the cash deposits in the bank account. A show cause notice was issued to the assessee and in response to the same, the assessee submitted a cash flow statement for the F.Y. 2017-18 which revealed cash deposit / withdrawal in bank and other heads inflow and outflow. However, the ld. AO observed that total cash deposits in the said account were to the tune of Rs. 1,28,67,831/- while cash withdrawals amounted to Rs. 56,25,000/- . Allowing the assessee the benefit of the withdrawals, he held that the balance of Rs. 72,42,831/- was unexplained. The ld. AO also pointed out that the cash withdrawal of Rs. 62,25,000/- from partnership firm M/s Ram Nath Jaiswal and cash receipts of Rs. 25,000/- from debtors were also not explained and no account had been furnished with regard to cash receipt from cash sales of the partnership firm M/s Ram Nath Jaiswal. The ld. AO accordingly added back Rs. 72,42,831/- as unexplained money under section 69A of the Income Tax Act and brought the same to tax under section 115BBE. The ld. AO also noted that the assessee had made an investment of Rs. 2,72,32,982/- in the purchase of immovable property during the assessment year 2018-19. He asked the assessee to explain the sources thereof. After considering the explanation submitted by the assessee, he was not convinced with regard to the claim of the assessee regarding transfer of Rs. 25,10,000/- from Sh. Ajit Kumar Verma to the additions in the house and he computed the total discrepancy regarding the sources of payment to be Rs. 26,72,000/- which he added back as unexplained investment under section 69 of the Act.

3. Aggrieved with the said order, the assessee went in appeal before the ld. CIT(A). Before the ld. CIT(A), it was submitted that the assessee was engaged in the business of sale and purchase of Liquor in and around Faizabad. He had reported sales of Rs. 16,94,28,909.5/- in liquor and sales from Blue Mango amounting to Rs. 1,12,656/-. During the course of assessment proceedings, the

assessee had been asked to explain the sources of investment in FDRs and cash deposits in his bank account no. 02941131001826 and to furnish a cash flow statement. However, it was pointed out that in fact the cash deposit in the said account no. 02941131001826 was only Rs. 1,28,67,831/- and not Rs. 2,39,04,759/- as reported by the AO which in itself demonstrated that the AO had not checked the details in the said bank account and had simply issued the notices mechanically, without trying to verify the transactions. It was further submitted that the assessee had submitted the cash flow statement, the bank account statement and details of withdrawals made from the bank account maintained by the assessee, withdrawals from firm where the assessee was a partner etc., He had also submitted details of the cash deposited in the bank accounts, self-expenses incurred for the purchase of car, house construction etc., cash paid to creditors and cash paid for other expenses, leading to a closing balance of Rs. 85,102.24/- which was duly reflected in the balance-sheet that had been audited by an independent Chartered Accountant, a report of which was before the Income Tax Authorities. It was submitted that the opening and closing balance of cash in hand had never been challenged by the AO during the course of assessment proceedings. However, the AO had not accepted the explanation given by the assessee regarding the source of deposit from Rs. 72,40,831/- by ignoring/overlooking the following points;

- a. The cash book was too voluminous and therefore, it was impractical to upload the same.
- b. That copy of sales ledger had not been submitted because the turnover was reflected in the balance-sheet and audit report.
- c. Only cash flow had been sought and not proof regarding amount received from debtors so if further evidences were required, the same ought to have been called for.
- d. Cash deposits in the bank account were provided by separate annexure which was duly tallied with the books of accounts.

e. Merely making addition on the basis of cash book not provided was unjustified as the entire amount received and deposited was from verified sources.

It was further submitted that the copy of the sales ledger was being submitted which was in line with figures audited reported in audited financials and tax audited report. The capital account of the assessee in the books of the firm was being submitted from where cash had been withdrawn during the relevant assessment year, as documentary evidence for cash withdrawal from firm and cash book ledger was being submitted depicting the cash receipt from sales as well as showing corresponding cash deposit in bank account from time to time and that this cash flow statement was prepared from the summary of the cash book but was rejected only because the cash book itself was not produced, without appreciating practical difficulty in uploading of the same. It was therefore, prayed that the addition of Rs. 72,42,831/- may be deleted. The ld. CIT(A) considered this request of the assessee but noted that the assessee had not furnished a copy of sales ledger and cash book before the AO and he also noted that no documentary evidence had been submitted for withdrawal from the firm and cash receipt from debtors. Accordingly, he held that there was no reason to interfere with the orders of AO and he confirmed the same. With regard to the unexplained investment of Rs. 26,72,000/-, the ld. CIT(A) did not record any submission of the assessee but recorded that he had perused the submission and the assessment order in detail and the assessee's assertion regarding payment of Rs. 25,10,000/- to Sh. Ajit Kumar Verma lacked supporting documentation therefore, the explanation was unacceptable and he accordingly confirmed the addition.

4. The assessee is aggrieved at the confirmation of these additions by the ld. CIT(A) and has accordingly come in appeal before us. Sh. Akash Agrwal, C.A. (hereinafter referred to as the ld. AR) appearing on behalf of the assessee submitted that the ld. CIT(A) had failed to consider the fact that alongwith submissions made before him, the assessee had uploaded the audited financials and Form CB-CD, the income tax returns alongwith the acknowledgement to justify

the sales from liquor and sales from Blue Mango. Furthermore, he had submitted its audited balance-sheet, cash flow statements and bank statements justifying the cash withdrawals / deposits made. He had also submitted the sales ledger as attachment no. 1.7 to the said reply and the cash book ledger as attachment no. 1.8, pointing out that the cash book in itself being too voluminous could not be uploaded. It was further submitted that the capital account of the assessee in the books of the firm had been uploaded as attachment no. 1.9 alongwith the ledger of the assessee in the books of the firm. It was further submitted that these documents had also been produced before the ld. AO and the AO had not considered the same and even the ld. CIT(A) had failed to look at these documents but simply affirmed the additions made by the AO, without considering the documents and rejecting the arguments on the grounds that documentary evidence had not been furnished. Accordingly, it was prayed that the order of the ld. CIT(A) was bad in law and deserved to be quashed on this ground alone. Arguing the stay petition, the ld. AR further submitted that while passing the impugned appellate order, the ld. CIT(A) had merely reproduced the observation of the AO and failed to independently examine or adjudicate upon the documentary evidences and explanations furnished by the assessee during the appellate proceedings. He had neither considered the additional evidence nor recorded any cogent reasons for rejecting the same. Thus, the appellate order had been passed mechanically without proper appreciation of facts, evidence and certain legal principles giving rise to substantial grounds for appeal before the Hon'ble ITAT. The ld. AR further submitted that 18.89% of the outstanding demand had already been paid and he prayed that stay application had not been filed before the Revenue authorities due to the lack of knowledge with regard to the same. The request for stay of demand was being made due to genuine hardship because compelling payment of a disputed demand when the matter was under a bonafide contest would be inequitable and disproportionate, when the additions were subject to serious legal and factual challenge. Furthermore, the bank accounts of the assessee had been frozen leading to severe financial complaints

and substantial hardship in maintaining the sustainability of business operations. Owing to this, the assessee was not in a position to comply with the standard requirement of payment of 20% of the disputed demand but it had already submitted an amount equivalent to 18.89% of the said demand by way of recovery through its income tax refunds. He, therefore, prayed that the balance demand may be stayed till the matter was decided. The ld. AR further placed reliance upon the judgment of the Hon'ble Supreme Court in the case of PCIT vs. M/s L.G. Electronics India Limited wherein the Court had held that the 20% deposit rule was not mandatory and the Commissioner had the discretion to order a lower pre-deposit, if the circumstances justified it. Accordingly, it was prayed that the balance demand may kindly be stayed till the disposal of the matter.

5. On the other hand, Sh. R.R.N. Shukla, Addl CIT DR (hereinafter referred to as the DR) pointed out that the assessee had not made proper compliance before the ld. AO and therefore, the decision taken by the AO was just and proper. The ld. DR further pointed out that as per Form No. 35, the assessee was supposed to furnish the details of fresh evidence to be considered under Rule 46A but the same had not been furnished at the time of the submission and therefore, there was no occasion for the ld. CIT(A) to consider the request for addition of fresh evidence. In these circumstances, his decision to proceed on the basis of what was available before the AO was just and proper.

6. We have duly considered the facts and circumstances of the case. We note that while filing the appeal, the assessee had submitted in Column No. 12 and 12.1 that it was filing additional evidences in terms of Rule 46A and would furnish the details of the same at the time of making written submissions. It is also seen that certain documents were uploaded by the assessee alongwith the submission dated 24.08.2023. However, while the ld. CIT(A) has dealt with the submissions in the body of his appeal order, he does not appear to have either considered the materials that were uploaded before him or recorded his reasons for rejecting such material that had been filed by way of additional evidence under Rule 46A. In

the circumstances, the decision of the ld. CIT(A) to simply rely upon the findings of the ld. AO alleging that documentary evidences had not been filed cannot be countenanced. We, therefore, deem it appropriate in the interest of justice to restore the matter back to the file of the ld. CIT(A) so that the ld. CIT(A) may consider the documents filed by the assessee at the time of appeal, and thereafter, take an informed decision on the appeal of the assessee, in accordance with law. The appeal having been restored to the file of the ld. CIT(A) and 18.89% of the outstanding demand having already been recovered by the Department, we also deem it appropriate to stay the recovery of the balance demand till the matter is considered and decided by the ld. CIT(A) or within a period of six months whichever is earlier. In case of delay in finalization of the order of the ld. first appellate authority, the assessee may approach the Revenue authorities for further extension of the stay of demand till the time of disposal of appeal.

7. In the result, the appeal of the assessee is allowed for statistical purposes while the Stay application is held to be allowed.

Order pronounced on 26.02.2026 in the Open Court.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED: 26/02/2026

sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.