

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 1017/JP/2024
निर्धारण वर्ष/Assessment Year : 2015-16

Ratika Kumbhat 4-BHA-4, Jawahar Nagar, Jaipur	बनाम Vs.	Income Tax Officer, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ANZPS 1599 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Anil Goyal, CA
राजस्व की ओर से / Revenue by: Sh. Gautam Singh Choudhary, JCIT-Sr. DR

सुनवाई की तारीख / Date of Hearing : 07/01/2025
उदघोषणा की तारीख / Date of Pronouncement : 09/01/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way of the present appeal the above named assessee challenges the order of the Commissioner of Income Tax, Appeal, Addl/JCIT(A)- Panaji [for short CIT(A)] dated 12/06/2024 for assessment year 2015-16. The said order of the Id. CIT(A) arise as against the order dated 28.12.2017 passed under section 143(3) of the Income Tax Act, [for short Act] by ITO, Ward 6(1), Jaipur [for short AO].

2. In this appeal, the assessee has raised following grounds: -

“1. The order of the learned AO u/s 143(3) and CIT(A) u/s 250 of Income Tax Act are bad in law and against facts of the case.

2. The learned AO has erred in making addition in respect of Debtors of assessee of Rs. 12,00,000/- u/s 69A r.w.s 115BBE of Income Tax Act, alleging that the assessee has failed to prove the genuineness/identity of debtors and that it was own capital of the assessee which has been given the colour of debtors so that the story of cash deposited during demonitization may be explained. Learned CIT(A) has erred in confirming this addition.

3. The assessee carves his right to add, amend or alter any ground before or at the time of hearing of appeal.”

3. Succinctly, the facts as culled out from the records are that the case was selected for scrutiny under the limited scrutiny criteria to examine cash deposit for demonetization period (9th Nov. to 30th December) as reported as per specified financial transaction [SFT] reporting as to verify if the cash deposited was derived from disclosed sources. The case was converted for complete scrutiny vide PCIT-2 letter no. 1478 dated 22-12-2017. The assessee had filed her return of income on 31-03-2017 for the A.Y 15-16. The notice had been issued after selection through CASS on 16-09-2017 and the notice was sent through registered post.

Ld. AO in the assessment proceedings noted that the assessee deposited cash amounting to Rs. 25,00,000/- during demonetization period stating that the assessee has filed declaration under IDS Scheme 2016. The assessee

did not submit IDS form in support of the contention so raised. However, the AO did not make any addition on that issue of cash deposited by the assessee for which the case of the assessee was selected for scrutiny.

But, while in the assessment proceedings, Id. AO noted that the assessee had shown debtors amounting to Rs. 12,00,000/- for whom no documentary evidence was submitted by the assessee. Ld. AO specifically brought on record that since the assessee had not justified the genuineness / identity of the debtors, from whom such income had been realized, no such claim of redemption of capital out of such debtors was allowed / accepted for the coming years i.e. A.Y.2016-17 and 2017-18 (Period of demonetization as well).

Therefore, Id. AO noted that the assessee did not prove the genuineness of such cash debtors, and drew an inference that amount represented assessee's own capital and she had given the colour of debtors so that the story of cash deposited during demonetization might be explained. Based on that observation, Id. AO made the addition of those debtors, for an amount of Rs. 12,00,000/-, as bogus, and considered assessee's own capital. Accordingly, he taxed that amount u/s 69A in the hands of the assessee.

4. Aggrieved by the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

"7. There are 07 grounds of appeal in all which are related to the same issue of addition of Rs.12,00,000/- as unexplained money/income u/s 69A of the Act. Therefore all the issues are adjudicated together on the basis of facts, merits of the case, submission of the appellant and material available on the record as under:-

It is observed from the perusal of the assessment order that the appellant has shown debtors amounting to Rs. 12,00,000/-, Upon perusal of the impugned assessment order it is observed that AO asked the appellant to furnish the confirmations of the parties from whom interest income is attained by her and thereby confirming the outstanding debtors as on 31.03.2015. The appellant utterly failed to furnish the confirmations from debtor parties and submitted that AO can sought confirmation from debtor parties by summoning them or by issuing them notice u/s. 133(6) of IT Act.

As per the maxim "ACTORI INCUMBIT PROBATION" the burden to prove always lies with the appellant and here in this case the appellant utterly failed to produce the confirmation from the debtors. The appellant has not provided any details like PAN, address, email id etc of the debtors persons to whom such money has been lent by her. This shows non cooperative attitude of the appellant during whole assessment proceedings. Which was already taken into consideration by the AO while passing speaking order after analyzing all the aspects therefore action of the AO is upheld.

From the above discussion the AO inferred that the appellant has not been able to substantiate her income to have arised from known sources and further failed to prove the genuineness of such income. The submissions made by the appellant during the appellate proceedings are carefully examined and this appellate authority held that the appellant has submitted the same facts as she had submitted during the course of assessment proceeding.

Further, Reliance is also placed in this regard on the decision of Hon'ble Supreme Court in the case of Kale Khan Mohammad Hanif Vs CIT(1963) 50 ITR 1 wherein it was held that "If an assessee fails to prove satisfactorily the source and nature of

certain amount received during the accounting year, the assessing officer is entitled to draw the inference that the receipts are of assessable nature."

Further, even during the appellate proceedings the appellant utterly failed to offer any valid explanation or adducing any clinching documentary evidence with regard to proving genuineness of debtors despite multiple hearing opportunities extended in this regard. Hence, AO has correctly made addition amounting to Rs. 12,00,000/- in the total income of the appellant as unexplained money/income u/s 69A of IT Act during the year under consideration. Therefore, all the grounds (01 to 07) raised by the appellant is hereby dismissed."

5. Feeling dissatisfied the assessee preferred present appeal on the grounds as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, he has filed the written submission in respect of the grounds raised by the assessee. The written submission so filed reads as under:

"Facts of the case

1. The assessee filed her Income Tax Return declaring total income of Rs 1,80,830 (copy of ITR placed at Paper Book Page No. 10 TO 13)
2. The case of the assessee was selected for Limited Scrutiny by issue of notice under section 143(2) dated 19/9/2017. (Pb page no 14) The reason given in the said notice for limited scrutiny was as under:

"Whether cash deposit has been made from disclosed sources"
3. The learned AO confused the whole matter with cash deposit of Rs 25,00,000/- made by the assessee in her bank account under Demonetization Scheme of 2016. This cash was deposited in Dec. 2016 which fall in AY 2017-18. Therefore it has no relevance with the income declared by the assessee in AY 2015-16
4. The learned AO has doubted the genuineness of Sundry Debtors of Rs 12,00,000/- and added the same in the income of the assessee under section 69A read with section 115 BBE of Income Tax Act. She has also added the

interest income declared by the assessee in ITR Rs. 1,80,830 under same sections.

Proceedings before AO:

The assessee filed letter dated 18/12/2017 before the AO (copy of which is reproduced in Assessment Order Page No. 2) explaining the following facts before him.

- a) It was submitted that the assessee filed declaration under IDS 2016 at Chennai address in which income of Rs 25,00,000/- was disclosed. AO has observed in his order that the assessee did not submit any documentary evidence in support of this.
- b) It was further submitted before the AO that case was selected for limited scrutiny to verify that "whether cash deposit has been made from disclosed sources".
- c) It was submitted before the AO that no such cash was deposited in the bank account of the assessee during the relevant period of AY 2015-16 and copies of bank account were also filed before the AO. (Copies of these bank account are placed at Paper Book page No. 16 to 17)
- c) It was further informed to AO that it was not possible to obtain balance confirmation from debtors at short notice as notice dated 15/12/2017 was issued by AO requiring for filing of confirmation on or before 18/12/2017. Therefore request was made to seek confirmation under section 131/133(6) of Income Tax Act.

Proceedings before CIT(A)

- a. Before the CIT(A) the assessee filed detailed submissions vide letter dated 13/5/2019 (copy is placed at Paper Book page No 20-24) Along with these submissions the assessee also filed comparative chart emphasizing that all the debtors were old debtors. Opening & Closing Balance of the debtors in AY 2015-16 was same. Therefore no addition can be made for debtors in AY 2015-16
- b. Before the CIT(A) the assessee has filed confirmation letters of the following sundry debtors.

Anil Kumar Garg HUF

2,00,000/-

Khandelwal Trading Company	3,00,000/-
Prabal Chouari	2,00,000/-
Pushpendra Kumar Rana	2,00,000/-

c. CIT(A) has also mentioned in his order that declaration made by the assessee in IDS Scheme 2016 was not filed.

Filing of revised Ground of appeal before ITAT

In the original ground of appeal before ITAT in form No. 36, the assessee has challenged addition of only Rs. 12,00,000 made u/s 69A of Income tax Act. However, in the revised ground of appeal filed on 1/10/2024, the assessee has challenged addition of Rs. 12,00,000 for debtors as well as addition of Rs. 1,80,830 being interest income as declared by the ITR u/s 69A.

FILING OF ADDITIONAL EVIDENCE BEFORE ITAT ALONG WITH RULE 29 APPLICATION:

The assessee has filed an application under rule 29 of ITAT Rules on 7/10/2024 for filing of additional evidence being proof of declaration made by the assessee for declaration of income of Rs. 25 lacs under IDS Scheme 2016 and issue of final certificate by the Income tax department

Submissions:

Ground No. 2 (as revised)

'The learned AO has erred in making addition in respect of Debtors of assessee of Rs. 12,00,000 and Interest Income declared in ITR Rs 1,80,830/- under section 69A read with section 115 BBE of Income Tax Act alleging that the assessee failed to prove the genuineness/identity of debtors and that it was own capital of the assessee which has been given the colour of debtors so that the story of cash deposited during demonetization may be explained. Learned CIT(A) has erred in confirming this addition.'

Submissions:

1. Limited Scrutiny notice was to examine the source of Cash Deposited in bank account of the assessee during the relevant previous year having no link with the cash deposited in AY 2017-18 under Demonetization Scheme of the Government

a. In this case, the case was selected for Limited Scrutiny for which notice u/s 143(2) dated 19/9/20217 was issued (copy at Pb page 14) to verify that:

'whether the cash deposit has been made from disclosed sources.'

b. In this case no cash was deposited in the bank account of the assessee during the year. This fact can be verified from the copy of bank accounts of the assessee. (Copy of bank accounts at Pb page no. 16-17.) Therefore, the requirement of Limited Scrutiny to verify the source of cash deposit in bank account was fulfilled.

c. The learned AO has erred in holding on the first page of the assessment order that 'the case had been selected for scrutiny of the return for AY 2015-16 for limited scrutiny to examine 'cash deposit for demonetization period (9th Nov to 30th December) as reported as per SFT reporting.

d. It is submitted that in the notice issued u/s 143(2) dated 19/9/2017, there was no mandate to examine 'cash deposited for demonetization period'. The mandate was only for the cash deposited in the relevant previous year. In any case it is difficult to assume that a mandate was given to examine the ITR of AY 2015-16 to examine the source of cash deposited in AY 2017-18.

e. The learned AO has made this addition and CIT(A) has sustained the addition as the assessee did not file copy of declaration made for declaring income of Rs. 25 lacs in IDS Scheme, 2016.

2. It is submitted that, the assessee had filed declaration dated 29/9/2016 under Income Declaration Scheme, 2016 in Form No. 1 for declaring income of Rs. 25 Lacs, and after payment of due taxes and interest and penalty thereon Rs. 11,25,000/-, final Certificate dated 8/12/2016 was issued by Principle CIT in Form no. 4. (Copies of both the documents have been filed as additional evidence before Hon'ble ITAT with application under rule 29 of ITAT rules) Therefore, the source of Cash Deposited in demonetization period is fully explained with the declaration made by assessee under IDS Scheme, 2016.

3. Sec. 69A is applicable only in respect of assets like Unexplained Money, Unexplained Investments, Unexplained Jewellery etc and not on Sundry Debtors
It is submitted that Old debtors and current years interest income cannot be added in the income of the assessee u/s 69A read with Sec. 115BBE of Income tax Act. Section 69A is applicable for money, bullion, jewellery or valuable article not recorded in the books of accounts. Therefore, outstanding balance of Sundry Debtors recorded in the books of accounts do not come within the scope of Sec. 69A of Income tax Act.

Provisions of Sec. 69A are as under:

Unexplained money, etc.

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income⁷⁹, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the ⁸⁰[Assessing] Officer, satisfactory, the money

and the value of the bullion, jewellery or other valuable article may be deemed to be the income⁷⁹ of the assessee for such financial year.]

Various judgments given below selected on random basis, show that Sec. 69A is applicable only on the assets like Unexplained Money, Unexplained Immovable Property, and Unexplained Jewellery. Sundry Debtors is not an asset referred to in Sec. 69A. Therefore there is no such thing like Unexplained Sundry Debtors.

[2024] 166 taxmann.com 248 (Rajasthan)

Agarwal Polysacks Ltd. v. Principal Commissioner of Income-tax-I*

Section [69A](#), read with sections [147](#), [148](#) and [148A](#), of the Income-tax Act, 1961 - Unexplained moneys (Reassessment) - Assessment year 2020-21 - Assessing Officer issued on assessee-company a notice under section 148A(b) intimating that on investigation of documents in his possession it was seen that assessee during year had sold 13 plots in cash and sales consideration received by it remained unexplained and supplied documents to assessee - He thereafter passed an order under section 148A(d) stating that amount of sales consideration received in cash required to be reassessed - Whether stand taken by assessee that it had no knowledge about sale transaction by power of attorney holder was not a ground for revenue not to proceed against it - Held, yes - Whether since a detailed adjudication on merits of information available with Assessing Officer and defence set up by assessee is not contemplated at stage of passing an order under section 148A(d), writ petition was to be dismissed - Held, yes [Para 4] [In favour of revenue]

[2024] 166 taxmann.com 253 (Gujarat)

Deloitte Haskins and Sells v. Assistant Commissioner of Income-tax*

Section 69A read with section 148 of the Income-tax Act, 1961 - Unexplained Moneys - Assessment year 2012-13 - Assessee, a partnership firm, was assessed to income tax for several years - For assessment year 2012-2013, a return of income was filed and later revised, with income remaining unchanged after scrutiny - In 2019, assessee received notices from tax authorities regarding foreign receipts and responded, clarifying that some amounts were received in later years or by a different firm - Revenue later issued a notice under section 148, alleging that income had escaped assessment - Assessee requested details to reconcile payments but did not receive necessary information - Assessee then filed objections, which were disposed of without addressing all concerns - Whether in view of above facts, matter would be remanded back to Assessing Officer with a direction to provide assessee an opportunity of hearing and thoroughly consider objections raised by assessee in response to impugned notice issued under section 148 - Held, yes [Para 18][Matter remanded]

4. Sec. 69A can not be applied on the outstanding balance of Old Debtors where opening and closing balance of debtors is the same:

It is submitted that as per submissions before CIT(A) (Paper book page no. 22), the Sundry Debtors of Rs12,00,000 on 31/03/2015 were the same as on 31/3/2014 and that there was no change in the figures between the two Assessment Years viz Rs 12,00,000/- The figures of the Sundry Debtors was Rs 9,00,000/- during the Assessment year 2013-14

		Year Ending 31-03-2013	Year Ending 31-03-2014	Year Ending 31-03-2015
		AY 2013-14	AY 2014-15	AY 2015-16
1	Anil Kumar Garg (HUF)	Rs 2,00,000	Rs 2,00,000	Rs 2,00,000
2	Khandelwal Trading Co.	Rs 3,00,000	Rs 3,00,000	Rs 3,00,000
3	Mithilesh Hiramath	-	Rs 3,00,000	Rs 3,00,000
4	Prabal Choudari	Rs 2,00,000	Rs 2,00,000	Rs 2,00,000
5	Pushpendra Kumar Rana	Rs 2,00,000	Rs 2,00,000	Rs 2,00,000
	Total	Rs 9,00,000	Rs 12,00,000	Rs 12,00,000

It is submitted that no addition can be attracted when the opening balance and closing balance are the same and there was no change during the year relevant to the assessment year 2015-16.

Confirmation of debtors which were available with the assessee were filed before CIT(A).

5. No evidence brought on record by the learned AO to support his wild allegations made against the assessee:

The learned AO has doubted the genuineness and identity of the Debtors without any basis, and has made wild allegations on the assessee that it was own capital of the assessee which has been given the color of debtors so that the story of cash deposited during demonetization may be explained. He has not brought on record any evidence to support his allegations.

6. Learned CIT(A) has erred in relying on the decision in the case of Hon'ble Supreme court in Kale Khan Mohammad Hanif V CIT (1963) 50 ITR 1, as the facts of this case are clearly distinguishable. This case is applicable on amount received during the accounting year for which no satisfactory explanation about source is offered by the assessee. In our case, no amount was received by the assessee

during the accounting year. Rather the addition has been made for the old debtors carried forward from earlier years by the assessee.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

Sr. No.	Particular	Page no.
1.	Copy of Income Tax Return for AY 2013-14	1-3
2.	Copy of Income Tax Return and Wealth Tax Return for AY 2014-15	4-9
3.	Copy of Income Tax Return for A.Y 2015-16	10-13
4.	Copy of notice u/s 143(2) dated 19.09.2017 for Limited Scrutiny	14-15
5.	Copy of Bank accounts of the assessee for AY 2015-16	16-17
6.	Copy of bank account of the assessee for AY 2017-18	18-19
7.	Copy of submissions before CIT(A) dt. 13/05/2019	20-24

7. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the addition so made pertains to sundry debtors already reflected in the books of accounts of the assessee. This fact was brought to the notice of the Id. CIT(A) as reproduced herein below ;

		Year Ending 31-03-2013	Year Ending 31-03-2014	Year Ending 31-03-2015
		AY 2013-14	AY 2014-15	AY 2015-16
1	Anil Kumar Garg (HUF)	Rs. 2,00,000	Rs. 2,00,000	Rs. 2,00,000
2	Khandelwal Trading Co.	Rs. 3,00,000	Rs. 3,00,000	Rs. 3,00,000
3	Mithilesh Hiramath		Rs. 3,00,000	Rs. 3,00,000
4	Prabal Choudari	Rs. 2,00,000	Rs. 2,00,000	Rs. 2,00,000
5	Pushpendra Kumar Rana	Rs. 2,00,000	Rs. 2,00,000	Rs. 2,00,000
	Total	Rs. 9,00,000	Rs. 12,00,000	Rs. 12,00,000

Ld. AR has contended that looking to the above chart, the addition so made in hands of the assessee was neither appearing of current year transactions nor assessee shown any sales in the year under consideration and therefore, the addition so made by the Id. AO and sustained by the Id. CIT(A) is based on wrong understanding of the facts and looking to the provision of section 69A of the Act addition is required to be deleted.

8. Per contra, the Id. DR relied on the orders of lower authorities. When confronted on the fact that the sundry debtors are not of the current year. Ld. DR did not dispute said facts.

9. We have heard the rival contentions and perused the material placed on record. Ground no. 2 raised by the assessee challenge the sustained addition of Rs. 12,00,000/-. The brief facts of the case as emerges from the orders of the assessing officer is that the case of the assessee was selected to verify the cash deposit. Thereafter the case was converted into full security. In the assessment proceeding Id. AO noted that the assessee had shown debtors amounting to Rs. 12,00,000/-. Ld. AO asked for the various details of these debtors but the relevant documentary evidence

were not submitted and thereby the Id. AO made the addition of Rs. 12,00,000/- u/s. 69A of the Act.

When the matter taken up before the Id. CIT(A) he confirmed the addition making reliance on the decision of Hon'ble Supreme Court in the case of Kale Khan Mohammad Hanif Vs CIT(1963) 50 ITR 1 wherein it was held that "If an assessee fails to prove satisfactorily the source and nature of certain amount received during the accounting year, the assessing officer is entitled to draw the inference that the receipts are of assessable nature."

Before we deal with the ground no. 2 of the assessee we would like to see the provision of section 69A of the Act which reads as under :

Unexplained money, etc.

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

As it is the amount of the sundry debtor already recorded in the books of account are not any money, bullion, jewellery or other valuable article therefore, considering that fact provision of section 69A of the Act is not applicable. Now coming to the finding of the Id. CIT(A) wherein case law relied specifically deals that "If an assessee fails to prove satisfactorily the

source and nature of certain **amount received during the accounting year**, the assessing officer is entitled to draw the inference that the receipts are of assessable nature." here we note from the fact the amount of sundry debtor neither received during the year nor accounted in the year under consideration as is evident from the chart reproduced herein above, which was not been disputed by the Id. AO through the Id. DR. Therefore, we are of the considered view that the addition of the sundry debtor of the year 2013 and 2014 could not be made in the year under consideration i.e. A. Y. 2015-16. Based on this discussion, ground no. 2 raised by the assessee is allowed.

Since we have considered the appeal of the assessee on merits while dealing with Ground no. 2, the technical ground no. 1 raised becomes academic in nature. Ground no. 3 is general and does not require any finding.

Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 09/01/2025.

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 09/01/2025

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Ritika Kumbhat, Jaipur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 1017/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

