2025:CGHC:43944-DB

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**TAXC No. 8 of 2024**

*{Arising out of order dated 1-11-2023 passed by the Income Tax Appellate Tribunal, Raipur Bench "SMC", Raipur in ITA No.180/RPR/2023}*

*(Assessment Year 2017-2018)*

Judgment reserved on: 12-8-2025

Judgment delivered on: 29-8-2025

Nanakchand Agrawal, L/h of Kalawati Agrawal, Age 65 years, Near Telephone Tower, Baster Road, P.O., P.S. and Tahsil Dhamtari, District Dhamtari (C.G.) - 493773, PAN: ACHPA6904A

**... Appellant**

**versus**

The Income-tax Officer, Ward, Income-tax Office, Harna Bandha, Dhamtari, District Dhamtari (C.G.)

**... Respondent**

| | | |
|---|---|---|
| For Appellant | : | Mr. S. Rajeswara Rao, Advocate. |
| For Respondent | : | Mr. Ajay Kumrani, Advocate on behalf of Mr. Amit Chaudhari, Standing Counsel for the Income Tax Department. |
| *Amicus Curiae* | : | Mr. Nikhilesh Begani, Advocate. |

**Division Bench: -**
**Hon'ble Shri Sanjay K. Agrawal and**
**Hon'ble Shri Deepak Kumar Tiwari, JJ.**

**C.A.V. Judgment**

**Sanjay K. Agrawal, J.**

1. Invoking the jurisdiction of this Court under Section 260A of the Income Tax Act, 1961 (for short, 'the IT Act'), the appellant herein/

husband of the assessee has preferred this appeal calling in question legality, validity and correctness of the judgment & order dated 1-11-2023 passed by the Income Tax Appellate Tribunal, Raipur Bench "SMC", Raipur in ITA No.180/RPR/2023, by which the ITAT has partly dismissed the appeal treating ₹ 20,50,000/- as unexplained money under Section 69A of the IT Act affirming the order of the Commissioner of Income Tax (Appeals).

2. The aforesaid appeal was admitted for hearing by this Court on 5-2-2024 by formulating the following substantial question of law: -

> "Whether the assessment in respect of the closing balance of cash-in-hand, shown in balance sheet of the preceding year which was brought down as an opening balance of the succeeding year, whether it can be an unexplained money under Section 69 A of Income Tax Act, 1961 of succeeding year and can be charged to tax under Section 115 BBE of Income Tax Act?"

3. The original assessee late Smt. Kalawati Agrawal filed her return of income in respect of assessment year 2017-18 on 9-1-2018 declaring a total income of ₹ 12,83,090/-. In the relevant assessment year (demonetization announced by the Central Government on 8-11-2016), the assessee had deposited a sum of ₹ 23,00,000/- in Specified Bank Notes (SBN) in her bank account in Bank of Baroda on 1-12-2016 and reflected the said cash deposits at Part-E – Other Information Column D14(a) of return of income filed in ITR-1S. The case of the assessee was accepted for scrutiny assessment by the Assessing Officer by issuance of notice under Section 143(2) of the IT Act seeking requisite information and

documents as to the details of cash deposited relating to nature & source of cash deposits in SBN to which the assessee filed detailed written submissions along with copies of bank statements for the period from 1-4-2014 to 31-3-2015 etc. and capital accounts & balance sheets for the assessment years 2015-16, 2016-17 & 2017-18 to substantiate the availability of cash-in-hand to source the cash deposits made during the demonetization period explaining that she encashed the fixed deposits held by her with Bank of Baroda and subsequent to such encashment, she withdrew a sum of ₹ 1,24,00,000/- in cash in the assessment year 2015-16 (financial year 2014-15) in the months of April & May, 2014 and thereafter, subsequently, an amount of ₹ 1,02,31,000/- was deposited in cash in the months of February & March, 2015 in the bank account with Bank of Baroda and the same was advanced to M/s. Mangal Tyres, Dhamtari. It is also the case of the appellant/assessee that the balance sheets filed in the course of assessment proceedings for the assessment year 2015-16 & 2016-17 reflected cash-in-hand of ₹ 21,60,301/- as on 31-3-2015 and ₹ 23,45,301/- as on 31-3-2016, respectively. In sum and substance, it was the explanation of the assessee that the source of cash deposit to the tune of ₹ 23,00,000/- during the demonetization period had its immediate nexus with the closing cash-in-hand to the tune of ₹ 23,45,301/- appearing in the balance sheet shown as on 31-3-2016 and which was available as opening cash-in-hand in the financial year 2016-17 relevant to assessment year 2017-18.

4. The Assessing Officer in its assessment order passed under Section 143(3) of the IT Act on 14-11-2019 made an addition of ₹ 23,00,000/- treating it as unexplained money invoking the deeming fiction engrafted under Section 69A of the IT Act charging the same to higher rate of tax as prescribed under Section 115BBE of the IT Act ascribing the following reasons: -

    1. Purpose of making cash withdrawal in the assessment year 2015-16 and holding the cash balance for nearly 32 months is not explained.

    2. Interest income from two sources viz., from M/s. Mangal Tyres and from short term loans and advances treated differently and shown under two heads in return filed for the assessment year 2016-17 viz., as income from other sources and income from business.

    3. List of persons to whom money was given and interest earned was not furnished.

    4. Return of income for the assessment year 2016-17 showing sufficient cash balance filed on 2-12-2016 i.e. subsequent to making of cash deposit during demonetization period on 1-12-2016.

    5. Intention of the assessee was to deposit her unaccounted money in the bank account and by using ITR-4S form to declare the cash balance of ₹ 23,45,301/- therein and treating interest income differently is just an afterthought to show the

cash balance in the return of income to merely cover up the cash deposit during demonetization period.

5. Feeling aggrieved and dissatisfied with the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) to which the learned CIT (Appeals) primarily concurred with the findings of the Assessing Officer and dismissed the appeal by order dated 23-3-2023.

6. Questioning the order passed by the CIT (Appeals) affirming the order passed by the Assessing Officer, the appellant herein preferred appeal before the Income Tax Appellate Tribunal (ITAT) which the ITAT by the order impugned dated 1-11-2023 partly allowed to the extent of ₹ 2,50,000/-, as per the circular of the CBDT (Central Board of Direct Taxes), holding that the assessee had regularly been assessed to tax for the last so many years, sustaining the balance cash deposit of ₹ 20,50,000/- treating it as unexplained money invoking the deeming fiction engrafted under Section 69A of the IT Act charging the same to higher rate of tax as prescribed under Section 115BBE of the IT Act assigning the following reasons: -

    1. The utilization of cash withdrawals made in the preceding assessment years simultaneously for the purpose of making cash deposits during demonetization period and for the purpose of advancing interest bearing short term loans & advances, at the same time, is incomprehensible and in the

absence of any documentary evidences to buttress the said claim, the contention of the appellant cannot be summarily accepted.

2. Availability of the said fund with the assessee in the assessment year 2016-17 parked as short term interest bearing loans had not been proved, though the ITAT as also held that availability of cash-in-hand out of cash withdrawals made by the assessee in the assessment year 2016-17 could not be summarily discarded on the ground that a substantial period had elapsed.

3. The assessee had failed to discharge the primary onus cast upon her to substantiate the 'nature' and 'source' of cash deposit in terms of Section 69A of the IT Act.

7. The order impugned passed by the learned ITAT is sought to be challenged in appeal filed before this Court by the legal heir of the assessee i.e. husband of Kalawati Agrawal namely, Nanakchand Agrawal in which the substantial question of law has been formulated which has been catalogued in the opening paragraph of this judgment.

8. Mr. S. Rajeswara Rao, learned counsel appearing on behalf of the appellant herein, submits that the accepted closing cash balance of the assessment year 2016-17 could not be taxed in the assessment year 2017-18, because each year is an independent assessment unit under the IT Act and it is contrary to the provisions contained in

Section 69A of the IT Act which clearly provides that "where in any financial year the assessee is found to be owner of any money" and in the present case, the assessee was found to be owner of the money in the preceding years viz., assessment year 2016-17. He would further submit that the income, whether unexplained or undisclosed, of relevant financial year alone can be assessed to tax in the same assessment year and not of the preceding assessment year and as such, Section 69A of the IT Act is not attracted. He would rely upon the decision of the M.P. High Court in the matter of **Harlal Mannulal v. Commissioner of Income-tax, M.P.-I**[1] to support his contention.

9. Mr. Ajay Kumrani, learned counsel appearing on behalf of the respondent herein/Revenue, would support the impugned order and submit that the ITAT has recorded well-reasoned findings of fact, which have not been shown to be perverse or unsupported by record. He would further submit that the ITAT has rightly held that a heavy burden lies upon the assessee to prove the source and availability of ₹ 23,00,000/- on 1-12-2016 and mere presence of a closing cash balance in the balance sheet, unsupported by corroborative cash flow or recovery details, cannot ipso facto prove the availability of that cash as a source for subsequent cash deposit, particularly where the assessee admits to having deployed that cash for lending activities. Therefore, the appeal deserves to be dismissed as having no merit, as the ITAT has also granted relief to

1 (1984) 147 ITR 11 (MP)

the extent of ₹ 2,50,000/- on estimated cash-in-hand, which demonstrates judicious application of mind and fairness. He would finally submit that the findings of the ITAT are based on cogent reasoning, appreciation of material facts and settled legal principles under Sections 69A and 115BBE of the IT Act. In that view of the matter, the appeal deserves to be dismissed by answering the substantial question of law against the assessee and in favour of the Revenue.

10. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

11. The assessee deposited a sum of ₹ 23,00,000/- in Specified Bank Notes (SBN) in her bank account with Bank of Baroda on 1-12-2016 and during that period, the Government of India had announced demonetization on 8-11-2016 vide notification No.SO 3407(E). The avowed objective of Demonetization of 2016 announced by the Government of India was aptly noticed by the Constitution Bench of the Supreme Court in a challenge as to the validity of decision-making process adopted prior to demonetization, whether the notification dated 8-11-2016 is liable to be struck down applying the test of proportionality etc., in the matter of **Vivek Narayan Sharma and others (Demonetisation Case-5J.) v. Union of India and others**[2] in which their Lordships have assigned three concerns which state as under: -

2 (2023) 3 SCC 1

> "**275**. The impugned notification has been issued with an objective to meet the following three concerns:
>
> **275.1.** Fake currency notes of the SBNs have been largely in circulation and it has been found to be difficult to easily identify genuine bank notes from the fake ones.
>
> **275.2.** It has been found that high denomination bank notes were used for storage of unaccounted wealth which was evident from the large cash recoveries made by law enforcement agencies.
>
> **275.3.** It has also been found that fake currency is being used for financing subversive activities such as drug trafficking and terrorism, causing damage to the economy and security of the country."

12. In the above background, the present case eventually revolves around the interpretation of the provisions contained in Section 69A of the IT Act, which states as under: -

> "**69A. Unexplained money, etc.**—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."

13. A focused perusal of the provisions contained in Section 69A of the IT Act would show that this provision is in the nature of deeming fiction engrafted under the IT Act which deems the money, bullion, jewellery or other valuable article to be income of the assessee for the financial year in which the assessee is found to be the owner of such money, bullion, jewellery or valuable article if the stipulated

conditions are satisfied necessitating the invocation of the deeming fiction.

14. The provisions of Section 69A of the IT Act came up for consideration and interpretation before the Supreme Court in the matter of **D.N. Singh v. Commissioner of Income Tax, Central, Patna and another**[3] wherein the contours of the said provision was expounded with precision by their Lordships as under: -

> **"25.** Section 69 and Section 69-A, apart from being close neighbours, do bear resemblance with one another. Section 69 deals with unexplained investment. Section 69-A deals with unexplained money, bullion, jewellery or other valuable articles. Section 69-A was inserted by the Amending Act 5 of 1964 and it came into effect w.e.f. 1-4-1964. Both sections require that the subject-matter of the provisions viz. investments in the case of Section 69 and money, bullion, jewellery or other valuable articles in the case of Section 69-A are not recorded in the books of accounts. That is, in a case where books of accounts are maintained. In the case of investments under Section 69, necessarily, the law giver contemplates the assessing officer finding that the assessee had made the investments. In the case of Section 69-A, the assessee must be found to be the owner of the money, bullion, jewellery or other valuable articles. In both cases, if the assessee is able to offer an explanation for the nature and the source for the investments and money, bullion, jewellery or other valuable articles, respectively, and it is not found unsatisfactory, there can be no deemed income under either section.
>
> **26.** Turning more to Section 69-A, it may be broken down into the following essential parts:
>
> (*a*) The assessee must be found to be the owner;
>
> (*b*) He must be the owner of any money, bullion, jewellery or other valuable articles;

3 (2024) 3 SCC 378

(*c*) The said articles must not be recorded in the books of accounts, if any maintained;

(*d*) The assessee is unable to offer an explanation regarding the nature and the source of acquiring the articles in question; or

The explanation, which is offered, is found to be, in the opinion of the Officer, not satisfactory;

(*e*) If the aforesaid conditions are satisfied, then, the value of the bullion, jewellery or other valuable article may be deemed as the income of the financial year in which the assessee is found to be the owner;

(*f*) In the case of money, the money can be deemed to be the income of the financial year;"

15. Having noticed the provisions contained in Section 69A of the IT Act read with the principles of law laid down by their Lordships of the Supreme Court in **D.N. Singh** (supra) for invoking Section 69A of the IT Act, if the facts of the present case are examined, it would clearly emerge that the source of cash deposits made during the demonetization period pertains to and has its immediate inextricable nexus with cash withdrawals made by the assessee from regular disclosed bank account in the assessment year 2015-16 relevant to financial year 2014-15, which were thereafter advanced to various persons as short term loans and advances on which interest income was earned in the assessment year 2016-17 relevant to financial year 2015-16 and which were thereafter returned/refunded and consequently, lying with the assessee as cl0osing cash-in-hand as on 31-3-2016 in the balance sheet drawn for the financial year 2015-16 and thereafter was carried out to the next financial year viz., financial year 2016-17 relevant to

assessment year 2017-18 as opening balance and pursuant to demonetization announced by the Government, the same was deposited in SBN on 1-12-2016.

16. It is the case of the assessee that the short term loans and advances were returned back to her in the assessment year 2016-17 itself and formed part of her disclosed cash balance in the return of income filed in respect of the assessment year 2016-17 and lying unutilized as on 31-3-2016 which is clearly evidenced by the balance sheet as on 31-3-2016 filed on record of the Assessing Officer. The assessee had filed her return of income for the assessment year 2016-17 on 2-12-2016, wherein the cash balance to the tune of ₹ 23,45,301/- was diligently declared.

17. The Assessing Officer has miserably failed to appreciate that the provisions of sub-section (4) of Section 139 of the IT Act, at the relevant time, provided an outer time-limit till 31-3-2017 to the assessee to file return of income for the assessment year 2016-17. Further, the said return of income was duly processed on 21-1-2017 vide an intimation order issued under the provisions of Section 143(1)(a) of the IT Act wherein the returned income was assessed as such. The Assessing Officer has further failed to appreciate that non-issuance of mandatory scrutiny notice under the provisions of Section 143(2) of the IT Act selecting the case for scrutiny assessment by the outer time limitation of 30-9-2017, the return of income filed by the assessee attained finality with all the figures

declared therein well within the knowledge of the Income Tax Department and forming part of the assessment records and even thereafter, there were no fetters on the powers of the Assessing Officer and he was not estopped in law nor debarred to take up the case for reassessment by issuance of reassessment notice under Section 148 of the IT Act, which as per the provisions of Section 149 of the IT Act, provided for an outer time limit of six years from the end of the relevant assessment year i.e. till 31-3-2023, particularly when the assertion of the source of cash deposit tracing it to closing balance as on 31-3-2016 was well before him in the regular assessment proceedings ongoing in the year 2019 itself.

18. In the matter of **Chintels India Limited v. Deputy Commissioner of Income-tax**[4], it was held by the Delhi High Court that once an assessee does not receive a notice under Section 143(2) of the IT Act within the period stipulated then such an assessee can take it that the return filed by him has become final and no scrutiny proceedings are to be started in respect of that return.

19. Similarly, in the matter of **Principal Commissioner of Income Tax, Central-3 v. Abhisar Buildwell Private Limited**[5], on the aspect of the return attaining finality when accepted in an assessment undertaken under Section 143(1)(a) of the IT Act and mandatory scrutiny notice under Section 143(2) not issued by the

4 (2017) 397 ITR 416
5 (2024) 2 SCC 433

stipulated time limit and the same being treated as a case of completed/unabated assessment in the context of provisions of Section 153A assessments in cases of search and seizure, it was held by their Lordships of the Supreme Court that the completed/ unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148, subject to fulfillment of the conditions as envisaged/mentioned under Sections 147/148 and those powers are saved.

20. Not only this, the provisions of Section 69A of the IT Act contemplate that the 'money' (cash deposit in the present case) could be deemed to be in the nature of income only in the financial year in respect of which the assessee is found to be the owner and in the instant case, by offering plausible explanation tracing the source of money to closing balance of preceding year, the assessee was found to be the owner of the 'asset'/cash in the assessment year 2016-17 and hence, the explanation of nature and source of such money and invocation of deeming fiction engrafted under Section 69A could have been sought/examined by the Assessing Officer in the assessment year 2016-17 and could not have been done in the assessment year 2017-18 going by the express language contained in Section 69A and not otherwise. Furthermore, the factum of liquidation/refund of short term loans and advances and its consequential accumulation as cash-in-hand as on 31-3-2016 could have been examined in the assessment year 2016-17 only particularly when the Assessing Officer has not discharged the

burden cast upon him to implicate the assessee into the sweep of Section 69A. As such, the Assessing Officer has made addition on pure guess. It is well settled principle of law that while making an assessment under the provisions of the IT Act, the Income Tax Officer is not entitled to make a pure guess and to resort to an assessment without reference to any evidence or any material at all and that suspicion howsoever strong cannot take the place of proof beyond reasonable doubt. (See **Dhakeswari Cotton Mills Limited v. Commissioner of Income Tax, West Bengal**[6].)

21. The Supreme Court in the matter of **Lalchand Bhagat Ambica Ram v. Commissioner of Income Tax, Bihar and Orissa**[7] while dealing with an addition made by the AO in a case concerning the deposit of High Denomination Notes, sternly deprecated the practice of the Assessing Officer and the Tribunal to indulge into conjectures, suspicion and surmises and acting without any cogent evidence, expounded as –

> "(i) that the entries in the Rokar and the Almirah account of the appellant showed that there was an aggregate cash balance of Rs.3,10,681 and it was highly probable that high denomination notes of the value of Rs.2,91,000 were included therein. The books of account of the appellant were not challenged in any other manner except in regard to the interpolations relating to the number of high denomination notes and the Tribunal accepted these books of account as genuine and worked up its theory on the basis of the entries which obtained in these books of account. It was not, therefore, open to the Tribunal to accept the genuineness of these books of account and accept the explanation of the

6 (1954) 2 SCC 602
7 (1959) 37 ITR 288

appellant in part as to Rs. 1,50,000 and reject the same in regard to the sum of Rs. 1,41,000.

(ii) that the circumstances relied on by the Income-tax Officer were matters of pure conjecture, suspicion and surmises: the notoriety for smuggling foodgrains was merely a background of suspicion and the appellant could not be held to have indulged in smuggling without any evidence; the cancellation of the foodgrain licence and the prosecution of the appellant were of no consequence inasmuch as the licence was was restored and the appellant was acquitted of the offence with which it was charged; the mere possibility of the appellant earning considerable amounts in the account year was a matter of pure conjecture; and the fact that the appellant indulged in speculation did not legitimately lead to the inference that the profits in speculative transactions could exceed the value of the notes;

(iii) that the Appellate Tribunal could not have come to the conclusion that the sum of Rs.1,41,000 comprising 141 high denomination note was not satisfactorily explained unless it had at the back of its mind the various probabilities relied on by the Income-tax Officer;

(iv) that therefore the Tribunal in arriving at its conclusion indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of the fats which could not reasonably be entertained: the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found;

(v) that there was no material to support the finding of the Appellate Tribunal that the sum of Rs.1,41,000 was profits liable to income-tax and excess profits tax in the hands of the appellant."

22. In view of the aforesaid analysis, we are of the considered opinion that the learned ITAT is absolutely unjustified in dismissing the appeal partly upholding the addition of ₹ 20,50,000/- treating it as unexplained money invoking the deeming fiction engrafted under Section 69A of the IT Act charging the same to higher rate of tax as prescribed under Section 115BBE of the IT Act. As such, the

impugned order passed by the Assessing Officer affirmed by the CIT (Appeals) and further partly affirmed by the ITAT is hereby set aside. It is hereby held that ₹ 20,50,000/- cannot be said to be unexplained money under Section 69A of the IT Act. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue.

23. The appeal is allowed to the extent indicated herein-above, leaving the parties to bear their own cost(s).

24. This Court appreciates the valuable assistance rendered by Mr. Nikhilesh Begani, Advocate, who in short notice submitted written synopsis along with citations relevant for the purpose of resolving the controversy. We place his assistance on record.

Sd/-
(Sanjay K. Agrawal)
**JUDGE**

Sd/-
(Deepak Kumar Tiwari)
**JUDGE**

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