

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH, AGRA**

**BEFORE SHRI A.D. JAIN, JUDICIAL MEMBER AND  
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

ITA No. 132 /AGR/2014  
Assessment Year: 2009-10

Sunil Jain C/o M/s Manoj Agra Traders Chutmal Ki Bazariya, Lhiya-Bazar, Lakshar, Gwalior (M.P.) PAN: AEZPJ 8420 Q	Vs.	CIT (Gwalior) Gwalior
---	-----	--------------------------

APPELLANT	RESPONDENT
-----------	------------

Assessee by:	Shri R.K. Agarwal, Advocate
Revenue by:	Shri Inderjeet Singh, CIT DR

Date of hearing:	17/10/2017
Date of Pronouncement:	09/11/2017

**ORDER**

**PER, DR. MITHA LAL MEENA, AM:**

This appeal, by Assessee is directed against the order dated 27/03/2014, of the Commissioner of Income Tax, Gwalior [herein after referred to as "the CIT"], under Section 263 of the Income Tax Act, 1961.

2. The following grounds of appeal have been raised against the order of the CIT under Section 263 of the Act:

- “1. While passing the order u/s 263, the learned CIT has wrongly directed Assessing Officer to add undisclosed sales of Rs.16,28,075/- u/s. 68 of the Income Tax Act, 1961.*
- 2. The ITO has rightly applied net profit rate of 14.32% on cash deposited of Rs.16,28,075/-, while making assessment after thoroughly examining the assessee version.”*
3. The brief facts of the case are that the assessee is an individual and carrying on business of lubricant. He filed return of income for A.Y. 2009-10 showing total income of Rs. 1,34,250/- as per the provision of section 44 AF of the Income-tax Act, 1961. During the course of assessment proceeding the AO found that there were cash deposit of Rs. 15,68,375/- in the bank account of SBI Patankar Bazar, Gwalior. The AO called for explanation about the above deposit, the assessee explained that the above deposit were made out of sales proceed of lubricant and the amount received on the occasion of marriage ceremony of the assessee from his family members in laws, relative and friends etc. The assessment was completed u/s 143(3) of the Act. 1961 on 01.12.2012 and determined total income of Rs.3,61,400/- by applying net profit rate of 14.32% on undisclosed sales of Rs.15,68,375/- . Similarly for the year under consideration there is a cash deposit of Rs.59,700/- in cash joint account bearing A/c No. : 149010103306 with his mother and wife with united State Bank of India. The said amount was not included in total undisclosed sales. The AO has estimated net

profit only undisclosed sales of Rs. 15,68,375/-, which was under assessment and thus assessment order was erroneous.

4. While passing the order u/s. 263 of the Act, the Id. CIT (A) has observed as under:-

*“.....In response to which Shri Mayur Garg, CA attended on behalf of the assessee from time to time and filed a written submission which is placed on record. The citations coated by the assessee in written submission are not tenable and facts of the case are not relevant.*

*In view of the above facts the assessment order passed by the AO is erroneous and so far as it is prejudicial to the interest of revenue. The AO is directed to add the total amount of undisclosed sales of Rs.16,28,075/- u/s of the Income tax Act, 1961 in place of Rs.2,24,590/- arrived at by the AO by applying NP rate 14.32% on cash deposit of Rs.15,68,375/-. The AO is also directed to revise the assessment order accordingly by making addition of Rs.16,28,075/-.”*

”

5. The Id. counsel for the assessee contended that while passing the order u/s 263 of the Act the Id CIT has directed to add total amount of undisclosed sale of Rs.16,28,075/- u/s 68 of the Act instead of applying net profit rate of 14.32% on the cash deposits as applied by the Assessing Officer. The Id. CIT has not given any reason for directing the Assessing Officer to add total undisclosed sale of Rs.16,28,075/- u/s. 68 of the Act. Ld. Counsel further contended that while passing the order u/s. 143(3) of the Act, the Assessing Officer has examined the complete facts in details which reflects in day to day order sheet entries.

6. In support, Id. counsel has relied upon the order of ITAT, Jodhpur in the case of Bikar Singh vs. CIT reported in 40 taxmann.com 128 (Jodhpur Trib.) wherein it was held that a mere disagreement or dissatisfaction of the learned CIT over the manner of assessment cannot be a basis for revision of the order under s. 263 of the Act.

7. Ld. DR has relied upon the order of the CIT.

8. We have heard the rival contentions, perused the facts and written submissions placed on record. It is noted that the Assessing Officer has estimated income by applying net profit rate of 14.32% on cash deposits of Rs.16,28,075/- in the bank account of the assessee. It is observed by the Id. CIT that the citations coated by the assessee in written submissions are not tenable and case are not relevant to the facts of the case. From the above, observation of the CIT, it is not clear that how the assessment order is erroneous and against the interest of the Revenue. The CIT's has not addressed the issue of under assessment of income in respect of cash deposits in bank account while passing the order u/s 263 of the Act. Under the facts and circumstances, we hold that it is non speaking order and hence required to be restored back to the CIT with the direction to pass a speaking order on merits after allowing afresh opportunity of being heard to the assessee.

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

**Order pronounced in the open Court on 09/11/2017.**

**Sd/-  
(A. D. JAIN)  
JUDICIAL MEMBER**

**Sd/-  
(DR. MITHA LAL MEENA)  
ACCOUNTANT MEMBER**

Aks/-  
Dated: 09/11/2017

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**

		Date	
1.	Draft dictated	01.11.2017	PS
2.	Draft placed before author	07.11.2017	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS		PS/PS
6.	Kept for pronouncement on	09/11/2017	PS
7.	File sent to the Bench Clerk		PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		