

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD ‘SMC’ BENCH, ALLAHABAD
(Heard by DB)**

(THROUGH VIRTUAL / HYBRID MODE)

**BEFORE SH. SUBHASH MALGURIA, JUDICIAL MEMBER
AND
SH. SANJAY AWASTHI, ACCOUNTANT MEMBER**

ITA Nos.115 & 116/Alld/2024
A.Y. 2009-10

Chandra Bali Singh, Bhurkura, P.O. Chunar, Mirzapur PAN:AXKPS5846B	vs.	Income Tax Officer-3(1), Mirzapur (Respondent)
(Appellant)		

Assessee by:	Sh. Praveen Godbole, C.A.
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	04.12.2024
Date of pronouncement:	04.12.2024

ORDER

PER SH. SANJAY AWASTHI, ACCOUNTANT MEMBER:

These are batch of two appeals pertaining to the same assessee for the same assessment year. Appeal in ITA No. 115/Alld/2020 is appeal in the quantum matter whereas ITA No.116/Alld/2020 is appeal against levy of penalty under section 271(1)(c). Since, both these appeals are inter connected, they are being disposed of through a common order.

2. For the sake of convenience, ITA No. 115/Alld/2020 is being disposed of first. In this case, the appeal emanates from order under section 250 of the Income Tax Act, 1961 (hereinafter the ‘Act’) passed by the ld. CIT(A), NFAC, vide order dated 21.12.2023. This appeal itself had been filed against the action of the ld. AO who had passed an order dated 28.06.2016, in an *ex parte* manner, on the ground that the assessee did not respond to either the terms of notice under section 148 of the Act,

nor notice under section 142(1) issued on 30.05.2016. Through a rather cryptic order, the ld. AO had added an amount of Rs.1108130/- on account of cash deposit in the bank account. This addition was carried before the ld. First Appellate Authority, who has also recorded in para 4 (page 3 of the impugned order) that five opportunities given to the appellant for presenting his case were not availed off. Thereafter, the ld. CIT(A) proceeded to decide the case on the basis of records available before him.

3. Aggrieved with this action of the ld. CIT(A), the appellant has approached the ITAT through as many as seven grounds of appeal, which mainly challenged the very little time given to him for responding to the AO's notice as also there is a grievance that the ld. CIT(A) did not consider the submissions filed before him. Also the quantum addition of Rs.1108130/- has been challenged.

3.1 Before us, the ld. AR has pointed out the extremely short and allegedly non speaking order passed by the ld. AO and has also averred that the ten page written submissions filed before the ld. CIT(A) was not taken into consideration before he passed the impugned order. The ld. AR prayed for another opportunity to present the full facts before the authorities below.

3.2 The ld. DR, on the other hand, stated that the assessee has not filed any response to either the notice under section 148 of the Act or even the notice under section 142(1) issued by the ld. AO. Furthermore, there is nothing on record to show that there was any submission filed before the ld. CIT(A) on the basis of which he could have formed some kind of opinion about the merit of the impugned addition.

4. We have carefully considered the rival submission and also gone through the records. It is evident that the assessee has not really complied in any fruitful manner before any of the authorities below. Even though, the ld. AR has mentioned about the filing of submissions before the First Appellate Authority but it does not appear as if those submissions, if at all filed, were taken into consideration by the ld.

CIT(A). Accordingly, in the interest of substantive justice, we remand this matter back to the file of ld. AO for a fresh assessment, after giving an opportunity of being heard to the appellant.

5. In the result, the appeal is allowed for statistical purposes.

ITA No.116/Alld/2020

(A.Y. 2009-10)

6. This matter emanates from the quantum addition of Rs.1108130/- on which penalty under section 271(1)(c) has been imposed. As is evident from the finding given for ITA No.115/Alld/2020, since the matter has been remanded back to the file of the ld. AO, this penalty cannot survive as of now. For this technical reason, this penalty is deleted. However, the ld. AO would be at liberty to initiate fresh proceedings under section 271(1)(c) in case there is any addition in the quantum matter, which has been remanded back.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 04.12.2024 at Allahabad, U.P.

Sd/-

**[SUBHASH MALGURIA]
JUDICIAL MEMBER**

DATED: 04/12/2024

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Copy forwarded to:

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

Sd/-

**[SANJAY AWASTHI]
ACCOUNTANT MEMBER**

By order
Sr. P.S.