

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

**BEFORE : SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER  
And  
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No. 278/Agr/2024  
Assessment Year: 2014-15**

Mr. Ratnesh Kumar Jain, Mahal Colony, Shivpuri-473551 (M.P.)	<b>v.</b>	Income-tax Officer, Aayakar Bhawan, Guna Bypass Ashok Nagar, Gwalior-473551, Madhya Pradesh
<b>PAN :ADWPJ5187A</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	S/Sh. Rajendra Sharma & Manuj Sharma, Adv.
Revenue by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	08.01.2025
Date of pronouncement	14.02.2025

**ORDER**

**PER RAMIT KOCHAR, AM:**

This appeal in ITA No. 278/Agr/2024 for the assessment year 2014-15 has arisen from the appellate order dated 26.06.2024 [DIN & Order No. ITBA/NFAC/S/250/2024-25/1066066549(1)], passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi, which

appeal before learned CIT(A) has in-turn arisen from the re-assessment order dated 25.03.2022 passed by Assessing Officer u/s. 147 read with section 144 read with Section 144B of the Income-tax Act, 1961.

2. Grounds of Appeal raised by the assessee in the Memo of appeal filed with Income Tax Appellate Tribunal, Agra Bench, Agra, as well as additional grounds of appeal filed by the assessee with Tribunal in ITA No. 278/Agr/2024, reads as under :

“1 That the appellate order passed dated 26.06.2024 is bad in law being passed not in consonance with the provisions of Sub-Section (6) of Section 250 of the Income Tax Act, the appellate order is liable to be set aside.

2 That while passing of the order, the learned CIT (Appeals) has not disposed of the grounds are being taken by the appellant in the appeal. The order passed by the learned CIT (Appeals) is bad in law, liable to be set aside.

3 That the order passed by the learned CIT (Appeals) is liable to be set aside being passed without taking into consideration the facts that the provisions of Section 147 of the Income Tax Act are not attracted in the case of the appellant. The AO has wrongly invoked the provisions of Section 147 of the Income Tax Act.

4 That without prejudice to the relief allowed as per grounds, as above, the authorities below have not considered the replies of the appellant filed before them, after taking into consideration the replies and the submissions made before them, no addition is liable to be made, addition made by the AO, sustained by the learned CIT (Appeals) is liable to be deleted.

5 That while sustaining the addition as made by the AO, the learned CIT (Appeals) has completely ignored the fact that the deposit in the bank account is either out of transfer entries made from other bank account of the appellant or out of sale consideration of the assessee.

The authorities below have also ignored that most of the deposits are through banking channel represent the sale amount, taking into consideration the above, no addition is called for, addition made by the AO, sustained by the learned CIT (Appeals) is liable to be deleted.

**Additional legal Ground No. 6-**

"6. That the provisions of sec 69A are not attracted in the case of assessee which the NFAC has ignored while passing the order and also has not disposed the specific ground no-7 taken, opposing the invoking of sec 69A of Income Tax Act, the order passed by NFAC is bad in law liable to be set-a-side"

**Additional legal Ground No.7-**

"7. That no notice U/s 148 can be issued being in this case the assessment U/s 143(3) has been completed on 15.12.2016 and after passing of four year from the relevant assessment year, notice U/s 148 is issued which is against the proviso to of sec 147, notice issued U/s 148 is bad in law same is liable to be quashed."

That the aforesaid grounds which are now being taken, may kindly be admitted as additional legal grounds and the appeal of the appellant may kindly be decided after taking into consideration the above submissions."

3. The brief facts of the case are that the assessee filed return of income for the impugned assessment year originally on 01.04.2015 , declaring total income of Rs.6,73,340/-. Case of the assessee was originally selected by Revenue for framing limited scrutiny through CASS. The assessment was originally completed u/s. 143(3) on 15.12.2016 , assessing total income of the assessee at Rs.7,54,500/-. Thereafter, on perusal of the case record, it was observed by the Assessing Officer that the assessee had deposited total amount of Rs.2,02,32,638/- in his bank account during the year under consideration, while the assessee has disclosed turnover of Rs.80,30,790/- for the year under consideration.

Thus , the AO was of the view that the assessee has deliberately shown his turnover on the lower side by Rs.1,22,01,848/- , hence this amount was not included in the books of accounts and the assessee has evaded tax liability. This led to reopening of the concluded assessment u/s. 147 of the Act by the jurisdictional Assessing Officer. Notice u/s. 148 was issued by the AO, dated 30.03.2021 ,which was claimed by the AO to have been duly served on the assessee, after recording of the reasons for reopening of the concluded assessment . In response, no reply was received by the AO from the assessee. The AO observed that the assessee has not filed return of income in response to notice u/s 148. The Statutory notices u/s 142(1) were issued by the AO to the assessee. There was no response by the assessee. Case was transferred by Revenue to complete the proceedings in faceless manner. Fresh notice u/s 142(1) was issued. The assessee filed reply on 21.12.2021 requesting to provide copy of recorded reasons for reopening. The assessee also submitted copy of ITR filed originally and stated that the same may be treated as the ITR filed in response to notice issued by the Assessing Officer u/s. 148. Copy of recorded reasons for reopening of assessment was provided to the assessee. The assessee filed replies before the AO as were filed during the original assessment proceedings but as per AO no documentary evidences/supporting documents were

furnished by the assessee. The Assessing Officer observed from the perusal of the return of income that the assessee has shown gross receipts of Rs.80,30,790/- with G.P. of Rs.15,69,075/- (19.53% of Gross Receipts) and N.P. of Rs.6,58,880/- (8.2% of the Gross Receipts). The AO observed that the assessee has deposited in his bank account total amount of Rs.1,68,53,128/-, out of which cash deposits were to the tune of Rs.1,28,13,500/-. The assessee was asked by the Assessing Officer to explain the source of the cash deposits, but no reply was furnished by the assessee. Assessing Officer issued fresh show cause notice dated 15.03.2022 along with draft assessment order proposing to make addition of Rs.1,28,13,500/- as unexplained money u/s. 69A of the Act. The assessee furnished explanation on 17.03.2022 i.e. at the fag end when the assessment was getting time barred, but it did not find favour with the Assessing Officer, as the assessee has failed to produce documentary evidences to substantiate the sources for cash deposited. The Assessing Officer made addition of Rs.1,28,13,500/- to the income of the assessee deemed as unexplained money u/s. 69A of the Act. The AO further held that as the assessee did not file his return of income in response to the notice u/s 148 of the Income-tax Act, 1961 dated 30.03.2021 within time prescribed, and the assessee vide letter dated 21.12.2021 requested the AO to treat his original return of income filed

for assessment year as return of income in response to notice issued u/s 148, the AO treated the said return of income as invalid return of income in response to notice issued by the AO u/s 148 being not filed within prescribed time.

4. Aggrieved, the assessee filed first appeal with Id. CIT(Appeals), and raised as many as 25 grounds of appeal challenging the reassessment framed by the AO both on merits as well as on legal/jurisdictional grounds. The assessee submitted in statement of facts(SOF) that the assessee is regularly assessed to Income-tax since last so many years. He deals in Tendu Patta business and is maintaining books of accounts. The assessee stated in SOF filed with Id. CIT(A) that the assessee filed computation of income, Trading , Profit & Loss Account and Balance Sheet and various other details as required by the AO and also produced Books of accounts during the course of assessment proceedings. The assessee filed return of income originally on 01.04.2015, which was scrutinized by AO u/s. 143(3) of the Act under CASS for framing limited scrutiny assessment, wherein assessment order dated 15.12.2016 was passed by the Assessing Officer and the income was assessed at Rs.7,54,500/- against the returned income of Rs.6,73,340/-. The AO during original assessment proceedings conducted detailed enquiry in respect of credit entries in the bank

account . Thereafter case of the assessee was reopened by Revenue u/s. 147 on the ground that the assessee has deposited Rs.2,02,32,638/- in his bank account, while the turnover disclosed is Rs.80,30,790/-. The assessee submitted that the return of income originally filed be treated as the return of income in pursuance to notice issued by the AO u/s. 148. Reasons recorded for reopening were supplied to the assessee. The assessee challenged invocation of section 147 on legal issues but the legal issues were not decided by the AO. It was submitted that that the Assessing Officer has added entire cash deposits in the bank account without giving credit for the sales of the assessee. There are other incomes in Profit and loss account, for which no credit was given. Bank account was fully explained with the books of account. The assessee also contended that no notice u/s. 143(2) was issued prior to framing of reassessment order. It was submitted that the reassessment is bad in law as the assessment was reopened on the ground that the assessee has shown lower turnover, while the additions have been made on the grounds of unexplained cash deposits in the bank account by invoking the provisions of section 69A of the Act. The assessee deals in the business of Tendu Patta and proper books of accounts are maintained. The assessee turnover is Rs. 80,30,790/- . The assessee claimed that the assessee is eligible for claiming the presumptive scheme of taxation

u/s. 44AD. The assessee also raised legal challenge to invocation of provisions of Section 147, as the notice was issued beyond the period of four years from the end of the assessment year ,while the original assessment was completed u/s. 143(3) of the Act. There was no failure on the part of the assessee in making truly and fully disclosure of the material facts. The assessee also sought to explain that there was withdrawal of cash which stood deposited back in the bank account , and there was also inter-banking transaction but the entire amount is taken by the Assessing Officer to be the turnover of the assessee. Ld. CIT(Appeals) dismissed the appeal of the assessee as there was no satisfactory explanation given by the assessee with regard to sources of cash deposits. Learned CIT(Appeals) recorded that the assessee has raised several jurisdictional issues, but the CIT(Appeals) did not adjudicate the same and dismissed the appeal of the assessee by adjudicating on the merits of additions.

5. Aggrieved, the assessee has now filed second appeal with the Tribunal and the Id. Counsel for the assessee opened arguments before the Bench, and submitted that the impugned assessment year is 2014-15. Original assessment was completed on 15.12.2016 u/s. 143(3) of the Act. Assessing Officer has observed that the assessee has suppressed the turnover by Rs.1,22,01,848/- as there are deposits in the bank

account to the tune of Rs.2,02,32,638/- and the turnover shown by the assessee is Rs.80,30,790/- and hence, there is suppression of turnover by Rs.1,22,01,848/-. Notice u/s. 148 was issued on 30.03.2021, which is beyond the period of four years from the end of the assessment year. It was submitted that originally assessment was framed by AO u/s. 143(3), and there was no failure on the part of the assessee to truly and correctly declare the income. The case of the assessee was re-opened on the same facts, which are available on record, the Assessing Officer has invoked the provisions of section 147/148 of the Act. It was submitted that the Assessing Officer has made addition of Rs.1,28,13,500/- on account of total cash deposits in the bank accounts. It was submitted that the assessee deals in Tendu Leaves. Assessing Officer invoked provisions of section 147 read with Sec. 148 alleging suppression of turnover, but the addition has been made on account of cash deposits in the bank account. It was submitted that the reasons recorded were supplied to the assessee and the objections of the assessee were not disposed of by the AO. Attention was drawn to the grounds of appeal raised before the CIT(Appeals) wherein as many as 25 grounds of appeal were raised by the assessee both raising challenge to reassessment on legal grounds as well as on merits. It was submitted that the learned CIT(Appeals) did not adjudicate the legal/jurisdictional

challenge made by the assessee to the reassessment framed by the AO. The learned CIT(Appeals) dismissed the appeal of the assessee despite elaborate submissions and evidences filed before the CIT(Appeals). No remand report was called for by the learned CIT(Appeals) with respect to additional evidences filed before Id. CIT(A). The Id. CIT(A) passed cryptic non speaking order. The learned counsel for the assessee prayed for setting aside the matter back to the file of Id. CIT(A) for denovo adjudication of the matter.

6. Learned Sr. DR relied upon the order of Id. CIT(Appeals) and submitted that the assessee has never filed return of income in pursuance to notice u/s. 148. Assessee filed return of income at a very later stage and the said return of income was declared invalid return of income by the AO

7. We have considered rival contentions and perused material on record. We have observed that the assessee filed return of income for the impugned assessment year on 01.04.2015 declaring total income of Rs.6,73,340/-. Return of income was scrutinized originally by Revenue u/s. 143(3) for framing limited scrutiny under CASS, and assessment was completed u/s. 143(3) on 15.12.2016, assessing total income of the assessee at Rs.7,54,500/- against returned income of Rs.6,73,340/-. It was observed by the Assessing Officer that the assessee had deposited

total amount of Rs.2,02,32,638/- in his bank account during the year under consideration, while the assessee has disclosed turnover of Rs.80,30,790/- ,and there was an escapement of income as per the Assessing Officer of Rs.1,22,01,848/-, which led to invocation of provisions of section 147 of the Act by the AO after recording of reasons for reopening of the concluded assessment . Assessee did not respond to notice issued by the AO u/s. 148. Notices u/s. 142(1) was issued by the Assessing Officer. Later on, the assessee came forward and submitted that the original return of income filed u/s. 139 be treated as the return of income filed in compliance to notice u/s. 148 of the Act. The assessee submitted replies before the Assessing Officer at the fag end when the re-assessment was getting time barred, but the reply filed by the assesseedid not find favour with the Assessing Officer and Assessing Officer made addition of Rs.1,28,13,500/- to the income of the assessee u/s. 69A of the Act as unexplained money being cash deposits in the bank accounts. We have observed that the assessee has made elaborate explanations before the Id. CIT(Appeals). Assessee has also raised 25 grounds of appeal before the CIT(Appeals) raising legal/jurisdictional challenge to invocation of section 147 ,as well the assessee challenged the additions as were made by the AO on merits of the issues in appeal. The Id. CIT(Appeals) dismissed the appeal of the

assessee on the ground that the assessee has not been able to substantiate on merits the cash deposits made with the bank . It was in fact a cryptic non speaking order passed by Id. CIT(A) even on merits of the issue involved in the appeal on the grounds that the assessee failed to produce the documentary evidences for sources of cash deposits in the bank account. The assessee on its part also submitted his reply at the end when the matter was getting time barred. The learned CIT(Appeals) never adjudicated the legal grounds raised by the assessee raising legal/jurisdictional challenge to invocation of Section 147 in the memo of appeal filed with the CIT(Appeals). Gist of such legal grounds raised by the assessee before Id. CIT(A) is that reasons were recorded without any basis and without considering original assessment record while the case of the assessee was duly scrutinized originally u/s. 143(3) of the Act. It was a change of opinion as the entire material was available before the AO in original assessment proceedings. Thus, there was change of opinion vis a vis original assessment framed by the Assessing Officer u/s. 143(3) and on the same material , a different view is sought to be taken by the Assessing Officer u/s. 147, which is not permissible. The assessee has also raise legal challenge to reopening of the assessment u/s 147 that Reopening was done on the ground of suppression of turnover while the additions have been made with respect

to entire cash deposits in the bank account and hence, additions were made on different ground than on which the provisions of section 147 were invoked. The re-assessment being framed without issuing notice u/s 143(2). The Id. CIT(A) did not adjudicated the legal grounds raised by the assessee. On merits, it is claimed that additions are made of Rs.1,28,13,500/- without proper examination of facts and without application of mind. It is also claimed that Reassessment order was passed u/s. 144 without adhering to principles of natural justice, as no proper opportunity was given to the assessee. It is also claimed that treatment of his return of income filed in pursuance to notice u/s. 148 as invalid by the AO is bad in law. There are other several challenges on legal grounds as well as on merits raised by the assessee before CIT(Appeals). We have observed that the learned CIT(Appeals) has dismissed the appeal of the assessee without adjudicating these legal issues/ grounds raised by the assessee. These legal issues go to the root of the matter including challenge to jurisdiction on legal grounds, which may also require investigation of facts . Even on merits, the appellate order passed by Id. CIT(A) is a cryptic non speaking order. Thus, prejudice has been caused to the assessee by not adjudicating of all the issues raised by the assessee before the CIT(Appeals) and the order of the Id. CIT(Appeals) is not sustainable in the eyes of law and in

the interest of justice and fairness to both the parties, we set aside the matter back to the file of learned CIT(Appeals) for de novo adjudication of appeal of the assessee after giving proper opportunities to both the parties. The Assessee is allowed to raise all the contentions in its defense ,and file all the evidences in support of its contentions before Id. CIT(A), and the learned CIT(Appeals) is directed to admit contentions raised aswell additional evidences filed by the assessee , both on legal/ jurisdictional issues as well as on merits of the issue in de novo adjudication proceedings, learned CIT(A) is directed to adjudicate the same on merits in accordance with law. We order accordingly.

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

***Order pronounced in the open court on 14.2.2025.***

***Sd/-***  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

Dated: 14.2.2025

\*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra

