

**INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "DB": AGRA
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
(Through virtual hearing)**

**ITA No. 784/AGR/2018
(Assessment Year: 2009-10)**

Shri Shailendra Singh, S/o. Shri Tej Singh Bhadoriya, Ara Mill Colony, Industrial Estate, Birla Nasgar, Gwalior, MP	Vs.	ITO (Tech), Gwalior
(Appellant)		(Respondent)
PAN: ARLPS0053R		

Assessee by :	None
Revenue by:	Shri Shailendra Srivastava, Sr. DR
Date of Hearing	03/03/2025
Date of pronouncement	02/04/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.784/Del/2018 for AY 2009-10, arises out of the order of the Commissioner of Income Tax (Appeals), Gwalior [hereinafter referred to as 'Id. CIT(A)', in short] dated 25.09.2018 against the order of assessment passed u/s 144 r.s.w. 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 21.12.2017 by the Assessing Officer, ITO-Tech, Gwalior (hereinafter referred to as 'Id. AO').
2. None appeared on behalf of the assessee despite issuance of notice. Hence we proceed to dispose of this appeal on hearing the Learned DR and based on materials available on record.

3. The only issue to be decided in this appeal is as to whether the Id CITA was justified in sustaining the addition made in the sum of Rs 3,78,430/- on account of payment made for credit card bills in the facts and circumstances of the instant case.

4. We have heard the Learned DR and perused the materials available on record. The learned AO on the basis of AIR information received observed that assessee during the year had made credit card payments of Rs. 378,429/-. Since no return of income was filed by the assessee for the year under consideration, the assessment was sought to be reopened vide issuance of notice under section 148 of the Act on 29-3-2017. No return was filed by the assessee in response to notice issued under section 148 of the Act. Thereafter, the learned AO issued notice under section 142(1) of the Act on 13-7-2017. In response to the said notice, father of the assessee attended the hearing and he was requested to submit the return of income and also explain the source of credit card payments. Later, the case of the assessee was transferred to Income Tax Officer, Gwalior, vide order passed by the learned PCIT, Gwalior under section 127 of the Act dated 8-11-2017. Accordingly, fresh notice under section 142(1) of the Act was issued by the new incumbent on 10-11-2017, for which also, there was no compliance made by the assessee. Accordingly, the learned AO proceeded to frame the assessment under section 144 read with section 147 of the Act on 21-12-2017, treating the payments made on account of credit card to the tune of Rs 3,78,429/- as unexplained.

5. Before the learned CITA, the assessee filed detailed written submissions dated 3-8-2018 along with some additional evidences. It was submitted that assessee was working in Thailand at the time of assessment proceedings and hence he could not comply with the statutory notices. It was also submitted that assessee's father attended before the learned AO

and filed copy of bank statement, ITR copies and second PAN with which assessee was filing his return. It was submitted that the earlier PAN ARLPS 0053R was used by somebody while assessee had filed his return using his new PAN (BKFPS 9875K). According to assessee, the old PAN (ARLPS 0053R) was fraudulently used by someone for obtaining credit card and certain credit card expenses were incurred using that PAN by such third party. It was also explained that even on the basis of AIR information, the name of Mr. Munish Kumar was mentioned and not the name of the assessee. Thus the assessee completely denied the transactions of credit card payments of Rs 3,78,429/- as not belonging to him as it was carried out by a third party using the assessee's erstwhile PAN. The learned CITA admitted the additional evidences submitted by the assessee and sought for a remand report from the Learned AO. The Learned AO submitted the remand report vide letter dated 28-08-2018 which is reproduced in pages 4 to 6 of the first appellate order.

6. The Learned AO in the remand report observed that Assessee had not furnished all the credit card bills for assessment years 2009-10 and 2010-11. Hence it was observed by the Learned AO that Assessee could not satisfactorily explain the AIR information regarding the credit card payments and reiterated for confirmation of addition made in the original assessment. The Assessee filed a rejoinder to the remand report on 25-09-2018 which are reproduced in pages 6 to 7 of the order of the Learned CITA. The Learned CITA observed in para 6 of his order that it is an admitted fact that two PANs were issued to the Assessee and the first PAN (ARLPS0053R) was issued to Assessee with wrong date of birth and hence it was never used by him. However, in the said PAN, the Assessee's photo, name and father's name were correctly mentioned. Accordingly, he concluded that the first PAN ARLPS0053R belongs to the Assessee and accordingly all

transactions carried out using the said PAN, the Assessee would be responsible for explaining the same. He reiterated the observations made by the Learned AO in the remand report and ultimately confirmed the addition made on account of credit card payments of Rs. 3,78,430/-. Aggrieved, the Assessee is in appeal before us.

7. It is a fact that Assessee was having two PANs. The Assessee had categorically denied all the transactions in respect of credit cards to the tune of Rs. 3,78,430/- on the contention that the said credit card payment details were carried out by one Mr. Munish Kumar even as per the AIR information available with the income tax department. In the said information, the name of the Assessee is not reflected at all, except the erstwhile PAN of the Assessee. The Assessee had always stated that the earlier PAN contained wrong date of birth, though the other details were correctly mentioned thereon. Because of the wrong mention of date of birth, the Assessee had not utilized the earlier PAN and had obtained a fresh PAN BKFPS9875K and had been filing his returns using the second PAN. Once the Assessee had categorically denied the credit card transactions which were carried out using his earlier PAN fraudulently by a third party, the Learned AO ought to have carried out necessary examination with the credit card agencies as admittedly the AIR based information did provide the credit card number and the credit card agency details thereon. A simple verification with the credit card agency could have revealed the truth together with the KYC information thereon. This was not carried out by the Learned AO in the instant case. Hence, in the interest of justice and fair play, we deem it fit and appropriate, to restore this appeal to the file of Learned AO for de novo adjudication in accordance with law qua the transactions of credit card payments to the tune of Rs 3,78,430/-. Accordingly, the grounds raised by the Assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 02/04/2025.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 02/04/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi