

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

**BEFORE :SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No. 121/Agr/2022
Assessment Year:2012-13

Mr. Jasbant Singh, Dalupur, Mainpuri (UP)-205261.	Vs.	Income-tax Officer, Ward 2(4), Mainpuri.
PAN : ETCPS8478F		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Shailender Shrivastava, Sr. DR

Date of hearing	24.03.2025
Date of pronouncement	02.04.2025

ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been filed by the assessee against the order passed by the learned Commissioner of Income-tax (Appeals) National Faceless Appeal Centre (NFAC) [in short "CIT(A)"] u/s. 250(6) of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

2. Grounds raised by the assessee are as under :

"1. That Ld CIT (A)-NFAC has erred by confirming the re-opening of assessment under Section 147 of the Income Tax Act, 1961 in sheer disregard of the facts of the case.

2. That Ld CIT (A)-NFAC has erred by confirming the assessment framed under Section 144 of the Income Tax Act, 1961 in sheer disregard of the facts of the case.

3. That Ld CIT (A)-NFAC has erred by confirming the addition made by Assessing Officer at Rs. 8,32,302/- being peak credit into bank account in sheer disregard of the fact that these credits were business receipts and profit from these receipts has already been assessed by AO U/S. 44AD at Rs. 169296/-.

4. That the appellant craves the leave to add, modify, delete and amend any ground of appeal at the time of hearing.

3. None came present on behalf of the assessee nor any application filed seeking adjournment. The appeal was therefore proceeded to be heard with exparte.

4. The solitary grievance of the assessee in the present appeal against the order of the learned CIT(A) is with respect to allegedly making two additions on account of the same cash deposits in the bank account of the assessee – one being peak deposits added to the income of the assessee and the other treating the total deposits as emerging from some business of the assessee and taxing it @ 8% at the presumptive rate of tax prescribed u/s. 44AD of the Act.

Orders of the authorities below reveal that the case of the assessee was reopened and the order framed u/s. 147 of the Act noticing cash deposits to the tune of Rs.13,40,000/- in saving bank account of the assessee. In the absence of any plausible explanation for the source of the same, the AO added the peak of cash deposits amounting to Rs.8,32,302/- considering it as capital introduction of the year. The AO

also noted the deposits to be accompanied with withdrawals and held that it appeared that the assessee was carrying some business activities during the year. He, therefore, invoked the provisions of section 44AD of the Act calculating income @ 8% of the total receipts resulting in addition of Rs.1,69,396/- to its income. Learned CIT(A) confirmed both the additions.

5. Learned DR was unable to controvert the fact that the same cash deposits were treated in two different manners for making the impugned two additions in the present case.

6. We, therefore, hold that in the present case, double addition has been made to the income of the assessee by treating the very same deposits in assessee's bank account differently – one by treating it as business receipts and other as unexplained cash deposits. This is a clear cut case of gross miscarriage of justice. The deposits in the bank account could either be treated as unexplained cash credits or as business receipts of the assessee. The Assessing Officer could not have taken two different stands on the same deposits and made addition on account of both the stands. In the light of the same, we hold the addition made by treating the deposits as unexplained credits resulting in addition of Rs.8,32,302/- to be not sustainable on facts. The AO is directed to delete the addition of Rs. 8,32,302/-.

7. Appeal of the assessee is allowed in above terms.

Order pronounced in the open court on 02.04.2025.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Dated:

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra