

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

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

ITA No.108/Agr/2023
Assessment Year: 2010-11

Anil Kumar, Usayani, Tundla, Firozabad (UP).	Vs.	Income-tax Officer, Ward 2(2)(1), Firozabad.
PAN : BPEPK2676C		
(Appellant)		(Respondent)

Assessee by	Sh. Rajendra Sharma, Advocate & Sh. Manuj Sharma, Advocate
Department by	Sh. Shailender Shrivastava, Sr. DR

Date of hearing	26.03.2025
Date of pronouncement	26.03/2025

ORDER

Per Sunil Kumar Singh, Judicial Member:

This appeal has been preferred against the impugned order dated 21.06.2023 passed in Appeal No. CIT(Appeal)-2, Agra/10034/2018-19 by the Ld. Commissioner of Income-tax (Appeals), NFAC, Delhi u/s. 250(6) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") wherein the Id. CIT(Appeals) confirmed the addition made by the learned Assessing Officer.

2. Brief facts state that the appellant/assessee is a non-filer. On the basis of information gathered from AIR, learned Assessing Officer noticed that the assessee had deposited Rs.37,41,059/- in cash in his

Saving Bank Account maintained with State Bank of India, Usaini, Firozabad during the financial year 2009-10. The assessee did not respond to the letters issued by the Assessing Officer for verification of the aforesaid cash deposit. The assessee also did not file return of income in compliance of notice issued u/s. 148 of the Act. Learned Assessing Officer completed the assessment u/s. 144 and added the aforesaid amount in the total income of assessee u/s. 69A of the Act.

3. Aggrieved, the assessee preferred an appeal before the learned CIT(Appeals) who confirmed the addition made by the learned Assessing Officer and dismissed assessee's first appeal.

4. The assessee has filed this appeal on the ground that the learned CIT(Appeals) has erred in confirming the addition of Rs.37,41,059/- u/s. 69A without affording sufficient opportunity of hearing and considering the submissions of the appellant that the said transaction undertaken by the assessee was the result of selling of potatoes on commission basis.

5. We have perused the records and heard the learned counsel for the assessee and learned Departmental Representative for the Revenue.

6. Learned representative for the assessee has submitted that the assessee was neither afforded sufficient opportunities of hearing by the learned Assessing Officer nor by the Id. CIT(Appeals) who even rejected the prayer of the assessee for filing additional evidence under Rule 46A

of the Income-tax Rules, 1962. Learned AR has further submitted that the deposits made in the assessee's account are out of the aforesaid business undertaken by the assessee as commission agent. He prayed to set aside the impugned order.

7. Learned Sr. DR has supported the impugned order.

8. It transpires from the perusal of records that the assessee did not respond to various notices issued by the learned Assessing Officer. Hence, learned Assessing Officer was compelled to frame *ex parte* order against the assessee. It is further noticed that during the first appellate proceedings, the remand report was also called for and learned Assessing Officer explained as to how the assessee failed to make submissions before him despite various opportunities. We notice that the Id. CIT(Appeals) has merely exhibited the order passed by the Id. Assessing Officer and the non-compliance therein. It is further noticed that learned CIT(Appeals) also rejected assessee's prayer to file additional evidence under Rule 46A of the Income Tax Rules without any cogent reason. Hence, in the interest of justice, we deem it just and proper to restore the matter to the learned Assessing Officer who will pass order afresh after affording an opportunity to the appellant/assessee. The assessee is directed to remain present before the Assessing Officer and make his submissions as last opportunity.

Needless to say that the Assessing Officer shall ensure substantial compliance of the principles of natural justice. Accordingly, impugned order dated 21.06.2023 and assessment order dated 12.10.2017 are set aside.

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

Order pronounced in the open court on 26.03.2025.

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

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

Dated: 08.04.2025

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra