

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH 'SMC' AGRA**

(Through video conferencing)

**BEFORE SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.62/Agr/2022
[Assessment Year: 2012-13]**

Sunil Kumar, S/o- Shri Devi Singh, R/o-Village Jait, Post-Jait, District-Mathura, Uttar Pradesh-281001	Vs	Income Tax Officer, Ward-1(3)(4), Room No.210, Aayakar Bhawan Radhika Vihar Phase-2, Mathura, Uttar Pradesh-281004
PAN-BJSPK7602Q		
Appellant		Respondent

Appellant by	None
Respondent by	Shri Shailender Shrivastava, Sr. DR

Date of Hearing	01.04.2025
Date of Pronouncement	19.05.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal filed by the assessee is directed against the order dated 25.06.2021 of National Faceless Appeal Centre, Delhi, relating to Assessment 2012-13 arising out of order u/s 144 r.w.s. 147 of the Act dated 12.12.2019/13.12.2019 passed by the Income Tax Officer, Ward-1(3)(4), Mathura.

2. None appeared on behalf of the assessee. However, the appeal is being decided after hearing the ld. Sr. DR and on the basis of material available on record.

3. There is a delay of about 9 months in filing of this appeal before the Tribunal. The assessee filed a condonation petition, which is reproduced as under:-

“Subject-Application for condonation of delay.

Respected Sir,

In the above noted matter it is respectfully submitted that first appellate authority has passed the order on 25/06/2021 but such order did not receive either on email or through registered post and never been informed through sms about this. Applicant is not so competent to access the portal of Income Tax Department independently. So he was no knowledge about such order of first appellate authority. As per the service of the order through portal the appeal has to be filed up to 24/08/2021 but applicant could not do so. So the appeal is beyond the legitimate prescribed time period.

Honourable Supreme Court vide its judgement dated 10/01/2022 disposing the M.A. No. 21 of 2022 issue some directions in regard to limitation. As per Honourable Supreme Court's verdict "In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons have a limitation period of 90 days from 01.03.2022." In this case time has expired between 15.03.2020 till 28.02.2022 so he can enjoy the said verdict. According to it such appeal is well in time or delay is liable to condone in the light of such order. The copy of the order is enclosed herewith.

So, it is requested to you kindly accept the appeal as regular accordingly and fixed the case for hearing, thanks.”

3.1. The explanation of the assessee has been considered and in view of the above Hon'ble Supreme Court order, the appeal has been filed within time. We, therefore, admit this appeal for hearing.

4. Brief facts of the case:- In this case, a notice u/s 148 of the Act was issued to the assessee on 28.03.2019, after recording reasons in view of an information [PAN AIR] in possession of the AO that the assessee had deposited cash Rs.11,89,056/- in his S.B. account No. 101701501460 maintained with ICICI Bank Ltd. during F.Y.2011-12. During the course of hearing, the assessee claimed that he was in the business of gilat ornaments and the cash deposits was on accounted of cash sales of the said ornaments.

The Assessing Officer did not accept the above explanation of the assessee and added the same of Rs.11,89,056/- as income from other sources.

5. Aggrieved with the said order, the assessee preferred an appeal before the ld. CIT(A). The Ld. CIT dismissed the appeal of the assessee on the ground that the assessee had failed to prove that he carried out any business during the AY 2012-13.

6. Aggrieved with the said order, the assessee is in appeal before us. The ld. Counsel for the assessee in the statement of facts submitted as under:-

1. That during the questioned year appellant made the sale and purchase of gilat ornament from his residence.

2. That during the questioned year appellant sold the gilat ornaments of Rs. 18,82,454.

3. That during the questioned year appellant has purchased the gilat ornaments form small traders known as karigar and M/s O.P. Gilat Ornaments, the registered dealer of Uttar Pradesh Value Added Tax.

4. That in compliance of the notice he filed the return of his income and shown the business income Rs 1,50,596 @ 8% of the sale under section 44AD I.T. Act.

5. That the total income of the appellant is below taxable limit.

6. That appellant submit the detailed reply with necessary evidences using the e-proceeding facility of the department.

7. That Assessing Officer did not accept the contention of the assessee and added the cash credits assuming the undisclosed income of him.

8. That the opening and closing balance of the questioned saving bank account is Rs.33,272 & Rs.79,589=42 respectively.

9. That according to the questioned bank account the appreciation is Rs 43,317=42 (Rs.79,589=42—Rs. 33,272) only and business income is Rs. 1,50,596.

10. That debits are in commensurate to credits of the questioned saving bank account.”

7. The ld. Sr. DR supported the orders of the authorities below.

8. We have considered the rival submissions and perused the material available on record. We note that the Ld. CIT(A) in para 4.9 of his order observed as under:-

“4.9 On analysis of the bank statement A/c. No. 101701501460, held with ICICI Bank Ltd, as furnished by the appellant, it is found that there were immediate cash withdrawals after each deposit. Very minimal balance was kept in the bank account at any point of time. In a normal business transaction, such immediate cash withdrawals cannot be found after each deposit. Further, during the course of a normal business transaction, amounts would be paid to several persons for various reasons. For example, there would be payments for electricity charges, maintenance charges, payments for workers or labourers etc. No such payments, either through cheque or through electronic mode could be found in the bank statement or the appellant. Thus, the pattern of the cash deposits and the cash withdrawals appearing in the bank statement of the appellant reveals that it did not appear to be a regular business transaction.”

9. In view of the observation of the Ld. CIT(A), we are of the considered view that without examining the purpose of immediate withdrawal of cash deposits as noted by the Ld. CIT(A), the confirmation of the addition made by the Assessing Officer on account of cash deposit in the bank account cannot be sustained. Further, the Ld. CIT(A) has not given any finding on the claim of the assessee about the fact of peak credit as stated at Sr. No. 8 and 9 of the statement of facts as reproduced in para no.6 on pre-page. We, therefore, in the interest of justice, set-aside the order of the Assessing Officer as well as the Ld. CIT(A) and restore the matter to the file of the Assessing Officer for afresh adjudication after giving a reasonable opportunity of being heard to the assessee in light of the above observations and as per law. Further, the assessee is also directed to appear before the Ld. Assessing Officer. Accordingly, grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 19th May, 2025.

Sd/-
[SUNIL KUMAR SINGH]
JUDICIAL MEMBER

Dated 19.05.2025.

Shekhar

Copy forwarded to:

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

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, Agra,