

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.512 & 513/Chny/2025
निर्धारण वर्ष/Assessment Years: 2016-17 & 2017-18

Late Mr. Nilesh Ratilal Shah, (Rep. by his legal heir Mr. Kunal Nilesh Shah), D-5 22, Arihant Apartments, Raja Annamalai Road, Purasaiwalkam, Chennai-600 084.	v.	The ITO, Non-Corporate Ward-9(1), Chennai.
[PAN: AACPN 7197 B]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से /Respondent by	:	Mr.N. Rajakumar, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	14.05.2025
घोषणाकीतारीख /Date of Pronouncement	:	11.06.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as "the Ld.CIT(A)"), Delhi, dated 23.12.2024 for the Assessment Year (hereinafter referred to as "AY") 2016-17 & dated 24.12.2024 for AY 2017-18.



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2. At the outset, the Ld.DR submitted that for AY 2016-17, the assessee filed additional evidences before the Ld.CIT(A) which has not been admitted by him citing Rule 46A of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules') and by stating that the assessee have not made out a case for admission of the same under clause (a) to (d) of the Rule 46A [refer Para No.4.3.1 of the CIT(A) order]. Therefore, the Ld.CIT(A)/NFAC was pleased to confirm the addition of Rs.81,42,700/-. Likewise, for AY 2017-18, according to the Ld.DR, the AO passed an order u/s.144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') (ex parte order qua assessee) and added Rs.59,84,000/- which was confirmed by the Ld.CIT(A) albeit after taking Remand Report from the AO which has been reproduced at Para No.4.3 of his order and therefore, according to the Ld.DR, the action of the Ld.CIT(A) need not be disturbed.

3. Having heard the Ld.DR and after perusal of the records, we note that the assessee is an individual who filed his return of income (RoI) for AY 2016-17 on 14.11.2017 declaring total income at Rs.12,66,190/- which return was selected for scrutiny. The AO taking note that the assessee had cash deposits in his HDFC, Kilpauk Branch, Chennai, asked for the entire details of the bank accounts maintained by him. According to the AO, the assessee didn't respond, therefore, he called for the details



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from the Branch Manager, HDFC, Kilpauk Branch, Chennai, who stated that Shri Nilesh Ratilal Shah, had joint account with three (3) different persons and had deposited in his bank account amounting to Rs.16,16,200/-; and the total cash deposits in all accounts was to the tune of Rs.81,42,700/-. The AO asked the assessee 'as to why' assessment u/s.144 should not be framed against the assessee. In response, the assessee submitted that he had only one account with HDFC wherein, he has deposited Rs.16,16,200/- and in the other bank accounts, he is only Joint Account holder and to support such a contention filed confirmation from his wife Smt. Urvashi N. Shah which stated that assessee was a Joint Account holder only. According to the AO, he thereafter asked the assessee for certain details. But the assessee failed to respond/file the same, which prompted him to add the entire cash deposits in four bank accounts [three accounts wherein he is a joint account holder and one account in his name] at Rs.81,42,700/-. On appeal, the assessee is noted to have filed additional evidences which have not been admitted, but rejected by the Ld.CIT(A) by holding as under:

4.3.1 The additional evidence furnished by the appellant cannot be accepted at this point of time. Clause (a) of rule 46A is not applicable because the AO never refused to admit evidences, for the simple reason that no evidences or information was provided by the assessee during the assessment proceedings. Clause (b) and (c) are not applicable because as per the additional evidences submitted by the assessee in appellate proceedings no cause or its sufficiency could be



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ascertained that prevented him from submitting the evidence during assessment proceedings. Clause (d) is not applicable because the AO did provide adequate opportunities to the assessee during the assessment proceedings to present evidence, which were not utilized by the assessee. Thus, the circumstances mentioned in the above mentioned four clauses of Rule 46A are not applicable to the present situation, and therefore, the additional evidence submitted by assessee during appellate proceedings is not admissible.

4. And thereafter, the Ld.CIT(A) has confirmed the addition of Rs.81,42,700/-. We don't countenance the action of the Ld.CIT(A). According to us, when the assessee has filed additional evidences, he was bound to give two (2) stages of opportunity as contemplated under Rule 46A. First, the Ld.CIT(A) ought to have given to the AO, an opportunity before admitting additional evidences and second, after admission of additional evidences. But in this case, the Ld.CIT(A) has rejected the additional evidences without giving opportunity to the assessee to put up his case 'as to why' he couldn't present the evidences before the AO during the assessment proceedings. Therefore, there is gross violation of natural justice and therefore, for the interest of justice and fair play, we are inclined to set aside the impugned order of the Ld.CIT(A) and taking note that assessee didn't get proper opportunity before the AO, relying on the decision of the Hon'ble Supreme Court in the case of TIN Box Co. v. CIT reported in [2001] 249 ITR 216 (SC), restore the assessment back to the file of the AO for de novo assessment and the assessee is directed to be diligent and file all the relevant documents to prove his claim regarding the cash deposits in his bank



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accounts as well as give all the details regarding the three bank accounts wherein his name is included as Joint Account holder; and the AO after hearing the assessee to frame assessment in accordance to law. Similarly for AY 2019-20 also, we find contradictory stand / action of the Ld.CIT(A) in respect of admission of additional evidences. First of all, he is noted to have called for Remand Report and having taken the Remand Report and after reproducing the same at Para No.4.3, he confronted it to the assessee, and then reproduced the assessee's submission at Para No.4.3.1, and thereafter, the Ld.CIT(A) is noted to have again copy pasted the same para for rejection of the additional evidences as he did in AY 2016-17 [refer Para No.4.3.1]

4.3.1 The additional evidence furnished by the appellant cannot be accepted at this point of time. Clause (a) of rule 46A is not applicable because the AO never refused to admit evidences, for the simple reason that no evidences or information was provided by the assessee during the assessment proceedings. Clause (b) and (c) are not applicable because as per the additional evidences submitted by the assessee in appellate proceedings no cause or its sufficiency could be ascertained that prevented him from submitting the evidence during assessment proceedings. Clause (d) is not applicable because the AO did provide adequate opportunities to the assessee during the assessment proceedings to present evidence, which were not utilized by the assessee. Thus, the circumstances mentioned in the above mentioned four clauses of Rule 46A are not applicable to the present situation, and therefore, the additional evidence submitted by assessee during appellate proceedings is not admissible.

5. The aforesaid action of the Ld.CIT(A), shows per-se non-application of mind which vitiates the impugned action of the Ld.CIT(A). Therefore, we set aside the impugned order of the Ld.CIT(A) and restore the



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Late Mr. Nilesh Ratilal Shah

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assessment back to the file of the AO for de novo assessment and the assessee is directed to be diligent and file all the relevant documents to prove his claim regarding the cash deposits in his bank accounts as well as give all the details regarding the three bank accounts wherein his name is included as Joint Account holder; and the AO after hearing the assessee to frame assessment in accordance to law.

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 11th day of June, 2025, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(**AMITABH SHUKLA**)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(**ABY T. VARKEY**)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 11th June, 2025.

TLN

आदेश की प्रतिलिपि अग्रेषित /**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF