

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT

ITA No.155/Bang/2025
Assessment year : 2017-18

Ateequr Rahman Akbarsab Kondgulli, Telecom Idea Distributor, Kareem Naar, Indi – 586 209. PAN: DYFPK 8371C	Vs.	The Income Tax Officer, Ward 2, Bijapur.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal Borkar, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue.

Date of hearing	:	05.06.2025
Date of Pronouncement	:	19.06.2025

ORDER

1. This appeal is filed by Mr. Ateequr Rahman Akbarsab Kondgulli (the assessee/appellant) for the assessment year 2017-18 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [ld. CIT(A)] dated 27.12.2024 wherein the appeal filed by the assessee against the assessment order passed u/s. 143(3) of the Act dated 16.11.2019 by the ITO, Wad 2, Bijapur was dismissed.

2. The Id. CIT(A) did not admit the additional evidence filed by the assessee.
3. The assessee aggrieved with the same has raised the following grounds of appeal:-
 - “ 1. The learned Assessing Officer (AO) erred in passing the order without following due procedure and in the manner in which the order was passed, rendering the assessment order invalid.
 2. The learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in law and is not justified in making the addition on the fact that appellant had not replied for the notices issued.
 3. The learned CIT(A) erred in assuming that the cash deposits in the appellant's bank account constituted undisclosed income without considering the nature of the appellant's business and the circumstances of the case while making assessment.
 4. The learned CIT(A) failed to appreciate that the various reasons given by the Ld. AO to uphold the ex parte assessment u/s 143 and addition of Rs 10,19,000/- to the income of appellant on account of unexplained cash deposits are misconceived and incorrect.
 5. The learned CIT(A) failed to consider that the learned AO has erroneously stated all cash deposits as old currency notes. Whereas only a portion of cash deposit was made in old currency notes and not all cash deposits during the period of demonetisation.
 6. The learned CIT(A) erred in sustaining the addition of cash deposits as undisclosed income u/s 69 during the period of Demonetisation, which is arbitrary, unjustified, and bad in law.
 7. Without prejudice to the above grounds, the impugned additions are unwarranted, excessive, and liable to be deleted in their entirety.

8. For these and any other grounds that may be raised at the time of hearing, the Appellant respectfully prays that the appeal be allowed, and the additions made be deleted in full.”
4. The brief facts of the case show that assessee is an individual, carrying on the business of distributor of Idea Cellular Ltd., filed his return of income on 17.10.2017 declaring total income of Rs.2,86,980. The return was selected for complete scrutiny for verification of cash deposit during the demonetisation period. Notices u/s. 143(2) of the Act was issued on 24.9.2018 and 142(1) was issued on 30.1.2019. The assessee did not comply with these notices. Show-cause notice was issued on 9.9.2019 which was also not complied with. The ld. AO on verification of e-filing portal found that assessee has filed return of income for AY 2017-18, however return for other years prior as well as subsequent to it are not filed. As per information available, it was found that assessee has made cash deposit of Rs.10,19,000 in his bank account with Indian Overseas Bank [IOB] during the demonetisation period. As the assessee did not comply with any of the notices, notice u/s. 133(6) of the Act was issued to the Bank on 21.8.2019, asking for certain details. It was provided by IOB and on the basis of the same, the ld. AO passed assessment order u/s. 143(3) of the Act wherein addition of Rs.10,19,000 was made u/s. 69A of the Act r.w.s. 115BBE of the Act determining total income of assessee at Rs.13,05,980.
5. The assessee aggrieved with the same preferred appeal before the ld. CIT(A). Before the ld. CIT(A), assessee furnished detailed reply stating that assessee was engaged in the business of Mobile currency recharge of Ideal Cellular Ltd. The assessee collects cash from the

customers for mobile recharge and deposit the same in his bank account and subsequently the payment is made through cheque to the principal, Ideal Cellular Ltd. Whatever cash is deposited is on account of sale consideration received by the assessee. The Id. CIT(A) held that as no details were submitted before the AO despite sufficient opportunity, did not admit the additional evidence and on the basis of information available, confirmed the order of the AO.

6. The assessee is aggrieved and is in appeal before the Tribunal.
7. The assessee has submitted that assessee submitted the copy of letter of intent, copy of bank statement and copy of RTC of agricultural land holding before the Id. CIT(A). The assessee also submitted an Affidavit of the father of assessee, who gave money particularly to the assessee to start the business. The assessee submitted all these details could not be submitted before the AO for the reason that intimation of the notices was on the email id registered with the IT department. It was submitted that the assessee did not have any access to that email because of some technical reasons. Therefore, the information could not be submitted before the AO. Before the Id. CIT(A) all the evidences are submitted. The Id. CIT(A) has no adjudicated the additional evidence stating that assessee was given enough opportunity by the Id. AO. It was submitted that when the email was not available, there is no opportunity to the assessee to explain his case. In these circumstances, all the evidence are produced before the Id. CIT(A), same should have been admitted in the interest of justice. The Id.

CIT(A) should also have obtained a remand report before deciding the issue against the assessee.

8. The ld. DR vehemently supported the orders of ld. lower authorities. It was submitted that before the AO the assessee did not respond and before the CIT(A) submitted additional evidences. Sufficient opportunity was given to him before the AO. The ld. CIT(A) is correct in not admitting the same.
9. We have carefully considered the rival contentions and perused the orders of ld. lower authorities. In this case, the assessee has filed return of income. The return was picked up for scrutiny for verification of cash deposit of Rs.10,19,000. As per the claim of assessee, notices issued on the registered email id on the e-filing portal of the assessee did not reach the assessee and therefore the evidences could not be produced. This resulted in assessment order passed u/s. 144 of the Act. Before the ld. CIT(A) the assessee submitted all the additional evidences and also stated that cash deposit in the bank account is on account of sale proceeds of Mobile recharge on behalf of Idea Cellular Ltd. As the assessee could not receive the email notices during the assessment proceedings, this is sufficient reason to state that assessee was not granted proper opportunity of hearing or adducing evidences before the CIT(A). Merely throwing away the merits of the case on the threshold by following technicalities does not help the interest of justice. Had these evidences been admitted by the ld. CIT(A) and sent back to the AO for verification and submitting a remand report, the

process of determination of correct income of the assessee would have ended there only. According to the provisions of Rule 46A, the CIT(A) is empowered to admit additional evidences. Such power should have been exercised. Looking at the facts of this case, as the did not have effective opportunity of hearing before the ld. AO, I do not find any reason to sustain the order of the ld. CIT(A) in not admitting these additional evidence and then confirming the order of the AO. Therefore the order of the ld. CIT(A) is reversed. As the assessee has not submitted all these evidence before the ld. AO also which resulted in assessment order passed u/s. 144 of the Act, I direct the assessee to submit all these details before the AO within 90 days from the date of receipt of this order, the ld. AO may examine the same and after giving opportunity of hearing to the assessee, decide the issue on its merits.

10. In the result, the appeal by the assessee is allowed as indicated above for statistical purposes.

Pronounced in the open court on this 19th day of June, 2025.

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 19th June, 2025.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.