

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

**BEFORE  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.140/AGR/2025  
(ASSESSMENT YEAR: 2019-20)

Singh Carriers, 2716, Swamipuram Colony, Gwalior Road, Jhansi, Uttar Pradesh-284003.  PAN-AACFS9607B <b>(Appellant)</b>	Vs.	Income Tax Officer, Ward-2(3)(1), Jhansi.   <b>(Respondent)</b>
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Assessee by	Shri Navin Gargh, Adv.
Department by	Shri Sukesh Kumar Jain, CIT-DR
Date of Hearing	22/05/2025
Date of Pronouncement	24/06/2025

**ORDER**

**PER MANISH AGARWAL, AM:**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [ld. CIT(A) in short] in Appeal No. NFAC/2018-19/10384806 dated 17.01.2025 passed u/s 250 of the Income Tax Act, 1961 ('the Act' for short) arising out of the order passed u/s 144 of the Act dated 29.02.2024 for Assessment Year 2019-20.

2. From the perusal of the assessment order, it is seen that the assessment was completed u/s 147 r.w.s 144 of the Act as the assessee failed to comply any notice issued by the Assessing Officer and, thus, the AO made addition of Rs.21,14,22,258/- u/s 69 of the Act by holding the credits in the bank account as unexplained money. In first appeal, the Ld. CIT(A) while dealing with ground of appeal No.1 to 6 taken on the merits of the additions, has set aside the issue back to the file of AO in terms of the powers conferred to him under first proviso to section 251(1) (a) of the Act and direct the AO to pass the assessment order afresh after considering the replies and documents filed by the assessee. However, the Ld. CIT(A) has not decided the jurisdictional issues raised by the assessee with regard to initiation of reassessment proceedings u/s 147 of the Act which was challenged before the Ld. CIT(A) in grounds of appeal Nos.7,8,9, 10 and 12 raised by the assessee.

3. It is true that the reassessment was passed *ex-parte* and CIT(A) has been given to power to set aside the cases where assessment order is passed u/s 144 to the file of the AO by Finance Act, 2024, w.e.f. 01.10.2024 however, when the assessee raised the jurisdictional issue, it is the duty of the Ld. CIT(A) to decide the legal issues first then to proceed to decide the grounds taken on the merits of the additions even in case of *ex-parte* order. Since, in the instant case, the Ld. CIT(A) has failed to do so, in our considered opinion, the matter needs to be reconsidered by the Ld. CIT(A) where the

jurisdictional issues raised by the assessee on the legality of the reassessment proceedings should be decided first. Accordingly, we set aside the order of the Ld. CIT(A) and restore the matter back to the file of Ld. CIT(A) with the directions that first decide the grounds taken by the assessee on jurisdictional issue which goes to the legality of the reassessment proceedings. This view is supported by the judgment of the Co-ordinate Bench of ITAT, Hyderabad in the case of Eye-gear Optics India (P.) Ltd. vs DCIT in Appeal Nos.1291 and 1347 (Hyd.) of 2024 dated 14.05.2025.

*“Section 37(1), read with sections 144, 147 and 251 of the Income-tax Act, 1961 - Business expenditure - Allowability of (Referral fees to doctors) - Assessment years 2012-13 and 2013-14 - Assessee-company, engaged in retail trading of ophthalmic products, claimed deduction of ₹4.17 crores towards referral fees paid to doctors - Assessing Officer reopened assessment under section 147 and completed it under section 144 on ground that referral fees was not an allowable expenditure under section 37(1) - On appeal, though Commissioner (Appeals) was empowered under proviso to section 251(1) to set aside best judgment assessment, he failed to adjudicate assessee’s specific ground challenging validity of reassessment on jurisdictional ground under first proviso to section 147 - Whether It is not obligatory on part of Commissioner (Appeals) to set aside all best judgment assessment orders passed under section 144 to file of Assessing Officer - Held, yes - Whether Commissioner (Appeals) instead of summarily setting aside matter to file of Assessing Officer for making a fresh assessment, ought to have taken a call as regards specific ground based on which validity of jurisdiction that was assumed by Assessing Officer for framing reassessment was assailed by assessee before him - Held, yes - Whether therefore, order of Commissioner (Appeals) was to be set aside and matter restored to his file with a direction to adjudicate specific ground based on which jurisdiction assumed by Assessing Officer for framing impugned reassessment order under section 147 read with section 144 was assailed by assessee before him.”*

In view of the above discussion, the matter is set aside to the file of the Ld. CIT(A) with the directions given hereinabove.

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

Order pronounced in the open court on 24.06.2025.

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

Sd/-  
**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

Dated: 24.06.2025

*PK/Sr. Ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR