

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

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

ITA No.62/AGR/2025
(ASSESSMENT YEAR: 2017-18)

Shri Ranjeet Kumar Sharma, Meera Colony, Bihind-477447 Madhya Pradesh. PAN-BWDPS0542K	Vs.	ITO, 2(1), Gawalior.
(Appellant)		(Respondent)

Assessee by	Shri Rajendra Sharma, Adv. and Shri Manuj Sharma, Adv.	
Department by	Shri Shailendra Srivastava. Sr. DR	
Date of Hearing	19/05/2025	
Date of Pronouncement	24/06/2025	

ORDER

PER MANISH AGARWAL, AM:

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A), in short] dated 23.01.2024, in Appeal No. CIT(A), Gwalior/10914/2019-20 for Assessment Year 2017-18 arising out of the order passed u/s 143(3) of the Income Tax Act, 1961 (the Act, in short) dated 24.12.2019.

2. The appeal filed by the assessee is delayed and the reason stated by the assessee is that the order of commissioner appeals was served on the IT portal and the IT portal was visited by the counsel of the assessee only as the assessee is not well versed, therefore, he was not aware of the passing of order by the Commissioner appeals. When the department has asked the assessee to deposit the demand, the fact of passing of appellate order was come to the notice of the assessee and immediately appeal was filed. In support of these contentions, assessee also filed an affidavit and requested that the delay is not intentional and, therefore, the same may be please be condoned and appeal may be adjudicated on merits.

3. Per contra, the Ld. Sr. DR vehemently objected of the condonation of delay in filing of appeal.

4. Heard both the parties on the issue of delay. Hon'ble Supreme Court in Sambhaji and Ors V Gangabai and Ors, in Civil Appeal no. 6731/2008 (arising out of SLP(C) No. 14562 of 2006) vide judgment dated 20.11.2008, has held that the object of prescribing procedure is to advance the cause of justice. In an adversarial justice system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extra ordinary situations in the ends of justice. Justice is the goal of jurisprudence. Procedural law is always subservient to and is

in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Processual law is not to be tyrant but a servant, not an obstruction but an aid to justice. A procedural prescription is the handmaid and not the mistress, lubricant, not a resistance in the administration of justice. In view of this and in the interest of justice, we find sufficient cause to condone the delay caused in filing the appeal before the Tribunal and therefore, admit the appeal for adjudication on merits.

5. Brief facts of the case are that the assessee is an individual and e-filed of his return of income on 15.10.2018 declaring total income of Rs.3,04,818/-. The case of the assessee was selected under CASS and after considering the submissions made and addition of Rs.12,16,500/- made u/s 69A of the Act on account of cash deposited during demonetization period. The Ld. AO also made addition of Rs.6,00,000/- by disallowing the agricultural income declared by the assessee. Against this order, the assessee preferred an appeal before the Ld. CIT(A) who dismissed the appeal of the assessee, thus, the assessee is in appeal before the Tribunal.

6. The assessee has raised the following grounds of appeal:

“Ground No. 1 - On the facts & circumstances of the case the learned CIT (A) was not justified on facts & in law in rejecting appellant submissions & explanation about the source of deposits including cash deposit in State Bank of India amounting to Rs. 12,16,500.00 & confirming AO's action of treating the amount of Rs. 12,16,500.00 as unexplained money u/s 69A & upholding the addition. Appellant explanation may kindly be accepted & the addition made may kindly be deleted.”

Ground No. 2 On the facts & circumstances of the case the learned CIT (A) was not justified in not considering to relevant facts of the case relating to non acceptance of agriculture income of Rs 6 lac by the AO. Which was also deposited in the State Bank of India. Suitable directions & interference may kindly be made.”

7. During the course of appellate proceedings, the assessee vide letter dated 9th April, 2025 has taken following additional legal grounds of appeal:-

Additional legal ground No. 3-

That the provisions of Section 69A of the Income Tax Act are not attracted in the case of the assessee. Invoking of Section 69A of the Income Tax Act in the case of the assessee, is against the provisions of Income Tax Act. No addition is liable to be made, addition made invoking the provisions of Section 69A of the Income Tax Act is not called for, same is liable to be deleted.

Additional legal ground No. 4-

That the provisions of Section 115BBE of the Income Tax Act are not attracted in the case of the assessee. In any view of the case, same are applicable from 01.01.2017 i.e. from Assessment Year 2018-19 and not from the year under consideration i.e. 2017-18. Tax charged, invoking the provisions of Section 115BBE of the Income Tax Act, is wrongly charged, tax even if to be charged, same is as per normal prescribed rate of tax.

It is submitted by the assessee that the additional grounds taken are purely legal in nature and, therefore, the same may be admitted.

7. On perusal of the additional grounds, it is seen that both the additional grounds are legal in nature, where the assessee has challenged the invocation of the provisions of section 69A of the Act and further challenged the applications of section 115BBE of the Act. Since, these grounds of appeal are purely legal and requires no verification, therefore, the same are admitted in view of the judgment of Hon'ble Supreme Court in the case of NTPC Ltd. reported in 229 ITR 383.

8. In ground of Appeal No.1 the assessee has challenged the action of the AO in making addition of Rs.12,60,500/- after invoking the provisions of section 69A of the Act and further by holding the same as unexplained money being the cash deposited during demonetization period.

9. Before us, the Ld. AR of the assessee submitted that the assessee assessed to tax for past law and having income from rent, salary, interest from partnership firm and agricultural income. It is the claim of the assessee that he has accumulated cash out of the income disclosed. Besides this, the assessee received contribution in cash from the family member for the solemnization of marriage of his sister which was fixed on 24.11.2016. Since, the demonetization was announced on 08.11.2016, therefore, the cash accumulated by various family members towards the marriage expenses were handed over to the assessee who had deposited the same in the bank account being in SBN. The Ld. AR submitted that these facts were duly stated before the lower authorities, however the AO has failed to appreciate these facts and made the addition.

10. Before us, the assessee has filed additional evidences along with prayer under Rule 29 of the Income Tax Appellate Tribunal Rules. Such evidences includes the affidavits of the grandmother and sister-in-law of the assessee wherein they have confirmed the cash given to the assessee as their contribution towards the marriage of the sister of assessee. The Ld.AR submitted that such evidences are crucial to decide the issue thus requested for the admission of the same and

further requested that since the assessee has been able to explain the sources of the cash deposited, therefore, addition made deserves to be deleted.

11. On the other hand, the Ld. Sr. DR supports the order of the lower authorities and requested for the confirmation of the additions was made.

12. We have heard both the parties and perused the material available on record. Since the issue involved is with regard to the source of cash deposited in SBN and the additional evidences filed under Rule 29 of the ITAT Rules, crucial to decide the issue thus in the interest of justice these are admitted. Further these evidences are comprising of affidavits of the grandmother and sister in law of the assessee which does not require further verification therefore they are considered on merits. In the instant case, the assessee has deposited Rs.12,16,500/- out of which Rs. 11,65,500/- there were deposited on 11.11.2016, i.e. just two days after the date of demonetization announced by the Hon'ble Prime Minister on 08.11.2016. It was claimed by the assessee that the immediate source was out of accumulation of the funds and further contribution received in cash from the family members for the marriage of his sister on 24.11.2016. Since demonetization was announced and nobody was accepting SBN, therefore, the cash accumulated by the family members including of the assessee was deposited in the bank to make the payments of marriage expenses. It is also admitted fact marriage of the sister was solemnized on 24.11.2016. Further the

assessee is having regular source of income from rent, salary and interest from firm, therefore, accumulation of funds by the assessee cannot be ruled out. Looking to the overall facts and circumstances of the case, the amount of Rs.50,000/- deposited at later stage is held as unexplained money of the assessee and the remaining amount is held as from the explained sources and accordingly the addition is restricted to Rs. 50,000/- and balance addition of Rs.11,66,500/- is hereby deleted. Ground of appeal no. 1 is partly allowed.

13. Ground no.2, the assessee has challenged the action of Ld. AO in making addition of Rs.6,00,000/- by not accepting the agricultural income declared by the assessee for one of evidences.

14. From the perusal of the orders of the lower authorities, it is seen that assessee has not challenged this addition before the Ld. CIT(A). Further vide application filed under Rule 29 assessee filed additional evidences comprising of details of agricultural holdings by him and his father. Since, this issue has not been examined by the AO nor by the Ld. CIT(A). Further, the evidences in the shape of land holdings were submitted for the first time before us. Looking to these facts, in the interest iof justice we admit the additional evidences and set aside this issue to the file of the AO with directions to examine the details filed by the assessee and decide this issue in accordance with law. Needless to say, the assessee be provided a reasonable opportunity of being heard. The Ground of appeal No.2 is partly allowed for statistical purposes.

15. The additional grounds of appeal Nos. 3 & 4 are in relation to the invocation of the provisions of section 69A and 115BBE of the Act. In this regard, it is seen that assessee is an individual having no regular books of accounts. While deciding the appeal of the assessee in ground No.1 above, we uphold the addition of Rs.50,000/- towards cash deposit in SBN in his bank account. The assessee claimed that the cash deposited was neither money nor bullion nor jewellery thus provisions of section 69A are not applicable. Since there were deposit in the bank account and assessee has failed to explain the source of the same, therefore, the provisions of section 69A are rightly invoked by the AO. With regard to the application of section 115BBE the Hon'ble Madras High Court in the case of S.M.I.L.E Microfinance Limited vs. ACIT in W.P. (MD) No.2078 of 2020 and W.P. (MD) NO.1742 of 2020 vide order dated 19.11.2024 has held that the provisions of section 115BBE inserted with effect from 15.12.2016 and thus are applicable from 01.04.2017 i.e. from Assessment Year 2018-19 and onwards. Thus by respectfully following the judgments of the Hon'ble Madras High Court in the case of .M.I.L.E Microfinance Limited (supra), we hold that provisions of section 115BBE are not application to the present case for AY 2017-18. We order accordingly. The additional grounds of appeal no.3 is dismissed and additional ground No.4 is allowed.

16. In the result, the appeal of the assessee is partly allowed with the observations made herein above.

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