

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

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

ITA No.120/AGR/2025
(ASSESSMENT YEAR: 2017-18)

Brajendra Vikram Singh 58, Ram Nagar Ajnari Road, Orai, Jalaun-285001. PAN-CIOPS6701G	Vs.	Income Tax Officer, Ward-2(1)(5), Orai-285001.
(Appellant)		(Respondent)

Assessee by	None
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 22.12.2023, in Appeal No. CIT(A), Kanpur-2/10336/2019-20 passed u/s 250 of the Income Tax Act, 1961 ('the Act' in short) for Asst. Year 2017-18.

2. The appeal filed by the assessee is delayed by 350 days. The reason for the delay as stated by the assessee in his petition for condonation of delay was that the assessee has handed over the

appellate order for preparation of the appeal to his counsel. The counsel has directed his junior for preparation of appeal, however, the junior has kept the order in folder, and the folder in which the order was kept got tied with other set of files so he skipped to prepare the appeal. It is when the Inspector of the Department visited the place/house of assessee for recovery of the outstanding demand, the fact of non-filing of appeal was come to the notice of the assessee who immediately contacted the counsel and appeal was filed. He thus, prayed for there was no malafide intention in filing the appeal delayed and, therefore, requested for the condonation of delay.

3. On the other hand, the Ld. Sr. DR vehemently opposed the admission of the appeal and requested not to condone the delay.

4. After considering the arguments of both the parties, we find that assessee has sufficient cause in delay in filing the appeal. The assessee would not gain anything by filing the appeal late, there is no malafide imputed to the assessee the delay. In our considered opinion on account of negligence on the part of the office of the counsel of the assessee that alone cannot be enough to turned down plea and to shut doors against him. If the explanation does not smack of mala fide or it is not put-forth as a part of dilatory strategy, the Courts must consider the request of such litigant in sympathetic manner. Considering overall facts and circumstances of the case and in the larger interest of justice, we condone the delay and admit the appeal of the assessee to decide the same on merits.

4. The brief facts of the case are that assessee is an individual and filed his return of income for impugned year on 26.02.2018 declaring total income of Rs.79,510/-. The assessee also filed the revised return. The case of the assessee was selected for scrutiny. The AO has not taken cognizance of the revised return for the sole reason that it was filed belatedly and after the issue of notice u/s 143(2) of the Act. Thereafter, the submissions of the assessee filed from time to time were considered and the assessment was completed at a total income of Rs.36,56,208/- by making various additions. Against such order, the assessee preferred appeal before the Ld. CIT(A) who decided the appeal of the assessee in terms of the impugned order dated 22.12.2023 wherein part relief was allowed to the assessee.

5. Aggrieved by the said order, the assessee is in appeal before the Tribunal, wherein following grounds of appeal are taken:

“01. The Income Tax Officer as well as CIT(A)/NFAC has grossly erred in law and on facts as well by making the assessment on the basis of a non-est Original) return in place of a validly filed revised return.

02. The Income Tax Officer as well as CIT(A) grossly erred in law and on facts as well by not considering the replies, related evidences, supporting documents uploaded while framing the assessment order.

03. The Income Tax Officer grossly erred in law and on facts as well by not obtaining the valuation as on date of agreement and adding difference between stamp value and sale consideration as on the date of sale, the CIT(A)/NFAC has also upheld the same.

04. The CIT(A)/NFAC has erred in law and on facts as well by not considering the valuation report submitted by the departmental DVO.

05. The CIT(A)/NFAC has erred in law and on facts as well by failing to examine the relationship between the assessee and the seller of the property.

06. The CIT(A)/NFAC has erred in law and on facts as well by considering the cash deposits made by my younger brother during the demonetization period in a joint account with the appellant as unexplained money while it was the sale receipts.

07. The AO as well as CIT(A)/NFAC has erred in law and on facts as well by considering the sales receipts of my business as undisclosed income under section 69A of the Income Tax Act, 1961.

08. The AO has erred by adding the Agriculture Income on the basis of original non-est return, which was nonexistent and also upheld by the CIT(A)/NFAC.

09. The Assessment order passed by the Assessing Officer and upheld by the CIT(A) is illegal, unlawful and against the principle of natural justice.”

6. Ground of appeal No.1 & 2 are general in nature.

7. Ground No.1, the assessee has challenged the action of the AO in not considering the revised the return filed by the assessee. On going through the records, it is seen that the assessee has filed revised the return after issue of notice u/s 143(2) and the original return was also filed belatedly on 26.02.2018.

8. The remaining grounds taken by the assessee are in respect to the additions sustained by the assessee by the Ld. CIT(A).

9. Heard the revenue and perused the material available. We find that Ld. CIT(A) has passed a reasoned order wherein while deciding all the issues, the Ld. CIT(A) has observed as under:

“Ground No.1

In the ground no.1, the appellant has contended that "The Income Tax Officer grossly erred in law and on facts as well by making the assessment on the basis of a non-est (Original) return in place of a validly filed revised return.”

In this regard, it is noticed that the appellant had filed original return of income belatedly on 28.02.2018 and after the case was selected for scrutiny under CASS and notice u/s 143(2) dated:22.09.2018 was issued to the appellant. The appellant filed revised return on 31.12.2018 after the selection of his case under scrutiny. It is pertinent to mention here that as per the provision of section 139(5) of the IT Act, with effect from 01.04.2017, any return filed after the end of the assessment year i.e. 31.03.2018 would be treated invalid. Here, the appellant had filed the revised return on 31.12.2018 after the end of the assessment year. Thus, the revised return would be treated not valid. Moreover, revised return is meant for making good any bonafide omission or any wrong statement. But in the appellant's case the revised return was filed after the case was selected for scrutiny and questionnaires were issued to him. Further, the case of the appellant was selected on the basis of original return and in the notice u/s 143(2), the acknowledgment number mentioned was that of the original return therefore, the assessment order had to be passed considering the original return and not the invalid one. In view of the same, the Assessing Officer has rightly incorporated the original return in assessment order. Considering the above facts discussed the ground no.1 of the appeal is hereby dismissed.

Ground Nos.3, 4 and 5.

In this ground the appellant has contended that "3. The Income Tax Officer grossly erred in law and on facts as well by not obtaining the valuation as on date of agreement and adding difference between stamp value and sale consideration as on the date of sale. 4. The Income Tax Officer grossly erred in law and on facts as well by not considering the valuation report submitted by the departmental DVO. 5. The Income Tax Officer grossly erred in law and on facts as well by failing to examine the relationship between the assessee and the seller of the property.

With regard to the above, the assessment order was carefully perused and it is found that the Assessing Officer while passing the assessment order had mentioned in the assessment order that As per natural justice, it is hereby ordered that after getting valuation report, the benefit, if any, shall be given to assessee after passing the order u/s 154 of I.T. Act, 1961. The appellant in his reply submitted that the valuation report was received on 24.12.2019 two days prior to passing of the assessment order but the appellant did not upload any valuation report before this office. However, considering the same, the Assessing Officer is directed to verify the valuation report if received and rectify the addition on this issue accordingly. In view of the same, the ground nos.3, 4 and 5 of the appeal is allowed subject to verification of valuation report by the Assessing Officer.

Ground nos.6 and 7

In this ground, the appellant has contended that 6. The Income Tax Officer grossly erred in law and on facts as well by considering the cash deposits made by my younger brother during the demonetization period in a joint account with the appellant as unexplained money while it was the sale receipts. 7. The Income Tax Officer grossly erred in law and on facts as well by considering the sales receipts of my business as undisclosed income under section 69A of the Income Tax Act, 1961.

With regard to the above claim of the appellant, the bank statement furnished by the appellant is perused carefully and it is found that the bank statement furnished is in the name of Shri Lokendra Vikram Singh and Shri Brajendra Vikram Singh having account no. 50170362611. From the statement it is noticed that the total credits in the bank account is Rs. 14,65,072/- only. However, the total turnover shown by the appellant is far more. The appellant has claimed that he runs his entire business in cash. This claim of the appellant is not acceptable. It is possible that the sales could be made substantially in cash but the payment has to be made through banking channel as the volume of purchase would be quite high. Thus, it is apparent that the appellant has not been able to come out clean by furnishing relevant details and explanation. Further, no documents have been furnished which establishes the claim of the appellant that some portion of these deposits belong to his brother. In absence of these supporting documents the AO was justified to treat the cash deposits of Rs.12,91,340/- as unexplained cash as per section 69A of the Act. In view of the same the claim of the appellant cannot be accepted and hence the ground nos. 6 and 7 of the appeal is dismissed

Ground No.8

In this ground the appellant has contended that The Assessing Officer grossly erred by adding the Agriculture Income on the basis of original non-est return, which was nonexistent.

This ground is related to the ground no.1, the adjudication is already done in the ground no.1. however, it is pertinent to mention that the appellant has filed the revised return only after the selection of his case under scrutiny. With regard to the agricultural income the Assessing Officer asked proofs for the agricultural activities carried out during the year which the appellant failed to produce and instead the appellant revised the returning after wiping out the agricultural income which seems intentional. Anyhow, the revised return filed on 31.12.2018 which is after the due date for filing any return for AY 2017-18 is not valid and thus, the claim of the appellant cannot be entertained. Therefore, the ground no.8 of the appeal is dismissed.”

9. Since, before us, the assessee has failed to controvert the findings of Ld. CIT(A), therefore, we find no reason to interfere in the findings given by Ld. CIT(A). Accordingly, all the grounds of appeal of the assessee are dismissed.

10. In the result, the appeal of the assessee is dismissed.

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