

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR  
(By Virtual Mode)  
BEFORE SH. KUL BHARAT, VICE PRESIDENT  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER  
ITA Nos.167 & 168/JAB/2025  
A.Ys. 2017-18 & 2016-17**

Jagdish Prasad Agrawal, Chhindwara Road, Seoni, M.P. <b>PAN:AHBPA9038N</b> (Appellant)	vs.	ITO, Ward Seoni, Range 72, AO No. 96  (Respondent)
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Assessee by:	Sh. Mukesh Agrawal, C.A.
Revenue by:	Sh. Alok Bhura, Sr. DR
Date of hearing:	19.08.2025
Date of pronouncement:	28.08.2025

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.**

Both the appeals have been filed by the assessee against the separate orders of the Id. CIT(A), NFAC under section 250 of the Income Tax Act, 1961 dated 23.05.2023 for the assessment years 2016-17 and 2017-18, wherein the Id. CIT(A) has dismissed both appeals for statistical purposes. As both the appeals have been filed on a common issue, therefore, they are being taken up together for the sake of convenience. The grounds of appeal are as under:-

**ITA No.167/JAB/2025**

*"1. That on the facts and circumstances of the case, the order passed by the Hon'ble CIT-A, u/s 250 of the Income Tax Act, 1961 (the Act) is bad in law and deserves to be set aside.*

*2. That on the facts and in the circumstances of the case and in law, the learned CIT Appeals NFAC has grossly erred in dismissing appeal of the Assessee without considering the merits of the case. The order passed by CIT Appeal is illegal, invalid and against the principles of natural justice.*

*3. That on facts and circumstances of the case, the Hon'ble CIT-A erred in upholding the ex-parte order passed by Ld. AO solely based on guesswork without bringing any credible evidence on record and without giving adequate opportunity of being heard to the Assessee.*

*4. That on facts and circumstances of the case, the Hon'ble CIT-A erred in confirming the addition of INR 1,10,20,869 of the Act without proper*

*consideration of the facts of the case. The addition is arbitrary, unjustified and deserves to be deleted.*

*5. Any other ground that may be raised during hearing of appeal.”*

**ITA No.168/JAB/2025**

*“1. That on the facts and circumstances of the case, the order passed by the Hon'ble CIT-A, u/s 250 of the Income Tax Act, 1961 (the Act) is bad in law and deserves to be set aside.*

*2. That on the facts and in the circumstances of the case and in law, the learned CIT Appeals NFAC has grossly erred in dismissing appeal of the Assessee without considering the merits of the case. The order passed by CIT Appeal is illegal, invalid and against the principles of natural justice.*

*3. That on facts and circumstances of the case, the Hon'ble CIT-A erred in upholding the ex-parte order passed by Ld. AO solely based on guesswork without bringing any credible evidence on record and without giving adequate opportunity of being heard to the Assessee.*

*4. That on facts and circumstances of the case, the Hon'ble CIT-A erred in confirming the addition of INR 63,32,617 of the Act, without proper consideration of the facts of the case. The addition is arbitrary, unjustified and deserves to be deleted.*

*5. Any other ground that may be raised during hearing of appeal.”*

2. It is seen that the appeals filed by the assessee are delayed by 11 days. The assessee has filed a condonation petition and sworn an affidavit, in which it has been submitted that he resides at a small place (Seoni) in Madhya Pradesh and is engaged in the business of trading of agricultural produce. The case had been reopened under section 147 pursuant to notice dated 6.07.2022, on the allegation that he had engaged in bogus purchase and sale transaction. The said proceedings had resulted in orders under section 147 r.w.s. 144 and substantial additions to returned income had been made. Aggrieved by the said orders, the assessee had preferred an appeal to the ld. CIT(A) and the ld. CIT(A) issued several notices on the email of the accountant, who did not look into it. The assessee submitted that as such he was unaware about the hearing notices and for this reason, they remained un-responded. Consequently, the ld. CIT(A) dismissed the said appeals, vide his orders dated 3.03.2025, but the assessee was not aware about the passing of the appeal order as no physical copy of the order had been served upon him. On 6.05.2025, the assessee came to know from his banker that his bank account had been attached by the Income Tax Department. Thereafter, he approached his tax

consultant, but did not receive proper response. Since, he resided in small place, there were no tax consultant well-versed in such matters that were available locally. He, therefore, contacted a relative at Nagpur, who helped him to engage another tax consultant. Thereafter, this tax consultant helped the assessee in re-setting his e-filing credentials and informed him about the order passed by the Id. CIT(A), that confirmed the addition made by the Id. AO. He also advised the assessee to file an appeal and immediately thereafter, the assessee filed an appeal against the said orders. It was submitted that both the appeals were delayed by 11 days, but the delay in the same as well as the failure to respond to various notices issued by the Id. CIT(A) occurred solely because of the assessee's lack of awareness of the ongoing legal proceedings and statutory timelines prescribed under the Act. It was further submitted that the assessee was not well educated, he had only studied up to 6<sup>th</sup> standard and hence he was not conversant with the portal of the Income Tax Department, unfamiliar with email and did not operate a smart phone. He was entirely dependent upon his tax consultant for all his compliances, but the tax consultant did not attend to the matter in a timely and diligent manner. It was, therefore, prayed that the delay in filing of the appeal may kindly be condoned on these accounts. After considering the aforesaid submission of the assessee, we feel that there is sufficient cause to explain the delay in the filing of the appeal and therefore, the delay is condoned and the appeal is admitted for adjudication.

3. The facts of the case are that the Department received information that the assessee had made bogus transactions relating to sales and purchases of Rs.63,81,578/- during the financial year 2015-16 and Rs.1,13,37,168/- during the financial year 2016-17. Therefore, he reopened the case after recording reasons and obtaining the necessary approvals where required. The Id. AO records that subsequently, in compliance to the judgment of the Hon'ble Supreme Court dated 4.05.2022 in Civil Appeal No. 3005/2022 in the case of Union of India vs. Sh. Ashish Agarwal & Ors and the CBDT Instruction No. 01/2022 dated 11.05.2022, the information and material relied upon by the Revenue, which suggested that income

had escaped assessment in the case of the assessee, was provided to the assessee by the jurisdiction of the ld. AO. Subsequently, it was concluded that the assessee had suppressed his income for both assessment years to the extent of the alleged bogus transactions and therefore, fresh notices under section 148 of the Income Tax Act, 1961 were issued for both assessment years along with orders under section 148A(d), with the prior approval of the specified authority. The ld. AO records that in both assessment years, a number of opportunities were given by the assessee to make compliance to the various notices issued by the Department, but these had not been complied with. He also observed that the assessee had not complied with the notice issued under section 148A(b) of the Act, therefore, the orders had been passed under section 148A(d), based on the materials on the record. Perusing these orders, the ld. AO noticed that the assessee had made a allegedly bogus transaction of Rs.30,24,450/-, from Gunn Enterprises and Rs.33,57,128/-, from Parth International in the F.Y. 2015-16 and a bogus sales of Rs.1,13,37,168/-, from the bogus firm of Umesh Kumar Vivek Kumar. He recorded the fact, that as per the enquiries conducted by the Investigation Wing in the case of Ashok Kumar Gupta (PAN-AAAPG2240G) both Gunn Enterprises and Parth International had been found to be paper entities that were providing accommodation entries through issue of non-genuine invoices and/or accepting non-genuine bills, from beneficiary parties. With regard to entity Umesh Kumar Vivek Kumar, the ld. AO observed that the statement of Ashok Kumar Gupta had been recorded, in which he had confessed to the fact that the said firm operating under the proprietorship of Vivek Gupta, his nephew, was a *jama kharchi* firm engaged in providing accommodation entries and the assessee had made bogus sales of Rs.1,13,37,168/-, to the firm Umesh Kumar Vivek Kumar. Therefore, on the basis of these facts, he issued show cause notices to the assessee, as to why the said amount should not be added back in the hands of the assessee and upon the failure to receive any reply, he held that the purchase made by the assessee from Gunn Enterprises worth Rs.30,24,450/- and the sales made of Rs.3,57,128/- to Parth International in the assessment year 2016-17 were bogus and he accordingly added

the sum of Rs.3,57,128/- to the income of the assessee, as unexplained cash credit under section 68 r.w.s. 115 BBE of the Act. He also reduced the GP by Rs.48,961/-, on account of the bogus purchases made from Gunn Enterprises. In the assessment year 2017-18, he added back the total amount of sales purported to be made to Umesh Kumar Vivek Kumar of Rs.1,13,37,168/- under section 68 of the Income Tax Act, holding the sales to be bogus and the credit on the said account to be unexplained.

4. Aggrieved with the said assessment orders, the assessee filed appeals with the National Faceless Appeal Centre. The ld. CIT(A), NFAC records the fact that he issued four notices to the assessee on the email ID [POTDAR.audit1@gmail.com](mailto:POTDAR.audit1@gmail.com), but none of these notices were complied with. Therefore, the ld. CIT(A) came to the conclusion that it was not necessary to give any further opportunity to the assessee, as the assessee had not shown any interest in pursuing the appeal. For this proposition, he relied upon the judgment of the Hon'ble Gujarat High Court in the case of Fairdeal Filaments Ltd. vs. CIT, 302 ITR 173 (Guj). The ld. CIT(A) held that section 114(g) of the Indian Evidence Act, 1872 created a presumption, that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it. He held that the burden of proof lay on the assessee in appeal proceedings to prove that the findings of the ld. AO were incorrect and since the assessee had not disproved the findings of the ld. AO, by placing any evidence before the ld. CIT(A), the order was fit to be confirmed. He also relied upon various other cases of the Hon'ble Supreme Court, Hon'ble Delhi High Court, Hon'ble Bombay High Court and the Hon'ble Madhya Pradesh High Court, in support of this proposition. He held that in the absence of co-operation of the assessee not much could be done on the merits of the case and therefore, he dismissed the appeal of the assessee for statistical purposes.

5. The assessee is aggrieved at this dismissal of his appeal and has accordingly come before us. Sh. Mukesh Agarwal, C.A. (hereinafter referred to as the ld. AR) representing the assessee, submitted that the facts of the case had been submitted

by the assessee in his affidavit and the failure to comply before the lower authorities and especially the Id. CIT(A) was because of the complete dependency on the previous counsel and the failure of the said counsel to attend to the case diligently. It was submitted that in view of this, the assessee may kindly be given an opportunity to prove that the purchases and sales made by him were not bogus and he undertook to ensure, that if the Tribunal in its wisdom decided to restore the matter back, then he would ensure compliance before the lower authorities.

6. On the other hand, Sh. Alok Bhura, Sr. DR (hereinafter referred to as the Id. Sr. DR) pointed out that the assessee had been given ample opportunities both at the time opening of the case, then at the time of assessment and also by the Id. CIT(A) in the course of appeal, but the assessee had not made any submissions before these authorities. Considering the findings of the Investigation Wing, it must be held that the assessee had no submissions to make in this regard and therefore, the appeals of the assessee were fit to be rejected and the additions confirmed.

7. We have considered the facts and circumstances of the case. The fact that the assessee is a poorly educated person, who was not familiar with the workings of the Income Tax Portal and unable to view emails / keep smart phones, would definitely hamper his ability to respond to proceedings conducted through electronic media. In such circumstances, the reliance upon an authorized representative for compliance is only natural and any non-compliance due to the negligence of the said counsel, must therefore be held to be a reasonable ground for non-compliance before the lower authorities. The assessee has narrated in the course of his affidavit, that because he did not receive proper response from his previous tax consultant, he had to approach a counsel at Nagpur to enable him to re-set his login details on the Income Tax Portal and file this appeal. Therefore, it appears that the non-compliance before the Id. AO or the Id. CIT(A), was primarily because of the incapacity of the assessee to handle the proceedings himself in electronic media. We have also noticed that the assessee has submitted in the statement of facts, that he had no association with Sh. Ashok Kumar Gupta, that he

has not made any purchase from any party called M/s Gunn Enterprises and furthermore that he had maintained books of accounts and had, during the course of the assessment proceedings, uploaded all the documents and books including sales register, purchase register, bank accounts, cash books, ledger, proof of concerned purchases including receipts / acknowledgment from local Government bodies, but none of the documents had been accepted and assessee was also not allowed the opportunity of cross examination by the Id. AO, of the person on whose statement the addition had been made. It had submitted in the statement of facts, that Sh. Ashok Kumar Gupta had not mentioned the name of the assessee in his statement and yet the additions had been confirmed in his hand, without giving him opportunity to rebut it. With regard to the sale made to M/s Umesh Kumar Vivek Kumar, the assessee had submitted in the statement of facts before the Id. CIT(A), that the purchase for the same had been made by the assessee from a local Government authorized body and in this case also, all the documents had been uploaded before the Id. AO. But here too, without giving the assessee an opportunity to cross examine Sh. Ashok Kumar Gupta, the entire sales had been regarded as bogus and added back to the income of the assessee. Ongoing through the orders of the Id. AO, it appears that the Id. AO has not examined these documents before finalizing the assessment orders, as he records in his order that the documents that the assessee has claimed to have filed, had not been filed before him. Therefore, considering the facts before us, we deem it proper in the interest of justice, to restore the matter back to the file of the Id. AO so that the Id. AO may consider the documents filed by the assessee and the assessee may explain to him as to why the purchases and sales that are alleged to be bogus are in fact not so. But while doing so, we would caution the assessee, that since the matter is being restored back at his request, the onus is upon him to make proper compliance before the AO and his failure to respond would be viewed against him. Accordingly, with these comments, both appeals are restored to the file of the Id. AO for *de novo* assessment after considering the submissions of the assessee.

8. In the result, both the appeals filed by the assessee in ITA No.167/JAB/2025 and ITA No.168/JAB/2025 are held to be allowed for statistical purposes.

Order pronounced on 28.08.2025 in the open Court.

Sd/-

**[KUL BHARAT]  
VICE PRESIDENT**

DATED: 28/08/2025

<sup>Sh</sup>

Copy forwarded to:

1. Appellant -
2. Respondent -
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

Sd/-

**[NIKHIL CHOUDHARY]  
ACCOUNTANT MEMBER**

By order  
Sr. P.S.