

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD 'SMC' BENCH, ALLAHABAD
(HEARD BY DB)**

**BEFORE SH. SUBHASH MALGURIA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.94/ALLD/2025
A.Y. 2017-18

Gajendra Kumar, 526, Rathaur Colony, Jaitpur, Belatal, Mahoba, U.P.	vs.	Income Tax Officer, Ward-2(2)(4), Banda
PAN:BITPK6827P		
(Appellant)		(Respondent)

Assessee by:	Sh. Praveen Godbole, C.A.
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	06.08.2025
Date of pronouncement:	28.08.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the orders of the Id. CIT(A) passed under section 250 of the Income Tax Act, 1961 on 3.01.2025, dismissing the appeal of the assessee against the orders of the ITO, Ward-2(2)(4), Banda dated 21.12.2019 passed under section 144 of the Income Tax Act. The grounds of appeal are as under:-

"1. THAT the learned CIT (Appeal) has erred in law & facts in disallowing appeal and confirming the addition made by A.O. of Rs. 25, 90,414/- as cash deposits into bank account under Section 69A of IT Act, 1961 because all notices were issued u/s 250 of the act on ITBA Portal and no physical notice was issued to appellant on address mentioned in filed ITR and filed appeal and has disallowed appeal without considering this fact that appellant lives at Village Jaitpur Post Belataal, District Mahoba (U.P.) and is unknown about information technology.

2. THAT the learned CIT (Appeal) has erred in law & facts in disallowing appeal and confirming the addition made by A.O. of Rs. 25, 90,414/- as cash deposits into bank account under Section 69A of IT Act, 1961 without considering this fact that appeal was filed by Advocate Dinesh Gupta who was expired and email ID in profile of appellant was update by him. Appellant was unknown about Login ID & Password of portal and email ID which was maintained by Late Advocate Dinesh Gupta.

3. THAT the learned A.O. has erred in law & facts in disallowing and making addition of Rs. 25, 90,414/- without considering this fact that case of appellant was selected only make enquiry about cash deposit of Rs. 11,20,000/- into bank accounts during demonetization period and only notice U/s 142(1) was issued to appellant. Further, the A.O. has completed assessment without issuing notice U/s 143(2) of the Act.

4. THAT the learned A.O. has erred in law & a fact in making addition of Rs. 25, 90,414/- without considering this fact that appellant has filed his return of income with no account case status and Section 69A can only be invoked where books of accounts were maintained.

5. THAT the appellant craves for adding or deleting any ground of appeal.”

2. At the very outset, it is observed that the appeal is delayed by 78 days. The petition has been filed by the assessee for condonation of delay. It was submitted that the assessee had not received any notice that was issued by the Id. CIT(A) because his Authorized Representative Sh. Dinesh Gupta, Advocate expired on 26.10.2021 and the assessee was not aware of the login ID and password created by him for the portal. It was only when the assessee received a notice under section 221(1) for the recovery of demanded tax by speed post, then it came to his knowledge that the Advocate Sh. Dinesh Gupta, who had filed the appeal before the Id. CIT(A), had expired. Thereafter, the assessee approached another Advocate, Sh. Subhash Chandra Gupta, to apply for a certified copy of the assessment order under section 144. Thereafter, the Id. AO provided a certified copy of the assessment order on 30.04.2025, only then could this appeal be filed. Accordingly, it was prayed that the delay in the appeal was for reasons beyond the control of the assessee and it was prayed that the said delay may be condoned. An affidavit was also filed in this regard. After considering the facts laid down in the condonation petition and the affidavit, we condone the delay and admit the case for hearing.

3. The facts of the case are that the Department received information that the assessee had deposited cash amounting to Rs.9,10,000/- in its bank account maintained with SBI, Jaitpur, Mahoba and Rs.2,10,000/- in its bank account maintained with Allahabad, Belatal, Mahoba, but the assessee had not filed a return of income for the assessment year 2017-18. Therefore, the Id. AO issued a notice

under section 142(1) asking the assessee to file a return of income. However, it appears that no return was filed in response to this notice. Therefore, to verify the genuineness of cash deposit, a notice under section 142 of the Act along with questionnaire was issued to the assessee on 30.05.2019. Some details were filed in response to these notices such as VAT return, details of bank account etc., which were examined. The ld. AO records that the total sales of the assessee, from a perusal of the VAT returns, were revealed to be Rs.26,30,691/- for the financial year 2016-17, but the total deposits in the bank account with State Bank of India, Jaitpur, Mahoba and Allahabad Bank, Belatal were Rs.52,26,970/-, which was in excess of the sales as per VAT returns by a sum of Rs.25,90,414/-. The ld. AO records that the assessee did not file any reply in response to this query. He also observed that the assessee had shown total purchases during the financial year at Rs.49,32,527/- against sales of Rs.26,30,691/-. Therefore, there was no explanation for why he had made such large purchases, even though he was making such few sales. After considering the VAT returns of the assessee, and the failure of the assessee to submit explanation with regard to the credits, the ld. AO held that the remaining money deposited into the bank account was unexplained money under section 69A of the Income Tax Act and he brought the same to tax under section 115BBE @ 60%.

4. Aggrieved with the said assessment order, the assessee filed an appeal before the ld. CIT(A), NFAC. Before the NFAC, it was submitted that the assessee appointed Advocate Sh. D.K. Gupta, as a legal Counsellor to represent him in the connection with their assessment proceedings and their appeal, but the legal Counsellor was unwell and he was unable to file the appeal on time. Therefore, it was prayed that the delay in filing the appeal may be condoned. It was also submitted that the assessee had not filed a return of income during the year consideration, as his income below taxable limits. It was submitted that the amount of Rs.52,40,493/- which had been deposited in the two bank accounts, were amounts received from cash sales and sundry debtors. It was further submitted that all books of accounts were maintained in the regular course of business, but the ld.

AO had passed the order without giving proper opportunity to be heard. The Id. CIT(A) records in his order that he offered five opportunities to the assessee to make compliance, but the assessee did not avail of any of these opportunities. From the same, he concluded that the assessee was not interested in pursuing the appeal and he further held, that the assessee had not submitted any reason for non-compliance with the notices issued to him, nor submitted any adjournment applications. Therefore, relying upon the case of M/s Chhabra Land and Housing Limited in ITA No.1025-1027/CHD/2005, which in turn was based on the decision of the Hon'ble Supreme Court in the case of B.N. Bhattacharjee, 118 1TR 461 (SC), the Id. CIT(A) held that the appeal of the assessee was liable to be dismissed for want of pursuit and accordingly, he dismissed the same.

5. The assessee is aggrieved at this dismissal of the appeal and has accordingly come before us in hearing. Sh. Praveen Godbole, C.A. (hereinafter referred to as the 'Id. AR') representing the assessee submitted that the assessee is an individual deriving income from trading of machinery parts and agricultural equipment in the name of the firm, namely Maa Sharda Machinery Stores and was assessed to tax regularly. For the year under consideration, the return had not been filed since the income was below taxable limits. It was submitted that during the assessment proceedings, the details could not be filed and ultimately an *ex parte* was framed thereby making addition of Rs. 25,90,414/- on account of difference shown in the VAT returns and the deposit in the bank account. It was submitted that the reason for not making compliance before the Id. AO and the Id. CIT(A) was that Sh. D.K. Gupta, Advocate, who was looking after the matter, was seriously ill for a long time and ultimately after a prolonged illness expired in the year 2021. The assessee was totally dependent upon his counsel for making representation and therefore, he was handicapped from representing his case before the lower authorities. It was submitted that compliance could not be made before the First Appellate Authority, since the notices were issued on the email and the mobile number of his counsel and thus the assessee was not even aware of the issue of

notices. The reason for the delay in filing the appeal before the Tribunal was also because of this lack of awareness. On the merits of the matter, it was submitted that, while making the addition, the Id. AO had not considered the amounts of deposits in both accounts operated by the assessee through cheques or RTGS came to Rs. 22,87,493/- and out of this amount, a sum of Rs.3,00,000/- had been returned back through RTGS. Thus, the net amount transferred to the said accounts by cheques / RTGS was Rs. 19,87,493/-. It was submitted that the above amounts of Rs.19,87,493/- had been received against water tankers supplied by the assessee, through farmers of Jaitpur Block, District Mahoba, towards irrigation of their agricultural lands. This facility was a subsidy from the Government to the farmers and the amount received against the supply of water tankers, was exempt from VAT as agricultural equipment. By the mistake of the Advocate, who filed the VAT returns, he had not shown this received amount in the filed VAT returns of the assessee but all payments had been received through cheques in the bank account and copies of all bills were available to establish this fact. It is for this reason that total purchases of Rs. 49,32,527/- had been shown in the VAT returns, because the same included exempt purchases. Thus, it was submitted that as per the VAT returns and the sales of water tankers supply received through RTGS or cheques, the total sale of the assessee came to Rs.46,70,984/- and the difference in the total amount deposited into bank account and the amount received on account of these sales was only Rs.3,03,121/- which was out of old debtors and cash in hand, which was sufficient looking to the turnover of the assessee. It was, therefore, prayed that the matter could be restored back to the files of the Id. AO where the assessee could establish these facts and dispel the doubts of the Id. AO that any amount deposited into the said bank accounts were unexplained.

6. On the other hand, Sh. A.K. Singh, Sr. DR (hereinafter referred to as the ('Id. Sr. DR')) firmly opposed restoring the case to the Id. AO. He pointed out that the assessee had deliberately not made compliance before the Id. AO and the Id. CIT(A) and could not therefore be given indefinite opportunities to represent his matter.

7. We have duly considered the facts and circumstances of the case. It appears that due to non-compliance by the assessee, which in turn was caused by the illness and subsequent demise of his counsel, the assessee was unable to make compliance before the lower authorities which resulted in these additions being made on the basis of presumption drawn by the ld. AO from his silence, that the assessee had no submissions to offer. However, on consideration of the details filed before us in the statement of facts and as explained by the ld. AR Sh. Praveen Godbole, it appears that the assessee is in a position to explain the deposits that had been made. We, therefore, restore the matter back to the file of the ld. AO so that the assessee may place this explanation along with supporting documents before the ld. AO, who in turn may thereafter consider the same and act in accordance with law. As the matter is restored to the file of the ld. AO, the appeal of the assessee is held to be allowed for statistical purposes.

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

Order pronounced on 28.08.2025 in the open Court.

Sd/-

[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED: 28/08/2025

Sh

Sd/-

[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

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

By order

Sr. P.S.