

**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.80/ALLD/2025  
A.Y. 2017-18

Shankar Lal Jaiswal, Bahadur Shah Nagar, Koraon, Allahabad	vs.	Income Tax Officer, Ward-1(5), Allahabad
<b>PAN:ANBPJ7379R</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Praveen Godbole, C.A.
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	07.08.2025
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. Addl CIT(A)-9, Mumbai passed under section 250 of the Income Tax Act, 1961 on 15.02.2024 wherein the Id. Addl CIT(A) has dismissed the appeal of the assessee against the order passed by the ITO, Ward-1(5), Allahabad on 12.12.2019 under section 144 of the Income Tax Act. The grounds of appeal are as under:-

*"1. That in any view of the matter the assessment made on an income of Rs.13,37,630/- by order dated 12.12.2019 passed u/s 144 of the Act is bad both on the facts and in law.*

*2. That in any view of the matter the Id. CIT(A) as well as assessing officer failed to consider the facts properly nor the matter was verified and both the lower authorities in an arbitrary manner made and confirmed the addition which is highly unjustified.*

*3. That in any view of the matter addition of Rs. 11,69,631/- by the assessing officer by applying net rate of 8% on turnover of Rs.1,42,20,391/- is highly unjustified and before applying said rate no comparable case was brought on*

*record nor past history in assessee own case was considered hence simply on presumption addition made is highly unjustified.*

*4. That in any view of the matter the addition of Rs. 1,68,000/- as made by the assessing officer and confirmed by CIT(A) is highly unjustified and such deposit in bank account requires verification at the stage of assessing officer to ascertain the real facts hence addition made is highly unjustified.*

*5. That in any view of the matter finding an observation of both the two lower authorities with regard to addition of Rs.11,69,631/- and Rs.1,68,000/- are incorrect and contrary to the actual facts of the case.*

*6. That in any view of the matter the assessee reserves his right to take any further ground of appeal before hearing of the appeal.”*

2. It is seen from the memo of appeal that the appeal is delayed by over a year. The assessee has filed a condonation petition and affidavit. In the same, it has been submitted that the appeal against the assessment order was decided *ex parte* and the reason for passing the *ex parte* order was that the assessee was seriously ill since 2023, that he had undergone knee replacement and he was hospitalized for a long time and, as such, he was not aware of the passing of the order by the appellate authority. It was further submitted that the mobile and email ID given in the return belonged to some other person and the assessee had not received any message, either on mobile or on his email ID. It was only when the Department pressurized the assessee for realization of demand, then the assessee came to know that the appellate authority had passed order and then he immediately contacted his counsel. However, his counsel did not give proper response therefore, the assessee engaged another counsel to get his profile changed with new password and, thereafter, he filed the appeal. It was submitted that there was no *mala fide* intention on the part of the assessee for the delay in the filing of the appeal. It was further submitted that the failure to comply with the proceedings was due to ill health of the assessee, who closed down the business in the year 2017. Thus, the delay in filing the appeal may kindly be condoned and the appeal may be admitted for hearing. In the affidavit, it is stated that the assessee is not techno savvy and is dependent entirely on his counsel.

3. We have duly considered the submissions made by the assessee. We note that the Hon'ble Supreme Court has laid down, in the case of Collector of Land Acquisition vs. MST. Katiji (1987) 167 ITR 471 (SC), that ordinarily the assessee does not stand to benefit by lodging an appeal late, in fact, he runs a serious risk on account of negligence. However, we observe that in the present case, the assessee has furnished documentary evidence in support of the fact that he was under a medical treatment for knee replacement, prostrate problems and other issues relating to Hydrocele and Piyoccele. In the circumstances, considering that the assessee has not been heard previously, we deem it fit to condone the delay and admit the appeal for hearing.

4. The facts of the case are that the Department received an information that during the demonetization period, the assessee had deposited a cash amounting to Rs.14,02,000/- in the assessee's bank account at Bank of Baroda, Koraon, Allahabad, but no ITR had been filed by the assessee for the assessment year 2017-18. Therefore, the assessee was issued and served with a notice under section 142(1) of the Income Tax Act, 1961. The said notice was not complied with. Therefore, the ld. AO issued a further notice to the assessee, asking the assessee to explain the nature and source of cash deposited by him in the bank during the demonetization period. Simultaneously, he issued a notice under section 133(6) of the Act to the concerned bank, to obtain a copy of the bank statement and upon receiving the same, he found that the total cash deposited during the entire year was Rs. 58,47,000/- and the total deposits during the year was Rs.1,09,40,591/-. The ld. AO, thereafter noticed that, as per the ITR for the assessment year 2015-16, the assessee has shown that he is doing a retailer and wholesale business. The ld. AO also observed that the assessee was maintaining two more bank accounts at the Bank of Baroda, Koraon, Allahabad and that the deposit into the same were Rs. 1,99,000/- in cash and Rs.2,02,509/- overall in A/c No.3774010002859, while they were Rs. 34,26,000/- in cash and Rs. 36,79,800/- overall in bank A/c No.37740400000022. Thereafter, the assessee submitted his reply.

In the same, it was stated that he deals in the business of Cement and Paints in the name of M/s A.K. Enterprises that was previously known as M/s Jaiswal Hardware and Paints. Regarding the cash deposit, it was stated that these were out of sales proceeds and the assessee submitted the details of his bank accounts and the amounts deposited in the said bank accounts. As per the same, the assessee had deposited total cash of Rs. 19,00,000/- in the three accounts during the demonetization period, Rs.97,21,000/- in cash throughout the year and Rs.1,51,76,656/- overall in cash and cheques into the three accounts. The assessee submitted a copy of his audit report for the assessment year 2017-18, but the ld. AO noted, that as per the ITD data base, no audit report had been found on the system. The ld. AO also records that as per the audit report, the assessee shown total turnover of Rs.1,37,13,550/-, gross profit of Rs.7,48,435/- and net profit of Rs.2,91,771/-. Copies of some purchase vouchers were filed, but no sale voucher or voucher of expenses claimed, were filed by the assessee. The ld. AO held that as no ITR had been filed and as no audit report had been filed with the Department, it was treated as never having been filed. The ld. AO noted that as per the bank accounts details, total deposits in bank, except saving bank account, came to Rs.1,46,20,391/-, which he decided to treat as total turnover of the assessee. On this total deposit / turnover, a net profit rate of 8% was applied and the net profit of the assessee's business was worked out at Rs.11,69,631/- which was then added to the total income of the assessee. With regard to the savings bank account of the assessee, the ld. AO observed that the total cash deposited was Rs. 4,18,000/- during the demonetization period. After giving benefit of Rs. 2,50,000/- as personal savings, the balance cash deposit of Rs. 1,68,000/- was treated as unexplained investment made by the assessee under section 69 of the Income Tax Act, 1961 and was brought to tax under the provisions of section 115BBE of the Income Tax Act.

5. Aggrieved with the said additions, the assessee went in appeal to the ld. CIT(A), Allahabad. Subsequently, the appeal was migrated to National Faceless

Assessment Centre and allotted to the Additional / JCIT(A)-9, Mumbai. Here, the Id. Addl JCIT(A) records, that he issued a notice under section 250 of the Income Tax Act which was duly served on the assessee on his registered email ID, but the assessee chose to remain silent. The Id. Addl / JCIT(A) pointed out that it had been mentioned in the notice under section 250 itself, that failure to reply would lead to a presumption that the assessee has nothing to say in the matter and the Department may proceed ahead based on the material on record. Thereafter, since the assessee had not submitted a response, the Id. Addl / JCIT(A) decided to proceed with the case on the basis of the statement of facts and the grounds of appeal, which were reproduced in the assessment order. In the said statement of facts, the assessee submitted that the Id. AO had failed to appreciate the results declared in the audit report and the statement of accounts were fully verifiable from the books of accounts and supporting bills and vouchers. Furthermore, the addition under section 69A of the Act in support of Rs. 1,68,000/- was not maintainable, because the same were fully recorded in the books of accounts of M/s A.K. Enterprises. The Id. Addl / JCIT(A) considered this response and concurred with the views of the Id. AO, that since the audit report filed by the assessee had never been uploaded by the assessee, therefore, he refused to give any credence to the said audit report and he dismissed the appeal of the assessee with regard to the estimation of profit @ 8% of gross receipts. Furthermore, he found that the assessee had not brought any evidence to controvert the findings of the Id. AO with regard to the addition of Rs.1,68,000/- under section 69A of the Act and, therefore, he dismissed the appeal of the assessee on this ground also. With regard to the claim of deduction of Rs. 32,700/- under section 80C of the Act, the Id. Addl / JCIT(A) pointed out that since the ITR had never been filed, the exemption should not be allowed. Therefore, he dismissed all the grounds taken by the assessee and upheld the assessment made by the Id. AO.

6. The assessee is aggrieved against this summary disposal of his appeal and has come before us. Sh. Praveen Godbole, C.A. (hereinafter referred to as the 'ld. AR') submitted that the assessee had admitted to non-compliance before the ld. AO, due to ill health and he could not make full compliance before the ld. AO, therefore, additions which have been made are considered to be unexplained only because the ld. AO had not managed to locate the Audit Report on the Departmental system. The ld. AR submitted that it had been judicially held in a number of case laws, that if the Audit Report was furnished during the course of assessment, it was required to be considered and while the failure to furnish the same could attract penal provisions, it could not be a basis to completely reject the book results of the assessee and refuse to consider them altogether. It should not be a basis to refuse to consider the book results of the assessee. It was, therefore, prayed that the matter may kindly be restored to the ld. AO, where the assessee can satisfy the ld. AO that there were no reasons to reject the books and estimate the net profit @ 8% of the gross receipts. On the issue of disallowance of Rs. 1,68,000/- by treating the same as unexplained, it was submitted that section 69A had no application to the said amounts and they were recorded in the books of accounts. With regard to the refusal to grant the concession under section 80C, he prayed that the same may be considered sympathetically in view of the fact that the assessee was unwell and undergoing medical treatment at the time of the assessment proceedings.

7. On the other hand, Sh. A.K. Singh, Sr. DR (hereinafter referred to as the ld. Sr. DR) opposed the plea of the ld. AR and submitted that the assessee had not filed the audit report and, therefore, could not now claim it to be an authentic indicator of his financial affairs. Accordingly, he submitted that the ld. AO was justified in rejecting the book results, in estimating the income of the assessee. He also submitted that the since the assessee has not filed his return on time and he could not claim deduction under section 80C. Finally, he submitted that the addition under section 69 was justified on

amounts deposited in the bank accounts but not explained, because it was not enough to say that the amounts should reflect in the books of accounts. The books of accounts must also be produced to demonstrate that and since the assessee had not made proper compliance, the ld. Sr. DR placed reliance on the orders of the lower authorities and prayed that the appeal of the assessee may be dismissed.

8. We have duly considered the facts and circumstances of the case. We observe that the matter of whether the assessee had filed an audit report or not before the due date is not clear, but it appears that the same had not been filed, because the ld. AO was not able to locate the same on the ITD system. However, it has been held in a number of cases by various courts, that even if an audit report is filed before the completion of assessment, the same has to be taken into account for finalization of the assessment. The failure may render the assessee liable for penalty, but unless the ld. AO is able to show that the audit report does not reflect the proper financial affairs of the assessee, the same cannot be dismissed out of hand. In the circumstances, we observe that the ld. AO did not consider the audit report that was filed by the assessee during the assessment proceedings and, therefore, jumped to a conclusion that the book results of the assessee were not reliable, which in turn had led to an estimation of the Assessee's income at 8% of deposits made into the bank account. This action of the ld. AO cannot be held to be sustainable. The audit report, if filed during the assessment proceedings, must be considered and the books of accounts on which they were based must be considered. If the audit report is not based on the books of accounts or if the book results are found to be defective, the book results can be rejected. We, therefore, deem it appropriate in the interest of justice, to restore the matter back to the file of the ld. AO, to consider the audit report and, thereafter, decide the matter afresh in accordance with law. On the issue of addition under section 69A, since the ld. AO is required to consider the audit report and the books of accounts, we deem it appropriate to send the matter back to the file of the ld. AO on this issue also, so that it

may be ascertained as to whether the amount added back was duly reflected in the books of accounts. On the issue of withholding of deduction under section 80C, the assessee may furnish his explanations before the ld. AO to justify its claim despite the failure to file the return before the due date. As all the issues have been restored back to the file of the ld. AO, the appeal is held to be allowed for statistical purposes.

9. 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

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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.