

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

Shreesh Kumar Tripathi, A-44, Avas Vikash Colony Head Post-Banda 210001, U.P. PAN:AGRPT7458C (Appellant)	vs.	Income Tax Officer, Ward-2(2)(5), Banda (Respondent)
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Assessee by:	Ms. Mamta Pandey, Adv
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), NFAC passed under section 250 of the Income Tax Act, 1961 on 28.03.2025, wherein the Id. CIT(A) has dismissed the appeal of the assessee filed against the orders of the ITO, Ward-2(2)(5), Banda passed on 22.12.2019, under section 144 of the Income Tax Act. The grounds of appeal are as under:-

- a. BECAUSE the appellant authority has failed to provide fair, real and reasonable opportunity of being heard, in the form-35 petitioner clearly mentioned that notices/communication may not be send on email mode. In this case no notice for hearing has been issued in physical mode.*
- b. BECAUSE the learned Assessing Officer as well as Commissioner (Appeals) has passed the order based on incorrect appreciation of facts, leading to an erroneous conclusion.*
- c. BECAUSE assessment order as well as order-in-appeal has been passed in ex-parte manner without giving reasonable opportunity of being heard.*
- d. BECAUSE the findings recorded in the impugned order are contrary to the material evidence available on record, resulting in a flawed assessment.*
- e. BECAUSE appellant was not aware about the issuance of notices at the proceedings stage because he got registered himself after order passed by the assessing officer.*

- f. BECAUSE the principles of natural justice have been violated, as the appellant was not granted a proper opportunity to present its case.*
- g. BECAUSE appellant has not received any opportunity of personal hearing neither at proceedings stage nor at first appellate stage.*
- h. BECAUSE additional evidences produced by the appellant under Rule 46A has not been considered by the appellant authority at the first appellate proceedings in arbitrary manner which is against the principle of natural justice.*
- i. BECAUSE substantial documentary evidence, which supports the appellant's claim, has been ignored while passing the order by appellant authority.*
- j. BECAUSE the learned authority has misapplied the provisions of the Income Tax Act, 1961, leading to an unjustified tax demand.*
- k. BECAUSE the conclusions drawn in the impugned orders are perverse and based on incorrect assumptions, making them legally unsustainable.*
- l. BECAUSE computational errors in the assessment have inflated the tax liability, causing undue hardship to the appellant.*
- m. BECAUSE judicial precedents and binding rulings have not been considered, despite their direct applicability to the present case.*
- n. BECAUSE the learned authority has arbitrarily ignored settled legal principles while adjudicating the matter.*
- o. BECAUSE the appellant craves leave to add, to alter, amend or vary from the above grounds of appeal at or before the time of hearing."*

2. The facts of the case are that the Income Tax Officer received information that the assessee had deposited a sum of Rs.14,94,000/- in his bank account with Allahabad U.P. Gramin Bank, Badausa. Since he had not filed a return of income, a notice under section 142(1) was issued to the assessee and the assessee was thereafter asked to submit details with regard to this deposit. The Id. AO records that no response was received from the assessee in respect of these notices, therefore it was decided to proceed under section 144 of the Income Tax Act. The Id. AO obtained information from the bank under section 133(6) of the Income Tax Act and on perusal of the same, he observed that the total cash deposit in the bank account was for a sum of Rs. 3,52,500/- out of which only Rs. 2,06,000/- was deposited during the demonetization period. The assessee was also earning salary of Rs.98,945/- and Rs.1961/- as interest earned on deposit in such savings bank account. From a perusal of the said factual position, the Id. AO came to the conclusion that the Rs.3,52,500/- was the unexplained income of the assessee.

Thereafter, he completed the assessment of the assessee by bringing to tax his salary income and the unexplained income of Rs.3,52,500/-.

3. Aggrieved by this order, the assessee went in appeal before the Id. CIT(A)-2, Kanpur. Subsequently, the appeal was migrated to the National Faceless Assessment Centre. Before the Id. CIT(A), the assessee filed a statement of facts in which it was submitted that the assessee was a teacher in a self-financing college and drew a meagre amount of salary, of Rs.93,500/- annually. The so-called information that Rs.14,94,000/- had been deposited in his bank account during demonetization was fictitious. Only a sum of Rs.2,06,000/- was deposited during demonetization and this had been admitted by the Id. AO. Thus, the reason for selection of the case of scrutiny was itself faulty. It was submitted that it had been wrongly stated in the assessment order that three notices had been issued and none attended in response to this. The fact is that the assessee was not registered on the Income Tax Portal before January, 2020. Thus, no reasonable opportunity was provided to the assessee to appear, which was a departure from the rules of natural justice. Had the assessee been provided with an opportunity, he could have co-operated. On the merits of the case, it was submitted that Rs.90,000/- was deposited in his bank account on 25.05.2016 out of money received from his sister, Manisha Tripathi, who was a teacher in Basic Education at Chitrakoot. She had withdrawn the said amount from her bank account at Aryavart Bank on 16.05.2016. It was also submitted that Rs.62,500/- that had been deposited out of earlier savings on 1.10.2016 and Rs.2,06,000/- that had been deposited during the demonetization period, was out of agricultural income and retained earnings. Thus, the amounts were fully explained. The Id. CIT(A) issued nine notices to the assessee and it appears that the assessee responded to one of the said notices. In the written submissions made, the assessee clarified that the cash deposit of Rs.2,06,000/- during demonetization period and aggregate of Rs.3,52,500/- during the year arose out of the receipt of Rs.90,000/- from his sister, agricultural income of Rs. 200000/- earlier savings of Rs.62,500/- and Rs.6,000/- out of retained earnings. Further, it

was submitted that the assessee only earned an annual salary of Rs.93,500/- but the ld. AO had mistakenly added Rs.5,455/- extra to his salary income. The assessee placed reliance on CBDT Instruction No.3/2017 issued on 21.02.2017, para 1.1, in which it was stated that in the case of an individual not having any business income, no further verification was required to be made if the total cash deposit was up to Rs.2.5 Lacs. It was submitted that in the present case, by looking into cash deposit of less than that amount, the ld. AO had exceeded his jurisdiction. The ld. CIT(A) considered the submissions made by the assessee. He noted that while the assessee had desired to file additional evidences as per Form 35, he had not been able to demonstrate the sufficient causes for not presenting the same before the ld. AO. Relying on the provisions of Rule 46A, he held that the said evidences filed by the assessee were not admissible at this stage. He noted that the assessee had deposited cash in his bank accounts, but not filed return of income and that the assessee had not offered any satisfactory explanation regarding the source of such cash deposits. Therefore, he held that the assessee had failed to discharge his onus to explain the same and he accordingly dismissed the appeal of the assessee and confirmed the additions made by the ld. AO.

4. The assessee is aggrieved with this order of the ld. CIT(A) and has come before us. Ms. Mamta Pandey, Advocate (hereinafter referred to as the ld. AR) representing the assessee submitted that the ld. CIT(A) had failed to consider the arguments offered by the assessee and had refused to admit the additional evidences on specious grounds and therefore, created a situation where explained deposit had been assessed as unexplained even though the jurisdiction to assess them as such was lacking, in view of the CBDT's own Instruction No.3/2017. She prayed that if given the opportunity, the assessee could prove the genuineness of the deposits and no addition was called for. Sh. A.K. Singh, Sr. DR submitted that the reason that the ld. CIT(A) had rejected the additional evidences, was because the assessee could not show how these opportunities had been denied to it by the ld. AO and therefore, the

evidences were not admissible before the Id. CIT(A) without letting the Id. AO apply his mind to the issue first.

5. We have duly considered the facts and circumstances of the case. The assessee has submitted that he was unable to comply with the said notices because he was not registered on the Portal. He has also said that he is a small tax payer who is not required to file his return. From the submissions made before the Id. CIT(A), it has also been claimed that a large portion of the deposits made by the assessee has been made out of agricultural income (which is not liable for taxation). We also observe that the assessee has claimed that a sum of Rs.90,000/- was deposited on account of withdrawal by his sister from her bank account and evidences with regard to the same were available with him. In the circumstances, we feel that the Id. CIT(A) should have considered the additional evidences and remanded the matter back to the Id. AO for examination, because receipts which are not taxable cannot be brought to tax only because an assessee has not made compliance before the Id. AO. Therefore, in the interest of justice, we restore this matter back to the file of the Id. AO, with a direction to the assessee to make due compliance before the Id. AO, failing which it could be presumed that the amounts deposited in his bank account are not explained, rendering them liable to tax. We also direct the Id. AO to give fresh consideration to the matter after examining the evidences submitted by the assessee. As the matter is restored to the file of the Id. AO for *de novo* assessment, the appeal of the assessee is held to be allowed statistical purposes.

6. 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

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT 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)

By order

Sr. P.S.