



**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC BENCH, LUCKNOW**

**BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.489/LKW/2025  
Assessment Year: 2017-18

Abhishek Tripathi Ward No.15, shankarganj Jhinhak Kanpur Dehat (U.P)	v.	The ITO Ward 1(3)(1) Kanpur
TAN/PAN:ATJPT8479N		
(Appellant)		(Respondent)

Appellant by:	Shri Kamlesh Kumar Pandey, Advocate
Respondent by:	Shri R.R.N. Shukla, D.R.

**ORDER**

This appeal has been preferred by the Assessee against the order dated 06.01.2025, passed by the Addl/JCIT(A)-1, Nashik for Assessment Year 2017-18.

2.0 The brief facts of the case are that the assessee was engaged in the business of mobile recharge of Bharti Airtel Limited. The assessee e-filed his return of income for the year under consideration on 28.02.2018, declaring a total income of Rs.1,83,750/-. The case of the assessee was selected for scrutiny. The Assessing Officer (AO) issued statutory notices to the assessee. However, the assessee did not respond to the notices issued by the AO. From the details furnished by the assessee along with the return of income, the AO noticed that the

assessee had made a total cash deposits of Rs.1,88,50,750/- in the bank account No.0701002100022168 maintained with Punjab National Bank in the name of Tripathi Brothers, during the year under consideration. The AO treated the same as the business turnover of the assessee for the year under consideration and worked out the net profit of the assessee by applying 8% on the alleged business turnover of Rs.1,88,50,750/-, which came to Rs.15,08,060/-. The AO, after subtracting Rs.1,83,750/- (income declared by the assessee) from Rs.15,08,060/- (net profit worked out by the AO), added the balance amount of Rs.13,24,310/- (Rs.15,08,060 – Rs.1,83,750) to the income of the assessee. The AO completed the assessment under section 144 of the Income Tax Act, 1961 (hereinafter called “the Act”), assessing the total income of the assessee at Rs.15,080,060/-.

2.1 The AO also initiated penalty proceedings under sections 270A and 271B of the Act, separately.

2.2 Aggrieved, the Assessee preferred an appeal before the Ld. First Appellate Authority, who dismissed the appeal of the assessee for the reason of non-compliance by the Assessee.

2.1 Now, the assessee has approached this Tribunal challenging the order of the Addl/JCIT(A)-1, Nashik, by raising the following grounds of appeal:

*1. Denial of Natural Justice: The Ld. CIT(A) erred in law and on facts in dismissing the appeal ex parte without considering the assessee's written factual matrix already on record, thereby violating the principles of natural justice. No meaningful opportunity was provided to rebut OR clarify the misunderstanding regarding the nature of the assessee's business*

*2. Erroneous Estimation of Turnover: The Ld. Assessing Officer erred in treating the entire bank deposits of Rs.1,88,50,750/- as the appellant's business turnover. These deposits were not the result of independent trading activity but represented pass-through amounts from mobile recharge and SIM transactions carried out on behalf of the telecom operator. The appellant acted purely as a distributor earning fixed commissions, and not as a trader. The AO also incorrectly presumed under-reporting based on the limited reflection of TDS in Form 26AS. However, during the relevant period, it was common industry practice that the telecom operator did not deduct TDS on such distributor-level incentive payments. The absence of substantial TDS entries does not indicate suppression of income, as the commission was fully disclosed and supported by internal records.*

*3. Arbitrary Characterization of Bank Transactions and Unsupported Addition of Income: The Ld. AO incorrectly concluded that the appellant had undisclosed business income beyond the declared commission, based solely on the*

*volume of debit and credit transactions in a current account. The account was used to facilitate operational fund flows linked to telecom recharges handled on behalf of the telecom company, not for conducting independent business. The AO ignores the actual business model of the assessee. The commission earned during the year was 6,40,017/-, out of which Rs.4,17,053/- was paid to sub-dealers, and only Rs.1,98,835/- was retained and correctly declared in the return. The AO also misinterpreted the lack of TDS credits in Form 26AS, whereas such payments from the telecom operator were often made without deduction of TDS due to industry practices at the time. Thus, there was no underreporting of income, and the addition of Rs.13,24,310/- lacks any factual OR legal basis.*

*4. Turnover Below Threshold for Audit- No Default u/s 271B: The authorities failed to appreciate that the assessee's actual gross receipts (commission) were Rs.6,40,017/- only, well below the Rs.71 crore audit threshold for A.Y. 2017-18. As such, there was no obligation to get the books audited u/s 44AB, and no default was committed attracting penalty u/s 271B.*

*5. That any other relief OR reliefs as may be deemed fit in the case and circumstances of the case be granted.*

3. The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted that there is a delay of 114 days in filing the appeal before the Tribunal. He further submitted that the assessee had filed an application dated Nil for condonation of delay, duly supported by an Affidavit and Medical Certificate,

stating therein that during the relevant period, the assessee was in serious medical condition and was under treatment for right ureteric calculus and had also undergone a surgical procedure on 07.04.2025 at Fortune Hospital, Kanpur and, thereafter, the assessee was advised to take complete rest. In view of these facts, the assessee could not file the appeal before the Tribunal within the prescribed time limit. He prayed that the delay be kindly condoned and the appeal be heard on merits.

2.0 The Ld. Sr. D.R. had no objection to the delay being condoned.

3.0 In view of the prayer made by the Ld. A.R. and no objection by the Ld. Sr. D.R., I condone the delay in filing of the appeal and admit the appeal for hearing.

4.0 The Ld. A.R. submitted before me that both the authorities below have passed ex-parte orders and have decided the appeal without giving proper opportunity to the assessee. He further submitted that the AO had erred in treating the entire bank deposits of Rs.1,88,50,750/- as the assessee's business turnover. The Ld. A.R. further submitted that certain details and documents relating to the transactions entered into by the assessee during the year under consideration could not be filed before the AO. The Ld. A.R. prayed that the matter may be

restored to the file of the AO and that if an opportunity is given, the assessee will produce all the relevant documents in support of his claim before the AO.

5.0 The Ld. Sr. D.R. submitted that the assessee is a habitual offender and he had failed appear before both the lower authorities despite various opportunities given to him. The Ld. Sr. D.R. opposed the restoration of appeal to the file of the Assessing Officer as requested by the Ld. A.R. and submitted that the appeal of the assessee be dismissed.

6.0 I have heard both the parties and have also perused the material on record. At the outset, I find that there was lack of co-operation on behalf of the assessee before the lower authorities, as the assessee had neither appeared before the lower authorities during the assessment proceedings as well as the appellate proceedings nor had responded to any of the notices issued by the lower authorities and had not even furnished any reason for either not appearing before the lower authorities or for not responding to the notices issued by the lower authorities. In view of the lackadaisical and non-cooperative attitude of the assessee during assessment proceedings as well as appellate proceedings, I impose a cost of Rs.1,000/- on the assessee and direct the assessee to deposit the amount of Rs.1,000/- in the Prime

Minister's National Relief Fund (PMNRF) and the proof of the same should be furnished before the AO during the set aside proceedings and as well as before the Registry of the ITAT, Lucknow Benches. I, accordingly, set aside the order of the Ld. First Appellate Authority and restore this file to the Office of the Assessing Officer with the direction to provide one opportunity to the assessee to present his case and produce the necessary evidences in support of the impugned transactions entered into by the assessee during the year under consideration. I also caution the assessee to fully comply with the directions of the Assessing Officer in the set-aside proceedings when called upon to do so, failing which, the Assessing Officer would be at complete liberty to pass the order in accordance with law, based on the material available on record even if it is ex-parte qua the assessee.

7.0 In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 27/10/2025.

Sd/-  
[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER

DATED:27/10/2025

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar/DDO