

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 260 & 259/Agr/2025
Assessment Year: 2012-13**

Bhagwan Das, L/h Shri Gauri shanker, Daulatpur, Muihiddinpur, Firozabad (UP)-283204.	Vs.	Income-tax Officer, Ward 2(2)(1), Firozabad.
PAN :EAMPD4308E		
(Appellant)		(Respondent)

Assessee by	Ms. Prarthana Jalan, C.A.
Department by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	13.10.2025
Date of pronouncement	30.10.2025

ORDER

PER : SUNIL KUMAR SINGH, JUDICIAL MEMBER:

These appeals have been preferred by assessee against separate impugned orders both dated 24.06.2024 passed in Appeal No. CIT(Appeal)-2,Agra/10832/2017-18 and CIT(Appeal)-2, Agra/10012/2018-19 by the Ld. Commissioner of Income-tax (Appeals), NFAC, Delhi u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2012-13, wherein the Id. CIT(Appeals) has dismissed assessee's appeal, confirming the assessment order dated 29.09.2017

passed u/s. 144/147 of the Act and also dismissed assessee's first appeal, affirming the penalty order dated 19.03.2018 passed u/s. 271(1)(c) of the Act, on the ground that quantum addition made by Assessing Officer in the assessment order, stood confirmed by Id. CIT(Appeals).

2. Since, the penalty order passed u/s. 271(1)(c) of the Act is consequential to the assessment order, both these appeals are being disposed of by the consolidated order for the sake of convenience and brevity. The facts of ITA No. 260/Agr/2025 only are being narrated as under :

3. At the very outset, it is noted that both these appeals were filed on 12.05.2025 against the impugned orders each dated 24.06.2024 by a delay of about 263 days. The reasons for delay assigned in the delay condonation applications are that the appellant assessee was not aware of the impugned order, as the email ID registered on the portal was not of the appellant assessee and therefore, he had no access to the communication sent by department on such registered mail ID. The reasons mentioned in the delay condonation application are supported by uncontroverted affidavit of the assessee, hence, treated as sufficient. The said delay of about 263 days in both the above said appeals stand condoned.

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4. Briefly stating, the facts are that the assessee did not file any return of income for the year under consideration. Based on the documents/information gathered from AIR filer, the Assessing Officer noticed that during the year under consideration, the assessee had sold an agricultural land for Rs.22,00,000/-, stamp value of which was Rs.66,68,000/-, in which assessee had 1/5th share, i.e., Rs.13,61,600/-. Letters were issued to the assessee for filing return of income, but the assessee neither filed any return nor submitted any reply. Case was reopened u/s. 147 of the Act by issuing notice u/s. 148 of the Act, which too remained un-responded. Statutory notices were also issued, but for no avail. Since the assessee failed to offer any explanation regarding the cost of acquisition etc., the Assessing Officer made addition of Rs.13,61,600/- as income from long term capital gain, vide assessment order dated 29.09.2017 passed u/s. 144/147 of the Act.

5. Aggrieved, assessee preferred an appeal before learned CIT(Appeals), contending that he sold impugned agricultural land and subsequently purchased three pieces of agricultural lands for total consideration of Rs.11,00,000/-, Rs.2,60,000/- and Rs.9,00,000/- to a total of Rs.22,60,000/- and hence, in view of deduction provided u/s. 54B of the Act, no capital gain arose on the sale of impugned property. The appellant

assessee also filed additional evidences in the form of copy of purchase/sale deeds of the properties etc. Ld. CIT(Appeals) called for the remand report from the Assessing Officer and after considering the same, dismissed the appeal of the assessee observing in para 5.3 as under :

“5.3. The remand report of the AO is self-explanatory wherein it is categorically mentioned that the assessee failed to file valid return of income for the AY 2012-13 and hence in the absence of any valid return of income, he is not liable to avail the claim of deduction u/s 54B of the Act. Thus on sale of the immovable property, the assessee earned capital gain and did not offer it to the taxation by filing return of income. In the absence of return of income, he is not liable to avail the deduction u/s 54B of the Act even if he otherwise fulfilled all the conditions in order to claim the deduction u/s 54B of the Act. Thus the AO correctly made an addition of Rs. 13,61,600/- under the head "Capital Gain".

In view of the facts discussed above & remand report furnished by the AO, the addition made of Rs.13,61,600/- on account of capital gain is confirmed.”

6. The first appeal was accordingly dismissed by the first appellate authority.

7. This second appeal has been filed on the ground, in addition to others, that Ld. CIT(Appeals) erred in dismissing the appeal without properly considering the additional evidences filed during the first appellate proceedings, wrongly denying the benefit of section 54B of the Act while calculating the long term capital gain and without giving an opportunity to file rejoinder to the remand report sought from the Assessing Officer.

8. Perused the records. Heard learned representative for assessee and learned Sr. DR for revenue.

9. Perusal of the impugned order shows that the Id. CIT(Appeals) sought for the remand report from the Assessing Officer consequent upon the additional evidences and assessee's submissions filed before him. The main grievance of the appellant assessee is that the copy of the remand report was not provided to him to file his rejoinder. It is also noted that the Assessing Officer has also made best judgment assessment u/s. 144 of the Act, as no response was filed by appellant assessee in compliance to various notices issued by Ld. Assessing Officer. The additional evidences filed before the first appellate authority go to the root of the issue as to whether the assessee is eligible for the deduction u/s. 54B of the Act or not ? In the totality of facts and circumstances of the case, we deem it just and appropriate to remit the matter back to the file of Assessing Officer for passing order afresh after affording proper opportunity of hearing to the assessee. The appellant assessee shall be free to raise all the submissions before the Assessing Officer. The Assessing Officer shall take into consideration all the submissions raised by the assessee before passing the assessment order afresh in accordance with law. The assessee is also directed to be cooperative in attending the proceedings and making

submissions in support of his case before the Assessing Officer for the expeditious and effective disposal. Needless to say, that learned Assessing Officer shall ensure the observance of the principles of natural justice. The appeal is, thus, liable to be allowed for statistical purposes.

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10. Since the issue relating to the quantum addition has been remanded back to the file of the learned Assessing Officer for fresh adjudication, and as the present appeal pertains to the penalty imposed under section 271(1)(c) of the Act, which is consequential to the said quantum addition, we consider it appropriate to remit this penalty matter also to the file of the learned Assessing Officer for passing order a fresh in accordance with law. Accordingly, this appeal is also allowed for statistical purposes.

11. In the result, both the appeals are allowed for statistical purposes. The impugned orders each dated 24.06.2024 are set aside.

Order pronounced in the open court on 30.10.2025.

Sd/-

**(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

Sd/-

**(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

Dated: 30.10.2025

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra