

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'A' BENCH, LUCKNOW
BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.548/LKW/2024
A.Y. 2013-14

Jitendra Singh, 107/2, Babu Purwa Colony, Kidwai Nagar, Kanpur, U.P.	vs.	Income Tax Officer-1(3)(5), Kanpur
PAN: CVXPS1754F		
(Appellant)		(Respondent)

Assessee by:	Ms. Shweta Mittal, C.A.
Revenue by:	Sh. Prajesh Srivastava, Sr. DR
Date of hearing:	19.08.2025
Date of pronouncement:	13.11.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the orders of the ld. CIT(A), NFAC dated 12.07.2024 dismissing the appeal of the assessee against the order under section 154 passed by the Assessing Officer on 22.07.2021. The grounds of appeal are as under: -

"1. That on facts and in law the impugned order dated 12.07.2024 passed by the Commissioner of Income Tax (Appeals) u/s 250 of the Income Tax Act, 1961 is bad in law and void-ab-initio.

2. That the facts and in law the CIT(Appeals) have erred in passing the impugned appellate order without considering the request of the appellant that the original appeal filed on 15.09.2019 for the same A.Y. 2013-14 u/s 147/143(3) of the I.T. Act, 1961, before CIT(Appeals) NFAC is pending for order so the rectification order u/s 154 by the A.O. for enhancing the demand not justified in natural justice.

3. That on facts and in law the CIT(Appeals) has erred in not follow the provision u/s 115BBE properly as per law of Income F Tax so, the rectification process u/s 154 is bad in law.

4. That on facts and in law the CIT(Appeals) has erred in upholding the levy of interest u/s 234A and u/s 234B of Income Tax Act, 1961 without considering the original appeal filed on 15.09.2019 for the same A.Y. 2013-14 u/s 147/143(3) before CIT(Appeals) NFAC is pending for order.

5. That the CIT(Appeals) has erred in confirming the order u/s 154 in the name of one of the legal heirs is illegal and void ab initio for holding Jitendra Singh as the only legal heir of the deceased Shri. Vishnu Kumar Singh Baghel.

6. That the CIT(Appeals) has erred in confirming the order u/s 154 of the deceased on Jitendra Singh, legal heir Vishnu Kumar Singh Baghel without issuing any notice to the other legal heirs of the deceased which is mandatory under law.

7. That the Appellant craves to add, alter, amend or vary from the above grounds of appeal at or before the timing of hearing of appeal.”

2. The facts of the case are that on the basis of a tax evasion petition, a report were sent by the ADIT (Inv.), Kanpur to the Assessing Officer on 2.03.2017 for taking appropriate action. The allegation was that the Principal and Manager of Marwari Vidyalaya Inter College, Nayaganj, Kanpur alongwith their close aid Sh. Vishnu Kumar Baghel were registering the students for Intermediate Grade Drawing Examination held by Maharashtra Kala Sanchanalaya, Mumbai by taking fees in the Range of Rs. 1100/- to Rs. 2000/-, whereas the examination fees were Rs. 100/- per student as per the instruction issued by the said body. It was submitted that eight demand drafts of Rs. 49,000/- each were made in cash from Bank of India Main Branch and sent to Maharashtra Kala Sanchanalaya Mumbai. It was also alleged that no receipts had been given to students until demanded and even when receipts were given, the amount was not mentioned. It was estimated that between the years 2009 and 2013, the aforesaid persons had received forms from 21,500 students and taken payments of Rs. 2,36,50,000/- from them. However, only Rs. 19,42,000/- had been passed on to Maharashtra Kala Sanchanalaya. Furthermore, a sum of Rs. 4,30,000/- had been received back as expenses. Thus, the aforesaid persons had made a profit of Rs. 2,17,80,000/- on which tax of Rs. 70 to 75 Lacs was payable. The ADIT (Inv.) conducted enquiries and from these enquiries, he came to the conclusion that Sh. Marwari Vidyalaya Inter College, Nayaganj, Kanpur was not involved in a registering students for IGD examination, but they had only rented their premises to Sh. Vishnu Kumar Singh Baghel and Sh. R.N. Singh for conducting the said examinations. The assessee, Sh. Jitendra Singh Baghel, who is the son of V.K.S. Baghel (now deceased) and Sh. R.N.

Singh had accepted this fact. They had also accepted that fees for the IGD examination were collected from students by Sh. V.K.S. Baghel and that the profits had been distributed amongst them after deducting all expenses relating to examination. From the same, the Id. AO concluded that total undisclosed income amounting to Rs. 14,05,000/- had been earned by Late Vishnu Kumar Singh Baghel during the F.Y. 2012-13 relevant to the A.Y. 2013-14 and after giving an opportunity to the assessee in his capacity as legal heir, the sum of Rs. 14,05,000/- was added back to his income as the income of late Sh. Vishnu Kumar Singh Baghel.

3. Aggrieved with this order, the assessee filed an appeal with the Id. CIT(A). However, during the pendency of the appeal, the Assessing Officer issued a notice under section 154 pointing out that, in the assessment under section 147 r.w.s. 143(3), the tax had been computed at normal rates while the same should have been charged as per the rate provided in section 115BBE of the Income Tax Act, 1961. Accordingly, it was proposed to rectify the same. Furthermore, in view of the delayed furnishing of the return, interest under section 234A was proposed to be levied. He, therefore, proceeded to complete the rectification on these lines.

4. The assessee is aggrieved at this order passed by the Id. AO. The Id. CIT(A) records the fact that three opportunities were provided to the assessee for hearing, and in response to the second notice, the assessee had uploaded two previous orders of the CIT(A) for the A.Y. 2010-11 and 2011-12, but the same orders did not have any direct co-relation with the grounds raised in the appeal. The Id. CIT(A) observed that as the appeal pertains to the order under section 154 and not against the substantial order under section 147 r.w.s. 143(3) therefore, the issues could not be considered on their merits in the course of this appeal, but since section 115BBE was automatic in nature, the Id. AO had rightly applied the same to compute the tax and interest under section 234A and 234B were consequential in nature. Therefore, he did not find any grounds to interfere with the orders of the Id. AO and therefore, he dismissed the appeal.

5. The assessee is aggrieved at this dismissal of his appeal and has come in appeal before us. At the time of hearing, the assessee was present in the Court room in person and he submitted that he could not afford the services of a professional person. Because of this, his case could not be represented properly before the ld. AO and the ld. CIT(A). After hearing the assessee, the Bench inquired from the professionals present in the Court room as to whether anyone would be prepared to represent the assessee and Ms. Shweta Mittal, C.A. (hereinafter referred to as the ld. AR) offered to extend to pro bono professional services to the assessee in the proceedings before us and subsequent proceedings based upon our orders. Smt. Shweta Mittal, C.A. (hereinafter known as the ld. AR) pointed to the fact that the case of the assessee had come before the Tribunal in ITA No. 501/LKW/2024 and the issue in dispute in that appeal had been restored back to the file of the ld. AO for *de novo* assessment. Accordingly, it was prayed that since the appeal against the quantum addition was pending before the ld. CIT(A), the rectification of the assessment order may also be restored back to the ld. CIT(A) for consideration alongwith the appeal against the quantum, so that a final decision could be taken in the matter only after the quantum appeal was considered and decided. She undertook to represent the assessee in those appeals before the ld. CIT(A). Sh. Prajesh Srivastava, Sr. DR (hereinafter referred to as the ld. DR) had no objection to the matter being restored back to the file of the ld. CIT(A) for a considered decision.

6. We have duly considered the matter. In view of the fact that the appeal of the assessee against the additions made by the AO are still pending before the ld. CIT(A), the passing of the appeal order against the rectification of the assessment on the issue of rate of taxation and interest thereon, before considering the grounds of appeal against the additions made in the first place, renders the order to be premature. Accordingly, we restore this matter back to the file of the ld. CIT(A) so that the ld. CIT(A) may consider the rectification, in the light of his final decision in the quantum appeal and pass fresh orders accordingly.

7. In the result, the appeal of the assessee is allowed for statistical purposes.
Order pronounced on 13.11.2025 in the Open Court.

Sd/-

**[KUL BHARAT]
VICE PRESIDENT**

DATED: 13/11/2025

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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.