

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

**BEFORE : SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No. 151/Agr/2025  
Assessment Year: 2018-19

Simrah Builders, 14-15, Naaz Plaza, Medical Road, Aligarh.	<b>Vs.</b>	DCIT- 4(1)(1), Aligarh.
<b>PAN : ACIFS3242A</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Pankaj Gargh, Advocate
Department by	Sh. Anil Kumar, Sr. DR

Date of hearing	20.08.2025
Date of pronouncement	14.11.2025

**ORDER**

**PER : SUNIL KUMAR SINGH, JUDICIAL MEMBER:**

This appeal has been preferred by assessee against the impugned order dated 29.01.2025 passed in Appeal No. NFAC/2017-18/10226689 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 2018-19, wherein, Id. CIT(Appeals) has partly allowed assessee's appeal by deleting all the additions made by the Assessing Officer, vide assessment order dated 01.03.2023 passed u/s. 147/144B of the Act. However, learned CIT(Appeals) *suo moto* enhanced

Rs.54,50,000/- shown by the assessee as liability towards sundry creditors balance in respect of M/s. Bharat Construction in assessee's books.

2. Brief facts state that the assessee did not file its return of income for A.Y. 2018-19. Case was reopened u/s. 147 of the Act and notice u/s. 148 of the Act was issued and served upon the assessee. Assessee filed its return of income on 12.04.2022 in response thereof, declaring total income of Rs.23,71,020/-. Learned Assessing Officer found that the return was not in terms of audited books of account and books of account of assessee were audited u/s. 144AB of the Act. Learned Assessing Officer discovered certain new issues during the assessment proceedings in terms of Explanation-3 of section 147 of the Act and after considering assessee's submissions, passed assessment order dated 01.03.2023 u/s. 147 of the Act and added the unsecured loans from different persons of Rs.13,00,000/-, Rs.1,15,000/- and Rs.12,00,000/-, further adding Rs.3,83,850/- shown against sundry creditors u/s. 68 of the Act, totaling to Rs.29,98,850/-.

3. Aggrieved, assessee preferred an appeal before Id. CIT(Appeals), who, after assessee's submissions, sought remand report from the Assessing Officer and after considering assessee's submissions and remand report, deleted all the aforesaid four additions made by the Assessing Officer, however, *suo moto* enhanced a sum of Rs.54,50,000/-

shown in assessee's books as sundry creditors balance against one M/s. Bharat Construction.

4. Appellant assessee has approached this Tribunal against the impugned order and raised following grounds :

“1. That the Ld. CIT (A) has legally erred in rejecting the appellants specific additional ground objecting on the issue of Notice u/s 148 by the Jurisdictional Assessing Officer and the assessment being completed by the Faceless Assessing Officer i.e. Assessment Unit, Income Tax Department ignoring the specific provisions as laid down in Section 151A of the I.T. Act. Considering the facts of the case the Ld. CIT (A) should have cancelled the assessment order.

2. That the Ld. CIT (A) has legally erred and has acted arbitrarily in directing the Assessing Officer to make addition of Rs 54,50,000/- as non-existing liability shown by the assessee as sundry creditor balance in respect of Bharat Construction.

3. That the direction given by Ld. CIT (A) to the Assessing Officer to make addition of Rs 54,50,000/- is an enhancement which has been made by Ld. CIT (A) without issuing any Show Cause to the assessee for such enhancement, thereby depriving the Assessee from providing reasonable opportunity of being heard. Under these facts, No such enhancement can be made by Ld. CIT (A) on the above facts as per the provisions of Sub section (2) of section 251 of the I.T. Act.

4. That without prejudice to the above ground no. 2 & 3, on merits of the case also:-

(a). The amount of Rs 54,50,000/- is fully explainable and verifiable and hence the addition made by the Ld. CIT (A) of Rs 54, 50,000/- by giving direction to the Assessing Officer is wrong, against the facts of the case, bad in law, arbitrary and deserves to be deleted.

(b). That under the facts and circumstances of the case and the legal position the addition made by Ld. CIT (A) of Rs 54,50,000/- is wrong, wholly bad in law, arbitrary as there is no such non-existing liability in the books of the assessee in respect of Bharat Construction. Thus, the addition made by Ld. CIT (A) is unjustified and deserves to be deleted.

5. That following legal ground is being taken before the Hon'ble ITAT for the first time:-

(a). That the Assessment Order under the undisputed facts of the case deserves to be cancelled as primary reason for which proceedings u/s 147 were initiated does not exist in the Assessment Order and the other additions made by the Assessment Officer were on altogether different issues.

(b). That it is a settled law that if the reasons for which proceedings u/s 147 does not exists in the Assessment Order, no other addition can be made.....”

5. Perused the records and heard learned representative for assessee and learned Sr. DR for revenue.

6. Learned representative for assessee has submitted that though, all the four additions made by the Assessing Officer have been deleted by the learned CIT(Appeals) in the first appeal, however, he has enhanced a sum of Rs.54,50,000/- without affording an opportunity of being heard to the assessee. Prayed to allow the appeal and delete the said enhanced sum added without notice to the assessee.

7. Learned Sr. DR has submitted that the learned CIT(Appeals), while examining the addition of Rs.1,15,000/- made by the Assessing Officer on account of unsecured loans from M/s Bharat Construction, merely corrected the figure to Rs.54,50,000/-, and thus supported the impugned order.

8. The sum and substance of assessee's grievance under appeal is that the Id. CIT(Appeals) has *suo moto* enhanced an amount of Rs.54,50,000/- without issuing any show cause notice to the assessee. As regards the

exercise of enhancement powers by Id. CIT(Appeals), the relevant part of section 251(2) of the Act reads as under :

“251. (1) xxxxxx      xxxxxx      xxxxxx      xxxxxx

(2) The Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.”

Explanation:- xxxx    xxxx    xxxx    xxxx    xxxx    xxxx    xxxx

9. The impugned order, vide para 3.4, speaks that on the basis of the issues raised in the assessment order, the submissions made by the assessee during the appellate stage and the remand report of the Assessing Officer, Ld. CIT(Appeals) has proceeded to pass the impugned order. There is no whisper, even in respect of any notice issued to the assessee before passing the impugned order. We further note that there is no mention in any form that Ld. CIT(Appeals) issued any show cause notice to the assessee before such enhancement. We, accordingly, hold that the Ld. CIT(Appeals) has committed an error in law, as such powers conferred in Id. CIT(Appeals) could not be exercised by the Commissioner without complying with the mandatory requirement of section 251(2) of the Act. Failure to afford a reasonable opportunity of showing cause against such enhancement made by the learned CIT(A) makes the impugned order bad in law. Such enhancement cannot be allowed to stand and is accordingly

quashed, having been made in violation of the principles of natural justice, which is explicit in sub-section (2) of section 251 of the Act. The impugned order dated 29.01.2025 is, thus, set aside and the appeal is liable to be allowed.

10. Since the appeal of the assessee has been allowed on the above legal ground, the remaining grounds raised by the assessee have become academic, hence, require no separate adjudication.

11. In the result, the assessee's appeal is allowed in the above terms.

***Order pronounced in the open court on 14.11.2025.***

***Sd/-***  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

Dated: 14.11.2025

\*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra