

INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "DB": AGRA
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
(Through virtual hearing)

ITA Nos. 54 & 76/AGR/2025
(Assessment Years: 2015-16 & 2017-18)

Manoj Kumar Agarwal, 2/25, Lohai Road, Farrukhabad, Uttar Pradesh, UP	Vs.	AO, NFAC, Delhi
(Appellant)		(Respondent)
PAN: AALPA7812P		

Assessee by :	Shri Swaran Singh, Adv Shri Shailesh Gupta, Adv
Revenue by:	Shri Anil Kumar, Sr. DR
Date of Hearing	15/09/2025
Date of pronouncement	12/12/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeals in ITA Nos. 54 & 76/AGR/2025 for AYs 2015-16 & 2017-18, arises out of the order of the Jt. Commissioner of Income Tax (Appeals)-9, Mumbai [hereinafter referred to as 'ld. JCIT(A)', in short] dated 12.12.2024 for AY 2015-16 and against the order of the NFAC, Delhi dated 31.01.2025 for AY 2017-18 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 14.12.2017 for AY 2015-16 by DCIT, Circle-4(2)(1) and passed u/s 147 r.w.s. 144 r.w.s. 144B dated 30.03.2022 for AY 2017-18 (hereinafter referred to as 'ld. AO').
2. Both these appeals were heard together and they are taken up together and disposed of by this common order for the sake of convenience.

3. The only issue to be decided in this appeal for AY 2015-16 is as to whether the Id CIT(A) was justified in confirming the addition made by the Id AO in the sum of Rs. 15,63,030/- by treating the agricultural income shown by the assessee as taxable income under the head income from other sources in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the material available on record. The assessee is a proprietor of M/s. Shakti Automobiles engaged in the business of dealer of Escorts Tractor, motorcycle and lubricants. The assessee filed his return of income for AY 2015-16 on 30.09.2015 admitting the total income at Rs. 41,44,270/-. The Id AO observed that assessee has shown agricultural income of Rs. 20,14,790/- in the return of income. The assessee owns 50.47 bighas of agricultural land. The assessee informed before the Id AO that he had also cultivated 44.19 bighas of agricultural land owned by his brother. The Id AO however observed that since the assessee is engaged in business of sale and purchase of Escorts Tractors, motorcycle and lubricants, it would not be possible for him to cultivate his own agricultural land to the fullest extent and hence he could not have cultivated his brother's agricultural land. The assessee furnished the details of land holding, crop grown and sale of agricultural produce together with documentary evidences. The Id AO estimated the agricultural income of the assessee at Rs. 8000 per bigha for 56.47 bighas of agricultural land owned by the assessee and accepted the agricultural income to the tune of Rs. 4,51,760/- (56.47 X 8000). Since, the assessee has declared agricultural income of Rs. 20,14,790/- and claimed as exempt in the return, the differential sum of Rs. 15,63,030/- was sought to be added by the Id AO by treating it as income from other sources.

5. Before the Id CIT(A), the assessee reiterated the submission made before the Id AO. The crux of the argument of the assessee before the Id CIT(A) and before us could be summarised as under:-

- a. The assessee owns 56.47 bighas of agricultural land;
- b. The assessee's brother who is in Mumbai, owns 44.19 bighas of agricultural land;
- c. The assessee cultivated crops in the entire 100.66 bighas of agricultural land;
- d. Confirmation from assessee's brother is placed on record i.e. cultivating agricultural produce on the land owned by assessee's brother which is enclosed at page 62 of the Paper Book;
- e. The assessee's brother has not shown any agricultural income in his return;
- f. Consistently the assessee has been showing agricultural income in the same way in preceding as well as in subsequent years which was accepted by the revenue authorities;
- g. The Id AO had estimated the agricultural income at Rs. 8000 per bigha for AY 2015-16 i.e. year under consideration and Rs. 14,000 per bigha for AY 2017-18.

6. We find that the revenue is inclined to accept the agricultural income only in respect of agricultural income owned by the assessee. The assessee carrying on agricultural activities on the land owned by the brother had to be proved by the assessee with documentary evidences that the brother had not shown agricultural income in his returns. This has not been done in the instant case by the assessee. Hence, merely making a bald statement that brother has not claimed any agricultural income and mere filing of confirmation from brother would not establish the genuineness of the claim of the assessee. At the same time, the fact of the agricultural land being subjected to cultivation of

crops and deriving agricultural income thereon is not doubted by the revenue. Hence, we are inclined to accept the agricultural income shown by the assessee on proportionate basis to the extent of agricultural lands owned by assessee alone and treat the differential sum as income from other sources in the hands of the assessee. Accordingly, the taxable income and agricultural income of the assessee for AY 2015-16 shall be as under:-

Agricultural income shown in the return	Agricultural income accepted by ITAT	Taxable income
20,14,790	11,30,292 (2014790 X 56.47 / 100.66)	8,84,498

7. Accordingly, grounds raised by the assessee are partly allowed in the above mentioned terms for AY 2015-16.

ITA No. 70/AGR/2025 - AY 2017-18

8. The assessee has raised a preliminary legal ground challenging the validity of assumption of jurisdiction u/s 147 of the Act.

9. We have heard the rival submissions and perused the material available on record. The return of income for AY 2017-18 was filed by the assessee on 28.10.2017 declaring taxable income of Rs. 45,54,880/-. The assessment for AY 2017-18 was originally completed u/s 143(3) of the Act on 24.12.2019 determining total income of Rs. 2,07,39,250/-. The case of the assessee was sought to be reopened by the Id AO based on the information declared by the

assessee in his affidavit filed before the Election Commission of India. The reasons recorded for reopening of the assessment are as under:-

"1. Assessee is an Individual. The return of Income for A. Y.-2017-18 was filed on 28/10/2017 declaring total income of Rs. 45,54,880/-

2. In this case, the election affidavit dated 30/03/2019 filed by Shri Manoj Kumar Agarwal with ECI was verified as per provisions of SOP issued by CBDT on 20/03/2019. During verification, it was found that for the assessment year 2017-18, assessee had a liability of Rs. 1,23,46,358/- in form of Unsecured Loans.


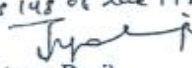
3. The undersigned has gone through the above information and also considering the fact of the case, it is sufficient to believe that the aforesaid amount of Rs. 1,23,46.358/- has been escaped from taxation. Therefore in this situation, reopening of the case u/s 147 of the Income Tax Act, 1961 is necessary at this stage.

4. In view of above facts, I have reason to believe that the income chargeable to tax to the extent of Rs. 1,23,46,358/- has escaped assessment in the hands of the assessee within the meaning of section 147 of the Income Tax Act, 1961 for A. Y.-2017-18.

5. The provisions of clause (b) of explanation 2 of Section 147 are applicable to the facts of the case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment."

10. The Id AO had sought approval from the Id Addl. CIT being the competent authority u/s 151 of the Act in the prescribed proforma which is reproduced herein:-

**PROFORMA FOR RECORDING OF REASON FOR OBTAINING APPROVAL
U/S 151(1)/151(2) OF THE INCOME TAX ACT 1961 TO ISSUE NOTICE U/S 148.
(WHERE RETURN IS FILED THE ASSESSEE)**

1.	Name & address of the assessee	Shri Manoj Agrawal 2/25, Lohai Road, Farrukhabad.
2.	Status	Individual
3.	Permanent Account Number	AALPA7812P
4.	Assessment Year	2017-18
5.	District/Circle/Range	DCIT, Circle-4(1)(1), Aligarh.
6.	The quantum of income escaped	1,15,77,454
7.	Whether the provisions of section 147(a) or 147(b) is applicable or both.	Explanation 2(b) of section 147
8.	Whether the assessment proposed for 1 st time if yes state: (a) Whether any voluntarily return was filed; if so (b) date of filing such return	Yes Yes 28.10.2017
9.	If answer to item '8' is no, state: (a).Income originally assessed. (b).Whether it is a case of under assessment, assessment at too low a rate, assessment, which has been made subject to excessive relief, excessive loss or depreciation on any other allowance has been computed.	No
10.	Whether the provision of sec 150(1) are applicable. If yes state relevant facts. Also state whether sec. 152(2) would stand in way of initiating proceedings u/s 147 of Income Tax Act, 1961.	No
11.	Reasons for the belief that income has escaped assessment Dated:	As Per Annexure- "A"  (Radha Rani Sharma) Dy. Commissioner of Income Tax Circle-4(1)(1), Aligarh
12.	Whether the Jt./Addl. Commissioner, Range-4(1), Aligarh is satisfied on the reasons DCIT that it is a fit case for issue of notice u/s 148 of the I.T. Act 1961. Dated:	After considering facts and reasons recorded by JAO, I am satisfied that it is a fit case to issue notice u/s 148 of the IT Act, 1961.  (Jyotsana Devi) Addl./Joint commissioner of Income Tax Range-4(1), Aligarh

11. The reassessment was completed u/s 147 r.w.s. 144 r.w.s. 144B of the Act on 30.03.2022 wherein an addition of Rs. 1,23,46,358/- being the amount of unsecured loan added u/s 68 of the Act.

12. At the outset, we find that the reasons recorded by the Id AO for reopening the assessment are very very vague and does not contain any

factual information thereon. The reasons does not even state whether the unsecured loans were received by the assessee during the year under consideration. The reasons does not state from whom the said unsecured loans were received by the assessee. There is absolutely no tangible material available with the Id AO suggesting some escapement of income so as to enable the Id AO to form a belief that income of the assessee had escaped assessment warranting reopening within the meaning of Section 147 of the Act. For these vague reasons being recorded, the Id Addl. CIT had accorded approval u/s 151 of the Act in a mechanical manner. This is classic case of reopening of assessment being made for making fishing and roving enquiries which is impermissible in the eyes of law. Factually the Id AR submitted that all the unsecured loans were not even received during the year by the assessee. The balance of Rs. 1,23,46,358/- represent unsecured loan received in earlier year and the same are being carried forward to the current year and no addition could be made validly by invoking the provision of Section 68 of the Act. Further, we find that in the proforma reproduced above for seeking approval u/s 151 of the Act, in response to Question No. 7, the Id AO had mentioned that the provision of Explanation 2(b) of Section 147 of the Act would be applicable. On perusal of the Explanation 2(b) of Section 147 of the Act, we find that the same would be applicable only if no assessment has been made earlier for the year which is sought to be reopened. In the instant case, the assessment has already been framed originally u/s 143(3) of the Act dated 24.12.2019 order of which is enclosed in page 381 of the Paper Book. Even this statutory provision has not been looked into by the Addl. CIT while granting approval for reopening the assessment thereby making his approval mechanical in nature which becomes fatal to the very assumption of jurisdiction for the Id AO u/s 147 of the Act. Further, we find that in the original scrutiny assessment proceedings, the Id AO vide notice u/s 142(1) dated 06.08.2019 had indeed raised a query regarding unsecured loans by asking for the name and address

of the lenders together with the confirmation, bank account, their creditworthiness etc. The assessee had filed the complete details before the Id AO vide reply letter dated 06.11.2019. The Id AO on being convinced with the same had chosen not to make any addition in the scrutiny assessment on account of unsecured loans eventhough various additions were indeed made in the said scrutiny assessment. Hence, the Id AO had indeed formed an opinion above veracity of the unsecured loans received by the assessee. Now the Id AO in the present reassessment proceedings is only trying to change the opinion already taken by his predecessor on the issue of unsecured loans. The law is very well settled that reopening of assessment cannot be made for change of opinion of the Id AO. Further, the law is also very well settled that an assessment cannot be made for making fishing and roving enquiries. The information submitted by the assessee in the election affidavit is only stating the fact of unsecured loan of Rs. 1,23,46,358/- already availed by him. That does not suggest anything adverse to the assessee much less to the Id AO to have live link for formation of belief that income of assessee had escaped assessment. Reliance in this regard is placed on the following decisions:-

- a. Decision of Hon'ble Supreme Court in the case of Kelvinator of India reported in 320 ITR 561 (SC) on the aspect of requirement of tangible material for reopening and on change of opinion;
- b. Decision of Hon'ble Punjab and Haryana High Court in the case of Vipin Khanna Vs. CIT on the aspect of reassessment not permissible for making fishing and roving enquiries;
- c. Decision of Hon'ble Delhi High Court in the case of PCIT Vs. NC Cables Ltd reported in 391 ITR 11 on the aspect of mechanical approval being granted by the competent authority u/s 151 of the Act ;

d. Decision of Hon'ble Madhya Pradesh High Court in the case of CIT Vs. S. Goyenka Lime and Chemical Ltd reported in 56 taxmann.com 390 on the aspect of mechanical approval being granted u/s 151 of the Act which becomes fatal to the entire assumption of jurisdiction u/s 147 of the Act. It is pertinent to note that the Special Leave Petition preferred by the revenue against this decision has been dismissed by the Hon'ble Supreme Court reported in 64 taxmann.com 313;

e. Decision of Hon'ble Delhi High Court in the case of SBC Minerals Pvt. Ltd Vs. CIT 475 ITR 360 on the aspect of mechanical approval by holding that the same is not a mere empty formality and the competent authority must apply his mind independently before granting or sanctioning approval u/s 151 of the Act;

f. Decision of the Hon'ble Bombay High Court in the case of Vodafone India Ltd Vs. DCIT reported in 464 ITR 385 on the aspect of mechanical approval granted u/s 151 of the Act;

g. Decision of the Hon'ble Gujarat High Court in the case of Sunrise Education Trust Vs. ITO(E) reported in 92 taxmann.com 74 on the aspect of approval being given u/s 151 of the Act based on incorrect assumption of fact by the Id AO in the reasons recorded and in the proforma seeking approval u/s 151 of the Act.

13. In any event, no addition u/s 68 of the Act could be made in the facts and circumstances of the instant case as there was no fresh receipt of unsecured loans at all during the year. Hence, the assumption of jurisdiction is totally flawed for more than one reason as detailed supra and respectfully following the various decisions referred supra, the reassessment proceedings are hereby quashed. Accordingly grounds raised by the assessee are allowed.

14. In the result, appeal of the assessee is allowed for AY 2017-18 and appeal of the assessee for AY 2015-16 is partly allowed.

Order pronounced in the open court on 12/12/2025.

-Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 12/12/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi