

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

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

**ITA No. 440/Agr/2025
Assessment Year: 2014-15**

Tomar & Brothers, 843-A, Moti Jheel, Etawah.	Vs.	Income-tax Officer, Ward 2(2)(5), Etawah.
PAN :AAAFT7729D		
(Appellant)		(Respondent)

Assessee by	Sh. Rajendra Sharma, Advocate & Sh. Manuj Sharma, Advocate
Department by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	17.12.2025
Date of pronouncement	15.01.2026

ORDER

PER : S. RIFAUH RAHMAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 22.07.2025 for the Assessment Year 2014-15.

2. At the time of hearing, learned AR of the assessee submitted that in the quantum appeal, preferred by the assessee before ITAT, it had reduced the estimation of expenditure disallowed by the Assessing Officer @ 5%. Following the same, learned CIT(A) in appeal preferred by the assessee against the penalty order u/s. 271(1)(c) of the Income-tax

Act, 1961 (“the Act” for short), deleted the penalty levied by the Assessing Officer on the basis of estimation and rest of the penalty levied by the Assessing Officer was remitted back to the Assessing Officer to modify the penalty levied. In this regard, he submitted that the Assessing Officer has made three disallowances – (A) adhoc disallowance of expenditure, which learned CIT(A) has deleted the addition, having been made on the basis of estimation. (B) Disallowance u/s. 40(a)(ia) of the Act. In this regard, he submitted that there are several decisions of coordinate benches, wherein it has been held that no penalty can be levied towards disallowance of expenses u/s. 40(a)(ia) of the Act. (C) Addition of Rs.10,54,363/- of sundry creditors/debtors. In this regard, he submitted that the addition was made u/s. 41(1) and not u/s. 68 of the Act to invoke the provisions of section 271(1)(c) of the Act to impose penalty.

3. On the other hand, learned DR relied on the findings of lower authorities.

4. Considered the rival submissions and the material placed on record.

5. We observe that various courts have held that penalty cannot be imposed u/s. 271(1)(c) of the Act for determination of income/expenditure on the basis of estimation. With regard to disallowance u/s. 40(a)(ia), we

observe that in view of decision of ITAT Agra Bench in the case of ACIT vs. Shri Ramendra Singh Kushwah, no penalty u/s. 271(1)(c) is attracted on disallowance of expenditure u/s. 40(a)(ia) of the Act. With regard to disallowance made by the Assessing Officer towards sundry creditors/debtors, we observe that the Assessing Officer has not quoted the relevant section, under which he has made the addition. We infer that the Assessing Officer has made addition u/s. 41(1) of the Act. Since the information have already been placed on record, it cannot be termed as concealment of income or inaccurate particulars of income.

6. In the result, the appeal preferred by the assessee is allowed.

Order pronounced in the open court on 15.01.2026.

Sd/-

**(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

Sd/-

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

Dated: 15.01.2026

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra