

**INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "SMC": AGRA
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 538/AGR/2025
(Assessment Year: 2011-12)**

Neeraj Kumar, 18/24, Ghadi Hussaini Prakash Nagar, Agra	Vs.	Income Tax Officer, Ward-2(1)(3), Agra
(Appellant)		(Respondent)
PAN: AJWPN8393C		

Assessee by :	Shri Jitendra Garg, Adv Shri Pradumn Garg, Adv
Revenue by:	Shri Anil Kumar, Sr. DR
Date of Hearing	22/01/2026
Date of pronouncement	03/02/2026

ORDER

1. The appeal in ITA No. 538/AGR/2025 for AY 2011-12, arises out of the order of the ADD/JCIT(A)-7, Kolkata [hereinafter referred to as 'ld. JCIT(A)', in short] dated 11.08.2025 against the order of assessment passed u/s 154 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 05.12.2018 by the Assessing Officer, ITO, Ward-2(1)(3), Agra (hereinafter referred to as 'ld. AO').

2. The Assessee has raised the following grounds of appeal before me:-

"1. Because the order dated 11/08/2025 passed under section 250 is illegal as the appeal was wrongly closed on the mistaken assumption that the appellant had opted for settlement under the VSVS Scheme, whereas no such application was ever filed for the assessment order; the only VSVS application pertained to penalty under section 271(1)(b).

2. *Because the learned CIT(A) orders dated 25/08/2025 and 24/09/2025 under section 154 failed to rectify clear mistakes, ignored jurisdictional defects, and were passed without proper application of mind.*

3. *Because the notice issued under section 148 was never validly served on the appellant, as the address used by the Department does not belong to the appellant; therefore, no jurisdiction was ever acquired for reopening, and the entire reassessment is void ab initio*

4. *Because the assessment framed ex-parte under section 147/144 is bad in law, since notices were never served at the correct address and the appellant was denied proper opportunity of being heard.*

5. *Because the reopening under section 147 is mechanical, without application of mind, based on no new tangible material, and in violation of the procedure laid down in GKN Driveshafts for supply of reasons and disposal of objections.*

6. *Because cash deposits of Rs. 11,65,500 in the SBI account were wrongly treated as undisclosed income, whereas they represented business receipts from the appellant's retail trading activity carried on under M/s Vijay General Store.*

7. *Because the appellant rightly computed income under section 44AD as total turnover was below Rs. 40 lakhs, and no books of account were required to be maintained; the addition made is arbitrary and contrary to law.*

8. *Because the learned CIT(A) erred in rejecting additional evidence under Rule 46A despite the fact that the assessment was completed ex-parte and the appellant was prevented by sufficient cause due to notices being served on a wrong address.*

9. *Because charging of interest under sections 234A and 234B is wrong and without correct verification of facts, particularly when income is computed under section 44AD."*

3. I have heard the rival submissions and perused the materials available on record. The assessment was framed u/s 147 read with Section 144 of the Act on 5-12-2018 by the Learned AO determining total income of the Assessee at Rs. 11,65,500/-. The Assessee challenged the same before the Learned JCIT(A). The Learned JCIT(A) dismissed the appeal of the Assessee on the ground that Assessee had availed Vivad Se Vishwas

Scheme 2020 and that Form No. 5 has been issued by the Jurisdictional Principal Commissioner of Income Tax and accordingly dismissed the appeal of the Assessee. Factually, there was no availment of Vivad Se Vishwas Scheme by the Assessee at all for the quantum proceedings. In fact, the Assessee had only availed the same in respect of penalty levied under section 271(1)(b) of the Act. Accordingly, the Assessee filed a rectification application under section 154 of the Act before the Learned JCIT(A). The Learned JCIT(A) agreed to the contentions of the Assessee that he had not availed the Vivad Se Vishwas Scheme and proceeded to take up the appeal.

4. The Assessee submitted that he is an individual and did not file any return of income for assessment year 2011-12 under section 139 of the Act. The case of the Assessee was reopened vide issuance of notice under section 148 of the Act dated 28-03-2018. In response to the said notice, the Assessee did not file any return of income. The Learned AO noted that the Assessee had deposited cash in his Savings Bank account maintained with State Bank of India in the sum of Rs. 11,65,500 for which no satisfactory explanation was afforded by the Assessee. Hence, the assessment was completed ex parte by adding the said cash deposits as unexplained money under section 69A of the Act. Before the Learned JCIT(A), the Assessee furnished complete details of the bank statement and also submitted that he is engaged in the retail business of beverages, salt, spices, bakery products, confectionery and other items carried under the name and style of M/s Vijay General Store at Prakash Nagar, Shadara, Agra. The Assessee also furnished the computation of total income for the year under consideration. It was submitted before the Learned JCIT(A) that the cash deposits in the bank account represent receipts / sales from the business of the Assessee carried on by him under

the name and style of M/s Vijay General Store and recycling of withdrawals, past savings, etc. It was submitted that though the cash deposits are Rs. 11,65,500, the cash withdrawals are Rs. 11,64,000. The withdrawals are mostly for purchase of goods and expenses of the shop. The Assessee submitted copies of registration certificate of Food Safety and Drug Administration before the Learned JCIT(A). The Assessee also submitted that he is a member of Best Price (wholesale dealer) from where he usually makes purchases for his shop. The copy of membership card number which is 1173110005050083 was also placed on record before the Learned JCIT(A). The Assessee's Aadhaar card was also placed on record. According to the computation made by the Assessee, the taxable income was worked out to Rs. 1,17,870 which was below the taxable limit and hence Assessee was not obligated to file any return of income thereon. The Learned JCIT(A) refused to admit the aforesaid additional evidences and dismissed the appeal of the Assessee.

5. I find that the aforesaid additional evidences go to the root of the matter and are very much crucial for adjudication of the issue in dispute. In fact, the Assessee's modus operandi of the business being conducted by him is explained before the Learned JCIT(A). In my considered opinion, those additional evidences ought to have been admitted and the issue in dispute should have been adjudicated. But considering the fact that the assessment order was also passed ex parte, I deem it fit and appropriate, in the interest of justice and fair play, to restore the entire appeal to the file of Learned AO for de novo adjudication in accordance with law. The Assessee is at liberty to furnish fresh evidences, if any, in support of his contentions. With these observations, the grounds raised by the Assessee are allowed for statistical purposes.

6. In the result, the appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 03/02/2026.

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 03/02/2026
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi