

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW
BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.384/LKW/2025
A.Y. 2018-19

Ashoka Minerals, Alampur Sikandra, NH-2, Kanpur Dehat, U.P.	vs.	ITO-NFAC
PAN: ABKFA0732C		
(Appellant)		(Respondent)

Assessee by:	Sh. Samrat Chandra, C.A.
Revenue by:	Sh. R.R.N. Shukla, Add CIT DR
Date of hearing:	05.02.2026
Date of pronouncement:	27.02.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the orders of the ld. CIT(A), NFAC wherein the ld. CIT(A) has dismissed the appeal of the assessee in limine for failure to make compliance to the various notices issued by him, the details of which he has given in his appeal order. The said appeal was filed against the order of the ld. AO under section 147 r.w.s. 144 for the A.Ys 2018-19 on 27.03.2023. The grounds of appeal are as under:-

"1. Because on the facts and in the circumstance of the case, the order of Ld. CIT(Appeals) has been passed in absolute violation of the principles of Natural Justice, without providing adequate opportunity of being heard and therefore deserves to be declared a nullity.

2. Because on the facts and in the circumstance of the case, Ld. CIT(Appeals) has the erred in law and on facts in confirming the addition of Rs. 1,12,78,456/-as the notice did not come to the knowledge of the appellant and the email was registered over the Income Tax portal was related to the one of the partner partners. The partner whose email id is registered is Mr. Kamal Deep Tiwari who holds only 10% of the share in the firm. The other partner Mrs. Geetanjali did not come to know of the notices.

3. Because on the facts and in the circumstance of the case, Ld. CIT(Appeals) has the erred in law and on facts in not consider the grounds mentioned in Point. 2 given in Form-35 as "That the Id AO added back the entire cash deposits of Rs. 1,12,78,456/- and did not calculate net profit on presumptive basis ie. 8% or more. The Ld. AO. assessed the total cash deposited as income of the appellant. The appellant operates a petrol pump on the highway and all the sales are made in cash only and later deposited in the bank.

4. Because on the facts and in the circumstance of the case, Ld. CIT(Appeals) has the erred in law and on facts in not deciding point 3. of grounds of appeal the appellant mentioned that "The No authority making a best adjustment must make an honest and fair estimate of the income of the appellant and though the arbitrariness cannot be avoided in such an estimate the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case.

5. Because on the facts and in the circumstance of the case, Ld. CIT(Appeals) has the erred in law and on facts in confirming an order of assessment as in the case of P. K. Noorjahan [TS5002-SC-1997-O] the Hon'ble Supreme Court held that merely the assessee's failure to explain the source of cash will not automatically will attract the addition of the cash deposit" the appellant already submitted that he operates a petrol pump and cash collection and deposit is a normal procedure. We have explained the various case laws to support our contention.

6. Because on the facts and in the circumstance of the case, Ld. CIT(Appeals) has the erred in law and on facts confirming an amount of Rs. 1,12,78,456/-deposited in the account of the petrol pump and the Ld. Assessing Officer has raised abnormal and is a high-pitched demand without considering the merit of the case that how a petrol pump depositing Rs. 1,12,78,456/-in account and has raised a demand of Rs. 1,85,67,846/-.

7. The appellant craves for leave to add, modify, amend or delete any other and further grounds of appeal with permission."

2. At the very outset, it is observed that appeal is delayed by 97 days. A condonation application has been submitted by the assessee accompanied by an affidavit from the partner of the assessee firm pointing out that the appeal could not be filed within time before the Hon'ble Tribunal since the local counsel Sh. P.K. Mishra, C.A. was suffering from Bell's Palsy, a neurological condition resulting in temporary facial paralysis in the month of January, 2025 and also chronic Kidney failure. The local counsel was undergoing treatment at Apollo Hospital, Delhi. Accordingly, he could not attend to his office for a considerable period of time.

Copy of MRI Report and details of medicines prescribed were furnished by way of annexures to the application and the affidavit. It was further submitted that Sh. Kamaldeep Tiwari, who was the active partner was not well-versed with computers and faced challenges in using email and other mobile applications. Due to his limited technological skills, Sh. Kamaldeep Tiwari was unaware of notices issued to him vide email due to which he was unable to access and respond to notices issued electronically. In view of these circumstances, the delay was prayed to be condoned. After considering that the fact that the assessee may have been handicapped in effectively pursuing its appeal on account of the illness of the counsel at that particular point of time, in the interest of justice, we admit the appeal for adjudication.

3. The facts of the case are that the case of the assessee is operating a Petrol Pump of Indian Oil Corporation and receives commission from the IOC for this agency business. It came to the knowledge of the AO that the assessee which had not filed a return of income for the A.Y. 2018-19 had made cash deposit for Rs. 1,12,78,456/- in A/c No. 37305148892 of the State Bank of India during the financial year pertaining to the said assessment year. Therefore, proceedings under section 147 of the Income Tax Act were initiated by way of issue of notice under section 148. The AO records the fact that several notices were issued to the assessee which were not complied with. Therefore, the ld. AO issued a show cause notice to the assessee on 28.02.2023, in which it was proposed to add this amount back to the income of the assessee, as unexplained money under section 69A of the Act. However, since the assessee did not respond to the notice and even the State Bank of India failed to furnish the bank statement in response to the notice under section 133(6), the AO proceeded to make a best judgment assessment by adding a sum of Rs. 1,12,78,456/- back to the income of the assessee under section 69A of the Income Tax Act, 1961.

4. Aggrieved with the said order, the assessee went before the ld. CIT(A). Before the ld. CIT(A), it was submitted that the firm M/s Ashoka Minerals had two partners, Smt. Gitanjali who had a profit-sharing ratio of 90% and Sh. Kamaldeep

Tiwari, who had a profit-sharing ratio of 10%. However, since Smt. Gitanjali had been facing health issues, she had entrusted Sh. Kamaldeep Tiwari with the day-to-day operations of the firm. Sh. Kamaldeep Tiwari not being well-versed with the nuances of computers could not respond to the notices issued for compliance and this resulted in the ex parte order. However, it was pointed out that the authority making a best judgment assessment must make an honest and fair estimate of the income of the assessee and the said should have a reasonable nexus to the available material and circumstances of the case. It was submitted that the copy of the balance-sheet and the profit and loss account were available on the income tax e-filing Portal. The assessee ran a dealership under the Indian Oil Corporation Limited and earned income on margin basis. The same could have been verified from the financial statements of the assessee i.e. profit and loss account. It was submitted that the total sales for the F.Y. were Rs. 4,20,50,311.15/- whereas the total purchases for the relevant F.Y. were Rs. 4,31,07,762.35/- as per the audited financial statements. Had the AO calculated a profit of 8% on the turnover then such a high-pitched demand would not have been raised. Accordingly, it was prayed that the Id. CIT(A) may direct the AO to re-consider the case and provide the assessee with an opportunity of being heard so that the assessee could present her case alongwith all necessary documents and information as would be required by the Income Tax Authorities.

5. The Id. CIT(A), however noted that during appeal proceedings also, the assessee had been granted many opportunities for presenting his case and filing a detailed submission in support of various grounds of appeal, but on none of the occasion had the assessee chosen to file a submission or filed any documents, evidences or even requested for adjournment. He noted that in a faceless environment, notices could only be issued by electronic means and the assessee was expected to respond to them through the same environment. Listing out the details of non-compliances during appellate proceedings, he dismissed the appeal of the assessee for want of pursuit.

6. The assessee is aggrieved at this summary disposal of its appeal and has accordingly come before us. Sh. Samrat Chandra, C.A. (hereinafter referred to as the ld. AR) appearing on behalf of the assessee submitted that the reasons for non-compliance before the lower authorities had been well spelt out in the condonation petition and also in the appeal memorandum filed by the assessee. Furthermore, they had also been placed before the ld. CIT(A). It was further submitted that the statement of facts and grounds of appeal filed before the ld. CIT(A) stated all the facts in detail. While the assessee did not deny this service of notice on web-portal, it was aggrieved at the fact that the ld. AO had added back the entire cash deposits of Rs. 1,12,78,456/- instead of calculating the profits. It was submitted that the assessee had only earned commission of Rs.7,58,814/- from IOC and after making expenditures, the total profit of the assessee only came to Rs. 3,45,829/-. However, the assessee was aware about the fact that it could not make proper compliances before the lower authorities and therefore, it requested that the matter may kindly be restored to the file of the AO so that it could satisfy the queries of the AO by filing all details in this regard.

7. On the other hand, Sh. R.R.N. Shukla, Addl CIT DR (hereinafter referred to as the ld. DR), submitted that the assessee had been given every opportunity by the AO and the ld. CIT(A) to make responses but had not availed the same and therefore, did not deserve a second innings. However, if the Tribunal in its wisdom decided to restore the matter back then it should do so only after imposing costs upon the assessee to discourage the assessee from such non-compliance in the future.

8. We have duly considered the facts and circumstances of the case. We observe that the both the AO and ld. CIT(A) had given adequate opportunity to the assessee to present its case before them but the assessee did not make compliance to the notices issued by them. While we can understand the non-compliance to the notices issued by the AO, once the fact of non-compliance was in the knowledge of the assessee at the time of filing of the appeal before the ld. CIT(A), it should have made adequate arrangements to respond to notices in an electronic media. The

excuses cited by the assessee do not seem to be an adequate explanation of its failure to respond to the various notices issued by the Id. CIT(A) and therefore, in consideration thereof, we have imposed costs upon the assessee by directing it to deposit a sum of Rs. 5,000/- only with the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund. It is seen that on 6.02.2026, the assessee has made this deposit. Be that as it may, we are conscious of the fact that the assessee is having a dealership of IOC Limited and that the entire deposits in the bank account cannot be said to be its income, if it emanates from the sale of petroleum products. We note that even the bank account was not available before the Id. AO at the time that he made the assessment. Accordingly, in the interest of justice, we deem it appropriate to restore this matter back to the file of the Id. AO and we direct the assessee to produce all necessary evidences before the AO to demonstrate that its claims regarding its financial situation and income earned are true and correct. The AO may therefore, pass a fresh assessment in accordance with law. As the matter stands restored to the file of the AO, the appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 27.02.2026 in the Open Court.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

DATED: 27/02/2026

sh

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.