



**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH (SMC), AGRA**

BEFORE : SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

**ITA No. 615/Agr/2025
Assessment Year: 2017-18**

Adal Singh Mohalla Upadhyay, Vill. Abhuapura, P.O. Kiraoli, Agra, (U.P.) 283101.	Vs.	Income Tax Officer 1(1)(1), Agra.
PAN : GBAPS9376G		
(Appellant)		(Respondent)

Assessee by	Sh. Harsh Agarwal, C.A.
Department by	Sh. Harsh Siddharth Gautam, Sr. DR

(Physical hearing)

Date of hearing	21.04.2026
Date of pronouncement	24.04.2026

ORDER

PER : S. RIFAUR 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 08.11.2025 for the Assessment Year 2017-18, wherein the assessee has raised following grounds:-

“1. BECAUSE, the Ld. CIT(A) has erred in law and on facts in upholding the validity of notice issued under section 148 of the Income-tax Act, 1961 dated 26.03.2024, which is barred by limitation under section 149(1)(a) of the Act and therefore the entire reassessment proceedings are void ab initio and without jurisdiction.

2. BECAUSE, the Ld. CIT(A) failed to appreciate that for A.Y. 2017-18, the statutory limitation of three years expired on 31.03.2021, whereas the notice

under section 148 of the Act was issued on 26.03.2024, much beyond the permissible time limit.

3. BECAUSE, the Ld. CIT(A) has grossly erred in holding that section 149(1)(b) is applicable merely on the basis of aggregate cash deposits and withdrawals, without there being any income escaping assessment exceeding Rs. 50,00,000/- as mandatorily required under law. Even, as per the assessment order, the total assessed income is Rs. 30,19,960/- which is far below the threshold of Rs. 50,00,000/- and therefore reopening beyond three years is impermissible in law.

4. BECAUSE, the Ld. CIT(A) has erred in law in holding that the return of income filed in response to notice under section 148 of the Act is non-est, ignoring settled legal principles that delay in filing return does not nullify the assessee's statutory rights.

5. BECAUSE, the Ld. CIT(A) has erred in confirming the addition of Rs. 27,00,000/- under section 69A of the Act, despite the appellant having fully explained the nature and source of cash deposits as arising from legitimate business activity of trading of potatoes.

6. BECAUSE, the authorities below erred in making and confirming addition in respect of entire deposits without giving credits to the withdrawals made from the same account. Even otherwise only peak addition could have been made.

7. BECAUSE, the authorities below erred in rejecting the claim of potato trading without considering the provisions of section 44AD which reflects a lack of proper appreciation of the statutory provisions and established principles governing presumptive taxation, thereby rendering the assessment legally untenable.

8. BECAUSE, the Ld. CIT(A) failed to appreciate that an assessee opting for section 44AD is not required to maintain books of account and therefore rejection of business activity is legally untenable.

9. BECAUSE, the provisions of section 115BBE of the Act cannot be invoked in view of the judgement of Hon'ble Madras High Court in the case of S.M.I.L.E. Microfinance Ltd. Vs. ACIT, 2024 (11) TMI 1444 Madras High Court as followed by the Hon'ble ITAT, Agra Bench in the case of Sh. Pankaj Kumar Vs. ITO in ITA No. 219/Agra/2023 dated 04.02.2025.

10. BECAUSE, the Ld. CIT(A) failed to adjudicate serious computational inconsistencies between the assessment order and computation sheet, rendering the demand illegal and unsustainable.

11. BECAUSE, order of the Ld. CIT(A) is bad in law, against facts, and liable to be quashed.

The appellant craves leave to add, amend, alter or withdraw any ground of appeal at or before the time of hearing.”

2. The assessee also filed an application for admission of additional ground with the prayer that it is purely legal in nature and it can be adjudicated on the basis of material on record, by relying on the decision of Hon'ble Supreme Court in the case of NTPC vs. CIT (1988) 299 ITR 383 (SC). After considering the submission of the Ld. DR and the material facts available on record,. We are inclined to admit the additional grounds of appeal for adjudication. The assessee has filed additional ground of appeal as under:-

“1. BECAUSE, on the facts and in the circumstances of the case and in law, the approval granted under section 151 of the Act for passing the order under section 148A(d) and issuance of notice under section 148 is bad in law and void ab initio, as the same has been accorded on incorrect and inconsistent facts regarding the quantum of alleged income escaping assessment, being Rs.1,11,37,000/- at the stage of approval as against Rs.66,13,961/- considered in the order under section 148A(d), thereby evidencing complete non-application of mind by the sanctioning authority and rendering the consequent reassessment proceedings liable to be quashed.”

3. At the time of hearing, Ld. AR of the assessee brought to my notice page 164 of the paper book which is approval granted u/s 151 of the Income Tax Act, 1961 (in short “Act”) and brought to my notice column 7 of the approval wherein the Assessing Officer has got approval for escapement of income for an amount of Rs. 1,11,37,000/-. Further he

brought to my notice page 168 of the paper book which is order passed u/s 148A (d) of the Act, wherein the Assessing Officer has determined the escapement of income after verification of bank statement submitted by the assessee to the extent of Rs. 66,13,961/- including Rs. 27,00,000/- of cash deposit made by the assessee during the year under consideration. Further, he brought to my notice assessment order passed u/s 147 r.w.s. 144B of the Act and he submitted that the Assessing Officer has finally made the addition of Rs. 27,00,000/- which related to cash deposits made by the assessee during the year under consideration. In this regard, he submitted that the Assessing Officer has got approval u/s 151 of the Act on the wrong amount of escapement of income. In this regard, he submitted that the issue is squarely covered by the various decisions by the Courts as under:-

1. Vodafone India Ltd. vs. DCIT reported in 464 ITR 385 (Bom.H.C.)
2. Chhugamal Rajpal vs S.P. Chaliha
3. United Electrical C. (P) Ltd. vs. CIT
4. PCIt v. N.C. Cables Ltd.
5. CIT vs S. Goyanka Lime & Chemical Ltd.
6. PCIT vs. Meenakshi Overseas (P) Ltd. (2017) 395 ITR 677 (Delhi HC)
7. Abdul Majeed v. ITO (Raj H.C.)

8. Sonali Dharmendra Mhetre (ITAT Mumbai)

9. Malkiat Singh (ITAT Delhi)

10. Sh. Pankaj Kumar vs. ITO ITA No. 219/Agr/2023 dated 04.02.2025.

4. Further, Ld. AR of the assessee submitted that final assessment income determined by the Assessing Officer i.e. Rs. 27,00,000/-, whereas as per provisions of the Act in order to reopen the assessment, there is threshold limit of Rs. 50,00,000/- which has to be satisfied before initiation of proceedings u/s 147 of the Act. This aspect was not considered by the Assessing Officer and in this regard he relied on the decision of ITAT, Mumbai Bench in the case of Ms. Sonali Dharmendra Mhatre vs. ITO (2005) 5 TMI 1481 and ITAT, even through reopening was made on alleged escapement of Rs. 90.64 lakh, the final additions were made below Rs. 50 lakh. It was held that reopening becomes void ab initio if the actual escapement does not meet the statutory threshold and Delhi Bench in the case of Shri Malkian Singh vs. ITO (2025) (10 TMI 848, reopening was quashed where the actual escapement was much lower than what was assumed for invoking extended limitation.

5. On the other hand, Ld. DR brought to our notice at page 166 of the paper book, wherein the Assessing Officer has submitted annexure to the form of seeking approval u/s 151 of the Act, in the annexure, the

Assessing Officer has clearly gave the explanation for escapement of income which includes the cash deposit of Rs. 27,00,000/- and aggregate gross amount debited to the open in cash in the bank statement to the extent of Rs. 84.37 lakh. Therefore, the Assessing Officer has clearly brought on record in the reasons recorded for reopening of the assessment. However, he relied on the orders of the lower authorities.

6. Considered the rival submissions and the material placed on record. I observed that the Assessing Officer observed that there is escapement of income in the case of the assessee to the extent of Rs. 1,11,37,000/- which comprised of cash deposit of Rs. 27,00,000/- and gross amount debited in the bank statement of Rs. 84.37 lakh, the Assessing Officer obtained approval u/s 151 of the Act with the above said reasons to believe. However, while passing the order u/s 148A(d) of the Act, the escapement of income was reduced from Rs. 1,11,37,000/- to Rs. 66,13,961/- which include Rs. 27,00,000/- of cash deposit, at the time of passing the assessment order, the Assessing Officer has deleted the aggregate gross amount debited to the account in cash in the bank statement to the extent of Rs. 84.37 lakh. It clearly shows that the Assessing Officer has got approval on the basis of alleged escapement

of income. However on careful consideration of facts available on record, I observed that the Assessing Officer was never sure of total escapement of income at the time of obtaining approval u/s 151 of the Act. Even at the time of passing order u/s 148A(d) of the Act, he has reduced escapement of income to the extent of Rs. 66,13,961/-. Therefore approval obtained u/s 151 of the Act is not proper reasons to believe.

7. Further, I observed that finally the Assessing Officer has assumed of escapement of income to the extent of cash deposit made by the assessee during the year to the extent of Rs. 27,00,000/- that being the case, the actual escapement of income is only Rs. 27,00,000/- as per provisions of section 149(1) of the Act , the Assessing Officer can reopen the assessment which is beyond 3 years from the end of the relevant assessment years unless the Assessing Officer has in his possession which reveals that income chargeable to tax in the form of assets or expenditure are in the nature or entries in the bogus account which has escaped amounts or is likely to amount of Rs. 50,00,000/- or more, that being the case the actual escapement of income is only Rs. 27,00,000/- of cash deposit made by the assessee during the year under consideration. From the factual matrix available on record, it is clear that the Assessing Officer was never assured of the escapement of income

for the year under consideration. Considering the various decision in the case of Vodafone India Ltd. vs. DCIT (supra) and United Electric Co. (P) Ltd. vs. CIT (Supra) in which it was held that sanction granted without proper application of mind is invalid in law. However, in the case of Sonali Dharmendra Mhatre (supra) in which it was held the reopening becomes void ab initio if the actual escapement does not meet the statutory threshold. Further, in the case of Malkiat Singh (supra), where the reopening of the assessment order quashed for the reasons actual escapement was much lower than what was assumed for invoking extended limitation. Therefore in the present facts on record the actual escapement of income is only Rs. 27,00,000/- whereas the escapement of income was assumed for invoking the provisions of section 148 of the Act was beyond Rs. 50,00,000/-, therefore, the grounds raised by the assessee in additional ground accordingly allowed. The other grounds raised by the assessee are kept open.

7. In the result, the appeal filed by the assessee is accordingly allowed.

Order pronounced in the open court on 24.04.2026.

**Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

Dated: 24.04.2026



*Santosh, Sr. PS

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra