

**IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER &
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA No. 154/Agr/2023
(Assessment Year 2017-18)**

Income Tax Officer, PS Tower, Near Barrier Chouraha, Opp, Old Rajput Hotel, AB Road Morena-476001 M.P.	Vs.	Sharad Verma, Prop.M/s Jaidayal Enterprises, Sadar Bazar, Porsa Morena-476115 M.P.
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AERPv2262E		
Appellant	..	Respondent

Appellant by :	Sh. Sukesh Kumar Jain, CIT, DR
Respondent by :	None

Date of Hearing	12.02.2025
Date of Pronouncement	12.02.2025

ORDER

PER SATBEER SINGH GODARA, JUDICIAL MEMBER:

This Revenue's appeal for assessment year 2017-18 arises against Commissioner of Income Tax(Appeals)/National Faceless Appeal Centre [in short, the "CIT(A)/NFAC"], Delhi DIN and Order No. ITBA/NFAC/S/250/2023-24/1055976900(1) dated 12.09.2023, involving proceedings u/s 143(3) of the Income-tax Act, 1961, [hereinafter referred to as the 'Act'].

2. Case called twice. None appears at the assessee's behest. He had also not appeared on all the earlier occasions as well. The assessee is therefore proceeded against *ex-parte*.

3. Learned CIT-DR invites our attention to the Revenue's following substantive grounds raised in the instant appeal.

"1. Whether on the facts and the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 5,39,07,875/- made by the Assessing Officer u/s 69A of the Income Tax Act, 1961 on account of unexplained deposits made by the assessee in his bank account in the Axis Bank.

2. Whether on the facts and the in the circumstances of the case, the Ld. CIT(A) has relied upon the FIR filed by the Assessee. Wherein it was stated that the alleged bank account of Axis Bank was neither opened nor operated by the assessee and that one Shri Neeraj Agarwal was responsible for the Fraud whereas on the contrary, the fact remains that Shri Neeraj Agarwal was not found guilty by the Hon'ble Civil Court and the petition filed by the police/assessee was dismissed."

4. The sole dispute between the parties herein appears to be correctness of Section 69 unexplained deposits addition of Rs.5,39,07,875/-made by the Assessing Officer in his assessment dated 31.12.019. Learned CIT(A)/NFAC has deleted the same as follows:

"6. Decision:

6.1 The appellant vide his appeal has assailed the AO for making an addition of Rs. 5,39,07,875/- u/s 69A ,in his returned income. The appellant had filed a return of income declaring an income of Rs. 2,03,571/- and the case of the appellant was selected for complete scrutiny through CASS for the following reasons

- 1. Large cash deposits during demonetization period and business return filed for the first time.*
- 2. Undisclosed income reported by PCIT (on ITBA AIMS Portal) after online verification of cash deposit during demonetization period.*
- 3. Large value cash deposits during demonetization period.*

4. *Abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period.*

6.2 *The AO during the assessment proceedings asked the appellant to explain the deposit of Rs. 5,39,07,875/- in his Axis Bank Account in Morena. The appellant in his submission to the AO stated that he did not open any bank account in Morena. He further submitted that he has also filed a FIR dated 23.04.2017 in this regard at Police Station Morena alleging that someone had misused his PAN card details to open the bank account.*

6.3 *The AO made the addition by holding that the appellant had failed to explain as to how the copy of PAN card along with other relevant documents were provided for opening the account at Morena and the fate of the FIR filed by the appellant had not been decided, as further investigation was still on it could not be ascertained that whether the appellant was in default or not.*

6.4 *The appellant in the appellate proceedings has again reiterated his stand that the said account was not opened by him. In support of his contention the appellant has submitted the following documents:*

1. *Copy of the FIR filed by the appellant.*
2. *Duly sworn affidavit of the appellant stating that the alleged bank account of Axis Bank was neither opened nor operated by him.*
3. *Copy of certificate issued by the Axis Bank Authority stating that the impugned bank account does not have any connection with the appellant.*
4. *Statement of Sh. Neeraj Aggarwal before the police authorities stating that the said bank account was opened and operated by him.*
5. *Copy of arrest memo of Sh. NeerajAggarwal.*
6. *Copy of seizure memo of police authorities vide which the original documents of account opening formalities were submitted before the ADJ III, Morena.*
7. *Copies of statements recorded on oath of Sh. AvinashAggarwal (introducer if bank account) and Sh. PankajKapoor (from whom the photocopies of documents of the appellant were taken by Sh. NeerajAggarwal).*
8. *Copy of letter sent by bank authorities to police authorities that the account was opened on the reference of Sh. AvinashAggarwal.*
9. *Copy of the final report prepared by the police authorities submitted in the court stating that Sh. NeerajAggarwal was responsible for the fraud done in the impugned account.*

6.5 The documents submitted by the appellant were forwarded to the AO on 22.3.2022, asking him to inquire about the status of the FIR and also to procure a copy of the bank statement from the bank of the said bank account and submit the same, within one month of receipt of the letter.

However no response was received from the AO so reminders for the same were issued to AO on 21.6.2022, 23.3.2023, 28.3.2023, 7.8.2023. As no response was received from AO then a final reminder was issued on 18.8.2023 asking the AO to submit his report by 25.8.2023 and if no report is submitted then the case would be decided on the basis of material present on record and the AO will be responsible for any adverse consequence to revenue. However, still no response was received from the

6.6 As no report has been received from AO the case is being decided on the basis of material on record. After the perusal of the submission and documents submitted by the appellant during the appellate proceedings it is seen that he is submitted enough evidence proving that the said bank account in axis bank was neither opened by him nor operated by him. The appellant was the victim of a fraud the perpetrators of which have been arrested after the police investigation and even a criminal case has been filed against them in the court. In the light of these findings it is reasonable to conclude that the said bank account did not belong to the appellant and the money deposited in the said bank account was not his. In view of the above the addition made by the AO is deleted.

7. The appeal is allowed.”

5. Suffice to say, the assessee's stand had alleged from day one that Shri Neeraj Agarwal had in fact misused his name and documents to open the bank account and made the cash deposits forming subject matter of addition before us.

6. Learned CIT-DR on the other hand has filed judgment of the learned “Upper Sessions Court”; Morena, in criminal case against Shri Neeraj Agarwal dated 06.09.2023, acquitting him from all charge levelled by the assessee. And that the learned CIT(A)/NFAC's detailed discussion date 20.09.2023 i.e. after the criminal case order coming on 06.09.2023, has admittedly not considered all these intervening developments.

7. Faced with the situation, we are of the considered view that the Revenue's instant sole substantive grievance deserves to be restored

back to the learned Assessing Officer for his afresh appropriate adjudication as per law. Ordered accordingly.

8. This Revenue's appeal is allowed for statistical purposes.

Order pronounced in the open court on 12.02.2025

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Dated 12.02.2025

PS: Rohit/Subodh, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT AGRA