

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

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND  
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकरअपील सं. / ITA No.246/Agr/2024  
(निर्धारणवर्ष / Assessment Year: 2018-19)**

**&**

**2. आयकरअपील सं. / ITA No.247/Agr/2024  
(निर्धारणवर्ष / Assessment Year: 2018-19)**

**&**

**3. आयकरअपील सं. / ITA No.248/Agr/2024  
(निर्धारणवर्ष / Assessment Year: 2018-19)**

<b>Shri Brajgopal Gupta</b> 54, Harsi Road infront of Sanyas Ashram MP 475110	<b>बनाम/ Vs.</b>	<b>ITO</b> Gawalior (MP)
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ARMPG-7098-M</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

**&**

**4. आयकरअपील सं. / ITA No.264/Agr/2024  
(निर्धारणवर्ष / Assessment Year: 2018-19)**

<b>ITO</b> Gawalior (MP)	<b>बनाम/ Vs.</b>	<b>Shri Brajgopal Gupta</b> 54, Harsi Road infront of Sanyas Ashram MP 475110
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ARMPG-7098-M</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	None
<b>Revenue by</b>	:	Shri Sukesh Kumar Jain – Ld. CIT-DR

<b>सुनवाईकीतारीख/Date of Hearing</b>	:	20-02-2025
<b>घोषणाकीतारीख /Date of Pronouncement</b>	:	28-03-2025

## आदेश / ORDER

### Manoj Kumar Aggarwal (Accountant Member)

1. The assessee is in further appeal before us against quantum additions as well as against penalties as levied by lower authorities. The revenue is also in further appeal against relief granted by Ld. CIT(A) on quantum additions. At the time of hearing, none appeared for assessee and accordingly, the appeals were heard with the able assistance of Ld. CIT-DR who pleaded for restoration of assessment orders as well as confirmation of penalty orders of Ld. AO. First, we take up quantum appeal which arises out of the order of Ld. Commissioner of Income Tax (Appeals), NFAC [CIT(A)] dated 15-05-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 144 r.w.s. 147 of the Act on 14-03-2023.

2. The assessee's case was reopened to examine the financial transactions as reported to the department. The assessee was show caused but the assessee remained non-compliant. Left with no option, Ld. AO added cash withdrawals of Rs.406.66 Lacs to the income of the assessee as unexplained money u/s 69A. The assessee made cash deposits of Rs.50.30 Lacs which were also added u/s 69A. The assessee earned contractual receipts of Rs.0.30 Lacs against which Ld. AO estimated income at 8%. The assessee earned interest of Rs.0.51 Lacs which was added as income from other sources. The Tax Auditor reported income of Rs.13.43 Lacs. After adding all these components, Ld. AO determined total income of Rs.470.93 Lacs on *best judgment* basis.

3. The Ld. CIT(A), at para 10.6, observed that the cash withdrawals were made out of amount received by the assessee by way of RTGS / NEFT. The credit transactions were out of trading activities and therefore, cash withdrawals were out of trading receipts only. The Ld. AO observed that the assessee made cash deposits of Rs.50.30 Lacs and made cash withdrawals of Rs.406.66 Lacs. Since the source of withdrawals was out of trading receipts, the same could not be added to the income of the assessee. Accordingly, the addition of Rs.406.66 Lacs was deleted whereas addition of cash deposit for Rs.50.30 Lacs was sustained. The adjudication of Ld. CIT(A) has led to cross-appeals before us.

4. The factual findings as rendered by Ld. CIT(A) remain uncontroverted before us. It is the finding of Ld. CIT(A) that cash withdrawals were out of trading receipts. However, the income from trading activities has not been estimated. Therefore, we estimate the same at 5% of withdrawals of Rs.406.66 Lacs. The addition of cash deposit for Rs.50.30 Lacs is sustained since the assessee has failed to establish the sources thereof. The addition as sustained by us would be subjected to normal rate of tax in terms of decision of Hon'ble High Court of Madras (Madurai Bench) in **S.M.I.L.E. Microfinance Ltd. vs. ACIT (WP (MD) No.2078 of 2020 dated 19-11-2024)** holding that the revenue is empowered to impose 60% rate of tax for the transactions from 01.04.2017 onwards and not prior to the said cut-off date. The Ld. AO is directed to re-compute the income of the assessee. The cross-appeals stand partly allowed accordingly.

5. Against quantum addition of Rs.13.97 Lacs, Ld. AO levied penalty of Rs.1.19 Lacs vide its order dated 20-07-2023, For quantum addition of

Rs.456.96 Lacs, Ld. AO levied penalty u/s 271AAC(1) for Rs.27.41 Lacs. The same was confirmed by Ld. CIT(A). Aggrieved, the assessee is in further appeal before us.

6. Considering our view in quantum appeal wherein we have estimated the income of the assessee and relied on the cited decision of Hon'ble High Court holding that the income would be subjected to normal rate of tax, we would hold that it is not a fit case for levy of impugned penalties. When the income is estimated, the same would not automatically lead to a conclusion that the assessee concealed its particulars of income. By deleting both the penalties, we allow the appeal of the assessee.

7. In the result, ITA No.246/Agr/2024 & ITA No.264/Agr/2024 stand partly allowed. ITA Nos.247 & 248/Agr/2024 stand allowed.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.*

*Sd/-*  
**(SATBEER SINGH GODARA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

*Sd/-*  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य / ACCOUNTANT MEMBER

Dated: 28-03-2025

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA