

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

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

**आयकरअपील सं. / ITA No.83/Agr/2024**  
**(निर्धारणवर्ष / Assessment Year: 2008-09)**

<b>Sh. Manish Kumar Verma</b> J-15, Site No. 1, City Centre, Near Honda Showroom, Gwalior.	<b>बनाम/ Vs.</b>	<b>Income-tax Officer,</b> Ward 1(1), Gwalior.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>ABDPV-8563-H</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Sh. M.K. Agarwal, Adv. – Ld. AR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Sh. Shailender Shrivastava – Ld. DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	19-02-2025
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	22.04.2025

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2008-09 arises out of an order of Ld. Addl. / Joint Commissioner of Income Tax (Appeals), NFAC, Delhi [CIT(A)] dated 24-01-2024 in the matter of an assessment framed by Ld. AO u/s 147 r.w.s. 143(3) of the act on 18-03-2014. The sole grievance of the assessee is confirmation of disallowance u/s 40A(3) for Rs.14.13 Lacs. Having heard rival submissions and upon perusal of case records, the same is adjudicated as under. The assessee is stated to be carrying out retail trade of gold and silver jewellery. The assessee did not maintain books of accounts and declared income u/s 44AF.

2. The case of the assessee was reopened vide notice u/s 148 dated 15-03-2013. The same was to verify the transactions as carried out by the assessee with Shri H.D. Joshi and others. It transpired that the assessee reflected income of Rs.1.28 Lacs against turnover of Rs.33.27 Lacs. Considering the provisions of Sec.44AF, 5% thereof would be deemed income which would be Rs.1.66 Lacs. The assessee reflected less income. Therefore, Ld. AO held that the income was not declared u/s 44AF. Finally, Ld. AO computed disallowance u/s 40A(3) for Rs.14.13 Lacs on account of cash purchases. The Ld. CIT(A) confirmed the assessment against which the assessee is in further appeal before us.

3. Upon perusal of reasons recoded to reopen the case of the assessee as kept on Page No.9 of the paper-book, we find that the assessment has been reopened merely on the allegation that the assessee has made unaccounted purchase / sale to Shri H.D. Joshi and others. It has been alleged that the assessee has made unaccounted transaction which has escaped assessment. However, no such addition has been made in the assessment order. The Ld. AO has merely made disallowance u/s 40A(3) which is against accounted purchases only. Further, there is no new tangible material before Ld. AO to form a belief that the income had escaped assessment. For these reasons alone, the assessment is liable to be quashed. We order so. Delving into the merits has been rendered academic in nature.

4. The appeal stand allowed in terms of our above order.

*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)**  
लेखक सदस्य / ACCOUNTANT MEMBER

Dated: 22.04.2025

**आदेश की प्रतिलिपि ँ ग्रेषित / 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