

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**

आयकरअपील सं. / ITA No. 421/Agr/2024
(निर्धारणवर्ष / Assessment Year:2017-18)

Shri Pradeep Kumar Gupta C/o Avantika Sales, Havells Galaxy, Morena Talkies Road, Morena (MP).	बनाम/ Vs.	Income-tax Officer, Ward-1, Morena.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AGMPG-3818-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	S/Sh. Nitin & Amit Goyal, Adv. - Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Shailender Shrivastava – Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	21-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	22.04.2025

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of an order passed by learned Commissioner of Income Tax (Appeals), NFAC, Delhi [CIT(A)] on 20-03-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 08-12-2019. The registry has noted delay of 115 days in the appeal which stand condoned. From the case records, it emerges that the case was subjected to scrutiny to examine the issue of large value cash deposits during demonetization period. During assessment proceedings, the assessee could not substantiate the bank credits. Ultimately, Ld. AO added cash deposit of Rs.317.10 Lacs u/s 69A. On the other bank credits for Rs.315.22 Lacs, Ld. AO estimated business income of 6% as per

Sec.44AD. The assessee remained non-compliant during first appeal also. The Ld. CIT(A) directed Ld. AO to verify whether all the bank accounts belonged to the assessee. The Ld. AO was further directed to add cash deposits in the bank account as belonging to the assessee. The estimation of 6% was to be computed on actual RTGS / NEFT credits in bank accounts as belonging to the assessee. Aggrieved, the assessee is in further appeal before us.

2. It clearly emerges that the assessee could not substantiate the cash and bank credits before any of the lower authorities. It is also appear that all 5 bank accounts do not belong to the assessee. Under these circumstances, it would be more appropriate that the assessment is framed de novo keeping all the issues open. Accordingly, the impugned order is set aside with a direction to Ld. AO to frame de novo assessment. The assessee is directed to substantiate it stand. All the issues are kept open. The Ld. AR has urged that the case was selected to verify cash deposit during demonetization period and therefore, other bank credits could not be added to the income of the assessee. This argument stand rejected since the assessment has been framed for want of any evidences from the assessee and the assessee has failed to discharge the onus of proving the bank credits. The Ld. AO has practically made assessment on best judgment basis. However, the higher rate of tax u/s 115BBE would not apply as per the 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.

3. The appeal stand allowed for statistical purposes.

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 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