

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AGRA**

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

**ITA No. 176/Agr/2016
(Assessment Year 2009-10)**

Shri Ram Baboo Agarwal 18, Bankhandi Mahadev, Vrindavan, Mathura	Vs.	Income Tax Officer, Ward-3(2), Aaykar Bhawan, Mathura
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ATBPB3350Q		
Appellant	..	Respondent

Appellant by :	Sh. Anurag Sinha, Adv.
Respondent by :	Sh. Shailener Shrivastava, Sr. DR

Date of Hearing	12.02.2025
Date of Pronouncement	12.02.2025

ORDER

PER SATBEER SINGH GODARA, JUDICIAL MEMBER:

This assessee's appeal for assessment year 2009-10 arises against Commissioner of Income Tax (Appeals)-1, Agra's in case No. 112/CIT(AO-1/AGRA/ITO-3(2)/Mathura/12-13 order dated 01.02.2016, in proceedings under Section 144 of the Income Tax Act, 1961, [hereinafter referred to as 'the Act'].

2. Heard both the parties at length. Case file perused.
3. It emerges during the course of hearing that the assessee herein is aggrieved against both the learned lower authorities respective orders at FDR of Rs.25 lacs and cash deposits to the tune of Rs.18.05 lacs,

respectively, as unexplained in his hands, in the course of assessment dated 07.06.2012 and upheld in the lower appellate discussion. We note that the first and foremost legal issue herein is correctness of the impugned FDR addition of Rs.25 lacs which was made on “protective” basis in assessment and converted to a substantive one in the lower appellate proceedings.

3. We deem it appropriate first of all to quote hon’ble apex court’s landmark decision in Lalji Haridas Vs. ITO (1961) 43 ITR 387 (SC) settling the law long back that a “protective” assessment arises in case the department comes across a situation wherein it is not clear as to in whose hands the income in question has to be assessed. Learned counsel further seeks to highlight the fact that the Assessing Officer had framed a “regular” assessment in assessee’s wife Smt. Madhu’s case on 21.01.2013 accepting her explanation *qua* the very investment herein of Rs.25,00,000/- which forms subject matter of addition before us. We thus conclude that the impugned addition of Rs.25,00,000/- is not sustainable; be it a protective or substantive basis, the assessee’s hands. Deleted accordingly.

6. Next comes the latter substantive issue of correctness of the addition of Rs.18.05 lacs wherein the assessee claims that the same in fact also involves both opening balance as well as previous withdrawals which have not given due consideration by the lower authorities. Faced with the situation, we restore the instant latter issue back to the learned Assessing Officer subject to a rider that the assessee shall himself plead and prove all the material facts at his own risk and responsibility, within three effective opportunities, in consequential proceedings. Ordered accordingly.

7. This assessee's appeal is partly allowed in above terms.

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