



**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH "DB", JABALPUR**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND  
SHRI, NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No. 156/JAB/2024  
Assessment Year: 2016-17

<b>Sanjay Kumar Agarwal</b> Blooms Campus, NH-75, Panna Road, Satna (MP)-485001.	v.	<b>ACIT Circle Satna</b> Aayakar Bhawan, Civil Lines, Satna, MP-485001.
<b>TAN/PAN:ACKPA2596H</b>		
(Appellant)		(Respondent)

Appellant by:	Shri Sanjay Mishra, Adv		
Respondent by:	Shri N. M. Prasad, Sr. Dr-1		
Date of hearing:	19	08	2025
Date of pronouncement:	21	08	2025

**ORDER**

**PER KUL BHARAT, VICE PRESIDENT.:**

This appeal, by the assessee, is directed against the order of the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi dated 11.09.2024, pertaining to the assessment year 2016-17. The assessee has raised the following grounds of appeal: -

*"1. That on the facts and circumstances of the case the Ld. CIT (Appeals), is unjustified in upholding the order passed by the assessing officer u/s 143(3) of the act 11.09.2024.*

*2. That the appellant has not been provided proper opportunity of being heard by the first appellant authority before passing the order dated 11.09.2024. Hence the order passed by the first appellant authority is in violation' to the principles of natural justice*

*3. That, there was sufficient reasons due to which the assessee could not appear before the first appellant authority before passing the order dated 11.09.2024.*

*4 That, the Ld. First appellate authority is totally unjustified in sustaining the addition of Rs. 8153072/- on account of additions made under various heads.*

5 Under the facts and circumstances of the case, Ld CIT (A) erred in not accepting Rs. 2,33,394/- as agriculture income out of Rs. 5,58,660/- earned and declared by the assessee.

6 Considering the facts that assessee had receive a loan of Rs. 5,00,000/- from Smt. Madhu Agrawal and Rs. 45,00,000/- from Ms. Shivani Agarwal by account payee cheque, depositors are identified and capable of lending said amount, transaction is genuine. Id. CIT (A) erred in not accepting the loans of Rs. 20,00,000/- and adding the same as unexplained credit u/s 68.

7 Since loans received Rs. 20,00,000/- are genuine and borrowed for the purpose of business, Ld CIT (A) erred in disallowing interest Rs. 1,93,050/- paid thereon.

8 Considering the fact that interest Rs. 10,286/- paid by the assessee on the late deposit of TDS is compensatory in nature and its disallowance is not provided, in income tax act specifically. Ld. CIT (A) erred in disallowing amount of interest Rs. 10286/- paid on the late deposit of TDS without quoting under which section its being disallowed.

9 Considering the fact that assessee paid Rs. 2,40,000/- as consultancy fee and Rs. 4,00,000/- as salary to his daughter — Sumedha Agrawal who is well qualified in MBA and giving her valuable service to the assessee for his business. Ld. CIT (A) erred in disallowing amount of Rs. 2,80,000/- out of salary paid to her on presumptions with out of any basis.

10. Considering the facts that loans and advances are given by the assessee for the purpose of his business and assessee has invested his own funds in business. Ld. CIT(A) erred in disallowing interest Rs.42,16,333/- on loans and advances given by the assessee.”

2. Apropos to the grounds of appeal, the Ld. Counsel for the assessee reiterated the contents of written submissions for the sake of clarity the written submission of the assessee is reproduced as under: -

*“The Appellant respectfully submits the present appeal against the order dated 12.02.2025 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, under section 250 of the Income Tax Act, 1961, for the Assessment Year 2016-17. The said impugned order arises out of the assessment order dated 30.03.2022 passed under section 147 read with section 144B of the Act, wherein the learned Assessing Officer made an addition of Rs.26,29,800/- under section 68 and denied the claim of exemption under section 10(38) of the Act.*

*The Appellant, being aggrieved by the said order of the learned CIT(A), and having already opted for the Vivad se Vishwas Scheme, 2020 for settlement of the disputed tax, prefers this appeal before this Hon'ble Tribunal on the statement of facts, grounds set forth herein below and in the interest of justice.*

**STATEMENT OF FACTS**

1. The Appellant, Sanjay Agrawal, is an individual and a resident of India, deriving income from business, salary, and interest. The Appellant filed his return of income for the Assessment Year (AY) 2016-17 on 07.09.2017, declaring a total income of Rs. 16,26,700/-.

2. Subsequently, the Appellant's case was reopened under Section 147 of the Income Tax Act, 1961, and a notice under Section 148 was issued on 31.03.2021. In response, the Appellant filed a return of income under Section 148 on 29.05.2021, without any change to the income declared in the original return.

3. The Assessing Officer (AO) passed an order under Section 147 read with Section 144B of the Income Tax Act, 1961, on 30.03.2022, assessing the income at Rs. 42,56,500/-. This included an addition of Rs. 26,29,800/- under Section 68 of the Act, treating the sale consideration of shares as unexplained cash credit.

4. The AO also rejected the Appellant's claim of exemption under Section 10(38) of the Act, pertaining to Long Term Capital Gain (LTCG) on the sale of shares, amounting to Rs. 25,58,557/-. The Appellant had purchased and sold shares of Appu Marketing and Manufacturing Limited, with supporting documents such as purchase bills, sale bills, demat account statements, and contract notes.

5. Aggrieved by the order of the AO, the Appellant filed an appeal before the Commissioner of Income Tax (Appeals) (CIT(A)), Jabalpur, on 18.04.2022.

6. During the pendency of the appeal before the CIT(A), the Appellant opted for the Vivad se Vishwas Scheme (VSVS) to settle the disputed tax and avoid further litigation.

7. The Appellant filed an application under the VSVS in Form No. 1 on 28.12.2024.

8. Subsequently, Form No. 2 was issued on 30.12.2024, and an intimation of payment in Form No. 3 was issued on 15.01.2025.

9. The Appellant duly paid the disputed tax as per the VSVS, amounting to Rs.3,88,449/- vide Challan No. 27490 dated 15.01.2025.

10. The issuance of Form No. 4 under the VSVS is still pending. 11. Due to the Appellant's compliance with the VSVS, the appeal filed before the CIT(A) on 18.04.2022, became infructuous and was deemed to be withdrawn.

12. However, the CIT(A), National Faceless Appeal Centre (NFAC), Delhi, proceeded to pass an order under Section 250 of the Income Tax Act, 1961, on 12.02.2025, without providing the Appellant an opportunity of being heard,

13. The CIT(A) dismissed the Appellant's appeal, upholding the additions made by the AO, despite the Appellant having availed the VSVS and paid the disputed tax.

14. The CIT(A) failed to consider the Appellant's compliance with the VSVS and the deemed withdrawal of the appeal.

15. The CIT(A) passed the order based on the Appellant's non-compliance with notices, disregarding the fact that the appeal had become infructuous due to the VSVS. 16. The Appellant contends that the order passed by the CIT(A) is illegal, unjust, and contrary to the provisions of the Income Tax Act, 1961, and the Vivad se Vishwas Act, 2020. 17. Hence the present Appeal.

**GROUND OF APPEAL:**

1. That the learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in passing the impugned order dated 12/02/2025, without considering the fact that the Appellant had availed the benefit of the Vivad se Vishwas Scheme (VSVS) and had duly complied with all the requirements of the said scheme.

2. That the learned CIT(A) failed to appreciate that the appeal filed before them on 18/04/2022, had become infructuous and was deemed to be withdrawn due to the Appellant's compliance with the VSVS.

3. That the learned CIT(A) erred in passing the order without providing the Appellant an opportunity of being heard, thereby violating the principles of natural justice.

4. That the learned CIT(A) failed to consider the Appellant's application under the Vivad se Vishwas Scheme in Form No. 1 dated 28.12.2024.

5. That the learned CIT(A) failed to consider the Form No. 2 issued on 30.12.2024 and the intimation of payment in Form No. 3 issued on 15.01.2025, and the subsequent payment of tax made by the Appellant vide Challan No. 27490 dated 15.01.2025.

6. That the learned CIT(A) erred in not recognizing the fact that the issuance of Form No. 4 was pending, and the appeal before them was deemed to be withdrawn due to the Appellant's VSVS compliance.

7. That the impugned order passed by the learned CIT(A) is illegal, unjust, and contrary to the provisions of the Income Tax Act, 1961, and the Vivad se Vishwas Act, 2020.

8. That the learned CIT(A) erred in dismissing the appeal based on the grounds of non-compliance with notices, despite the appeal having become infructuous due to the VSVS scheme compliance.

9. That the learned CIT(A) failed to take cognizance of the fact that the Appellant had already paid the disputed tax and was awaiting the issuance of Form 4 under the VSVS scheme.

10. That the learned CIT(A) erred in upholding the addition of Rs. 26,29,800/- under section 68 of the Income Tax Act, 1961, despite the Appellant having availed the VSVS scheme.

11. That the learned CIT(A) erred in upholding the rejection of the Appellant's claim of exemption under section 10(38) of the Income Tax Act, 1961, despite the Appellant having availed the VSVS scheme.

12. That the learned CIT(A) order is passed without application of mind and is therefore bad in law.

13. That the appellant reserves the right to add, alter, amend or withdraw any of the above grounds of appeal.

**ARGUMENTS ON BEHALF OF THE APPELLANT**

The Appellant most respectfully submits the following arguments, duly supported by documentary evidences, in pursuance of and in conformity with the Statement of Facts and the Grounds of Appeal as set forth herein below:

1. That appeal before CIT(A) had become infructuous due to VSVS Compliance

1.1 The Appellant respectfully submits that during the pendency of appeal before the CIT(A), he opted for the Vivad se Vishwas Scheme, 2020 (VSVS) with the sole object of putting an end to the litigation and settling the disputed tax amicably.

1.2 The Appellant filed Form No. 1 on 28.12.2024 under section 4 of the Vivad se Vishwas Act, 2020. Pursuant thereto, Form No. 2 was issued on 30.12.2024, and Form No. 3 was issued on 30.12.2024, and Form No. 3 was issued on 15.01.2025 determining the amount payable under the scheme. Additionally, Form no.4 is awaited from the department's end which is expected to be received in due course.

1.3. The Appellant duly made the payment of the disputed tax amounting to Rs. 3,88,449/- vide Challan No. 27490 dated 15.01.2025.

1.4 In terms of section 4(2) of the VSVS, read with Rule 3 of the Vivad se Vishwas Rules, once the declaration is filed and payment is made, the pending appeal is deemed to be withdrawn. Consequently, the appeal before the CIT(A) stood infructuous in law.

**2. That failure of CIT(A) to recognize the deemed withdrawal leading to violation of principles of natural justice:**

2.1 Despite the Appellant's compliance with the VSVS, the learned CIT(A) proceeded to pass the impugned order dated 12.02.2025 under section 250 of the Income Tax Act, 1961, upholding the additions made by the Assessing Officer.

2.2 The learned CIT(A) failed to appreciate that in light of VSVS compliance, there was no lis pending before him, and he was divested of the jurisdiction to adjudicate the matter on merits.

2.3 This is contrary to the express provisions of section 4(3) of the Vivad se Vishwas Act, 2020, which provides that upon filing the declaration, the pending appeal shall be deemed to be withdrawn.

2.4 The learned CIT(A) passed the impugned order without granting the Appellant an opportunity of being heard, thereby violating section 250(1) of the Income Tax Act, 1961, which mandates that the appellant shall be heard before disposal of the appeal.

2.5 This action also infringes audi alteram partem, the cardinal principle of natural justice.

**3. That the non-consideration of relevant documents leads to irrationality and omission of appreciating the documents placed on record:**

3.1 Further, the learned CIT(A) failed to take cognizance of the following material evidence on record:

Form No. 1 filed on 28.12.2024;

Form No. 2 issued on 30.12.2024;

Form No. 3 issued on 15.01.2025;

Proof of payment of disputed tax dated 15.01.2025.

3.2 Ignoring these documents amounts to non-application of mind and renders the order as infructuous, unwarranted and bad in the eyes of law.

**4. Impugned Order Contrary to Legislative Intent of VSVS**

4.1 That the Vivad se Vishwas Scheme was enacted with the object of reducing litigation and facilitating quick settlement of disputes. Once an appellant complies with the provisions and makes the requisite payment, the matter should stand closed, and no adverse order should be passed in the pending proceedings. However, Hon'ble CIT(A) failed to recognize its existence and neglected the mere duty diligence carried by appellant through opting for the scheme and depositing the tax as per the rules and regulations. Thus, the impugned order defeats this legislative intent and prolongs litigation unnecessarily.

**PRAYER**

The Appellant, in view of the facts, grounds, and submissions advanced hereinabove, most respectfully submits that the impugned order dated 12.02.2025 passed by the learned Commissioner of Income Tax (Appeals), NFAC, deserves to be quashed and set aside, inasmuch as the Appellant has already opted for the Vivad se Vishwas Scheme, 2020 and has duly discharged the requisite tax liability in accordance with the provisions of the said scheme. The disputed demand stands duly offered for taxation under the scheme, rendering the appeal before the learned CIT(A) infructuous by operation of law.: It is, therefore, most humbly prayed that this Hon'ble Tribunal may be pleased to:

a. Set aside the impugned order dated 12.02.2025 passed by the CIT(A), NFAC;

b. Hold that the appeal before the learned CIT(A) stood rendered infructuous on account of the Appellant's compliance with the VSVS, 2020;

c. Direct that the pending issuance of Form Nos. 4 under the VSVS, 2020 be duly taken on record for final closure of the matter; and

d. Pass such other and further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case and in the interest of justice.”

3. On the other hand, the Ld. Departmental Representative (DR) supported the orders of the lower authorities. Therefore, Ld

DR contended that the finding of the lower authorities may be sustained.

4. We have heard the rival submissions and perused the material available on record. It is stated by the Ld. Counsel for the assessee that the assessee had opted for Vivad se Vishwas Scheme, 2024 ("VSVS", for short) and the Form no.1, 2 & 3 were issued to the assessee by the Department. It is stated that the Form no. 4 under the VSVS, 2024 is also placed on record. Therefore, considering the totality of the facts, we deem it appropriate to set aside the issue to the file of the AO who would verify the correctness of the claim of the assessee that the dispute has been settled under the VSVS, 2024 and outstanding taxes have been paid under the VSVS, 2024. The Revenue has not brought any contrary material. We, therefore, direct the AO to verify from his records that all due taxes have been paid by the assessee and requisite forms have been issued to the assessee. In that event no lis qua the impugned demand would survive. We hold accordingly. Grounds raised by the assessee are allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21/08/2025.

Sd/-  
[NIKHIL CHOUDHARY]  
ACCOUNTANT MEMBER

Sd/-  
[KUL BHARAT]  
VICE PRESIDENT

DATED: 21/08/2025

Vijay Pal Singh, (Sr. PS)

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

By order

// True Copy//

Assistant Registrar  
ITAT, Jabalpur