

# IN THE INCOME TAX APPELLATE TRIBUNAL, DIVISION BENCH, JODHPUR

HEARING THROUGH: VIRTUAL MODE

**BEFORE: SHRI. LALIET KUMAR, JM & DR. MITHA LAL MEENA, AM**

ITA No. 408/Jodh/ 2023  
Assessment Year: 2017-18

Gen Singh Plot No. 202, Laxman Nagar Ramjan Ki Kahat, Banar Jodhpur-342001, Rajasthan	Vs.	The ITO Ward-3(5), Jodhpur
PAN NO: BLEPS1999G		
Appellant		Respondent

Assessee by : Shri Amit Kothari, C.A  
Revenue by : Shri Arvind Kumar Gehlot, Addl. CIT DR  
Date of Hearing : 09/10/2025  
Date of Pronouncement : 30/10/2025

## आदेश/Order

### **PER LALIET KUMAR, J.M:**

This appeal by the assessee is directed against the order dated 08.08.2023 passed by the Ld. CIT(A)/NFAC, Delhi u/s 250 of the Income-tax Act, 1961 ("the Act") for the Assessment Year 2017-18, arising out of the ex-parte assessment order dated 26.12.2019 passed u/s 144 by the ITO, Ward-3(5), Jodhpur.

2. Briefly, the facts of the case are that the Assessing Officer received information that the assessee had deposited Rs. 25,68,455 in cash during the demonetization period (Nov – Dec 2016) in his SBI account No. 35201240548 and had not filed a return of income for AY 2017-18. Statutory notices u/s 142(1) were issued but remained uncomplied with. The AO therefore completed assessment ex parte u/s 144 treating the deposits as unexplained money u/s 69A and determined total income at Rs. 25,68,455 taxable u/s 115BBE.

3. Against the order of the AO the assessee filed appeal before the CIT(A), contending that he never received the assessment order and came to know only when his bank account was attached. He submitted that he is an ex-serviceman running a small "Mother Dairy" outlet and that cash deposits were

sale proceeds of milk and products. The CIT(A) condoned the delay but, despite notices, found no compliance and dismissed the appeal ex parte on 08.08.2023, confirming the assessment.

4. Against the order of the Ld. CIT(A) the assessee filed the appeal before the Tribunal.

5. During the course of hearing the Ld. AR for the assessee submitted that both the assessment and appellate orders were passed without affording reasonable opportunity. The assessee, an ex-serviceman engaged in small dairy business, had no professional assistance. He was not aware of online NFAC proceedings and never received effective hearing opportunity. The deposits were genuine sales proceeds, and relevant bank statements, cash book, and daily sale records are now available for verification. Reliance was placed on judicial precedents:

- *CIT v. Raj Kumar Bothra* (2014) 366 ITR 453 (Chhattisgarh HC);
- *Smt. Shyam Singh v. ITO* (2022) 145 [taxmann.com](https://taxmann.com) 47 (Chhattisgarh HC);
- *CIT v. Kailash Jewellers* (2010) 320 ITR 535 (Del); and
- *Malabar Industrial Co. Ltd. v. CIT* (243 ITR 83 SC)—*that addition u/s 69A cannot rest on suspicion, and source must be examined objectively.*

5.1 He urged that the order of the Ld. CIT(A) be set aside and the matter be restored to the CIT(A) or AO for de-novo adjudication with proper opportunity, citing the principles of *audi alteram partem* and a justice-oriented approach rather than technical dismissal.

6. Learned DR, on the other hand, supported the order of the Ld. CIT(A). He argued that repeated opportunities were granted by both AO and Ld. CIT(A) via registered email, but the assessee chose not to comply. Therefore, the authorities were justified in drawing adverse inference. He relied on *CIT v.*

*Multipan India (P) Ltd.* (38 ITD 320 Del) and *Tukojirao Holkar v. CWT* (223 ITR 480 MP).

7. We have considered rival submissions and perused the record. The assessment was framed u/s 144 and the Ld. CIT(A) appeal was dismissed ex parte. The reasons recorded by Ld. CIT(A) primarily rest on non-compliance of notices. It is evident from the condonation paragraph itself that the assessee learned of the order only after the bank attachment, thereby suggesting a communication gap at the assessment stage.

7.1 While statutory compliance is essential, the appellate process is meant to correct injustice and not to penalize non-technical taxpayers. The assessee has now expressed willingness to furnish full documentary evidence of dairy sales, bank transactions, and cash flow. The principle laid down by the Hon'ble Chhattisgarh High Court in *Smt. Shyam Singh v. ITO* (supra) is squarely applicable: mere retention of cash or deposit in bank, when contemporaneous withdrawals or business receipts support the source, cannot justify addition u/s 69A in absence of contrary evidence.

7.2 Similarly, in *CIT v. Raj Kumar Bothra* (Chhattisgarh HC), it was held that if the assessee establishes that the cash deposit originated from earlier withdrawals and Revenue fails to prove utilization elsewhere, the addition cannot stand. In the present case, no enquiry was made into the dairy sales or preceding withdrawals due to ex parte proceedings.

7.3 The Ld. CIT(A) also failed to examine the condonation reasons substantively. Once delay was condoned, the matter ought to have been decided on merits rather than dismissed for "non-compliance," particularly in faceless proceedings where technological literacy varies among taxpayers. The approach of the Ld. CIT(A) was thus hyper-technical and contrary to settled principles that justice should prevail over procedural lapses.

7.4 Considering the totality of facts, we deem it just and proper to set aside the order of the Ld. CIT(A) dated 08.08.2023 and restore the matter to the file of the CIT(A)/NFAC with a direction to decide the appeal afresh on merits, after affording adequate opportunity to the assessee to present evidence of business receipts and cash deposits. The assessee shall cooperate fully and file the necessary documents within the time allowed. The Ld. CIT(A) shall thereafter pass a reasoned order in accordance with law.

7.5 We also direct that if the assessee so requests, the Ld. CIT(A) shall consider permitting virtual/personal hearing under Rule 12(2) of the Faceless Appeal Scheme 2020 to facilitate effective participation.

8. In the result, the appeal of the assessee is allowed for statistical purposes with directions as above.

(Order pronounced in the open Court on 30/10/2025)

**Sd/-**  
**(DR. MITHA LAL MEENA)**  
**ACCOUNTANT MEMBER**  
**AG**

**Sd/-**  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, JODHPUR
6. Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar