

**INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "DB": AGRA
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH , JUDICIAL MEMBER
(Through virtual hearing)**

**ITA No. 232/AGR/2025
(Assessment Year: 2022-23)**

Dharmendra Sharma, In front of Narcotics Office, Ramkala Nagar, Morar, Gwalior	Vs.	Jurisdictional Assessing Officer, Ward-2(1), Gwalior
(Appellant)		(Respondent)
PAN: FEJPS7901J		

**ITA No. 210/AGR/2025
(Assessment Year: 2022-23)**

Jurisdictional Assessing Officer, Ward-2(1), Gwalior	Vs.	Dharmendra Sharma, In front of Narcotics Office, Ramkala Nagar, Morar, Gwalior
(Appellant)		(Respondent)
		PAN: FEJPS7901J

Assessee by :	Shri Mahesh Agarwal, CA
Revenue by:	Shri Sukesh Kumar Jain, CIT (DR)
Date of Hearing	16/09/2025
Date of pronouncement	02/12/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 232/AGR/2025 for AY 2022-23, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] dated 26.02.2025 against the order of assessment passed u/s 143(3) r.w.s. 144B of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.02.2024 by the Assessing Unit, Income Tax Department (hereinafter referred to as 'Id. AO'). As these are cross

appeals, they are taken up together and disposed of by this common order for the sake of convenience.

2. The Ground Nos. 1 to 3 raised by the Assessee are challenging the confirmation of addition of Rs. 3,65,25,000/- made by the Learned AO solely on the basis of figures reported in Form 26AS ignoring the claim of the Assessee that the mining department of Government had reported wrong figure in their returns, which had eventually been reflected in Form 26AS of the Assessee. The Grounds raised by the revenue are challenging the action of the Learned NFAC to adopt 8% net profit rate on the aforesaid transaction in accordance with section 44AD of the Act. Both these issues are interconnected and hence adjudicated together.

3. We have heard the rival submissions and perused the materials available on record. The Assessee is an individual and is a partner in a partnership firm styled as M/s Siddhi Vinayak Stone Crusher. The return of income was filed for the assessment year 2022-23 on 20-10-2022 declaring taxable income of Rs. 4,91,830/-. The Assessee has declared income in the form of receipts from mining and quarrying, which has been duly subjected to collection of tax at source (TCS). The Learned AO observed that TCS of Rs 7,30,500/- was collected from the Assessee by the office of the District Collector Gwalior on payment of Rs 3,65,25,000 under Section 206C of the Act. As per the Form 26AS of the Assessee, the receipts on account of mining was reflected at Rs 3,65,25,000 against the name of Office of the Collector District Gwalior with TAN - BPLO00750B after deduction of tax of Rs 7,30,500/-. The Learned AO accordingly showcaused to the Assessee as to why the amount of Rs 3,65,25,000/- be not treated as the income of the Assessee for the financial year 2021-22 as per Form 26AS. The Assessee furnished the reply before the Learned AO. The Assessee submitted that he had through tenders obtained

license for leasing of mines from mining officer Gwalior. Due to financial, technical and infrastructural constraints in the business expediency, the above mining rights were leased to various parties who have crusher units and the royalty on the extraction of mining is paid by the lease party. But the TCS under Section 206CH of the Act has to be paid to the credit of the Central Government by the Assessee as the license granted by the State Government of Madhya Pradesh, mining department is in the name of the Assessee and PAN and other necessary details are also in the name of the Assessee. The Assessee received royalty of Rs 18,68,234/- after an amount of Rs 41,030/- was credited to the Government account as TCS under Section 206CH of the Act. The Learned AO simply ignored the submissions of the Assessee and proceeded to make an addition of Rs 3,65,25,000/- under the head 'income from business' of the Assessee based on Form 26AS. The Learned NFAC in principle agreed with the action of the Learned AO for treating Rs 3,65,25,000/- as business income of the Assessee, but directed the Learned AO to adopt Net Profit @ 8% thereon in consonance with the provisions of section 44AD of the Act and make an addition only on account of Net Profit.

4. The Learned AR before us submitted that the mining department of Government had submitted wrong figures in their returns and that had correspondingly reflected in the Form 26AS of the Assessee, which had prompted the lower authorities to frame an addition in the hands of the Assessee. It was submitted that the facts of the case were not properly understood and appreciated by the lower authorities and prayed for re-verification of the basic facts and the business model adopted by the Assessee in this regard. The Learned DR vehemently supported the orders of the lower authorities and stated that the Assessee had failed to reconcile the figures reported in Form 26AS with regard to the mining receipts. Considering the totality of the facts and circumstances of the instant case qua this issue, we are

inclined to restore it to the file of Learned AO for denovo adjudication in accordance with law as the entire issue requires re-verification of the facts and the modus operandi adopted by the Assessee. Needless to mention that the Assessee be given reasonable opportunity of being heard. The Assessee is given liberty to furnish fresh evidences, if any, in support of his contentions. With these directions, the Ground Nos. 1 to 3 raised by the Assessee and Grounds raised by the revenue are allowed for statistical purposes by restoring to the file of Learned AO.

5. The Ground No. 4 raised by the assessee is challenging the confirmation of addition of Rs 23,10,500/- made by the Learned AO by treating the cash deposits in the bank account as unexplained money .

6. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the Assessee had deposited a sum of Rs. 23,10,500 as cash in the bank account during the year under consideration. When asked about the source for the said cash deposits, the Learned AO concluded that the Assessee had could not satisfactorily explain the same warranting addition as unexplained money under section 69A of the Act. The assessee submitted that as licensee, the royalty to the Government had to be paid by him for which purpose, he had mobilised funds from parties to whom he sublet his mining rights. The Learned NFAC however concluded that the claim of the assessee is unsubstantiated and accordingly upheld the addition made under section 69A of the Act. Before us, certain additional evidences were filed by the Assessee as under:-

a) Copy of Registered Supplementary Partnership Deed dated 28-01-2020 attaching Assessee's lease rights with the firm – enclosed in Pages 12 to 16 of the Paper Book

b) Statement showing the date wise cash deposit in bank account with its source – enclosed in Page 17 of the Paper Book

c) Copy of Assessee's ledger account for Royalty in the books of the firm – enclosed in Pages 18 to 30 of the Paper Book

7. In our considered opinion, these additional evidences are crucial for adjudication of the dispute before us and hence the same are hereby admitted. Since the said evidences require factual verification at the end of the Learned AO, we deem it fit and appropriate, in the interest of justice and fair play, to restore this issue to the file of Learned AO for denovo adjudication in accordance with law. The Assessee is given liberty to furnish further evidences, if any, in support of his contentions. Needless to mention that the Assessee be given reasonable opportunity of being heard. With these directions, the Ground No. 4 raised by the Assessee is allowed for statistical purposes by restoring to the file of Learned AO.

8. The Ground Nos. 5 & 6 raised by the Assessee are general in nature and does not require any specific adjudication.

9. In the result, the appeal of the Assessee as well as the revenue are allowed for statistical purposes.

Order pronounced in the open court on 04/12/2025.

-Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:04/12/2025
A K Keot

Copy forwarded to

1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi