

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH,
(VIRTUAL HEARING AT KOLKATA)****[BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER &
SHRI SANJAY SARMA, JUDICIAL MEMBER]****I.T.A. No. 182/PAT/2019**

Assessment Year: 2012-13

Shri Omjee Prasad Sahebganj, Sonarpatti, Chapra (Saran) – 841301. (PAN: AMGPP 6740 E)	Vs.	ITO, Ward-2(2), Chapra
Appellant		Respondent

Date of Hearing	19.07.2022
Date of Pronouncement	01.08.2022
For the Appellant	None
For the Respondent	Shri Rupesh Agrawal, Sr. DR

ORDER**PER SONJOY SARMA, JM:**

The present appeal has been preferred by the assessee against the order of ld. CIT(A), Jamshedpur dated 06.03.2019 [hereinafter referred to as 'CIT'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

- “1. For that impugned order is bad in law and facts as well.*
- 2. For that the appellant is registered businessman and they filed his return regularly.*
- 3. For that learned assessing officer taking figure from bank and charge general rate 8% where as the appellant has not run as contract business so that the assessment order of the assessing officer is not correct or as per law.*
- 4. For that the LAO pick up all the transaction deposit and withdrawal there is no evidence from the transaction represent sale.*
- 5. For that without prejudice to above, the estimate of income @ 8% of the deposit is wrong, illegal, unjustified and beyond the law.*
- 6. For that the LAO added amounting to Rs. 8,01,210/- as capital is wrong, it is simple transaction.*

7. *For that the LAO without passing any order and they charged interest u/s 234A & 234B and u/s 234C upon assessed tax is illegal and beyond the law.*
8. *For that any grounds which is applicable at the time of hearing to be urged.*
9. *For that any view of the matter, the impugned order is no sustainable in the eye of law as well as facts and fit to be set aside.”*

2. From the perusal of the grounds raised by the assessee, we find that the solitary grievance of the assessee is that the impugned order passed by the Id. CIT(A) not sustainable in the eye of law as well as facts and to be set aside. However, perusal of the record, it is noticed that the sole grievance of the assessee is confirmation of addition of Rs. 5,90,000/- made by Id. CIT(A) on account of peak credit, being undisclosed capital in the bank accounts of the assessee.

3. Brief facts of the case are that the assessee is an individual and filed its return of income declaring income of Rs. 1,97,339/- on 31.03.2013. As per information, it was found that the assessee had deposited cash tune of Rs. 1,03,90,000/- in ICICI bank, Chapra and found that the assessee suppressed income from taxation. Accordingly, notice u/s 148 was issued by AO upon the assessee on 27.12.2013 to file his return but the assessee did not file any return in response to notice u/s 148 of the Income-tax Act, 1961. Several notices u/s 142(1) issued but the assessee never turned up for compliance of the same. Ultimately, the AO has no other option but he assessed the income of the assessee determined as under:

i. The assessee has filed return of income showing an income of Rs. 197339/- only. As already detailed above he has made a cash deposit of Rs. 1,03,90,000/- in his accounts. Despite several reminders he did not produce copies of sale bills, purchases invoices and other documents which can substantiate credits and debits in Bank account. It is very apparent that the assessee has made turnover through frequent credits and debits in accounts. Since he has not furnished bills/invoices the sales and purchases are unverifiable. It is also apparent that the assessee has been given more than enough time to produce these papers. Being left with no other alternative, the total deposits Rs. 1,03,90,000/- is taken as Gross Turnover of the assessee. Books of accounts have not been produced and copy of any bills or vouchers have also not been furnished. Therefore, profit from business cannot be ascertained. As per the provisions of Section 44AD of the Income Tax Act, 1961, the profit from such business is estimated @ 8% of total turnover of Rs. 1,03,90,000/- amounting to Rs. 8,31,200/- making an addition of Rs. 6,33,861/- to his returned income.

ii. Examination of assessee's bank accounts shows that cash deposits have been made evenly throughout the year during the financial year 2011-12. Initially capital must have been brought in for making the turnover. The assessee has also not submitted any reply to the query vide letter No. 1577 dated 07.01.2015 as to why the peak credits standing in his accounts should not be added to his income. Comparison of above two bank accounts reveals that the maximum credit out of the two accounts is Rs. 9,90,000/- in ICICI Bank. The opening balance in this account is zero. Therefore a sum of Rs. 9,90,000/- is taken on account of undisclosed capital and added to total income.

Total income as per return Rs. 1,97,339/-

Add

As discussed in para (1) Rs. 6,33,861/-

As discussed in para (2) Rs. 9,90,000/-

Total Assessed income Rs. 18,21,200/-

Assessment u/s 147/144 of Income Tax Act, 1961 on a total income of Rs. 18,21,200/- only.

Issue demand notice and challan accordingly.

Initiate penalty proceeding u/s 271(1)(c) of I.T Act, 1961.

4. Against the assessment order passed by the AO, the assessee preferred an appeal before the ld. CIT(A) which was partly allowed vide order dated 06.03.2019.

5. Aggrieved by the said order of the ld. CIT(A), the assessee is in appeal before us.

6. At the time of hearing none appeared on behalf of the assessee. Although the notices were issued to the assessee by the registry from time to time by informing about the hearing of the appeal. The conduct of the assessee shows that the assessee has no interest to peruse the appeal and as such we have no other option but to decide the appeal with the assistance of ld. DR.

7. The ld. DR submitted that the ld. CIT(A) had given substantive relief to the assessee and as such there is no scope for interfere with the order of ld. CIT(A) and discussion to this effect reads as under:

3. The first issue is that AO had estimated the income of the appellant-assessee @ 8% of the turnover of Rs. 1,03,90,000/-. In the instant case, AO had treated total cash deposits of Rs. 1,03,90,000/- in the bank accounts as Gross Turnover of the business of the appellant-assessee. I have gone through the arguments of the appellant and the facts of the case. I find the appellant's contention to be correct. Upon analysis of the

transactions recorded in bank accounts it appears that these transactions are not in the nature of business transactions. There are withdrawals and then deposits, either on the same day or the next day or after few days. The nature of the transactions is not sale/purchase. Therefore, AO was not justified in treating total deposits of Rs. 1,03,90,000/- as gross turnover of the business and the same is found to be unsustainable. Hence, addition made by AO on this ground is deleted. As a result, this ground of appeal is allowed.

3.1 The second issue is regarding addition of Rs. 9,90,000/- made on account of peak credit, being undisclosed capital in bank accounts of the appellant-assessee. On this issue, the appellant filed submission. I have gone through the contentions of the appellant and the facts of the case. I find AO's action to be correct. However, the appellant-assessee might have had some accumulated past savings in hands. No credit for the same has been given by AO. In the interest of justice, I consider a sum of Rs. 4,00,000/- as genuine capital, i.e. out of accumulated past savings. Thus, the remaining amount of Rs. 5,90,000/- is confirmed as undisclosed capital. In other words, out of the total addition of Rs. 9,90,000/- addition to the tune of Rs. 4,00,000/- is deleted and the remaining amount of Rs. 5,90,000/- is confirmed. As a result, this ground of appeal is partly allowed.

3.2 Other grounds of appeal and contentions of the Appellant have become infructuous or are only consequential in nature. The same are, therefore, not adjudicated.

4. In the result, the appeal is partly allowed."

8. We after going through the findings of ld. CIT(A) and wherein the ld. CIT(A) allowed Rs. 4,00,000/- as genuine capital arises from past accumulated savings of assessee and remaining Rs. 5,90,000/- confirmed as undisclosed capital of the assessee.

9. We after hearing the submission made by the ld. DR and perusing the material available on record, we do not see any reasons to disagree with the ld. CIT(A)'s findings where the ld. CIT(A) regarding addition made by AO of Rs. 9,90,000/- on account of peak credit being undisclosed capital in bank a/c's of the assessee where the ld. CIT(A) viewed that sum of Rs. 4,00,000/- as genuine capital i.e. out of accumulated past savings and remaining amount of Rs. 5,90,000/- was confirmed as undisclosed capital i.e. total addition of Rs. 9,90,000/- - Rs. 4,00,000/- = Rs. 5,90,000/- as undisclosed capital and it was a

reasonable order passed under the provisions of law and accordingly we sustained the order passed by the CIT(A).

10. In the result, the appeal of assessee is dismissed.

Order is pronounced in the open court on 01.08.2022

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 01.08.2022

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant– Shri Omjee Prasad.
2. Respondent – ITO, Ward-2(2), Chapra.
3. CIT(A),
4. CIT ,
5. DR, ITAT,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata