



**IN THE INCOME TAX APPELLATE TRIBUNAL
VARANASI CIRCUIT BENCH, VARANASI**

**BEFORE SHRI. VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.22/VNS/2021
Assessment Year: 2015-16

Sanjay Tiwari Prop. Tiwari Automobiles Bewari Chowk, Gola Bazar Gorakhpur	v.	The ITO Ward 2(1) Gorakhpur
PAN:AGUPT4822H		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri A. K. Singh, D.R.
Date of hearing:	09 02 2023
Date of pronouncement:	13 02 2023

ORDER

PER VIJAY PAL RAO, J.M.:

This appeal by the assessee is directed against the order dated 19.7.2021 of the ld. CIT(A), NFAC, New Delhi for Assessment Year 2015-16.

2. None has appeared on behalf of the assessee despite notice of hearing was duly sent by RPAD and also served through email. However, the ld. A. R. of the assessee has filed an application, requesting for considering the Bank Certificate dated 24.8.2022 issued by the Punjab National Bank, Gola Bazar Branch, Gorakhpur. Accordingly, the Bench proposed to hear and dispose of this appeal ex-parte.

3. The assessee has raised the following grounds of appeal:

1. That on Facts and circumstances of the case, Ld. C.I.T. (A) of NFAC has erred in law and facts in dismissing the appeal ex-parte and confirmed the addition of Rs.8,69,000/- without affording

reasonable opportunity of being heard where as the adjournment application was already filed online on 15/07/2021 and the Income tax site was also not in working order till now.

2. That on facts and circumstances of the case, the Ld. C.I.T. (A) of NAFC has erred in Law and facts in adopting the total turnover from Business at Rs.1,08,62,500/- where as the actual deposit being deposits in Bank A/C is only at Rs.97,18,000/-which is verifiable with the Bank statements.
3. That on facts and circumstances of the case, Ld. C.I.T (A) of NFAC has erred in Law and facts in not taking any consideration of contra entries of Rs.16,20,000/- which was mentioned in Ground No. 2 as such after deducting the contra entries of Rs.16,20,000 with the total deposit of Rs.1,08,62,500/-, the net deposits will come at Rs.97,18,000/- on which the N.P. rate 8% should have been applied instead of confirming addition of Rs.8,69,000/- and dismissing the Appeal ex-parte.
4. That on facts and circumstances of the case, Ld. C.I.T (A) of NFAC has erred in law and facts in not treating the materials available on record which are verifiable with the Bank A/Cs. Had the cognizance of contra entries of Rs.16,20,000/- has been taken, then the actual deposit of Rs.97,18,000/- be taken as turnover and after applying N.P. rate of 8% the net taxable income will come at Rs.7,77,440/- as against Rs.8,69,000/- determined by A.O. and confirmed in appeal. Therefore a relief of Rs.91,560/- be allowed.
5. That the order passed in appeal is erroneous in the interest of appellant illegal unjustified against the material available on record and against law of natural justice and law of equity be necessary relief be allowed and directed to drop the penalty proceedings initiated u/s 271B as the turnover is below Rs.1 crore

and appellant is not liable to get the accounts audited u/s 144AB of I.T. Act 1961.

4. The only grievance of the assessee is regarding non-exclusion of the amount of contra entries in the Bank account of the assessee from the turnover considered by the Assessing Officer while estimating the income by applying the net profit rate @ 8%, which was also accepted by the assessee. The assessee is an individual and deriving income from the sale of agricultural implements and equipments under the name and style "M/s Tiwari Automobiles". The assessee filed his return of income on 22.3.2017, declaring a total income of Rs.3,73,650/-. The case of the assessee was selected for limited scrutiny under CASS for examination of the deposits made in the Bank account of the assessee. The Assessing Officer issued notice under section 143(2) of the Act on 21.9.2017, but there was no response from the assessee. Thereafter, a notice under section 142(1) of the Act was issued on 25.9.2017, in response to which the ld. A. R. of the assessee appeared and sought adjournment. Thereafter, the Assessing Officer issued notices under section 142(1) of the Act, but there was no response or compliance on behalf of the assessee. Accordingly, the Assessing Officer issued show cause notice under section 144 of the Act on 1.12.2017, but there was not response or compliance on behalf of the assessee. Consequently, the Assessing Officer framed the assessment under section 144 of the Act on 23.12.2017, whereby the income of the assessee was assessed by applying the net profit rate @ 8% on the total deposits in the Bank account of the assessee to the tune of Rs.1,08,62,500/-. Thus, the Assessing Officer has assessed the total income of the assessee at Rs.8.69 lakhs as against the returned income of Rs.2,67,980/-.

5. The assessee challenged the action of the Assessing Officer before the Id. CIT(A). But the appeal filed by the assessee was dismissed by the Id. CIT(A) by holding that the assessee has not brought on record any material or satisfactory explanation regarding the amount deposited in the Bank account. The assessee has narrated his explanation in the 'Facts of the Case' filed before the Tribunal, as under:

“Sanjay Tiwari A.Y. 2015-16
PANAGUPT4822H
FACTS OF THE CASE

The appellant is an individual and derived income from sale of Agricultural implements and Equipment under the name and style of M/S Tiwari Automobiles. Return of income filed voluntarily on 22/03/2017 disclosing total income of Rs. 3,73,650/- The case was selected for limited scrutiny through CASS to enquire the source of deposits in Bank amounting to Rs.1,08,62,500/- The source of deposits have been explained by furnishing reply online. The Ld. Ao has not considered the submissions made and completed experte assessment U/S 144 of the I.T. Act 1961 on the total income of Rs. 8,69,000/- as against returned income of Rs. 3,73,650/- and also initiated penalty proceedings U/S 271(1) (C) 271 (1) (b) and 271 B of I.T. Act 1961. The Ld A.O. has estimated the Turnover from business at Rs. 1, 08, 62.500/- being deposits made in Bank A/c and adopted N.P. rate @ 8%. After treating the entire deposits as Turnover determined Income of Rs. 8, 69,000/-Aggrieved with the order of the A.O. An appeal has been preferred before the C.I.T. (Appeal) Gorakhpur on 20/01/2018 subsequently the appeal was migrated to National Faceless Appeal Centre Delhi. The statutory notice us 250 was issued fixing date for written submission on or before 15/07/2021 Necessary compliance could not be made due to the problem in Income tax site and the problem is still going on. The Honorable Finance Minister has already allowed time to the CEO to Infosys to remove the short coming of site till 15/09/2021.


However an adjournment application has been filed on 15/07/2021 Acknowledgement is enclosed. Instead of allowing time C.I.T. (A) N F A C has dismissed the appeal vide order No ITBA/NFAC/S/250/2021-22/1034301261 (1) dt 19/ 07/2021. Aggrieved with the order of the Ld C.I.T. (A) NFAC Delhi an appeal is being filed against the order. It is hereby necessary to mention here that the actual deposits in the bank A/C by way of Transfer and Cash deposits is only at Rs. 97,18000/- as against 1,08,62,500/- as taken by the Ld. A.O. The deposit way of Transfer is and cash deposits is only Rs. 97,18,000/- Therefore it is requested to adopt the turnover at Rs. 97,18,000/- and apply N.P. rate at 8% only There is also contra entries of Rs. 16,20,000/- which has been included in total deposit After deducting contra entry of Rs. 16, 20.000/- net deposit will be Rs. 97, 18.000/- only: Which should be taken as Turnover and N.P. rate 8% be applied on this amount instead of Rs. 1, 08, 62,500/- The Turnover will be below Rs 1 crore thus there is no need to get the accounts audited u/s 44 A B of I.T. Act 1961. Penalty notice u/s 271 B has wrongly been initiated Requisite fee of Rs. 10000/- has been deposited on 13/09/2021 vide BSR Code CN6360218 Challan No 006345 in Axis Bank copy is enclosed for already reference.

Appellant”

6. The assessee has contended that after the case was migrated to the NFAC, New Delhi, only one notice for fixing the date for written submission on or before 15.7.2021 was given, in response to which the assessee could not furnish any submission due to technical glitches in the system of the Department, which were also admitted by the Department, as the Service Provider Company, Infosys was asked to remove the shortcomings till 15.9.2021. It is also stated by the assessee that the assessee filed an application for adjournment on 15.7.2021 before the ld. CIT(A), but without considering the adjournment application of the assessee, the ld. CIT(A) has passed the impugned order on 19.7.2021. We further note that the assessee has filed a

Certificate dated 24.8.2022 issued by the Punjab National Bank, Gola Bazar Branch, Gorakhpur regarding the contra entries, which were claimed to be not part of the business receipts of the assessee. The same is scanned and reproduced, as under:


पंजाब नेशनल बँक Punjab National Bank

 Dated:-24-08-2022

SANJAY TIWARI PAN NO.AGUPT4822H

Contra Entry Made By Punjab National Bank During The Year 14-15
Which is Not Part Of Business

Date	Dabit	Credit
19/03/2015	410000	410000
20/03/2015	410000	410000
24/03/2015	200000	200000
31/12/2014	100000	
01/01/2015		100000
10/09/2014	50000	50000
30/09/2014	450000	450000
Total	1620000	1620000

BRANCH MANAGER 

7. On the other hand, the Id. D.R. has submitted that the assessee has not disputed the adoption of net profit rate @ 8% by the Assessing Officer, but since the assessee has not produced any material or furnished any explanation either before the Assessing Officer or before the Id. CIT(A), therefore, the deposits

made in the Bank account has rightly been considered by the Assessing Officer as turnover of the assessee. He has relied upon the orders of the authorities below.

8. We have considered the statement of facts filed by the assessee, the submission of the Id. D.R. as well as the impugned orders of the authorities below. The only grievance of the assessee in the present appeal is regarding the contra entries to the tune of Rs.16.20 lakhs to be excluded from the turnover of the assessee while estimating the income by adopting the net profit rate @ 8%. The Id. CIT(A) has dismissed the appeal of the assessee, observing as under:

“I have considered the grounds of appeal, gone through the submissions of the appellant and seen the order of the AO. From the assessment order it is noticed that in compliance to the statutory notice u/s. 142(1) along with questionnaire dated 25.9.2017 the Id. Counsel of the appellant Shri P P Agrawal appeared and sought adjournment along with vakalatnama. The AO fixed the dates of hearing on 17.10.2017 and 16.11.2017 but none appeared nor any reply was filed. From the above it is clear that ample opportunity was accorded to the appellant on various dates to make necessary submissions and explain his case which he has failed to do so. In the online replies the appellant submitted the bank statements which was duly considered by the AO wherein he found that the assessee has deposited Rs. 1,08,62,5007- in the bank account during the year under consideration against gross turnover of Rs. 4,10,5507- as per original return. That the bank statement submitted by the appellant electronically was duly considered by the AO is clear from the recital of facts in para 6 of the assessment order wherein the AO has categorically mentioned that on going through the

bank statement he found that the assessee had deposited Rs. 10862500/- during the year under consideration . The submission of the appellant were duly considered by according opportunity through statutory notices from time to time. During the appeal proceedings the appellant has not brought material on record against the action of the AO in making addition of Rs. 8,69,000/-. It is an undeniable fact that the appellant has deposited the specified amount and for which no satisfactory explanation was furnished. The appellant was aware that his case had been picked up for scrutiny to examine the sources of cash deposits and whether the same has been made from disclosed sources. No satisfactory explanation or material was brought on record by the appellant. Considering the above facts and circumstances of the case the addition of Rs.8,69,000/-is confirmed.”

9. The impugned order of the Id. CIT(A) is silent about issuing any notice after the case was migrated to the NFAC, New Delhi and therefore, it appears that the Id. CIT(A) has passed the impugned order without giving sufficient and effective opportunity of hearing to the assessee. Hence, in the facts and the circumstances of the case and in the interest of justice, the impugned order of the Id. CIT(A) is set aside and the matter is remitted to the record of the Id. CIT(A) for deciding the same afresh after giving an opportunity of hearing to the assessee as well as considering the Bank Certificate dated 24.8.2022 issued by the Punjab National Bank, Gola Bazar Branch, Gorakhpur showing contra entries in the Bank account of the assessee, claimed as not part of the business of the assessee. It is made clear that since the Certificate is filed by the assessee for the first

time before the Tribunal, therefore, the ld. CIT(A) may get the said certificate verified through Remand Report.

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

Order is pronounced under Rule 34(4) of the I.T.A.T. Rules, 1963 on 13/02/2023 at Allahabad.

[RAMIT KOCHAR] ACCOUNTANT MEMBER DATED: 13/02/2023 JJ:	Sd/- [VIJAY PAL RAO] JUDICIAL MEMBER <i>As per separate Concurring order</i> Sd/- Ramit Kochar, A.M. 13/2/23
-----------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------

Copy forwarded to:

1. Appellant-Sanjay Tiwari
2. Respondent-The ITO Ward 2(1), Gorakhpur, U.P.
3. CIT(A)
4. CIT
5. DR

I.T.A. NO. 22/VNS/2021 (Assessment Year: 2015-16) in the case of Mr. Sanjay Tiwari, Prop. Tiwari Automobiles , Bewari Chowk,Gola Bazar, Gorakhpur-273408,U.P.(PAN:AGUP4822H) v. The ITO, Ward 2(1), Gorakhpur,U.P..

Concurring Order

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

I concur with the conclusion reached by my learned Brother(J.M.) vide order for assessment year 2015-16 in the case of the assessee namely Mr. Sanjay Tiwari , however, I am writing this concurring order to express my view, reasoning and finding on the issues which are discussed by me in later part of this order.

2. The brief facts of the case are enumerated by my ld. Brother(JM) in his order. The grounds of appeal are also reproduced by my ld. Brother(JM) in his order. The solitary issue in this appeal raised by the assessee is that his turnover was adopted by the AO at Rs. 1,08,62,500 /- , and Net Profit rate of 8% was applied by the AO to compute his taxable income, while there were some contra entries in his bank accounts which were not excluded by the AO , and after its exclusion the Gross turnover will come to Rs. 97,18,000/- on which N.P.Rate of 8% may be applied. The assessee has no objection/grievance if the income is computed by Revenue after adopting correct gross turnover of Rs. 97,18,000/- and then applying Net Profit Rate@8% on the said Gross turnover to compute income chargeable to tax. The ld. CIT(A) has dismissed the appeal of the assessee ex-parte. The assessee has filed second appeal with tribunal , and certificate from PNB is produced before tribunal for the first time as additional evidence to contend that there were some contra entries in the aforesaid bank account which led to computation by AO of enhanced turnover on which the AO applied Net profit rate of 8% to compute his income chargeable to tax , and that these contra entries in the Bank account are to be excluded while computing Total Turnover of the assessee and consequently income chargeable to tax. My ld. Brother(JM) has observed that the impugned order of ld. CIT(A) is silent about issuing any notice after the case was

migrated to the NFAC , New Delhi and therefore, the ld. CIT(A) has passed the impugned appellate order which need to be set aside, and my ld. Brother(JM) set aside the appellate order passed by ld. CIT(A) and remitted the matter to the file of ld. CIT(A) for deciding the same afresh after necessary verification of the additional evidences as well after giving opportunity of being heard to the assessee. I concur with the ultimate conclusion of my ld. Brother(JM) , with reasoning as below in this concurring order written separately by me. Proceeding further, in the instant case before us, the assessee filed return of income for the impugned assessment year on 22.03.2017 electronically disclosing total income of Rs. 2,67,980/- in the status of individual. The case of the assessee was selected by Revenue for framing limited scrutiny under CASS. The AO issued statutory notices u/s 143(2) , dated 21.09.2017 , to the assessee fixing compliance on 06.10.2017 , but no compliance was made by the assessee. Later on, statutory notice u/s. 142(1), dated 25.09.2017 was issued by the AO to the assessee , fixing the date of compliance for 10.10.2017. In response, the assessee's counsel appeared and filed for adjournment. Thereafter, notices were issued by AO u/s 142(1) on 11.10.2017 and 06.11.2017 and served on the assessee , but there was no compliance by the assessee. The AO issued SCN u/s 144, dated 1.12.2017 to the assessee which was served on the assessee, but no compliance was made by the assessee. **The AO observed that the assessee has deliberately not complied with the notices issued by the AO and since the matter was getting time barred, the AO completed the assessment** , vide assessment order dated 23.12.2017. The AO observed that the assessee has filed return of income showing Gross Total Receipt of Rs. 4,10,550/- and claimed expenses of Rs. 36,990/- , and hence net income of Rs. 3,73,650/- . The reasons for selection of the case by Revenue for framing scrutiny assessment was to verify whether cash deposits were from disclosed sources of income. The AO wanted to verify the sources of cash deposits, but the assessee did not comply with the notice issued by the AO. The AO

observed that the assessee has deposited Rs. 1,08,62,500/- in the bank account during the year against gross turnover of Rs. 4,10,550/- as per original return of income. The AO applied Net Profit rate of 8% on Total turnover as per bank statement during the year under consideration. Before Id. CIT(A) , the assessee has submitted that the case was selected for framing limited scrutiny assessment under CASS for verifying cash deposits, and there was cash deposits of Rs. 1,08,625 (wrong figure) in the bank account. The assessee submitted that the replies were filed before AO which were not considered by the AO and the assessment order was passed without considering the replies submitted. The assessee also submitted that the AO has estimated total turnover of Rs. 1,08,62,500/- as against deposits of Rs. 93,49,000/- in the bank and NP rate of 8% was applied. The assessee's counsel once appeared before Id. CIT(A) seeking adjournment, and then again did not appear before Id. CIT(A). The Id. CIT(A) dismissed the appeal of the assessee. Thus, it could be seen that despite being given various opportunities by the AO , the assessee did not produce books of accounts and bills and vouchers for verification, and no explanations were submitted by assessee before AO. Even before Id. CIT(A), no details were submitted nor books of accounts and other evidences were produced. The case was selected for framing scrutiny to verify the sources of cash deposits . Even no details as to sources of cash deposits were submitted by the assessee. On perusal of the bank statement A/c. No. 4658008700000673 which is available on record and other bank statements , if any of the assessee are not on record), it is observed that there was cash deposit of Rs. 86,24,100/- during the year under consideration in this bank account, while total deposits were higher . The AO was required to verify the sources of cash deposits in the bank, as per mandate of limited scrutiny. The assessee did not give any reply even with respect to details of such cash deposits. The AO on its own accepted all the deposits including cash deposits as turnover of the assessee (in an ex parte assessment order) to the tune of Rs. 1,08,62,500/- and applied NP ratio of

8% , but the AO did not gave any reasons for adopting all the deposits as turnover of the assessee , while the assessee has merely declared Rs. 4,10,550/- as his Gross Turnover in the return of income filed with the department. The assessee has claimed that he is engaged in the business of sale of agricultural implements and equipment's etc. under the name and style of Tiwari Automobiles Gola. The Id. CIT(A) dismissed the appeal of the assessee ex-parte but accepted turnover as adopted by the AO being deposits in the bank account . The assessee is not aggrieved by the assessment order as well Id. CIT(A) order so far as applying net Profit Rate of 8% on adopted turnover of Rs. 1,08,62,500/-(being deposits in the bank account accepted as turnover) but the only grievance of the assessee in this appeal filed with tribunal is to exclude the contra entries in bank statement, for which the assessee has furnished his bank statement and certificate from bank . Although issue of applying estimated net profit rate of 8% on the gross deposits in bank account , is not before us for adjudication in this appeal, but in my considered view , by framing assessment in this manner by adopting entire bank deposits including cash deposits as turnover of the assessee without any basis and then applying NP ratio by the AO (the AO adopted turnover being Rs. 1,08,62,500/- (deposits in the bank account adopted as Gross Turnover) although the assessee is not even under the purview of presumptive tax regime as specified in the 1961 Act) , the tax-payers whose cases are put under scrutiny, gains undue advantage and premium on non compliances, as in the process they do not produce any details ,vouchers, bills ,books of accounts,stock registers etc. called for by authorities for verification for framing scrutiny assessments , and authorities simply apply Gross Profit/Net Profit ratio to assess/compute income, and in the process the whole purpose of scrutiny assessment is defeated, as none of the authorities did ever see compliances of Section 37(1) as to whether expenses were incurred wholly and exclusively for the business of the assessee which otherwise were claimed as deduction from income while

computing tax liabilities, whether the income is correctly computed as per provisions of the 1961 Act, whether compliances of Section 68, 69, 69A , 69B etc. have been made by assessee . Similarly, the authorities also could not see whether provisions of Section 40(a)(ia), 40A(2), 40A(3) etc. etc. were infact complied with by the tax-payer, and in the process the whole purpose of framing scrutiny assessment got defeated, and assessment are framed by merely applying GP/NP ratio, wherein income is assessed and brought to tax. Further, in the instant case, the limited scrutiny was to verify sources of cash deposits, which could not be verified by the AO in the absence of any details filed by the assessee before any of the authorities, and the AO as well Id. CIT(A) treated the entire deposits in the bank including cash deposits as turnover, without any reasoning and basis and then applied NP Ratio of 8%. Even before us, none appeared for the assessee but bank statement and bank certificate are filed. The only grievance canvassed by the assessee before us is to adopt Gross turnover by excluding contra entries in the bank account Reference is drawn to the decision of Hon'ble Supreme Court in the case of CIT v. Devi Prasad Vishwanath reported in (1969) 72 ITR 194(SC), wherein Hon'ble Supreme Court observed as under:

“There is nothing in law which prevents the Income-tax Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him under section 13 of the Income-tax Act, after rejecting the books of account of the assessee as unreliable. This was so decided in Kale Khan Mohammad Hanif v. Commissioner of Income-tax [1963] 50 ITR 1 (SC). Whether in a given case the Income-tax Officer may tax the cash credit entered in the books of account of the business, and at the same time estimate the profit must, however, depend upon the facts of each case.”

In the instant case also, the assessee did not produce any books of accounts, stock register etc. before the authorities , and entire deposits in the bank was treated as turnover of the assessee (although no basis is given by the AO as well Id. CIT(A) as to considering bank deposits including cash deposits as Turnover of the assessee) and net profit was computed @8% of the deposits in the bank by the AO, which was also accepted by Id.

CIT(A) . Thus, the assessee gained undue advantage of his entire deposits in the banks being accepted as turnover and also that he has not to explain for the sources of these bank deposits . The assessee also did not produce books of accounts and no explanation as to the expenses were given as well other verifications required under scrutiny assessment was also not undertaken in the absence of any details furnished by the assessee, and merely Net Profit rate of 8% was applied on the total bank deposits However, since this matter is not before us for adjudication , I rest the matter here , but is referred by me in this concurring order to highlight the potential fallouts of framing assessments by simply applying GP/NP ratio and ignoring all other aspects of assessments which ought to have been verified by the AO to ensure compliances with the mandate and provisions of the Income-tax Act, 1961 as the 1961 Act is a code in itself. Since, the issue is not before us for adjudication as Revenue is not aggrieved by the adoption of GP/NP rate nor by the adoption of entire deposits in the bank as turnover, nor the assessee is agitating this issue before us , I rest the matter here. I am also fully aware that the Revenue is not remedy less as there are several other provisions existing in the 1961 Act, such as Section 147/148/148A , 251(1)(a),263 etc.etc. which Revenue can always invoke in an appropriate case. With these observations and remarks, I set aside the matter to the file of Id. CIT(A) for deciding the same afresh after giving proper opportunity of hearing to the assessee as well to the AO . I order accordingly.

3. In the result, appeal filed by assessee stand allowed for statistical purposes .I order accordingly.

Order pronounced in accordance with Rule 34(4) of the Income-tax(Appellate Tribunal) Rules, 1963 on 13.02.2023 at Allahabad, U.P.

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 13/02/2023
Allahabad, U.P.

Copy forwarded to:

1. Appellant –Mr. Sanjay Tiwari, Prop. Tiwari Automobiles, Bewari chowk, Gola Bazar, Gorakhpur-273408 U.P..
2. Respondent – The ITO, Ward 2(2) Gorakhpur, U.P.
- 3.The CIT, Gorakhpur, U.P.
4. The CIT(A),NFAC, New Delhi/ Ld. CIT(A) Gorakhpur,U.P.
- 5.TheSr.DR–ITAT, Circuit Bench, Varanasi, U.P.
6. The Guard File

By order
Assistant Registrar