

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President
&
Dr. Manish Borad, Accountant Member**

**I.T.A. Nos. 5 & 6/PAT/2022
Assessment Years: 2004-2005 & 2005-2006**

***Rajeshwar Prasad (HUF),.....Appellant
Montessari Gali, Boring Road,
Patna-800004, Bihar
[PAN: AAJHR6849B]***

-Vs.-

***Assistant Commissioner of Income Tax,...Respondent
Central Circle-1, Patna,
Lok Nayak Bhawan, 3rd Floor,
Dak Banglow Road, Patna-800001, Bihar***

Appearances by:

N o n e, appeared on behalf of the assessee

*Shri Rinku Singh, CIT (D.R.), appeared on behalf of the
Revenue*

Date of concluding the hearing : May 30, 2023

Date of pronouncing the order : May 31, 2023

O R D E R

Per Dr. Manish Borad, Accountant Member:-

These appeals at the instance of assessee for assessment years 2004-05 and 2005-06 are directed against the order of ld. Commissioner of Income Tax (Appeals), Patna-3, both dated 30.12.2021, which is arising out of the order under section 153A of the Act

dated 12.12.2008 framed by ACIT, Central Circle-1, Patna.

2. The grounds of appeals raised by the assessee read as under:-

ITA No. 05/PAT/2022 (A.Y. 2004-05)

- (1) *For that the action of the Ld. CIT (Appeal)-III in passing the order under section 250 of the Income Tax Act, 1961 against the assessee is unjust, arbitrary and deserves to be quashed.*
- (2) *For that the Ld. CIT (Appeal)-III has erred in conforming the order of A.O. at assessing the appellant on a total income of Rs. 1,02,091/- as against the return filed for Rs. 51,324/- on the facts and in the circumstances of the appellant's case.*
- (3) *That the Ld. CIT (Appeal)-III's action of not providing proper opportunity of being heard and dismissing the appeal on the basis that "the appellant is not interested to prosecute the appeal. Hence the appeal filed by the appellant is liable to be dismissed for non- prosecution despite the fact that time petition was filled by the appellant on 30.05.2019 and thereafter the appellant never received any other hearing notices which is against the cardinal principle of natural justice and accordingly order deserves to be quashed.*
- (4) *That the action of Ld. CIT (Appeal)-III in confirming the addition made by the Ld. Assessing Officer in holding that the addition of Rs. 5,132/- on account of undisclosed business income by enhancing the declared income by fixed ratio of 10% every year and passing the order u/s 153C r.w.s. 153A of the Income Tax Act, 1961 is illegal, arbitrary, void-ab-initio and deserves to be quashed.*
- (5) *That the action of Ld. CIT (Appeal)-III in confirming the addition made by the Ld. Assessing Officer in treating the agricultural income of Rs. 45,635/- as undisclosed*

income of the questioned assessment year is bad in law and void-ab-initio and therefore deserves to be quashed.

- (6) *For that the CIT (Appeal) has erred in conforming the charge u/s 234A, 234B and 234C of the Income Tax Act, 1961.*
- (7) *That the appellant must be provided proper opportunity of being heard and in view of the principles of natural justice to set aside the impugned order passed u/s 250 of the Income Tax Act, 1961 dated 30.12.2022 and may be adjudicated afresh before the Ld. CIT (Appeal)-III in accordance with the law.*
- (8) *Appellant craves leave to add, alter, delete or modify and/or withdraw grounds of appeal up to the date of hearing of the appeal.*

ITA No. 06/PAT/2022 (A.Y. 2004-05)

- (1) *For that the action of the Ld. CIT (Appeal)-III in passing the order under section 250 of the Income Tax Act, 1961 against the assessee is unjust, arbitrary and deserves to be quashed.*
- (2) *For that the Ld. CIT (Appeal)-III has erred in conforming the order of A.O. at assessing the appellant on a total income of Rs. 1,04,211/- as against the return filed for Rs. 52,145/- on the facts and in the circumstances of the appellant's case.*
- (3) *That the Ld. CIT (Appeal)-III's action of not providing proper opportunity of being heard and dismissing the appeal on the basis that "the appellant is not interested to prosecute the appeal. Hence the appeal filed by the appellant is liable to be dismissed for non-prosecution despite the fact that time petition was filed by the appellant on 30.05.2019 and thereafter the appellant never received any other hearing notices which is against the cardinal principle of natural justice and accordingly order deserves to be quashed.*
- (4) *That the action of Ld. CIT (Appeal)-III in confirming the addition made by the Ld. Assessing Officer in holding that the addition of Rs. 5,214/- on account of undisclosed business income by enhancing the declared*

income by fixed ratio of 10% every year and passing the order u/s 153C r.w.s. 153A of the Income Tax Act, 1961 is illegal, arbitrary, void-ab-initio and deserves to be quashed.

- (5) That the action of Ld. CIT (Appeal)-III in confirming the addition made by the Ld. Assessing Officer in treating the agricultural income of Rs. 46,852/- as undisclosed income of the questioned assessment year is bad in law and void-ab-initio and therefore deserves to be quashed.*
- (6) For that the CIT (Appeal) has erred in conforming the charge u/s 234A, 234B and 234C of the Income Tax Act, 1961.*
- (7) That the appellant must be provided proper opportunity of being heard and in view of the principles of natural justice to set aside the impugned order passed u/s 250 of the Income Tax Act, 1961 dated 30.12.2021 and may be adjudicated afresh before the Ld. CIT (Appeal)-III in accordance with the law.*
- (8) Appellant craves leave to add, alter, delete or modify and/or withdraw grounds of appeal up to the date of hearing of the appeal.*

3. With the assistance of ld. D.R., we have gone through the record carefully. The assessee has raised eight grounds of appeals. However, we find that the ld. 1st Appellate Authority has dismissed the appeals of the assessee for want of prosecution without adjudicating the issues on merit. Sub-section (6) of section 250 contemplates that ld. CIT(Appeals) would determine the points in dispute and thereafter records reasons in support of his conclusion on those points. A perusal of the order of ld. CIT(Appeals) would reveal that it is a non-speaking order, which does not deal with any of the issues agitated in the grounds of appeals before CIT(A) or issues taken up in the assessment order.

Therefore, we allow these appeals for statistical purposes, set aside the impugned order of Id. CIT(Appeals) and restore these issue to the file of Id. CIT(Appeals) for fresh adjudication.

4. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open Court on May 31st, 2023.

**Sd/-
(Rajpal Yadav)
Vice-President(KZ)**

**Sd/-
(Manish Borad)
Accountant Member**

Kolkata, the 31st day of May, 2023

- Copies to :* (1) *Rajeshwar Prasad (HUF),
Montessari Gali, Boring Road,
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(2) *Assistant Commissioner of Income Tax,
Central Circle-1, Patna,
Lok Nayak Bhawan, 3rd Floor,
Dak Banglow Road, Patna-800001, Bihar*
(3) *Commissioner of Income Tax (Appeals),
Patna-3;*
(4) *Commissioner of Income Tax ,*
(5) *The Departmental Representative*
(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.