

आयकर अपीलिय अधिकरण, कोलकाता पीठ “एसमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
श्री राजपाल यादव ,उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सटस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 57/Kol/2024
Assessment Year: 2017-18

Bablu Debnath (PAN: AWKPD 3473 G)	Vs.	CIT Appeals(NFAC)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	21.03.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	05.04.2024
For the Appellant/ निर्धारिती की ओर से	Nirupama Deb, CA
For the Respondent/ राजस्व की ओर से	Shri Laxmi Narayan Das, Addl. CIT Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 22.09.2023 for the AY 2017-18.

2. On the appeal being time barred by 49 days, the assessee's counsel explained that the delay has occurred due to the wrong advice of the tax consultant whereby the tax consultant has advised the assessee that appeal is to be filed within 60 days from the date of the demand notice and not from the date of the appellate order and hence the delay has occurred. The Ld. Counsel of the assessee prayed before us that the

delay in filing the appeal is neither intentional nor deliberate and the assessee is not going to be benefitted by the said delayed filing of appeal in any manner. Considering all these facts, we are of the opinion that there are reasons for the said delay which the assessee has explained. In our opinion, the assessee should not be suffer to technicalities of the matter as the assessee should get opportunity to be heard as has been decided by the Hon'ble Supreme Court in the case of Mst. Katiji & Ors. reported in (1987) 2 SCC 107 (SC) wherein it has been held that the substance must prevail over the technicalities. Accordingly we are inclined to condone the delay and admit the appeal for adjudication.

3. The only issue raised by the assessee in the various grounds of appeal is against the order of Ld. CIT(A) upholding the order of AO wherein the AO has estimated the turnover of the assessee for two months up ending on 31.03.2017 on the basis of actual turnover of the assessee till 7.01.2017.

4. Facts in brief are that the assessee is a wholesale traders in Potato. The assessee did not file any return of income during the instant assessment year. The AO, on the basis of information available, found that the assessee has deposited huge amounts of cash Rs. 1,30,83,900/- and has also withdrawn Rs. 1,30,53,000/- from his bank account while no return of income was filed. Accordingly the AO, after taking approval from the competent authority, issued notice u/s 148 of the Act dated 24.03.2021. The assessee filed return of income on 16.08.2021 in response to notice u/s 148 of the Act dated 24.03.2021 but the same was treated as invalid as the same was found beyond stipulated time. During the course of assessment proceedings, the assessee submitted that the assessee is a traders/dealers in potatoes in Coochbehar and transactions of purchase and sale are mostly done on cash basis. The assessee accepted that during the F.Y. 2016-17, the total sales were Rs. 1,45,34,920/- and the same were deposited in the current account bearing a/c no. 3528686725. Vide letter dated 25.01.2022 it was submitted that assessee's net income did not exceed the basic exemption limit chargeable to tax and therefore the provisions of Section 44AB of the Act were not applicable. As per the directions of AO, the assessee furnished month

wise turnover aggregating to Rs. 1,45,34,920/- up to 0.01.2017 which the AO did not accept on the ground that no turnover has been recorded in the books of account for the remaining two months. The AO, on the basis of monthly average turnover ,computed the turnover for remaining two months at Rs. 29,06,984/- and added the same to the income of the assessee in the assessment framed u/s 147 read with Section 144 read with Section 144B of the Act vide order dated 27.03.2022.

5. In the appellate proceedings, the Ld. CIT(A) simply affirmed the order of AO and thus dismissed the appeal of the assessee.

6. After hearing the rival contentions and perusing the material on record, we observe that the assessee is undisputedly dealers of potatoes and during the year has done business transactions only upto 07.01.2017. It was submitted before us that the reasons for not doing any sales during the last two months of the financial year were that there is no season during those two months which was explained with the help of books of account, vouchers, bank statements. We also note that there was no banking transactions during these two months as is evident from the copy of bank statement placed before us. We have no reasons to disbelieve the explanation offered by the assessee's counsel as the Senior DR could not controvert the said fact by bringing any substantive evidences before us to the effect that during those two months, the assessee has actually made transactions the sale and purchase in potatoes. In our considered opinion, the estimating the turnover for two months as stated above on the basis of conjecture and surmises without any substantive evidences brought on record cannot be allowed. In the appellate order too the Id CIT(A) has simply affirmed the order without giving any reasons. Under these facts and circumstances ,we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

7. In the result appeal of the assessee is allowed.

Order is pronounced in the open court on 5th April, 2024

Sd/-

Sd/-

(Rajpal Yadav /राजपाल यादव)
Vice-President /उपाध्यक्ष

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 5th April, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Bablu Debnath, Barai Bari, Bokalimath, Sadar Coochbehar, West Bengal-736133
2. Respondent – CIT AppealsNFAC
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata