

**THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

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

**I.T.A. No. 1300/KOL/2023
Assessment Year: 2016-2017**

***Pranab Das,.....Appellant
Raghudevpur,
Raghudevpur Uluberia,
Howrah-711322, West Bengal
[PAN:AQZPD2947G]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-46(4), Kolkata,
3, Government Place (West),
Kolkata-700001***

Appearances by:

*Shri Miraj D. Shah, A.R., appeared on behalf of the
assessee*

*Shri P.P. Barman, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing: May 16, 2024

Date of pronouncing the order: May 22, 2024

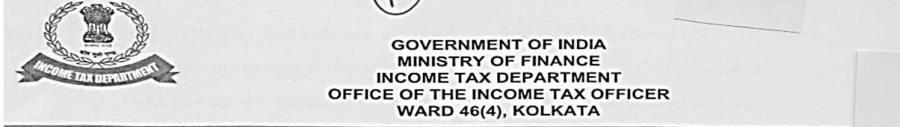
O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 27.10.2023 passed for A.Y. 2016-17.

2. The assessee has taken four grounds of appeal. However, his grievances revolve around a single issue namely, whether Id. CIT(Appeals) is justified in confirming the addition of Rs.45,00,000/- on an estimate basis.

3. Brief facts of the case are that the assessee has filed his return electronically declaring total income of Rs.3,78,250/-. The Id. Assessing Officer has passed an assessment order on 26.12.2018 under section 144 of the Income Tax Act, according to his best judgment. It is a very brief assessment order, therefore, we take note of the complete assessment order, which reads as under:-



To,
PRANAB DAS
RAGHUDEVPUR, RAGHUDEVPUR ULUBERIA
HOWRAH 711322, West Bengal
India

PAN: AQZPD2947G AY: 2016-17 Order No: ITBA/AST/S/144/2018-19/1014580130(1) Dated: 26/12/2018

Name of the assessee	PRANAB DAS
Address of the assessee	RAGHUDEVPUR, RAGHUDEVPUR ULUBERIA, HOWRAH 711322, West Bengal, India
Status	INDIVIDUAL
Range/Circle/Ward	WARD 46(4), KOLKATA
Resident/Resident but not Ordinary resident/ Non-resident	Resident
Date of Hearing	23/08/2018, 10/09/2018, 15/10/2018, 19/12/2018, 19/12/2018
Section/Sub-section under which assessment is made	144
Date of Order	26/12/2018

ASSESSMENT ORDER

The assessee furnished his IT return through E- filing on declaring a total income of Rs:3,78,250 /- . The same was processed under section 143(1) of the I.T. Act, 1961 on CPC. Subsequently, the case was selected for scrutiny u/s 143(3) of the IT Act through CASS and the case is a **LIMITED Scrutiny**.

Notice u/s. 143(2) was issued on respectively and the same was duly served to the Assessee. Thereafter, notice u/s. 142(1) of the Income-tax Act, 1961 dtd. 04/09/2018, 25/09/2018 were issued to the assessee and duly served to the assessee. In response to those notices, none submitted / complied notices

The CASS point for examination in this case is cash deposit during the year In this regard no one appeared during the assessment proceedings. Thus, the CASS point c verified and as per bank statement (Allahabad Bank Dhamsia Branch) the amount of cash deposits (in all accounts) detected of Rs. 1,94,54,383/- for which a show cause notice vide no., ITBA/AST/F/143(3)(scn)/2018-19/1014411511(1) Dtd.19/12/2018. A corrigendum letter regarding bank account sent on 21/12/2018 vide ITBA/AST/F/17/2018-19/1014468573(1)

Dtd.19/12/2018 also But assessee did not submitted any compliance . till 21/12/2018.

Penalty proceedings u/s. 271(1) (c) of I.T. Act 1961 started separately.

As per above discussion income of the assessee is computed as follows :-

Income As per I.T. Return : Rs:3,78,250

:

Add. Cash deposits in bank account

during year in various accounts : Rs. 1,94,54,383/-

Assessed Income: Rs. 1,98,32,633/-

Assessed u/s 144 of the Income-tax Act, 1961 on income of **Rs.1,98,32,633/-** Calculation of income in a separate sheet is also a part of the order. Demand Notice and Challan is issued along with this order.

The said order is issued without prejudice to any action that may be initiated under any other provisions of the IT Act 1961.

CHANDRA SEKHAR GURLA
WARD 46(4), KOLKATA

4. On appeal, Id. CIT(Appeals) partly accepted the contention of the assessee. The finding recorded by the Id. CIT(Appeals) on this aspect reads as under:-

“As noticed from the details submitted by the appellant, the appellant is involved in the business of selling sweets. The appellant has declared total sale proceeds of Rs.62,03,667/- in its return of Income and declared a profit of Rs.5,28,245/- as per the provisions of section 44AD of the I.T. Act. Thus the difference between the declared sale proceeds and the credits in the bank account is huge and more than double of the turnover declared.

Further the appellant asked for video Conference to present the facts of the case and the same was allowed and conducted on 26.10.2023 @ 11:30AM attended by the AR of the appellant.

8.3. During the Video Conference the AR of appellant stated that the appellant is having business in small city and wasn't very aware of the Income Tax matter and declared the turnover at Rs. 62,03,667/-. However as noticed the total deposit/credit in the bank account is Rs. 1,94,54,383/- and there is huge difference as compared to the turnover declared by the appellant. In this regard the clarification was asked to the AR during the Video Conference for which the AR stated that the appellant has wrongly declared less Turnover whereas the actual turnover was more but failed to provide the actual amount. Further the AR also failed to provide the reconciliation for the difference in the turnover declared and the actual deposit/credits in the bank account in response to a query during the Video Conference. He merely stated that some of the deposits are not out of sale proceeds but couldn't specify the details of such deposits.

8.4. The contention of the appellant cannot be wholly accepted, but it is also true that the appellant is involved in the business of selling sweets and the entire cash deposit/credit cannot be the Income of the appellant as there is much expenditure involved. The appellant is having sweet shop and it is normal to the business to have cash sales and the cash expenditure. A perusal of the bank statement which was available before the assessing officer also while making the assessment, it is seen that deposits were made throughout the year and the same were followed by withdrawals/remittances also. Although the appellant has stated that the entire

deposit/credit is not out of the sales of the sweets shop but couldn't substantiate the same. Under the circumstances it is considered fair and reasonable that the Income from the sweet shop is taken on estimated basis. Considering the fact that the total deposits/credits in the bank account is Rs. 1,94,54,383/- and the business of sweet shop mainly involves cash sales, the turnover of the appellant's business is estimated at Rs. 3 Crores. It is also noticed that in this nature of business the net profit is around 15% of the total sale proceeds. In view of the same the business Income of the appellant is calculated at Rs.45,00,000/- after treating the gross turnover at Rs. 3 Crores. In view of the same the addition made by the AO of Rs.1,94,54,383/- being cash deposit in the bank account is restricted to total Rs.45,00,000 as Business Income of the appellant (including the Business Income declared by the appellant while filing the Return of Income). The AO is directed to allow relief accordingly. Thus this ground of appeal is partly allowed.

Grounds no. 5 & 6:

9.1. These grounds of the appeal are in regard to the appellant reference towards the case-law in the judgment of Hon'ble ITAT, Kolkata bench in the case Jaswant Singh vs. Income Tax Officer, Ward-48(3), Kolkata. The appellant has reproduced the relevant portion and the same is as under:

"... Without prejudice to the above submission your appellant further state that by applying the principal of telescoping the assessed income should have been restricted to the amount of pick balance only. The A. O. has failed to give his finding that the assessee is engaged in business of sweet shop (Copy of Trade Licence is enclosed). The A. O. did not give any comparative case where 100% Net Profit rate is available in the similar area in sweet business before applying such ratio and it appears that the A. O. did not apply his independent mind while framing the Order of Assessment. In such circumstances, the application of 100% Net Profit ratio by the A. O. is unwarranted.....".

9.2. However, in the case of the appellant the facts of the case have been discussed and it is concluded that the entire cash deposit/credit in the bank account cannot be the Income of the appellant and accordingly the addition made by the AO has been restricted to Rs.45,00,000/- (at 15% of the gross receipts) considering the facts of the case, hence these grounds of appeal becomes irrelevant therefore dismissed".

5. With the assistance of ld. Representatives, we have gone through the record carefully. It emerges out from the record that though assessee has declared total sale proceeds of Rs.62,03,667/- in his business of selling sweets, the ld. Assessing Officer found a deposit of Rs.1,94,54,383/- in his Bank account, which according to him, was not explained by the assessee. The ld. CIT(Appeals) has accepted that the deposits made in the Bank account are not in consonance with the sales disclosed by the assessee. Therefore, ld. CIT(Appeals) has enhanced the turnover to Rs.3,00,00,000/- and estimated the profit at 15%. This give rise to a profit of Rs.45,00,000/-, which has been added to the total income of the assessee.

6. The ld. Counsel for the assessee submitted before us that from where this figure of Rs.3,00,00,000/- as estimated by the ld. CIT(Appeals) is not discernable. At the most, the total deposits in the Bank could have been considered as sales turnover of the assessee. But how it can be amplified to the extent of Rs.3,00,00,000/-.

7. The ld. D.R., on the other hand, submitted that the assessee did not submit anything before the ld. Assessing Officer, though submitted the details before the ld. CIT(Appeals). He relied upon the order of the ld. CIT(Appeals).

8. On due consideration of the facts and circumstances, we are of the view that basic issue before us is, whether gross turnover of the assessee could be estimated at Rs.3,00,00,000/- or it should be the total deposit minus sales disclosed by the assessee (Rs.1,94,54,383/- minus Rs.62,03,667/- = Rs.1,32,50,716/-). A perusal of the record would suggest that the Id. CIT(Appeals) has accepted the stand of the assessee that the deposits made to the Bank account are, at the most, to be treated as sales of the assessee. There is no facts and circumstances discernable, which suggest further amplification to this figure. Therefore, we accept the stand of the assessee that gross deposit in the Bank account is to be treated as a gross turnover. The assessee has already disclosed a turnover of Rs.62,03,667/- and on this turnover, he has shown the profit at Rs.5,28,245/-. To this extent, this turnover is to be debited from the gross deposits. In other words, the balance turnover of which profit is to be estimated should be Rs.1,32,50,716/-, which is result of Rs.1,94,54,383/- minus Rs.62,03,667/-. On this turnover, the profit is required to be estimated. The assessee has disclosed the profit as per Section 44AD i.e. @ 8%. According to the assessee, it should be 8.5% but cannot be 15%. To our mind, estimation of the profit at 15% is on the higher side but profit at 8% can be retained upto the gross sales of Rs.50,00,000/-. If total sales increase thereupon, then, books ought to be maintained by the assessee. If we accept the stand of the assessee then, we will be giving premium to the assessee over the other person who are following the law and maintaining the books. The assessee is a negligent person, because he did not maintain the books or if maintains then did

