

**IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA" BENCH  
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.29/Pat/2023  
Assessment Year: 2013-14**

Masudan Tanti Jagdishpur, Bhagalpur, Bihar- 813105. (PAN: AKWPT0290R)	Vs	Assessing Officer, NFAC, Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri R. N. Bedi, CA

Respondent by : Dr. Lalita Kumari, Sr. DR

Date of Hearing : 02.07.2024

Date of Pronouncement : 22.07.2024

**O R D E R**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "the Ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2013-14 dated 26.11.2022 passed against the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Income-tax Act, 1961 (hereinafter referred to as the "Act") by the AO NFAC, Delhi (hereinafter referred to as the "Ld. AO") dated 04.03.2022.

2. Grounds of appeal raised by the assessee vide Form No. 36 read as under:

*“1. The Learned CIT(A) has also passed the order in ad hoc manner without going in details of our submission. The Learned ACIT (NFAC) has been pleased to complete the Assessment on u/s 147 r.w.s. 144 by making addition of Rs.1,06,23,768/- mere conjecturers & Surmises. The Appellant is seriously aggrieved with the order and prefer the Appeal on following grounds amongst other.*

*2. 1. That the Hon’ble CIT(A) has not considered & not gone through submission which were given during the filing of appeal & passed the order in ad hoc manner. 2. That the sufficient opportunity have also not been given & passed the order in sputnik speed. 3. That if no compliance is made it does not mean that the grounds which have already been submitted will not be considered. The Hon’ble CIT(A) should have considered our submission & grounds which have duly supported various case laws but he has not bothered to look into & passed the order abruptly. 4. That all the deposits are not income. 5. That the Learned I.T.O has completely failed to understand the appellant, has also paid to supplier either by cheque or DD. It can be revealed from the bank statement enclosed.*

*3. 6. Sir, further you will appreciate that there is frequent withdrawals from bank. From withdrawals have the appellant have purchased the goods, and the same has been sold and whatever cash has been received after meeting expenses the appellant have deposited in bank a/e. 7. Sir, appellant had not maintained any books of a/c. the income may kindly be treated under presumptive basis u/s 44 AD. 8. Sir, you will find there is not only deposit, but withdrawals also. If it would have been purely deposit and no withdrawal, then it could be said that total credit is nothing but is total income. It is not the matter here every time or you can say several times withdrawals have also been made that is in cash for the purchase of goods. 9. Sir, it will be completely wrong to treat whole deposit in income. That all the deposit are nothing but it is cash sales. Which has been deposited in bank.*

*4. 10. That the cash deposits are not made in any single day but on different days cash deposit are cash sales and withdrawals are for the purchase from the different parties. That definitely I have very small business and any how maintaining my life. I am not maintaining any books of account due to very small business man, 11. That further your honor will find that from withdrawal by the assessee are not utilized for the purchase of fixed assets or invested anywhere. 12. That further is anything on records which suggest that the assessee has other sources or additional source of income. Due to complete wrong advice by the civil lawyers who is not actually an income tax lawyer. I have filed the return by showing the income from other sources. 13. There is no income from other sources. Sir, you will not find any evidence which shows that I have got other sources of income.”*

3. Brief facts of the case are that the Ld. AO received information that the assessee had deposited cash within the financial year 2012-13 relevant to AY 2013-14 in a savings bank account maintained with UCO

Bank. He analysed the information and the material available on record, recorded reasons and after taking the required statutory approval, issued notice u/s 148 of the Act, which was duly delivered at the e-mail address of the assessee requiring, the assessee to file the return of income within 30 days. However, the assessee did not comply with the notice. Subsequently, notice u/s 142(1) of the Act was issued requiring the assessee to file various details but no reply was filed. Vide subsequent notices issued, the Ld. AO required a copy of the return of income filed in response to the notice issued u/s 148 giving a brief description about the business activity, if any, and to explain the source/heads of income for AY 2013-14, to furnish copy of bank statement along with list of bank accounts and sources of credits with supporting documentary evidence and any other details or explanation which the assessee might like to submit along with the statement of income/computation of income for AY 2013-14 and financial statement like P&L Account, Balance Sheet, capital account etc. A copy of the notice u/s 142(1) dated 02.12.2021 was also got served physically through the Verification Unit but despite being provided with several opportunities, no compliance was made nor any reply was filed. Meanwhile, information was collected from UCO Bank and it was found that the total amount credited in the bank account No. 07530110001790 was Rs.1,06,23,768/- during the FY 2012-13 relevant to the AY 2013-14 which was added u/s 69A of the Act to the income of the assessee as the assessee failed to furnish explanation for the same. Aggrieved with the order of the assessing officer, the assessee filed an appeal before the Ld. CIT(A). Before the Ld. CIT(A), in the statement of facts and the grounds of appeal, the assessee stated that all the deposits were not income. It was further stated that the Ld. AO failed to appreciate that the assessee had also paid to the supplier either by cheque or by DD and there were frequent withdrawals for purchase of

goods and the same were sold and the cash received after meeting expenses was deposited in the bank from time to time. The assessee requested for assessment of the income on presumptive basis u/s 44AD of the Act and since there were deposits as well as withdrawals, he also pleaded that it would be completely wrong to treat the entire deposits as income as the deposits were not made on any single day but were made on many different dates and the withdrawals were made for purchases from various parties. No books of account were maintained for the reason that the assessee was a very small businessman. It was pleaded that there is nothing on record which suggests that the assessee had other sources of income. The assessee relied on several judicial pronouncements in support of its claim. Before the Ld. CIT(A) as well, neither any compliance was made to the notices issued for granting opportunity of being heard nor any written submission was filed and taking into account the entire conspectus of the case, the Ld. CIT(A) did not see any reason to disturb the categorical finding of the Ld. AO in the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act and the appeal was dismissed. Aggrieved with the order of the Ld. CIT(A), the assessee is now in appeal before us.

4. We have heard the rival contentions and also gone through the written submission filed during the course of the hearing. Ground no. 1 is against the action of the Ld. CIT(A) in passing the order in an ad-hoc manner without going into the details of the submission, although no written submission was filed but along with the Memo of Appeal the statement of facts as mentioned above and grounds of appeal were filed in which it was submitted that the income may be treated on the presumption basis u/s 44AD of the Act but since no compliance was made, the Ld. CIT(A) sustained the order of the Ld. AO. Since apart from the case laws cited in the appeal memo, no other submissions were made, therefore, ground no. 1 of the appeal of the assessee is not

sustainable and the same is hereby rejected, more so as the ground is general in nature.

5. However, in the course of hearing, the assessee has filed written submission which is reproduced as under and has also filed the copy of statement showing deposits and withdrawal:

*“The appellant is an Individual and during the Asst. year 2013-14, he had sold foreign liquor which were purchased in the name of OM PRAKASH BHAGAT because the License to trade Foreign Liquor was in the name of Om Prakash Bhagat and Om Prakash Bhagat had permitted the appellant to do business in the area of JAGADISHPUR & BALU CHAK PURAINI, CHANDPUR, BRAWANIPUR DESARI against which a declaration in the form of affidavit by Om Prakash Bhagat in the name of Appellant attached for your reference honor.*

*The return of Income for the Asst. Year 2013-14 was not filled due to the reason that all the documents like Retail Ledger and Form 27D issued from BIHAR STATE BEVERAGE CORPORATION LIMITED were being kept by Om Prakash Bhagat and refused to give the documents to appellant. Resulted Notice U/s 148 was issued and later order was passed u/s 147 r.w.s 144 read with section 144B of the Income Tax Act. Subsequently Appeal was filled and appeal was also rejected on the ground that documents and reply not submitted.*

*Later, after so many request on 21.05.2024 the appellant had able to collect the ledger and Form 27D from BIHAR STATE BEVERAGE CORPORATION LIMITED for the Financial Year 2012-13 and attaching here the documents with submission for your kind consideration.*

*Further to submit that, copy of Purchase Ledger received from BIHAR STATE BEVERAGE CORPORATION LIMITED for the Financial Year 2012-13 with Bank Statement of UCO Bank, Affidavit from Om Prakash Bhagat and License Copy of Om Prakash Bhagat attached for your reference and consideration.*

*Further during the financial year 2012-13 all the sales receipts were received in cash only and all the sales proceeds were deposited in UCO Bank Account. Whatever payment were to made against purchase of foreign liquor to Bihar State Beverage Corporation Ltd were from UCO Bank A/c No. 07530110001790 in the form of DD and Transfer. In some cases, cash withdrawals were made to prepare DD from other bank as per the instruction of BIHAR STATE BEVERAGE CORPORATION LIMITED.*

*Therefore, all the deposits in the UCO Bank account were the cash received against sale of Foreign Liquor and that was the only source of receipt, so whatever cash receipt were there from sale of foreign liquor deposited into bank account and all the payments against purchase of liquor were also made from/through UCO Bank account.*

*Lastly, this is to submit that addition of total receipt of cash as income which were deposited into bank account collected from sale of liquor was illegal and against the law of Natural Justice.”*

6. The bank statement was also available before the Ld. AO which shows frequent cash deposit and withdrawal and while the Ld. AO has not taken into account the withdrawals, the entire deposits have been added to the income of the assessee.

7. As regards the applicability of section 44AD, the same applies to the eligible assessee which is defined as under and the relevant provisions are reproduced as under:

*“44AD. Special provision for computing profits and gains of business on presumptive basis.—(1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head “Profits and gains of business or profession”.*

*[Provided that this sub-section shall have effect as if for the words “eight per cent.”, the words “six per cent.” had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.]*

*(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed:*

*\* \* \* \* \**

*(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.*

*(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).*

*(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not*

*chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.]*

*(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—*

*(i) a person carrying on profession as referred to in sub-section (1) of section 44AA;*

*(ii) a person earning income in the nature of commission or brokerage; or*

*(iii) a person carrying on any agency business.]*

*Explanation.—For the purposes of this section,—*

*(a) “eligible assessee” means,—*

*(i) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and*

*(ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading “C. - Deductions in respect of certain incomes” in the relevant assessment year;*

*(b) “eligible business” means,—*

*(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and*

*(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of 1 [one crore rupees].”*

8. The limit of total turnover as applicable for AY 2013-14 was Rs. 1 Cr. which has been modified to Rs. 2 Cr. w.e.f. 01.04.2017. Since the entire deposits, which are claimed to be the turnover from business of liquor, exceed the limit of total turnover of Rs. 1 Cr., therefore, the provision of section 44AD of the Act are not applicable. The assessee has not filed any evidence like purchase, sale bills or the details of TDS/TCS, if any, for the business of liquor nor even the copy of license in the name of Shri Om Prakash Bhagat and copy of any agreement with Shri Om Prakash Bhagat have been filed. Prima facie, the deposits appear to be made on a regular basis and withdrawals also have been made, therefore, the claim that he was carrying on a business cannot be

totally ruled out. However, since the documents filed before us are additional evidences which were not filed before the Ld. CIT(A) and since proper representation could not be made before the Ld. CIT(A) and the entire deposits cannot be treated as income as the assessee is claiming that he was carrying on the business, therefore, in order to be fair to both the assessee as well as the Ld. CIT(A), the order of the Ld. CIT(A) is hereby set aside for being made afresh after granting a reasonable opportunity of being heard to the assessee. The assessee shall file all necessary evidence like copy of agreement, purchase/sale bills, details of TDS in support of the claim that he was carrying on liquor business before the Ld. CIT(A) and after considering the same, the Ld. CIT(A) shall pass an order as required u/s 250(6) of the Act after making a reasonable estimate of income in accordance with law as no return of income was filed and the income needs to be estimated. It has been held in the case of **Kachwala Gems v. Joint Commissioner of Income-tax, Jaipur [2007] 158 Taxman 71 (SC)** that *it is well-settled that in a best judgment assessment, there is always a certain degree of guess work. No doubt, the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts. There was no arbitrariness in the instant case on the part of the authorities. Thus, there was no force in the instant appeal and the same was to be dismissed accordingly.* [Para 11]

9. Further, in the case of **Brij Bhushan Lal Parduman Kumar, v. Commissioner of Income-tax [1978] 115 ITR 524 (SC)**, Hon'ble Supreme Court have held that *the authority making a best judgment assessment must make an honest and fair estimate of the income of the assessee and though arbitrariness cannot be avoided in such estimate the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case.*

Also, in the case of **State of Kerala v. C. Velukutty [1966] 60 ITR 239 (SC)** it has been held that *Under section 12(2)(b) of the Act, power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a "best judgment assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. Though subsection (2) of section 12 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material.*

10. Similarly, in **Tara Singh v. Income-tax Officer, Ward III Khanna [2017] 81 taxmann.com 293 (Punjab & Haryana)** it has been held that *Law in respect of best judgment assessment is well settled. The assessing authority while making the best judgment assessment should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his best judgment and not of anyone else.*

11. Thus, even in a best judgment assessment, the Assessing Officer ought to have estimated the income of the assessee instead of adding the entire deposits. Thus, the order of the Ld. CIT(A) is hereby set aside to be made afresh keeping in view our observations and the judicial

pronouncements for estimating the income after providing a reasonable opportunity of being heard to the appellate and the appeal is remitted to the Ld. CIT(A) for adjudication afresh.

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

Order pronounced in the open court on 22<sup>nd</sup> July, 2024.

Sd/- (Sanjay Garg)  
Judicial Member

Sd/-(Rakesh Mishra)  
Accountant Member

Dated: 22<sup>nd</sup> July, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)-
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata