

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

**Before Dr. Manish Borad, Accountant Member and
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 40/Pat/2021
Assessment Year: 2017-18**

**Upam Shree,
C/o Ashok Kumar Mandal,
Sabjee Chowk, Barari,
Bhagalpur - 812003
[PAN: ECFPS5292P]**

.....Appellant

vs.

**Principal Commissioner of Income Tax,
Patna – 1,
Central Revenue Building,
Birchand Patel Marg,
Patna - 800001**

..... Respondent

Appearances by:

Assessee represented by : Shri D.V. Pathy, Advocate
Department represented by : Shri Ashwani Kumar, Sr. DR

Date of concluding the hearing : July 11, 2024
Date of pronouncing the order : July 16, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the National Faceless Appeal Centre (NFAC), Delhi, dated 13.04.2021 arising out of Assessment Order dated 11.03.2019, passed under Section 147/143(3) of the Act.

2. The Assessee has raised the following grounds of appeal:

"1. For that the orders as passed by the lower authorities of Income tax is against the weight of facts and evidences on record and contrary to the law and circumstances of the case.

2. For that the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Centre, New Delhi is against law and facts on the file in as much as CIT (Appeal) was not justified to uphold the action of the Assessing Officer in initiating proceedings u/s 148 of the Income Tax Act, 1961 particularly so when the AO never supplied the copy of reason recorded u/s. 148 of the Act to the appellant raised in additional grounds of appeal, which is in clear violation of provisions of law and of various judicial pronouncements.

3. For that the CIT (Appeal), NFC failed to consider the additional ground of appeal and ignoring submissions made in support thereof, that leads to the inevitable invalidation of all the proceedings that took place pursuant to notice u/s 148 of the I.T. Act, 1961 and the reassessment made is legally bad in law and ab initio void in gross violation of the guidelines of the Hon'ble Supreme Court in *GKN Driveshafts (India) Ltd. vs. DCIT (2003) 259 ITR 19 (SC)* and other various pronouncements made by the Apex Court.

4. For that the Id. CIT (A) failed to consider that notice u/s 148 of the was issued in gross violation of section 151 of the LT. Act, 1961 without obtaining necessary approval of the designated income tax authority and in absence thereof the entire proceedings are invalid on this ground and makes the order of reassessment ab initio void and illegal and fit to be quashed.

5. For that the CIT (A), NFC erred in holding the reopening of the assessment valid solely on the ground that the cash deposited with the bank is income of the assessee is purely a doubt that it is income of the assessee not a confirmed finding, not any tangible evidence with the ITO to form the opinion that the income of the assessee has escaped assessment.

6. For that the Id. CIT(A) failed to appreciate the fact that the reopening of case under section 147 of the Act has been made on the basis of wrong facts of the case that a suru of Rs. 12,50,000/- was deposited in bank's savings account as against deposit of the sum of Rs. 2,50.000- only which renders the reassessment ab initio void and illegal.

7. For that the CIT (A), NFC erred in holding the reopening of the assessment solely on the ground that the cash deposited with the bank is income of the assessee is purely a doubt that it is income of the assessee not a confirmed finding, not any tangible evidence with the ITO to form the opinion that the income of the assessee has escaped assessment.

8. For that the CIT (A) erred in rejecting the statement of cash flow as the same was supported with the bank and postal savings accounts and the

receipts from her professional income from year to year on the alleged findings that no cash book and cash flow statements have been filed with the income tax return for earlier years on infructuous ground.

9. For that the CIT (A) failed to appreciate the fact that the entire reassessment proceedings are bad and ab initio void being based on return of income filed on 19/08/2018 filed under section 142(1) of the Act as the AO has wrongly stated that the same was filed in response to notice under section 147 which was, in fact, filed on 31/01/2019.

10. For that the CIT (A) erred in confirming the addition amounting to Rs. 12,50,000/- made by the AO on account of assumed deposits in bank under section 69A, on wrong facts of the case, as she is deriving income from various sources of income as accepted by AO and has sufficient assets to justify the deposits in bank and Post Office.

11. For that the CIT (A) erred in rejecting the statement of cash flow without any justification and on surmises and conjectures as the same was supported with the bank, postal savings accounts and the receipts from her professional income from year to year.

12. For that the Id. CIT (A), NFC has erred in not considering and taking into account the submissions, explanation and the material placed before him. along with its written submissions dated 9/2/2021 without considering the merit of the case and upheld the reassessment order and addition made to the returned income in a very cursory manner which is against the provisions of law and renders the appellate order ab initio void and illegal and fit to be quashed.

13. For that, in the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of the Id. AO in making addition of Rs. 12,50,000/- towards alleged unexplained money u/s 69A of the I.T. Act, 1961 in the bank account of the appellant based on wrong facts of the case. The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case as sum of Rs.2,50,000/- only was deposited in savings Bank account.

14. For that the provisions of section 69A do not apply in the appellant's case as she furnished her return on account of income from profession and from bank & postal interest under section 44AD when maintenance of books of account was not required and the Id. CIT (A) erred in not considering the submissions made by the appellant.

15. For that for other grounds, if any, to be urged at the time of hearing the orders as passed by the lower income tax authorities are bad in facts and law and fit to be modified and/or set aside."

3. Brief facts of the case are that the case of the assessee was reopened under Section 147 of the Act followed by notice issued under Section 148 of the Act. In response to the notice, the assessee has filed return of income for the Assessment Year 2017-18 on 19.08.2018 by showing total income of Rs. 2,24,320/-. Thereafter, the Ld. AO issued notices under Section 143(2) and 142(1) of the Act. In response to the notices, the AR of the assessee appeared time to time before the AO. During the time of framing of the Assessment Order, the Ld. AO noticed that substantial amount of cash deposit was made by the assessee amounting to Rs. 12,50,000/- in her bank account during the period of demonetization from 09.11.2016 to 13.12.2016 and he had asked the assessee to furnish the details of regarding the source of said deposit. However, the assessee had failed to furnish details before him. Accordingly, the Ld. AO made the addition of Rs. 12,50,000/- in the hands of the assessee by treating it as unexplained money under Section 69A of the Act. Aggrieved by the above order, the assessee went in appeal before the Ld. CIT(A) where the appeal of the assessee was dismissed. Aggrieved by the above order, the assessee is in appeal before this Tribunal raising multiple grounds of appeal. However, the main grievance of the assessee is that the Ld. AO while framing the assessment order on the basis of wrong facts that sum of Rs. 12,50,000/- was deposited in assessee's savings bank account during the period of demonetization as against deposit of sum of Rs. 2,50,000/- only. Therefore, on wrong facts making such addition in the hands of the assessee renders the reassessment proceedings void-ab-initio. On the other hand, the Ld. DR supported the decision of the authorities below. We after perusing the material available on the record and considering the submission of the parties, we find that if the assessee had deposited sum of Rs. 2,50,000/- during the period of demonetization in that case no addition could be made in the hands of the assessee since it is within the prescribed limit under which no income tax liability could be imposed. However, the Ld. AO while framing the assessment as stated that the cash deposit was made at Rs. 12,50,000/- during the demonetization period in his order. We therefore, in order to examine the facts of the case feeling necessary to remand back to the whole issue to the file of Ld. AO with a direction to re-examine the

issue afresh after affording reasonable opportunity of being heard to the assessee. Assessee is also directed to appear before the Ld. AO in order to prove its case as and when notice would served upon the assessee. In terms of the above, appeal of the assessee is allowed for statistical purposes.

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

Kolkata, the 16th July, 2024.

Sd/-
[Manish Borad]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 16.07.2024.
Alindra, PS

Copy of the order forwarded to:

- 1 Upam Shree
2. Principal Commissioner of Income Tax, Patna – 1
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches