

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

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

**I.T.A. No. 35/PAT/2023
Assessment Year: 2017-2018**

***Shyam Kumar Gara,..... Appellant
C/o. M/s. New Mithila Shoes Stores,
Mahavir Chowk, Rosera-848210,
Dist. Samastipur, Bihar
[PAN: AFPPG2663H]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-3(4), Samastipur,
Samastipur-848101, Bihar***

Appearances by:

*Shri Naman Nayak, Advocate, appeared on behalf of the
assessee*

*Shri Ashwani Kr. Singal, JCIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : September 02, 2024

Date of pronouncing the order : September 03, 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 21st December, 2022 passed for assessment year 2017-18.

2. The assessee has taken six grounds of appeal, but before advertng to the specific grounds of appeal, we deem it appropriate to take note of the brief facts.

3. It emerges out from the record that the assessee did not file his return of income. The Annual Information Wing sent an information to the ld. Assessing Officer about cash deposits amounting to Rs.14,63,000/- during demonetization in the Bank of Baroda, Rosera Branch. The ld. Assessing Officer recorded the reasons and issued notice under section 148 of the Income Tax Act. Since there was no dispute against reopening and in any other procedural aspects, therefore, we do not deem it necessary to devote much energy towards those aspects. The ld. Assessing Officer has ultimately assessed the income of the assessee with the help of section 44AD. He determined the taxable income of the assessee at Rs.7,69,730/-, which is 8% of the alleged gross receipt/turnover of Rs.96,21,630/-. To this determination, assessee is not aggrieved. The grievance of the assessee is that a sum of Rs.10,96,500/- deposited during demonetisation in the Bank of Baroda, Rosera Branch, has been culled out by the ld. Assessing Officer separately and it has been assessed under section 69A of the Income Tax Act. In other words, though it is part of the gross turnover but ld. Assessing Officer has given a separate treatment, as if it

is unexplained money and cannot be part of from the gross turnover. The ld. Assessing Officer has accordingly determined the taxable income of the assessee at Rs.18,85,270/-, which has two components [Rs.10,96,500/- + Rs.7,69,730/-]. The ld. Assessing Officer has also included the undisclosed interest income of Rs.19,044/-.

4. Dissatisfied with the determination of income, assessee carried the matter in appeal before the ld. CIT(Appeals). The ld. CIT(Appeals) has not recorded any finding. It has just concurred with the ld. Assessing Officer by making a general observation in paragraph no. 7 of the impugned order. The finding of the ld. CIT(Appeals) is running in nine lines only.

5. With the assistance of ld. Representatives, we have gone through the record carefully. The stand of the assessee is that he is carrying out retail business of shoes. He has filed the return in the past also. His gross turnover does not exceed Rs.1 crore as contemplated in section 44AD. Therefore, he is not required to maintain any books of account or other details because his income is to be determined on an estimate basis. Once income is being determined on estimate basis, then, the transactions in the Bank could not be segregated merely on the ground that deposits were made during demonetisation. It is

pertinent to note that total deposit during the year was Rs.81,24,000/-, which are in cash. Out of that Rs.10,96,500/- could be during the period of demonetisation. If rest of the amount could become part of the gross turnover, then why a separate treatment is being made to the normal money deposited during demonetisation. If we revert to the grounds of appeal, then without demonstrating any specific grievance. The assessee has narrated various figures without any coherence and inter-angled the facts instead of exhibiting the exact grievance. The exact grievance of the assessee is that the sum of Rs.10,96,500/- ought not to be assessed under section 69A. It is to be construed as part of the gross turnover. Therefore, construing the exact grievance of the assessee, we allow this appeal and direct the ld. Assessing Officer to only take 8% of the alleged gross turnover of Rs.96,21,630/-. Rest of the addition and separate treatments are deleted.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 03.09.2024.

Sd/-

(Manish Borad)
Accountant Member

Kolkata, the 3rd day of September, 2024

Sd/-

(Rajpal Yadav)
Vice-President

- Copies to :*(1) *Shyam Kumar Gara,*
C/o. M/s. New Mithila Shoes Stores,
Mahavir Chowk, Rosera-848210,
Dist. Samastipur, Bihar
- (2) *Income Tax Officer,*
Ward-3(4), Samastipur,
Samastipur-848101, Bihar
- (3) *Commissioner of Income Tax (Appeals),*
National Faceless Appeal Centre (NFAC),
Delhi;
- (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.