

**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. 320/PAT/2023
Assessment Year: 2004-2005**

***Rameshwar Prasad,..... Appellant
C/o. Rameshwar Service Station,
Bettiah, West Champaran-845438,
Bihar
[PAN: AAFHR7401B]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward- Bettiah,
Bihar***

Appearances by:

*Shri Sanjeev Kr. Anwar, Advocate, appeared on behalf of
the assessee*

*Smt. Rinku Singh, CIT (DR), appeared on behalf of the
Revenue*

Date of concluding the hearing : September 09, 2024

Date of pronouncing the order : September 10, 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 12th October, 2022 passed for assessment year 2004-05.

2. The Registry has pointed out that the appeal is time barred by 385 days. In the application, the assessee has submitted that this appeal has earlier been decided by the ld. CIT(Appeals) vide its order dated 24.04.2018. NFAC has wrongly taken cognizance of appeal instituted on 25.01.2007 against the assessment order dated 20.11.2006. In fact, the NFAC ought to have taken cognizance of this appeal on the basis of the order of ITAT dated 25th October, 2018 and should have decided it afresh.

3. Apart from the above, ld. Counsel for the assessee filed a letter, wherein he has given following chronology of the events:-

That the important dates with regard to above appeal are as under:-

<i>(a)</i>	<i>Order passed u/s 143(3)</i>	<i>29.12.2006</i>
<i>(b)</i>	<i>First appeal filed on</i>	<i>25.01.2007</i>
<i>(c)</i>	<i>Appeal decided by CIT(A), Muzaffarpur</i>	<i>24.04.2018 (copy enclosed)</i>
<i>(d)</i>	<i>Appeal filed before ITAT</i>	<i>21.06.2018</i>
<i>(e)</i>	<i>Order passed by ITAT</i>	<i>25.10.2018 (copy enclosed)</i>
<i>(f)</i>	<i>NFAC passed order against the original assessment order dated 29.12.2006</i>	<i>12.10.2022</i>

He has placed on record copy of the ld. CIT(Appeals)'s order dated 24.04.2018 passed on the assessment order

dated 29.12.2006. Dissatisfied with this order of ld. CIT(Appeals), an appeal was filed by the assessee before the Tribunal bearing ITA No. 158/PAT/2018 and this appeal was decided by the Tribunal vide its order dated 25th October, 2018. Copy of the Tribunal's order has also been placed on the record.

4. With the assistance of ld. Representatives, we have gone through the record carefully. Considering the peculiar facts and circumstances, we condone the delay in filing the appeal by the assessee and proceed to decide it on merit.

5. The appeal against the assessment order has already been decided by the ld. CIT(Appeals) vide its order dated 24.04.2018. Thus, the NFAC has erred in reinstating the appeal and deciding it afresh vide its order dated 12.10.2022. The ld. CIT(Appeals) in the impugned order has nowhere made a mention about the earlier order of the ld. CIT(Appeals) or of the remand order by the ITAT. Therefore, in the interest of justice, we deem it appropriate that this order is set aside or vacated. The ld. CIT(Appeals) would decide the appeal afresh as per the directions of the ITAT passed in its order dated 25th October, 2018 (ITA No. 158/PAT/2018). It is needless to observe that ld. CIT(Appeals) would provide opportunity of hearing to the assessee. It has been stated before us that appeal against

that remand order is still pending before the ld. CIT(Appeals).

6. On the basis of the above facts and circumstances, this appeal is treated as allowed for statistical purposes.

Order pronounced in the open Court on 10.09.2024.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President

Kolkata, the 10th day of September, 2024

*Copies to :(1) Rameshwar Prasad,
C/o. Rameshwar Service Station,
Bettiah, West Champaran-845438, Bihar*

*(2) Income Tax Officer,
Ward- Bettiah, 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.