

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

Before
Dr. Manish Borad, Accountant Member
&
Shri Pradip Kumar Choubey, Judicial Member

I.T.A. No.211/Pat/2023
Assessment Year: 2017-18

Santosh Kumar. **Appellant**
Prop. M/s. Tirupati Enterprises, Daudnagar,
Bihar-824143.
(PAN: AQDPK3821E)

Vs.

ITO, Ward-3(3), Aurangabad **Respondent**

Appearances by:

Shri Manish Rastogi, Advocate appeared for Appellant
Shri Ashwani Kumar, Sr. DR appeared for Respondent

Date of hearing : 24.07.2024

Date of pronouncing the order : 12.09.2024

ORDER

Per Manish Borad, Accountant 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 ld. Commissioner of Income-tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. "CIT(A)"] dated 26.04.2023 arising out of the assessment order framed u/s

143(3)/147 of the Act by ITO, Ward-3(3), Aurangabad dated 26.12.2019.

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

“1. For that the National Faceless Appeal Centre (NFAC), Delhi, [‘the CIT(A)] erred on facts and in law in dismissing the appeal filed by the appellant by confirming the assessment order passed by the Income Tax Officer, Ward 3(3), Aurangabad, (‘the AO), assessing the appellant under section 143(3)/147 of the Act at an income of Rs. 10,70,830/- against the NIL returned income.

2. For that the learned CIT(A) has erred in the facts and circumstances of the case in failing to appreciate that the assessing officer has wrongly added an amount of Rs. 10,70,828/- on account of unexplained deposits in bank accounts under section 69A of the Act, which is wrong, illegal and unjustified.

3. For that the learned CIT(A) has erred in arbitrarily dismissing the appeal for want of prosecution on behalf of the appellant appreciating the facts available on record, which is wrong, illegal and unjustified in the facts and circumstances of the case.

4. For that the learned CIT(A) has erred in arbitrarily dismissing the appeal without adjudicating the grounds of appeal raised by the appellant, which is wrong, illegal and unjustified in the facts and circumstances of the case.

5. For that the learned CIT(A) has erred passing an ex-party' order without allowing proper opportunity of being heard, which is wrong, illegal and unjustified in the facts and circumstances of the case.

6. For that the learned CIT(A) has erred in arbitrarily confirming the action of the AO in arbitrarily resorting to the reassessment proceedings under section 148 of the Act, which is wrong, illegal and unjustified in the facts and circumstances of the case.

7. That the whole order passed by the CIT(A) is bad in facts and law.

That the appellant craves leave to add, alter, amend, or vary the above grounds of appeal at or before the time of hearing.”

3. At the outset, Ld. Counsel for the assessee submitted that the assessee did not get fair opportunity to appear before both the lower authorities, therefore, he prayed that the matter may be restored to the file of the Ld. AO for de novo adjudication.

4. On the other hand, Ld. DR though did not oppose the request made by the Ld. Counsel for the assessee but supported the orders of the lower authorities.

5. We have heard Ld. DR and perused the records placed before us. We observe that the assessee is an individual engaged in the business of trading in FMCG product. Return of income was not filed. On the basis of the information about cash deposit during the demonetization period, case of the assessee was picked up and notice u/s. 148 of the Act issued for carrying out the assessment proceeding u/s. 147 of the Act. In the course of the reassessment proceedings though the assessee remained non-compliant on most of the occasions but after repeated notices he provided details about the cash and credit entries appearing in his bank account held with PNB Bank being account no. 3861008700001 and gave a break up about the cash deposited during pre-demonetization period, cash deposit during demonetization period, cash deposit during post demonetization period and all credit entries and all these details totalled to Rs.1,00,27,996/-. Thereafter, Ld. AO calculated the total turnover during demonetization period at Rs.14,24,742/- by applying the formula of multiplying total credits with 52 days divided by 666 days and then reduced the calculated turnover of Rs.14,24,742/- from cash deposit during demonetization period at Rs.24,95,570/- and treated the remaining amount of Rs.10,78,828/- as unexplained cash deposit.

6. We observe that the Ld. AO on one hand accepted that the assessee is carrying out some business activities but on his own

has calculated the turnover during the demonetization period. Before us, it has been stated that assessee has all relevant details to explain the deposits both cash/credit made in the bank account during the year under consideration. Since the Ld. DR has not opposed the request of the Ld. Counsel for the assessee, we deem it appropriate to set aside the order of Ld. CIT(A) and restore the issue raised before us to the file of the Ld. AO for *de novo* adjudication to be carried out after affording reasonable opportunity of being heard to assessee, so that the assessee can file all necessary details and documents before the Ld. AO, who shall then decide the matter in accordance with law. Assessee is also directed not to take any adjournment without the reasonable cause.

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

Order is pronounced in the open court on 12th September, 2024.

Sd/-

Sd/-

(Pradip Kumar Choubey)
Judicial Member

(Manish Borad)
Accountant Member

Dated: September, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

- 1. Appellant – Shri Sanotsh Kumar**
- 2. Respondent – ITO, Ward-3(3), Aurangabad**
- 3. CIT(A), NFAC, Delhi**
4. CIT,
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata