

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER**

**SMC MATTER**

**ITA no.147/Nag./2024**  
**(Assessment Year : 2017-18)**

Bapulal Shiwabhai  
Shop no, Saokar Peth, Yawatmal 445 001  
PAN – AABFB0405F

..... Appellant

v/s

Income Tax Officer  
Ward-1, Yawatmal

..... Respondent

Assessee by : None  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 30/09/2024

Date of Order – 22/10/2024

**ORDER**

The assessee has filed this appeal challenging the impugned order dated 17/01/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18.

2. When the case was called for hearing, none appeared on behalf of the assessee appellant. I also do not find any application for adjournment. Hence, the Bench was of the view that the appeal filed by the assessee can be disposed of ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. The assessee has raised following grounds:-

*"1) Based on the facts and circumstances of the case addition of Rs.15,00,000/- on account of unexplained income sources is arbitrary, unjustified, unwarranted and against the Principal of theory of taxation and needs to be deleted.*

*2) Based on the facts and circumstances of the case, assessment proceedings initiated u/s 144 of the I.T. Act 1961 is ab-initio bad in the eyes of law and needs to be set aside.*

*3) Interest u/s 234A, 234B and 234C of the Income Tax act '1961 being consequential in nature needs to be deleted.*

*4) Assessee craves leave to add, alter or amend any of the grounds of appeal."*

4. Facts in Brief:- The assessee firm is engaged in the business of trading of Bidi Patta (Bidi) since last many years. For the year under consideration, the assessee has filed return on 26/03/2017, showing gross income of ₹ 33,951, only on a turnover of ₹ 25.50 lakh. The Assessing Officer observed that the return of income filed after the demonetization period although the due date was 31/07/2017, but the return was filed on 15/06/2018, offering gross income of ₹ 32,414, on a turnover of ₹ 27.50 lakh. However the assessee failed to produce the original purchase bills and stock register. The assessee also failed to prove the genuineness of its purchase/sales and the cash in hand claimed by the assessee firm. In response to the show cause notice dated 16/07/2019, issued by the Assessing Officer, the assessee has not filed any reply. Hence, the Assessing Officer left with no option but to proceed in this case on the basis of material available on records and accordingly, the assessment proceedings in this case were completed to the best judgment of the Assessing Officer. The Assessing Officer, on perusal of

the records/ITS details in respect of the said assessee firm, observed that the assessee has made cash deposit of ₹ 15 lakh with Union Bank of India, Yavatmal Branch during the demonetization period i.e., between 09/11/2016 and 30/12/2016. Further notice under section 133(6) of the Income Tax Act 1961 ("*the Act*") was issued and bank statement & SBN details were called for from the bank. Under these circumstances, the Assessing Officer passed order under section 144 of the Act treating the said cash deposit worth ₹ 15 lakh by the assessee during the demonetization period as unexplained money under section 69A of the Act in the absence of explanation supported by documentary evidence furnished by the assessee to justify the source of cash deposits and accordingly addition of ₹ 15 lakh was made to the total income of the assessee.

5. During the course of first appellate proceedings, the learned CIT(A), despite granting several opportunities to the assessee to substantiate its case, however, the assessee miserably failed to make its appearing through authorised representative before the learned CIT(A) and hence the learned CIT(A) relying upon the decision of the Co-ordinate Bench of the Tribunal rendered in CIT v/s Premkumar Arjundas (HUF) [2017] 297 CTR 614 (Bom.), dismissed the appeal filed by the assessee.

6. Though the learned CIT(A) granted ample opportunities to the assessee, ultimately, the order passed by the learned CIT(A) is an ex-parte order. Therefore, I am of the opinion that by following the principles of natural justice, one more opportunity should be given to the assessee by

restoring the appeal to the file of the assessee Assessing Officer to enable the assessee to substantiate his case before the Assessing Officer. It is pertinent to mention here that in the event of assessment concluded under section 144 of the Act by the Assessing Officer and on appeal before the Tribunal, the matter, if required, has to be restored to the file of the Assessing Officer for denovo adjudication. Such amendment is made in the statute w.e.f. 1<sup>st</sup> October 2024. The recent amendment as contained in section 251 of the Act is reproduced below:–

*"Provided that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment."*

7. In view of the above, the order passed by the learned CIT(A) is set aside and remit the matter to the file of the Assessing Officer and direct him to adjudicate the matter denovo after providing reasonable opportunity of being heard to the assessee. It is also directed that the assessee should not seek adjournment without there being a justified reason. Accordingly, all the grounds raised by the assessee in this appeal are allowed for statistical purposes.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 22/10/2024

**NAGPUR, DATED: 22/10/2024**

**Sd/-  
V. DURGA RAO  
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur