

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNABENCH, PATNA
(Through Virtual hearing at Kolkata)**

**BEFORE SHRI DUVVURU RL REDDY, VP
AND
SHRI RAJESH KUMAR, AM**

**ITA No.353/PAT/2023
(Assessment Year: 2017-18)**

**Dy. Commissioner of Income
Tax,**

Lok NayakJai Prakash Bhawan,
4th Floor, Dak Bangalow
Crossing, Frazer Road, Patna,
Bihar 800001

(Appellant)

Prabha Tiwary,

Vs. Tiwary Service Station Maner,
Patna-801108, Bihar

(Respondent)

PAN No. ACRPT5598D

CO No. 2/PAT/2024

(Arising in ITA No.353/PAT/2023 for A.Y. 2017-18)

**Dy. Commissioner of Income
Tax,**

Lok NayakJai Prakash Bhawan,
4th Floor, Dak Bangalow
Crossing, Frazer Road, Patna,
Bihar 800001

Prabha Tiwary,

Tiwary Service Station Maner,
Patna-801108, Bihar

Vs.

(Applicant)

(Respondent)

Assessee by

: Sh. Sudeep Sinha, AR

Revenue by

: Sh. Ajay Kr. Shukla, Sr. DR

Date of hearing: 13.11.2024

Date of pronouncement : 27.11.2024

ORDER

PER RAJESH KUMAR, AM:

This is the appeal preferred by the revenue and cross-objection by the assessee against the order of the Ld. Commissioner of

Income Tax (Appeals)-National Faceless Appeal Centre, Delhi, Delhi [hereinafter referred to as the Id. CIT(A)] dated 31.10.2023 for the AY 2017-18.

02. The Revenue has challenged the order of Id. CIT (A) relating to the issue of cash deposit during the demonetization period of ₹2,22,04,000/- as made by the Id. AO u/s 69 of the Act.
03. The facts in brief are that the assessee filed return of income on 24.10.2017, declaring total income of ₹16,56,300/-. The assessee is running a petrol pump in the name of "M/s Tiwary Service Station". The case of the assessee was selected for scrutiny assessment through Computer Assisted Scrutiny Selection (CASS) for the reason of cash deposits during the demonetization period. Accordingly, the notice u/s 143(2) was issued on 22.09.2018, which remained non-complied. Thereafter, notice u/s 142(1) of the Act was issued along with questionnaire and assessee furnished certain details before the Id. Assessing Officer in compliance thereto. Thereafter, the assessee remained non-compliant and finally, the assessment was framed u/s 144 of the Act by making addition of ₹2,22,04,000/- to the total income of the assessee on account of unexplained deposit u/s 69A of the Act.
04. Aggrieved, assessee preferred the appeal before the Id. CIT (A). In the appellate proceedings, the Id. CIT (A) allowed the appeal of the assessee by holding that the Id. AO has not rejected the books of accounts. Finally, the Id. CIT (A) has passed a very cryptic order allowing the appeal of the assessee.
05. Aggrieved by the order of Id. CIT (A), Revenue is in appeal before us. After hearing the rival contentions and perusing the material available

on record, we note that the issues have not been examined either by the Id. AO nor by Id. CIT (A). We even note that the Id. CIT (A) has decided the issue on the basis of the facts available on record. We note that the assessee is running a petrol station and the possibility of depositing cash out of the cash turnover of the assessee could not be ruled out. However, this fact has not been examined either by the Id. AO or by Id. CIT (A). Therefore, we restore the appeal to the file of the Id. AO with a direction to examine the books of account of the assessee along with the evidences/ details, which the assessee may wish to file during the set aside proceedings. Accordingly, the appeal of the assessee is restored to the file of the Id. AO.

06. Since, we have restored the appeal of the Revenue to the file of the AO, the Cross Objection of the assessee in support of order of Id. CIT (A) becomes infructuous and hereby dismissed.
07. In the result, the appeal of the Revenue is allowed for statistical purpose and the CO of the assessee is dismissed.

Order pronounced in the open court on 27.11.2024.

Sd/-
(DUVVURU RL REDDY)
(VICE PRESIDENT)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 27.11.2024
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, PATNA