

आयकर अपीलीय अधिकरण  
कोलकाता 'बी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
श्री रakesh मिश्रा, लेखा सदस्य  
के समक्ष  
**Before**

**SRI SANJAY GARG, JUDICIAL MEMBER  
&  
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1327/KOL/2024  
Assessment Year: 2016-17**

Rajarshi Bhattacharya	Vs.	ACIT, Circle-50(1), Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN: APDPB0452P</b>		

**Appearances:**

**Assessee represented by:** *Miraj D. Shah, AR.*

**Department represented by:** *P.P. Barman, Addl. CIT, Sr. DR.*

Date of concluding the hearing : September 12<sup>th</sup>, 2024

Date of pronouncing the order : December 6<sup>th</sup>, 2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2016-17 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short, 'the Act') by the Id. Commissioner of Income-tax (Appeals)- NFAC, Delhi [in short 'the Id. CIT(A)'] dated 19.04.2024 which is arising out of the assessment order framed u/s 143(3) of the Act dated 28.12.2018.

2. The Grounds of appeal are as under:



1. For that in the facts and circumstances of the case the Assessment order passed was perverse and without jurisdiction and also in violation of principles of natural justice hence is bad in law and be quashed.
2. For that the Authorized Representative of the assessee sought for adjournments during the appellate proceedings before the Ld. CIT(Appeals) as he was going under medical supervision and bed rest due to multiple fractures in his leg. Thus the Authorized Representative was unable to devote proper attention towards appellate proceedings and the Appellate order was passed and proper opportunity of hearing was not provided to the assessee.
3. For that the assessment order passed u/s 143(3) of the Income Tax Act, 1961 was without jurisdiction and hence the Ld CIT(A) erred in confirming the assessment order. The assessment order was bad in law and should be quashed.
4. For that the addition of Rs.25,75,280 received in cash from Mangal Karwa for sale of painting was treated as unexplained and added u/s 68 of the IT Act 1961 read with Section 115BBE of the Income Tax Act, 1961 was not justified and without any basis and uncalled for. The addition therefore be deleted.
5. For that the addition of Rs.21,51,109 received in cash from Mangal Karwa for sale of painting was treated as unexplained and added u/s 68 of the IT Act 1961 read with Section 115BBE of the Income Tax Act, 1961 was not justified and without any basis and uncalled for. The addition therefore be deleted.
6. For that the addition of Rs. 14,54,880 received as advance from customers in cash for sale of painting was treated as unexplained and added u/s 68 of the Income Tax Act, 1961 read with Section 115BBE of the IT Act 1961 was not justified and without any basis and uncalled for. The addition therefore be deleted.
7. For that the disallowance of Rs.5,47,649 out of sales promotion expenses as being personal in nature was not justified and without any basis and uncalled for. The addition therefore be deleted.
8. For that the disallowance of Rs. 29,63,385 out of sales promotion expenses for want of evidences was not justified and without any basis and uncalled for. The addition therefore be deleted.
9. For that the disallowance of Rs. 18,85,736 out of travelling expenses for want of evidences was not justified and without any basis and uncalled for. The addition therefore be deleted.
10. For that the addition of Rs.54,33,948 for deposit made in bank account as unexplained and added u/s 68 of the Income Tax Act, 1961 read with Section 115BBE of the IT Act 1961 was not justified and without any basis and uncalled for. The addition therefore be deleted.
11. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding that the material based on which the Ld Assessment Officer passed the assessment order are collected behind the back of the assessee and which were not provided during the course of



*assessment proceeding, thus material should be excluded/ignored for the purpose of this case.*

*12. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding that the statement of third parties on which the Ld Assessment officer relied during the course of assessment proceeding were not subjected to cross examination for the assessee, thus the third party statement relied upon should be excluded/ignored for the purpose of this case.*

*13. For that the facts and circumstances of the case the notice u/s 143(2) of the Income Tax Act 1961 was without jurisdiction and bad in law and hence the entire assessment order is bad in law and the same should be quashed.*

*14. The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.*

*15. For that the facts and circumstances of the case the interest computed u/s 234 A/B/C/D of the IT Act 1961 is over charged and wrongly calculated and or is not applicable to the assessee case hence the interest be deleted and or correctly computed.*

*16. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.*

3. Brief facts of the case as culled out from the order of Ld. CIT(A) are that the assessee is an individual engaged in the business of buying and selling of paintings as well as acting as agent for buyers/dealers to procure paintings. The assessee filed a return of income showing total income of Rs. 21,41,450 and revised the return of income on 17/02/2017 for AY 2016-2017 declaring income of Rs.28,83,270. The return of income was taken up for scrutiny and the following additions to the income were made by the Ld. AO:

*(a) Rs.25,75,280 received in cash from Mangal Karwa for sale of painting was treated as unexplained and added u/s 68 of the IT Act 1961 read with Section 115BBE of the IT Act 1961.*

*(b) Rs.21,51,109 received in cash from Nimish Godiwala for sale of painting was treated as unexplained and added u/s 68 of the IT Act 1961 read with Section 115BBE of the IT Act 1961.*

*(c) Rs. 14,54,880 received as advance from customers in cash for sale of painting was treated as unexplained and added u/s 68 of the IT Act 1961 read with Section 115BBE of the IT Act 1961.*

(d) Rs.5,47,649 was disallowed from sales promotion expenses as being personal in nature.

(e) Rs.29,63,385 was disallowed from sales promotion expenses for want of evidences.

(f) Rs. 18,85,736 was disallowed from travelling expenses for want of evidences.

(g) Rs.54,33,948 deposited in bank account was treated as unexplained and added u/s 68 of the IT Act 1961 read with Section 115BBE of the IT Act 1961.

Aggrieved with the order of the Ld. AO, the assessee filed an appeal before Ld. CIT(A) but could not succeed. Hence, the appeal before the Tribunal.

4. We have heard the rival submissions. It was submitted before the Tribunal that the Chartered Accountant was injured and an affidavit has been filed, which is reproduced as under:

*“I, Sabyasachi Chattopadhyay, son of Late Sures Chandra Chatterjee, residing at 17/2/3 Chakraberia Road (South), Kolkata - 700025, bearing PAN ADRPC2657D, and a Chartered Accountant by profession, do hereby solemnly declare and affirm as follows:*

*1. I am the auditor and tax counsel for Mr. Rajarshi Bhattacharya, holding PAN: APDPB0452P.*

*2. I was engaged by the aforementioned assessee to represent his appeal case for Assessment Year 2016-2017 before the Learned CIT Appeals, with hearings scheduled in February and March 2024.*

*3. During this period, I was afflicted with a diabetic ulcer on my left leg, which eventually led to a partial amputation. Due to this, I was either hospitalized or confined to bed rest, leaving my family and me in a state of emotional distress.*

*4. As a result of these circumstances, I was unable to attend to my professional responsibilities, including responding to the notices issued by the CIT Appeals for this case. Consequently, no compliance could be made before the Hon’ble Learned CIT(Appeals) during the said period.*

*5. I affirm that the non-compliance was not due to any ill intent but solely due to the reasons stated above.*

*6. I hereby declare that the statements made herein are true and correct to the best of my knowledge and belief.”*



5. The assessee has submitted that the e-mails from the Department were in the Spam folder of the assessee's e-mail and therefore, the same could not be attended and requested that since the order of the Ld. CIT(A) is *ex-parte*, the same may be restored to him for deciding afresh. Ld. DR on the other hand supported the order of Ld. CIT(A).

6. We have considered the rival submissions made. It is evident from page 4 of the Ld. CIT(A)'s order that various notices issued and sent to the e-mail: [sabychat@rediffmail.com](mailto:sabychat@rediffmail.com) were not complied with and the e-mails sent at [info@djshahandco.com](mailto:info@djshahandco.com) had also bounced. Neither during the course of the assessment proceedings nor during the course of the appeal before the Ld. CIT(A), the assessee could furnish evidence to rebut the additions made as the deposits were being claimed to be made out of the sale proceeds of the paintings and therefore, in the absence of any representation being made before Ld. CIT(A), the additions were confirmed by the Ld. CIT(A). The additions on account of cash deposits in the bank account of the assessee were also confirmed by relying upon several judicial pronouncements and in the absence of any submission made by the assessee. The assessee requested before us that in order to furnish the required evidence and make proper representation, the order of Ld. CIT(A) may be set aside to be done afresh after affording adequate opportunity to the assessee. Therefore, it is deemed appropriate in the interest of justice and fair play to set aside the order of the Ld. CIT(A) to be done de novo after allowing an opportunity of being heard and for making proper representation before the Ld. CIT(A). Needless to say, the assessee shall not seek any unnecessary adjournments and shall file all required evidences before the Ld. CIT(A). The Ld. CIT(A) shall make the order afresh after considering the submissions of the assessee.



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

**Order pronounced in the open Court on 6<sup>th</sup> December, 2024.**

*Sd/-*

**[Sanjay Garg]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 06.12.2024

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **Rajarshi Bhattacharya, 14/2, P.C. Banerjee Lane, Dakshineswar, Kolkata, West Bengal, 700076.**
2. **ACIT, Circle-50(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata