

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

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.293/Pat/2024
Assessment Year: 2017-18

Chole Lal Yadav..... Appellant

Prop: Ritu Brahm Filling Station,
Moglanipur, Asaon, Siwan,
Bihar – 841226.

[PAN: ABFPY7309A]

vs.

ITO, Ward-2(3), Siwan..... Respondent

Appearances by:

Shri Sanjeev Kr. Anwar, Advocate appeared on behalf of the appellant.
Shri Ashwani Kr. Singal, JCIT, appeared on behalf of the Respondent.

Date of concluding the hearing : December 16, 2024

Date of pronouncing the order : December 17, 2024

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 01.01.2024 of the National Faceless Appeal Centre [hereinafter referred to as ‘CIT(A)’] passed u/s 250 of the Income Tax Act (hereinafter referred to as the ‘Act’).

2. At the outset, the ld. AR submitted that there is a delay of 4 days in filing the instant appeal. The assessee has submitted an application for condonation of delay citing valid and proper reasons. After considering the averments made in the application, we condone the delay.

3. Brief facts of the case are that the assessee run a petrol pump and filed his return of income on 29.11.2017 declaring total income of Rs.12,27,310/-. Thereafter, the case was selected for scrutiny on account of cash deposits during demonetization and subsequently notices u/s

143(2) and 142(1) of the Act was issued. During the assessment proceedings, the Assessing Officer noticed that the assessee debited Rs.1,17,52,120/- in Profit & Loss A/c under the head 'contract expenses'. The Assessing Officer found that the assessee was not maintained books of accounts and he added 30% of Rs.1,7,52,120/- i.e. Rs.35,25,636/- to the total income of the assessee under the head 'profit and gains of business or profession'.

4. At the outset, the ld. Counsel for the assessee submitted that the ld. CIT(A) has passed an ex-parte order as the assessee had not responded to the notices of hearing on multiple occasions. The ld. Counsel has also stated that the notices were not served physically. Moreover, the Assessing Officer was not justified in making the assessment u/s 144 even if books of accounts including stock register, sale register and other relevant documents were duly produced by the assessee and the Assessing Officer was not justified in making ad hoc disallowance of 30% of the expenses. He argued that the non-appearance was not intentional and prayed accordingly that in the interest of justice, one more opportunity may be provided to him to substantiate its claim before competent authority.

4. The ld. DR submitted that he has no objection if the matter be remanded back to the file of the ld. CIT(A) for fresh adjudication.

4. We, after hearing the rival submission of the parties and perusing the materials available on record, find that the order of the ld. CIT(A) is an ex parte order against the assessee, therefore, it is clear that the assessee could not represent his case before the ld. CIT(A). We also find that the ld. CIT(A) dismissed the appeal solely on the procedural ground without examining the merits of the case, which is essential condition stipulated u/s 250(6) of the Act. We, therefore, considering the facts of the case and in the interest of justice and fair play, remand back the

issue to the file of the ld. CIT(A) for fresh adjudication after giving reasonable opportunity of being heard to the assessee to present his case and to pass a speaking order. We also direct the assessee to strictly comply with the notices issued by the ld. CIT(A) and furnish all relevant documents to substantiate his claim.

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

Kolkata, the 17th December, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 17.12.2024.

RS

Copy of the order forwarded to:

1. Chole Lal Yadav
2. ITO, Ward-2(3), Siwan
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches