

IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA BENCH" PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI SONJOY SARMA, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 14/Pat/2022
Assessment Year: 2012-13
&
I.T.A. No. 15/Pat/2022
Assessment Year: 2013-14

Pawan Kumar,
Prop. Life Line Rice Mills,
Vill-PO- Sihma, PS- Maithani,
Begusarai, Bihar - 851129
[PAN: ALLPK1329A] **Appellant**

vs.

ACIT, Circle-2(1), Begusarai,
Prop. Life Line Rice Mills,
Vill-PO- Sihma, PS- Maithani,
Begusarai, Bihar – 851129 **Respondent**

Appearances by:

Assessee represented by : Sh. D.V. Pathy, Adv.
Department represented by : Sh. Ajay Kr. Shukla JCIT, (Sr. DR)

Date of concluding the hearing : 19.12.2024
Date of pronouncing the order : 01.01.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This is a batch of two appeals for Assessment Years (AYs) 2012-13 and 2013-14 which are delayed by 30 and 40 days respectively.

1.1 It is seen that the petition for condoning the said delays have been filed for both of the years. However, for the sake of convenience, the petition filed for 2012-13 (ITA No. 14/Pat/2022) may be reproduced as under:

“1. That this is an application for condonation of delay the filing of the present appeal.

2. That the appellant states that in order was passed by the Commissioner of Income Tax (Appeals), NFAC under section 250 of the Act on 29.12.2021. The same was served on the same date online.

3. That as per the provisions as contained in the Act the appellant was required to file the appeal within a period of 60 days from the date of the receipt of the order i.e by 27.02.2021. Thus, there is a delay of approximately 30 days in the filing of the present appeal.

4. That the appellant states that after receipt of the order in appeal it requested its chartered accountant to take necessary steps for filing of the appeal. The said chartered accountant on account of his ill-health could approach the counsel on 27.03.2022. The said counsel immediately thereafter took steps for filing of the present appeal. The said counsel could prepare and file the appeal on 29.03.2022.

5. That the appellant states that the delay in filing of the appeal occurred only due to the ill-health of its chartered accountant. The appellant states that the same does occurred due to reasons beyond its control. The appellant submits that the same is due to a reasonable cause.

6. The appellant submits that since the delay was caused due to a reasonable cause the same merit not be condoned. The appellant submits that the delay in filing of the present appeal be condoned and the appeal be heard on merits.”

1.2. Considering the reasons mentioned in the said petition this appeal is admitted for adjudication after condonation of the said delay.

2.0 The present appeals arise from the order u/s 250 of the Income Tax Act, 1961 (hereafter ‘the Act’) passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereafter ‘the Ld. CIT(A)’) dated 29.12.2021 (AY 2012-13) and 19.12.2021 (AY 2013-14).

2.1 Aggrieved with the action of Ld. CIT(A), the assessee is in appeal before ITAT through following grounds of appeal:

“1. For that the grounds of appeal hereto are without prejudice to each other.

2. For that the learned assessing officer has erred in initiating proceeding under Section 148 of the Act notwithstanding the fact that the condition precedent to the invocation of jurisdiction under the said provision of law or conspicuous by its absence.

3. For that learned assessing officer has erred in initiating proceeding under Section 148 of the Act after the expiry of four years from the end of the relevant assessment year in absence of any omission or failure of the appellant to make a disclosure in the return that too without any tangible evidence or material on record

and also without supplying reasons recorded in writing for the purposes of reassessment.

4. For that the learned assessing officer has erred in passing an order of assessment *ex parte* to the best of his judgement under section 144 of the Act notwithstanding the fact that the notice issued for the purposes of assessment were not complied with only for want of service.

5. For that the learned assessing officer has erred in rejecting the books of accounts under section 145 (3) of the Act merely on the ground that the notices were not complied with notwithstanding the fact that such failure are only attributable to the service of notice.

6. For that the learned Commissioner of Income Tax (Appeal) has erred in confirming the *ex parte* order of assessment notwithstanding the fact that the notice issued for the purposes of assessment were not complied with only for want of service.

7. For that the learned Commissioner of Income Tax (Appeal) has erred in confirming addition on account of net profit from rice mill at 48,17,388 at the rate of 8% on estimate notwithstanding the fact that the addition was made on estimate only on the ground of alleged non-compliance to the notice without taking notice of the fact that the turnover and also the expenditure incurred in relation thereto were amenable to proper verification with reference to the books of accounts maintained in the regular course of business and that the same could not be submitted only for want of proper service of notice and that necessary particulars in respect thereof were disclosed in the return of income itself.

8. For that the learned Commissioner of Income Tax (Appeal) has erred in confirming the addition on account of net income from contract work amounting to 26,11,502 at the rate of 8% of the gross receipt notwithstanding the fact that the addition was made on estimate only on the ground of alleged non-compliance to the notice without taking notice of the fact that the turnover and also the expenditure incurred in relation thereto were amenable to proper verification with reference to the books of accounts maintained in the regular course of business and that the same could not be submitted only for want of proper service of notice and that necessary particulars in respect thereof were disclosed in the return of income itself.

9. For that the learned Commissioner of Income Tax (Appeal) has erred in confirming the addition on account of income from undisclosed sources invested in property amounting to 24,05,535 merely on the ground of alleged non-compliance to the notice notwithstanding the fact that the investments were made out of its income chargeable to tax and that the same was disclosed in the return of income.

10. For that the learned Commissioner of Income Tax (Appeal) has erred in confirming the addition on account of agricultural income amounting to 125,700 assessed as undisclosed income only on the ground that evidence in support thereof were not furnished notwithstanding the fact that agricultural income do not constitute income chargeable to tax or even otherwise are only subject to marginal rate of tax and that the same to constitute undisclosed income.”

11. For those other various reasons which may be urged at the time of hearing.”

2.2 It is seen that the Ld. AO passed an order u/s 147/144 of the Act since the assessee did not make any compliance to notice u/ s 148 of the Act dated 12.03.2019. It is recorded in the Ld. AO's order that there was absolutely no compliance made by the assessee to any of the notices and therefore, the Ld. AO proceeded to pass his order in an exparte manner.

3. Before the Ld. CIT(A) also, the assessee did not make any presentation in response to as many as four notices issued, leading to the confirmation of addition made by the Ld. AO.

4. Before us, the Ld. AR argued that the assessee never received the notices sent by the Ld. CIT(A) and hence did not have any opportunity to present the case before him. He further stated that the additions made by the Ld. AO are purely on the ground that there was no compliance to the notices issued by him.

4.1 The Ld. DR relied on the orders of authorities below.

5. We have considered the documents before us and heard the Ld. AR/DR. It is felt that in the interest of justice, the assessee deserves another chance to present the facts before the Ld. AO for both of the years in appeal before us. We accordingly remand the matter to the file of Ld. AO for fresh assessment, after giving an opportunity being heard. The two appeals are accordingly allowed for statistical purposes having been remanded back to the Ld. AO.

6. In the result, these two appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the court on 01.01.2025

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 01.01.2025.
AK, PS

Copy of the order forwarded to:

1. Pawan Kumar
2. ACIT, Circle-2(1), Begusarai
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches