



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.562/CTK/2024**  
Assessment Year : 2017-18

Dibakar Chakargunathpur, Nikirai, Kendrapara	Swain, Chhoti	Vs.	ITO, Ward, Kendrapara.
PAN/GIR No.BBNXPS 2582 N			
<b>(Appellant)</b>		..	<b>( Respondent)</b>

Assessee by : Shri S.K.Sarangi, CA  
Revenue by : Shri S.C.Mohanty, Sr DR

**Date of Hearing : 09/01/2025**  
**Date of Pronouncement : 09/01/2025**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 17.8.2023 in Appeal No.CIT(A),Cuttack/10899/2019-20 for the assessment year 2017-18.

2. Shri S.K.Sarangi Id AR appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

3. The assessee has challenged the appellate order on the strength of following grounds of appeal:

"1. For that order u/s.250 of the I.T.Act dated 17.8.2023 as passed by the Id CIT(A) NFAC is illegal and arbitrary on the facts and in the circumstances of the case.

2. For that Id CIT(A) is not justified to confirm addition of Rs.44,92,000/- towards cash deposits in the bank accounts of the assessee as un-explained cash credit on the facts and in the circumstances of the case.

3. For that estimation of net profit @ 6% on the turnover of Rs.5,16,06,634/- and consequential addition of Rs.38,96,392/- (Rs.30,96,398/- determined by Id AO) as sustained by the Id CIT(A) is illegal, high and excessive on the facts and in the circumstances of the case."

4. The appeal is delayed by 423 days. The assessee has filed condonation petition supported by affidavit stating the reasons that due to oversight of the Id counsel for the assessee, the delay was occurred though the order was delivered to Id counsel for filing of appeal on time. After considering the petitions and hearing the parties, we are satisfied that the assessee had reasonable cause for filing the appeal late and, therefore, we condone the delay of 423 days and admit the appeal for adjudication on merits.

5. Ground No.1 of appeal is general in nature.

6. Ground No.2 relates to addition of Rs.44,92,000/- made u/s.69A of the Act. Ground No.3 relates to estimation of income by applying 6% profit rate on declared turnover resulting into the addition of Rs.30,96,398/-. Since both the grounds of appeal are inter-connected, therefore, these are canvassed together for the sake of convenience.

7. Brief facts of the case are that the assessee is an individual carried on business of IMFL. Return of income was filed on 29.3.2018 at an income of Rs.10,79,750/- and the assessment was completed by the Assessing Officer at an income of Rs.74,38,400/- by making various additions as stated above. Ld CIT(A) dismissed the appeal of the assessee. Thus, the present appeal is filed before us.

8. During the course of hearing, Id AR submits that the books of account of the assessee were duly audited and the audit reports were filed. The Assessing Officer while invoking the provisions of section 145(3) of the Act, has observed that the assessee has made cash sales and cash books and ledgers were not produced before the Assessing Officer. As per Id AR, the books of account were very well available with the assessee. However, as the details of sales registers have already been submitted to the Excise Department, they could not be available for examination by the Assessing Officer. With regard to estimation of income, Id AR submits that estimation was on higher side though the Assessing Officer has stated it reasonable, however, had not cited any single case on record for application of such high profit. With regard to addition of Rs.44,92,000/- deposited in the bank account maintained by the assessee during the period from 9.11.2016 to 30.12.2016, the Assessing Officer has made addition of the amount deposited in SBNs without confirming these facts from the Bank. The assessee is dealing in liquor business, where sales have been made in cash

and the cash realizations were deposited in the bank account on regular basis. Once the books of account have been rejected and income is estimated on the turnover declared by the assessee, which is much more than the amount of cash deposited in the bank during demonetization period, he requested that no separate addition for cash deposit be made as main source from the sale of liquor on which income has already been estimated by the Assessing officer. He further submits that it is not alleged by the department that the assessee has any other source of income from which, the assessee had deposited the amount in the bank. He prayed that the addition of Rs.44,92,000/- be deleted and the income estimated by applying 6% profit rate on the turnover of Rs5,16,06,634/- be reduced to a reasonable profit rate.

9. On the other hand, Id Sr DR vehemently supported the orders of lower authorities and submitted that the assessee has not produced any books of account and the Assessing officer is very much reasonable in making estimation of income by applying 6% profit rate which is in line with similar line of business. With regard to Id AR's argument that once books of accounts were rejected, no further addition could be made, Id Sr DR relied on the judgment of Hon'ble Supreme Court in the case of CIT vs Devi Prasad Vishwanath (1969) 72 ITR 194 (SC) and requested that the assessee should explain the source of cash deposit during the demonetization period and since the assessee has failed to do so, the Assessing Officer has rightly

made the addition and the order of the Id CIT(A) confirming such addition be upheld.

10. We have considered the rival submissions and perused the record of the case. It is an undisputed fact that the assessee is dealing in IMFL, where most of the sales were made in cash. The assessee is bound to deposit the sales registers to the Excise Authorities after the expiry of the licence period, therefore, day to day sales as declared by the assessee has already been verified by the Excise Department and same has not been disputed by the Assessing Officer also. Since sales were made in cash, the amount deposited during the demonitisation period of Rs.44,92,000/- were the sales consideration and the department has not filed any evidence that the entire amount of Rs.44,92,000/- were SBNs. It is also relevant to mention here that the turnover declared by the assessee was Rs.5,16,06,634/-, which is much higher than the cash deposit during the demonetization period. With regard to estimation of income, we are in agreement with the Assessing officer that in absence of day to day bills and vouchers with regard to cash sales etc, the book results cannot not be accepted , therefore, we uphold the order of the Assessing Officer in rejecting the books of account u/s.145(3) of the Act. However, looking into the facts of the case, income estimated by applying profit rate seems to be higher side and in our considered view the profit rate @ 3% of total turnover of Rs.5,16,06,634/- would be reasonable and would meet the

ends of justice. We accordingly direct the Assessing Officer to compute the profit rate @ 3% of turnover of Rs.5,16,06,634/- and the balance addition is hereby deleted.

11. With regard to addition of Rs.44,92,000/-, the decision of Hon'ble Supreme Court in the case of Devi Prasad Vishwannath (supra) relied upon by Id Sr DR, wherein, it was held that where there is an unexplained cash credit, it is open to the Assessing Officer to examine and made the addition even if the income is estimated. We have perused the order of the Hon'ble Supreme Court in the case of Devi Prasad Vishwannath (supra). In that case, there was cash deposit of Rs.20,000/-, which has no relation with the business of the assessee and in these circumstances, the Hon'ble Supreme Court was of the view that the addition made u/s.68 of the Act on such deposit could separately be made even if the income is estimated by invoking the provisions of section 145(3) of the Act (old section 13 of the Indian Income Tax Act). Further, the Hon'ble Supreme Court had observed that this has to be seen depending upon the facts of each case and cannot be straight forward applied in all the cases. In the instant case, as it is evident that the bank deposits were made by the assessee out of IMFL business sales proceeds and has direct relationship, therefore, the ratio laid down by Hon'ble Supreme Court in the case of Devi Prasad Vishsnnath (supra) are not applicable. It is also an undisputed fact that no other source of income was brought on record, therefore, it could be safely

presumed that what has been deposited during demonetization period was out of business receipts only. Looking into the facts of the case, we are of the considered view that the source of cash deposit in the bank is fully explained and accordingly, the addition of Rs.44,92,000/- made u/s.69A of the Act is deleted.

12. In the result, appeal of the assessee stands partly allowed.

Order dictated and pronounced in the open court on 09/01/2025.

Sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

sd/-  
**(Manish Agarwal)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 09/01/2025  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Dibakar Swain,  
Chakargunathpur, Chhoti Nikirai,  
Kendrapara
2. The Respondent: ITO, Ward, Kendrapara
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT,
6. Guard file.

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**By order**

Sr.Pvt.Secretary  
**ITAT, Cuttack**