

आयकर अपीलीय अधिकरण
पटना पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 502/PAT/2024
Assessment Year: 2017-18**

Raj Kumar Gupta (Appellant)	Vs.	NFAC, Delhi (Respondent)
PAN: BBAPG2887D		

Appearances:

Assessee represented by : None.

Department represented by : Ashwani Kumar, Sr. DR.

Date of concluding the hearing : January 27th, 2025

Date of pronouncing the order : January 29th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2017-18 dated 19.06.2024,

which has been passed against the assessment order u/s 144 of the Act, dated 22.11.2019.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. For that the order passed under section 250 dated 19/06/2023 is wholly illegal and bad in law.

2. For that the Ld. CIT (A) has erred in law as well as on fact in upholding addition of Rs.711000 as unexplained money under section 69A, though out of the cash deposit of Rs. 11591500, sum of the cash deposit of Rs. 1,08,80,500 has been considered as business income and tax @8% by the AO but cash deposit during demonetization period has been not considered explained.

3. For that the Ld. CIT(A) has erred in passing a vague and cryptic order as Ld. Cit has uphold the addition of Rs. 711000 as unexplained cash credit though the present case is the addition as unexplained money u/s 69A.

4. For that the Ld. CIT(A) has erred in passing the order without giving the opportunity of being heard which is against the principle of natural justice.

5. For that whole order is bad in fact and the law of the case and is fit to be quashed.

6. For that order grounds, if any, shall be urged at the time of hearing of the appeal.”

3. Brief facts of the case are that notice u/s 142(1) of the Act was issued on 17.03.2018 requiring the assessee to prepare a return of income but the assessee failed to furnish the same for the impugned assessment year. On the basis of data analytics and information available, the Ld. AO noted that the assessee had deposited a sum of Rs. 1,15,91,500/- in the bank account in Uttar Bihar Gramin Bank, Hajipur, A/c No. 1009151130000322 and during the demonetization period from 09.11.2016 to 31.12.2016 a sum of Rs. 16,54,000/- was deposited. Since no compliance was made to the notice u/s 142(1) of the Act therefore, the assessment was made u/s 144 of the Act. The



assessee was found to be engaged in the business activity and had deposited total Rs. 1,15,91,500/- during the FY 2016-17 out of which Rs. 7,11,000/- was deposited during the demonetization period in the old currency which was treated as unexplained money and the remaining cash deposit of Rs. 1,08,80,500/- in the bank account was treated as the assessee's turnover of the business for which the assessee had not filed the return of income nor offered any tax and 8% of Rs. 1,08,80,500/-, which worked out to Rs. 8,70,440/- was considered as the business income of the assessee and assessed accordingly.

4. None appeared in the course of the hearing before us and the appeal was heard with the assistance of the Ld. Sr. DR. It is noted that the assessee has taken the ground that the cash deposit during the demonetization period has not been considered. We also note that the order of Ld. CIT(A) in upholding the addition is a cryptic one, the operative part of which is as under:

“Having considered the appellant's submissions and the facts of the case. I hold the following views: It is found from the submission of the appellant, due to his lack of knowledge about income tax he could not file his return of income A.Y. in question. During the course of the assessment proceedings the A.O. has assessed the appellant's income on the basis of available bank transactions. AO has also identified Rs. 870440/- as business income and the balance amount of Rs. 7,11,000/- as unexplained cash credit but the appellant in his submission stated that the total transaction found in bank a/c was his business transaction. The appellant also stated that his business is best on 100% cash transaction. For the appellant considering the provisions of section 44AD of the Act, paid a tax amount of Rs. 71,070/- . Due to the non-availability of the supporting documents and the facts of the case the A.O. has rightly assessed the income of the appellant at Rs. 15,81,440/-.

Considering the circumstances, I have no reason to interfere with the decision of the A.O. Thus, dismissed the appellant's appeal.

As such, the appeal of the appellant is dismissed.”



5. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before this Tribunal.

6. During the course of hearing and with the assistance of the Ld. Sr. DR, it was observed that the Ld. AO had applied the net profit rate of 8% for the rest of the year and only the cash deposited during the demonetization period was treated as unexplained, which is not correct. Merely because the money was deposited during the demonetization period, the same, in the absence of any evidence to the contrary, cannot be treated as unexplained deposit; more so when the deposits during the rest of the financial year are being treated as the business income of the assessee. As the Ld. AO found that the assessee was carrying on business and as also appears in the order of the Ld. CIT(A) when in the course of the appeal, the assessee had stated that the business was based on 100% cash transactions and total transactions in the bank account were due to business transactions, therefore, on the principle of consistency and without giving reasons why the specific amount was held to be not pertaining to the business, once the deposits for the rest of the year were being treated as part of the business income, the deposit during the demonetization period could not be excluded and added u/s 69A of the Act merely because they pertained to the demonetization period.

7. Before the Ld. CIT(A) the assessee filed the written submission claiming that his entire business was in cash. That being so and considering the fact that for the rest of the year net profit rate of 8% has been applied, the Ld. DR had no objection in case 8% of the net profit was applied on the entire deposit in the bank account. Hence, instead of adding a sum of Rs. 7,11,000/- u/s 69A of the Act and the addition



on account of business income at Rs. 8,70,440/-, the Ld. AO is directed to apply the net profit rate of 8% on the entire bank deposits of Rs. 1,15,91,500/- which works out to Rs. 9,27,320/- and assess the total income at Rs. 9,27,320/- instead of Rs. 15,81,440 assessed. Accordingly, the Ld. AO is directed to apply the rate of 8% of the net profit on the entire deposits of Rs. 1,15,91,500/- and grant necessary relief out of the addition made at Rs. 7,11,000/- which is reduced to Rs. 56,880/- and the rest of the addition u/s 69A of the Act is hereby deleted resulting in relief of Rs. 6,54,120/-. Hence, ground no. 2 is allowed and ground no. 3 is partly allowed. Ground nos. 1, 4, 5 & 6 are general in nature and do not require any separate adjudication.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 29th January, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 29.01.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Raj Kumar Gupta, Purani Bazar, Sarai, Vaishali, Hajipur, Bihar, 844125.**
2. **NFAC, Delhi.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata