

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.: 362/PAT/2024
Assessment Year: 2014-15**

Sanjay Kumar Shukla (Appellant)	Vs.	ITO, Ward -2(3), Siwan (Respondent)
PAN: CRUPS4078R		

Appearances:

Assessee represented by : None (Adjourned petition filed).

Department represented by : Ashwani Kumar, Sr. DR.

Date of concluding the hearing : January 27th, 2025

Date of pronouncing the order : January 30th, 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 2014-15 dated 06.02.2024, which has been passed against the assessment order u/s 143(3) of the Act, dated 06.09.2016.

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

“1. That Ld.AO failed to issue show-cause notice before making huge addition into the income of appellant and further, he wrapped up the assessment proceedings in just few days, whereas, 116 days were left for him to conduct appropriate enquiry into the matter and to provide sufficient opportunity to the appellant for explaining the transactions and producing evidences, hence assessment made by AO is against the facts, illegal, unjustified, arbitrary and without jurisdiction. This fact was not considered by the Ld. CIT (A).

2. The transactions which were related to business activities of the assessee were not considered as business transactions and added to the total income of the assessee.

3. That the appellant seeks permission to modify and /or add any other ground or grounds of appeal as the circumstances of the case might require or justify.

4. During the assessment stage the Authorised Representative submitted that deposits in accounts are from business transactions. Accordingly the assessment has been completed by the AO treating income @6.16% (as disclosed by assessee itself) on the undisclosed business transaction of accounts of Rs. 1,38,19,485/-. Further the deposits in Andhra Bank (appearing at SI No. 4 &5) were treated as unexplained deposit. The Ld. CIT(A) erred in this also.”

2.1. The assessee has also filed a letter dated 04.04.2024 addressed to the Tribunal stating that the appeal was filed u/s 143(3)/144C of the Act by mistake whereas it should have been filed u/s 143(3) of the Act only and has requested for treating the appeal as filed against the order u/s 143(3) of the Act and allow relief to the assessee.

3. Brief facts of the case as culled out from the Ld. CIT(A)'s order are that during the year, the assessee was engaged in the business of trading of cloths and had filed the return of income on 30.09.2014, showing total income of Rs.3,35,690/-. The case was selected for limited scrutiny and the order under section 143(3) of the Act was passed on



06.09.2016. The assessee claims to be residing at "M/s Maa Vaishno Saree Centre, Jhari Sha Baba Road Sandila, Hardoi-241204" for more than 5 years and was doing trading business under the name and style of M/s Maa Vaishno Saree Centre at the aforesaid address for more than 5 years. The assessee opened and operated all bank accounts at Sandila, Hardoi and none of the bank accounts was opened or operated at Siwan. The Ld. AO completed the assessment on 06.09.2016 assessing the total income at Rs. 49,82,130/- on the basis of the deposits in the 4 bank accounts. The Ld. AO concluded that the deposits in HDFC Bank and State Bank of India were on account of business transactions not accounted for in the books of account and accordingly the income from these transactions was assessed by applying gross profit rate as per the books of account @ 6.16% on the total credits in these two bank accounts and an addition of Rs. 8,51,280/- was made. Since the bank account with Andhra Bank (A/c No.208311100000229) was not related to the business and the assessee failed to explain the nature of the deposits, the total deposits in this account were brought to tax after excluding the interest credited, which had already been offered to tax and an addition of Rs. 37,37,774/- was made. In respect of the 2nd account in Andhra Bank, total deposits during the year at Rs. 44,200/- were treated as income and added to the total income. Aggrieved with the assessment order, the assessee filed an appeal before Ld. CIT(A) who called for the remand report from the Ld. AO. In the remand report, the Ld. AO mentioned that in the later part of the order sheet, the assessee accepted that source of deposits in Andhra Bank bearing Sl. Nos. 4 and 5 was not explained. Accordingly, the assessment was completed by the Ld. AO treating the income @ 6.16% on the undisclosed business transactions of accounts. Even at the remand report stage no compliance had been made nor any reply was received



for the remand report which was sent to the assessee by the Ld. CIT(A). The Ld. CIT(A) treated ground nos. 1 & 4 as on account of procedural issues and since no counter argument to the replies of the Ld. AO was filed, therefore, the grounds were dismissed. As regards the grounds relating to deposits in the banks and the estimation of income not being called for, the assessee submitted before the Ld. CIT(A) that he had enough cash to make the deposits in the banks and, therefore, the estimation of income was not called for. However, since no evidence had been filed to substantiate this claim and from the assessment order it was seen that the assessee accepted during assessment that he had not accounted for 4 out of the 5 bank accounts operated by him, therefore, this ground of appeal was also dismissed.

4. None appeared on behalf of the assessee but an adjournment application was filed. However, the adjournment was not allowed. The Ld. CIT(A) has confirmed the addition as no submission was made by the assessee. It appears that proper representation was not made before the Ld. AO and while the deposits in SBI A/c No. 32734717743 amounting to Rs. 78,97,485/- and HDFC A/c No. 5010000092233 amounting to Rs. 59,22,000/- were not reflected in the audit report but the assessee admitted that the transactions were business transactions, therefore, gross profit rate @ 6.16% was applied. However, in respect of the other 2 bank accounts in Andhra Bank, the entire deposits were added. The assessee has contended in the grounds of appeal that the Ld. AO failed to issue a show cause notice before making huge additions and adequate opportunity was not provided. No reply on the remand report was filed before the Ld. CIT(A) as well. Therefore, in the interest of justice and fair play it is considered to imperative to set aside the order of the Ld. CIT(A) and restore the appeal to the Ld. CIT(A)



who shall allow one more opportunity of being heard to the assessee and after considering the reply of the assessee, decide the appeal on the additions of Rs. 37,37,774/- and Rs. 44,200/- upheld by him. The assessee shall file evidence in his possession to substantiate the claim that the transactions related to the business and also for the relief claimed and the Ld. CIT(A) shall also provide an opportunity of being heard to the Ld. AO as per Rule 46A of the Income Tax Rules, 1962.

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

Order pronounced in the open Court on 30th January, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 30.01.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Sanjay Kumar Shukla, Jhari Sha Baba Road, Sandila, Hardoi, Uttar Pradesh, 241204.**
2. **ITO, Ward -2(3), Siwan.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata