

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

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.632 and 633/Nag./2024**  
(Assessment Year : 2015-16 and 2018-19)

Income Tax Officer  
Ward-4(3), Nagpur

..... Appellant

v/s

Naresh Narayandas Ramrakhyani  
106, Radhe Apartment, Bhandewadi  
Pardi, Nagpur 440 008 PAN-ASFPR5384K

..... Respondent

Assessee by : Shri Naresh Gupta  
Revenue by : Shri Sandipkumar Salunke

Date of Hearing - 03/02/2025

Date of Order - 05/02/2025

**ORDER**

**PER K.M. ROY, A.M.**

This appeal by the Revenue is against the impugned order dated 22/10/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2015-16.

2. In its appeals, the Revenue for A.Y. 2015-16 and 2018-19, has raised following grounds:-

*"Ground-1. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) had erred in setting aside the assessment order as per the provisions of section 251(1)(a) of the Income Tax Act, 1961, when the assessee was responsive during the course of assessment proceedings.*

*2. Any other ground that may be raised during the course of appellate proceedings."*

3. For A.Y. 2015-16, we deem it expedient to reproduce below the impugned order passed by the learned CIT(A) under challenge:-

"4. As per the information available with the Income Tax Department, the appellant had made cash deposits amounting to Rs. 1,45,00,000/- in his bank account held with M/s Mangaldeep Multi State Urban Co-operative Society Ltd. during the Financial Year 2014-15. Based on this information, the AO initiated proceedings u/s 147 of the Act by issuing notice u/s 148 of the Act dated 27.03.2021 with the prior approval of the competent authority. The notice was duly served on the appellant through registered post. The appellant did not file his return of income for AY 2015-16 in response to the notice u/s 148 of the Act. The AO issued notice u/s 142(1) of the Act on 24.02.2022 in response to which the appellant filed written submission before the Assessing Officer. In reply the appellant has said that he has become member of M/s Mangaldeep Multi State Urban Co-operative Society Ltd. by paying Rs.25,000/-which was paid by Mr. Naresh Shivlal Rajai. The appellant claimed that Mr. Naresh Shivlal Rajai has misused his KYC and done the transaction in his name. The AO has carefully considered the submission and found the explanation to be not acceptable and completed the assessment on the basis of information/details available on record u/s 147 r.w.s. 144B of the Act. Therefore, the AO treated the said cash deposits amounting to Rs. 1,92,98,275/- as undisclosed income of the appellant and passed assessment order u/s 144 r.w.s. 147 of the Act dated 29.03.2022 determining the assessed total income at Rs.1,92,98,275/-.

4.1 During the appeal proceedings, several opportunities were provided to the appellant to substantiate its grounds of appeal on following dates:

| Sr. no. | Date of hearing(s)                |
|---------|-----------------------------------|
| 1.      | 21/08/2023                        |
| 2.      | 09/08/2024                        |
| 3.      | 22/08/2024                        |
| 4.      | 30/08/2024                        |
| 5.      | 06/09/2024                        |
| 6.      | 01/10/2024<br>(final opportunity) |

4.2 Against all these notices, there was no response from the assessee. A final opportunity i.e. show-cause notice was issued on 24.09.2024 and the appellant was informed that if no reply is received on or before 01.10.2024, the appeal would be disposed of based on the materials available on record. The appellant has not responded to the hearing posted. Despite providing numerous opportunities, the appellant did not file his submission. As has been brought out above, sufficient time is allowed to the appellant to submit the response online. However, it is evident that the appellant has not availed any of the opportunities of being heard under the principle of natural justice and

also was not interested in filing any details during the appellate proceedings in support of his claim. In response to the notices issued, the assessee has not furnished any submissions in support of his claim, to prove why the addition made by the Assessing Officer should not be sustained. In such a situation, the only conclusion which can be drawn is that the appellant is not interested in pursuing the appeal.

4.3. It has been held by the Hon'ble Supreme Court in the case of *B.N. Bhattacharjee and Another* (118 ITR 461) (at pages 477 & 478) that appeal does not mean merely filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of *M/s Chemipol vs. Union of India* in Excise Appeal No. 62 of 2009.

4.4. This appeal has been filed by the appellant claiming that the action of the Assessing Officer is not supported by facts and laws and that it is unjust. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The 'burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Thus, in cases where a particular receipt is sought to be taxed as income, the initial onus is on the Assessing Officer to prove that it is taxable. Where, however, the assessee claims exemption, the burden is on the assessee to prove it to be exempt. Same is the position in case of all allowances, deductions, claims or loss, etc. Since an appeal is nothing, but the claim of the appellant that he has been unduly unjustifiably taxed, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

4.5 From the conduct of the appellant, as per the facts noted above, it is clear that the appellant does not wish to pursue the appeal. Even otherwise, on merits also, I do not see any reason to differ with the findings of the AO. The AO was in receipt of information that the appellant had made cash deposits in his bank account to the tune of Rs.1,92,98,275/- during the FY 2014-15. During the assessment proceedings, the appellant failed to furnish details regarding the source of cash deposits despite being provided various opportunities by the AO. The appellant has not furnished any documentary evidence either during the assessment proceedings as well as during the present appeal proceedings. However, the appellant stated that the assessment was completed without giving any proper opportunity of hearing. Therefore, in the interest of fairness and justice, the AO is directed to verify the cash/credit entries made in Current bank account of the appellant and find out who has deposited Cash and who is the owner of the cash deposited. The AO is also directed to verify the withdrawals made by the appellant and the destination of the same into any asset. In case it is proved that the appellant is a "benamidar" of any other person necessary legal action may be taken by the AO after conducting due factual enquiries. In case, the appellant remains non-cooperative during these proceedings also, the AO may proceed to treat the cash deposits as unexplained as per law and determine the tax demand applying the correct rates of tax.

4.6 The AO may follow the line of action as described below:

- a) The AO is directed to delve into the nature of business of the appellant to see whether the operations of the business are carried out in cash or he is capable of generating that much of cash through his business activities by calling bank account statements.
- b) To verify the source for cash deposits alongwith counterfoils of cash deposits made.
- c) Once again verify the KYC documents and application form of the applicatnt while opening the bank account.
- d) Details of cash withdrawals alongwith counterfoils and cash withdrawals slip of AY 15-16 & 18-19.
- e) The AO also may verify details of loan obtained by the appellant in his name or in the name family members in the above mentioned bank.
- 1) The AO may verify the locker facility availed by the appellant or his family members in the above mentioned bank.
- g) The AO may verify the immovable properties held by the appellant provided as collateral security for any loan obtained.
- h) The AO may verify whether Mr. Naresh Shivlal Rajai, Resident of Savitri Nivas, Behind Janta Hall, Chaproo Nagar, Hanuman Chowk, Nagpur-440008, Director of Kingfisher Forex Pvt Ltd having PAN AADCK7939A is having bank account in M/s Mangaldeep Multi State Urban Co-operative Society Ltd.
- i) The AO also may verify any FIR lodged in this matter or not.
- j) The AO may also examine if the appellant is in the business of unaccounted money lending.
- k) The AO is directed to verify all the credit entries into the bank account and examine the cash trail as well as credit trail.
- 1) While doing the above scrutiny the AO is directed to attach the properties of the appellant or any person connected to this scrutiny proceedings to enforce compliance following the due procedure laid down in the Income Tax Act, 1961.
- m) If the appellant is found to be the "benamidar" of Mr. Naresh Shivlal Rajai or any other person the same may be informed to the Benami Unit of the Department.
- n) If there is complete non-cooperation by the appellant, the non-cooperation may be recorded in detail in the record along with documentary evidence collected from the above bank.
- O) Similarly, after conducting third party enquiry, the collected details may be furnished to the corresponding AO for taking further necessary action in the case of Mr. Naresh Shivlal Rajai or any other person involved.

4.7 Thus, the case of the appellant is set aside to the file of the AO for de-novo consideration.

5. In the result, the appeal is allowed for statistical purposes.”

4. In A.Y. 2018-19, the learned CIT(A) has made following observations vide Para-4 and 4.6 to 4.7 of its order, which is reproduced below:-

"4. As per the information available with the Income Tax Department, the appellant had made cash withdrawals through cash as well as bearer cheques amounting to Rs.23,49,99,360/- in his current bank account during the Financial Year 2017-18. Based on this information, the AO initiated proceedings u/s 147 of the Act by issuing notice u/s 148 of the Act dated 26.03.2022 with the prior approval of the competent authority. The notice was duly served on the appellant through registered post. The appellant filed his return of income declaring total income of Rs.5,49,070/- on 30.11.2022 for AY 2018-19 in response to the notice u/s 148 of the Act. The AO issued notice u/s 142(1) of the Act on 26.10.2022 in response to which the appellant filed written submission before the Assessing Officer. In reply the appellant has said that he has withdrawn Rs.23,49,99,360/- for goods purchases and business expenses from farmers. Two challans of Rs.15,000/- & Rs.11,504/- are attached to substantiate the claim. The AO has carefully considered the submission and found the explanation to be not acceptable and completed the assessment on the basis of information/details available on record u/s 147 r.w.s. 144B of the Act and the AO treated the said cash withdrawals made amounting to Rs.23,49,99,360/- as unexplained expenditure u/s 68 of the Act of the appellant and passed assessment order u/s 144B r.w.s. 147 of the Act dated 29.03.2023 determining the assessed total 55,48,430/- income at Rs.23,55,48,430/-

4.1 to 4.5 .....

4.6 It is seen from claim of the appellant that he is dealing with the purchases and sale agricultural products in cash. However, as the AO rightly pointed out that the volume of such transactions would have to have some concrete documentary evidence. The AO also has tried his best to get some evidence in support of the expenditure claimed. The AO's findings in the assessment order are reproduced below in brief so as to understand the non-compliant behaviour by the appellant.

Further, there is no continuity in filing ITR though such heavy transactions have been undertaken by the assessee and it is only when the information was filtered to the Department and notices were issued to the assessee that he has responded by trying to create some evidence to authenticate the source and reasons for the subsequent withdrawal of the amount of Rs. 23,49,99,360/-. Therefore, for the reasons mentioned, the amount of Rs. 23,49,99,360/- is treated as unexplained credit and the same is added back to the income of the Assessee under the provisions of Section 68 r.w.s 115BBE of the Act. I am

*satisfied that the assessee has concealed its true particulars of Income and the penalty u/s 271AAC is initiated separately in this case.*

*4.7 However, a perusal of the trading account of the appellant demonstrates that the appellant has made cash sales of Rs.23,12,02,480/- and cash purchase of Rs.22,68,13,026/-. The opening stock and the closing stock of the appellant is also clearly available. Therefore, in the interest of fairness and justice, the AO is directed to verify the cash/credit entries made in bank account of the appellant. The AO is also directed to verify the credits made into the bank account by cash or otherwise and also verify the withdrawals made by the appellant and the destination of the same. In order to ensure compliance by the appellant, the Assessing Officer is directed to provisionally attach the properties of the appellant or his family members. In view of the above findings and directions, the appeal is set aside to the file of the Assessing Officer for de-novo consideration.*

*5. In the result, the appeal is allowed for statistical purposes."*

5. The direction of the learned CIT(A) are flawed and superfluous, because the Assessing Officer has made the addition as the assessee failed to discharge its onus. The assessee cannot be permitted to improve his cases by permitting a second innings. Moreover, the assessment orders having not been revised under section 263 of the Act cannot be held to be lacking on the aspect of enquiry. The impugned orders passed by the learned CIT(A) for both the years under consideration are set aside and the assessment orders passed by the Assessing Officer for A.Y. 2015-16 and 2018-19 are hereby restored. Accordingly, all the grounds raised by the Revenue in the years under consideration are allowed.

6. In the result, appeals for A.Y. 2015-16 and 2018-19 by the Revenue stand allowed.

Order pronounced in the open Court on 05/02/2025

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Nagpur; and*
- (5) Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur