

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 रakesh मिश्रा, लेखा सदस्य
के समक्ष
Before

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

**I.T.A. No.: 714/PAT/2024
Assessment Year: 2017-18**

Aashirbad Enterprises	Vs.	Income Tax Officer
(Appellant)		(Respondent)
PAN: AAYFA0301N		

Appearances:

Assessee represented by : N. K. Jain, ITP.

Department represented by : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : February 3rd, 2025

Date of pronouncing the order : February 13th, 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 28.11.2024, which has been passed against the assessment order u/s 147/144 of the Act, dated 23.09.2021.



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

“(1) Audited Balance sheet Bank statement Full copy of casebook

(2) Statement of retail invoice register

(3) Detail of Sale during demonization period

(4) Detail of Purchase date wise

(5) 3rd Quarter VAT Return in support of cash deposited in Demonization Period which is supported by sale.

Once again we are producing document which may be kept on your records

Sec 69A is not applicable at all deposit are verified and duly supported by sale which can be verified by VAT 3rd Quarter return and all other Quarterly and Annual return. Bank statement

That all additions were made on submises and estimation without any concrete evidence on recorded which may be quashed.”

3. Brief facts of the case are that the assessee had filed the return of income for AY 2017-18 on 04.11.2017. In the assessment proceedings of Shri Samir Bhowmik, the partner of the Firm M/s. Ashirwad Enterprises, which was selected for Limited Scrutiny for AY 2017-18, it was clarified by him that due to wrong tagging of PAN by the bank, his name was appearing while depositing the cash but in fact the cash belonged to the Firm and was deposited in the bank account of the Firm bearing No. 463720170000277 during the demonetization period, which needed verification. The assessment was reopened by issuing notice u/s 148 of the Act on 04.05.2020. Thereafter, notice u/s 142(1) of the Act was issued which was not complied with. Since the assessee had deposited high value of cash to the extent of Rs. 12,32,000/- by using PAN of its partner instead of its own PAN and did not explain the reason to do so with the supporting documents, it was held by the Ld. AO that it was established that the assessee had nothing to say in this regard and the amount of Rs. 12,32,000/- deposited in bank account



bearing No. 463720170000277 was treated as unexplained money and added u/s 69A of the Act and the total income was assessed at Rs. 13,30,200/- u/s 144 read with Section 147 of the Act.

4. Aggrieved with the assessment order the assessee filed an appeal before the Ld. CIT(A). It was submitted that the income tax return of the firm was audited by the Chartered Accountant well within the prescribed time and filed on 04.11.2017 and a refund of Rs. 14,750/- was granted. In the case of Samir Bhowmik, the partner of the firm, it was clarified that due to mistake of bank, wrong PAN of Samir Bhowmik was appearing in the firm's bank statement for A/c No. 463720170000277 which was rectified by the bank due to clerical mistake and the Ld. AO was informed and evidence of rectification was submitted to the Ld. AO. In response to the notice issued u/s 142(1) of the Act, due compliance was made and audit report, bank statement, copy of cashbook, annual return, copy of VAT quarterly return of 3rd quarter and all of four quarters were all on the income tax record. Written submissions were also filed before the Ld. CIT(A) and deletion of Rs. 1,23,200/- on account of money deposited during the demonetization period added u/s 69A of the Act was requested along with consequential tax and interest relief. The Ld. CIT(A) noted that the appeal was filed late by 847 days approximately and no reason was mentioned for the delay in filing the appeal and since no reason was mentioned for the belated filing of the appeal, the appeal was dismissed on account of being filed beyond the period prescribed under the Act. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before this Tribunal.

5. Rival contentions were heard and the submissions made have been examined. It was submitted in the course of the appeal that the



books of account were audited and nothing adverse was found. The cash book, ledger and audit report were filed. The Bench drew the attention of the assessee to para 2 of the assessment order in which it is mentioned that in response to the show cause notice issued u/s 144 of the Act, the assessee submitted the reply but did not file complete documentary evidence and since the proceedings were getting barred by limitation of time, therefore, the Ld. AO had no other option but to complete the assessment on the basis of the details available on record. It was submitted that the error occurred on account of clerical mistake and the Ld. AO was informed and evidence of rectification was submitted to the Ld. AO. However, the Ld. CIT(A) dismissed the appeal without condoning the delay.

6. We have heard the rival submissions. The assessee could not justify the delay of 847 days in filing the appeal before the Ld. CIT(A) as no explanation or the reason for the delay in filing the appeal before the Ld. CIT(A) was filed and the appeal has been dismissed on account of delay beyond the period prescribed in the Act and no opinion was expressed on the merits of the case. Even before us, the assessee has not filed any justification for the delay of 847 days in filing the appeal but requested for another opportunity. However, considering the facts of the case that the assessee does not gain anything by filing a belated appeal and has stated that his books of account were audited, and since the assessment order is *ex parte* and even the appeal has not been decided on merit, it was considered in the interest of justice by the Bench that another opportunity of being heard may be provided by the Ld. CIT(A). The assessee shall file the reasons for the delay in filing the appeal before the Ld. CIT(A) who shall consider the same and decide the issue of condonation of delay on the application of the assessee and



thereafter decide the appeal on merits in case there is sufficient cause for the delay. This is required as the assessee has submitted that the mention of PAN of the partner Samir Bhowmik occurred on account of clerical error on the part of the bank for which necessary rectification request was made and the Ld. AO was informed accordingly, hence on facts, the assessee has a prima facie case which needs to be adjudicated on merit in case the delay is condoned after analysing the reason for the delay. Hence, the order of the Ld. CIT(A) is set aside and the appeal is restored to him to be decided afresh. The present appeal of the assessee before us is allowed for statistical purposes. The Ld. CIT(A) shall allow an opportunity to the assessee of being heard and also decide the appeal in accordance with Rule 46A of the Income Tax Rules, 1962.

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

Order pronounced in the open Court on 13th February, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 13.02.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Aashirbad Enterprises, Press Road, Forbesganj, Bihar, 854318**
2. **Income Tax Officer.**
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