

IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA BENCH" PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI SANJAY GARG, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 453/Pat/2024
Assessment Year: 2017-18

Sujeet Kumar Singh,

S K Enterprises,
Near Mahesh Nursing Home,
Gola Road, Danapur- 801503
[PAN: AZSPS1726N]

..... **Appellant**

vs.

ITO, Ward 6(1),
Patna

..... **Respondent**

Appearances by:

Assessee represented by : Alok Kumar, Advocate on behalf of
Prasoon Kumar, Advocate

Department represented by : Ashwani Kr. Singal, JCIT

Date of concluding the hearing : 16.01.2025
Date of pronouncing the order : 04.02.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. In this case, there is a delay of 44 days in filing the present appeal. The assessee has filed a petition for requesting condonation of the said delay as under:

"1. That, the CIT Appeal had passed order on 08.03.2024 under section 250 of the Income Tax Act for the assessment year 2017-18. The copy of order of Id. Commissioner of Income Tax Appeal, however, was served on income tax portal through online process. Therefore, there is delay of 40 days in filing appeal by appellant.

2. That, the appellant got ill and has authorized his accountant to look into the business. The accountant has not gone through the income tax portal as such

appellant was not aware about the order by the Commissioner of Income Tax Appeal. Hence appeal was not filed within time. In the month of June appellant made contact with his Chartered accountant for filing return of income, therefore, he came to know about the order passed by the Commissioner of Income Tax. The appellant therefore made contact with his advocate for filing appeal against the order of appellate commissioner. The Advocate took 10 days time in filing appeal. No intentional delay has been made from the part of the appellant rather delay has been made due to circumstances beyond the control of the appellant

3. That, the Hon'ble Apex Court has held in number of judgment that the court should take lenient view in condoning delay, if reasonable cause is shown and effort always should be made to decided the case on merit. In the present case, the cause is reasonable and order is factually illegal, as such, this is a fit case to condone delay. It is therefore, prayed to your honour to kindly condone the delay of 42 days in filing appeal and/or pass such an order/orders as your honour deemed fit and proper.”

1.1 Considering the reasons advanced through this petition, the delay is hereby condoned and this appeal is admitted for adjudication.

2. In this case, the appeal arises from order dated 08.03.2024 passed by the Ld. Commissioner of Income Tax (Appeals) [hereafter ‘the Ld. CIT(A)'], National Faceless Appeal Centre (NFAC), Delhi u/s 250 of the Income Tax Act, 1961 (hereafter ‘the Act’). In this case, the Ld. AO passed an order dated 27.12.2019 u/s 144 of the Act, in an ex parte manner, as the assessee did not make any compliance to the notices issued by the Ld. AO for hearing in the case. Thereafter, the Ld. AO estimated profit from business @ 8% of total receipts of Rs. 3,60,93,643/-. Thereby an addition of Rs 28,87,491/- was made on this account and also an amount of Rs. 52,76,568/- was made as undisclosed deposits during demonetization period.

2.1 Aggrieved, the assessee approached the Ld. CIT(A), where also he could not succeed as there was no compliance by him to as many as 5 notices of hearing issued by Ld. CIT(A).

2.2 Further aggrieved, the assessee has filed the present appeal with the following grounds of appeal:

“1. For that the whole of the appellate order is bad and illegal in view of the fact that the appellate commissioner has passed ex-parte order without providing

opportunity to the appellant and also without considering the document and evidence available on record as such the order under challenge is against the principle of natural justice.

2. For that the dismissal of the appeal on the ground of non-prosecution is otherwise bad and arbitrary in view of the fact that the appellant has already taken the grounds but the ld. Commissioner without considering these fact passed order without providing opportunity to the petitioner.

3. For that addition on account of cash deposit in bank is bad and illegal as the cash were the sale proceed of business which the appellant kept with himself for smooth running of business but due to demonetization, the appellant had deposited the same in the bank, as such, it were not unexplained deposit rather the appellant has sufficient explanation regarding source of deposit.

4. For that the addition made by the assessing officer of 52,76,568/on account of undisclosed investment under section 69A of the Act is bad and illegal and also against the provision of law because the said cash is sell proceed of mobile sim which the appellant has kept in hand and also recorded in the books of account as such, the nature and source of money/cash is known and explainable.

5. For that the estimate of income by the assessing officer at the rate of eight percent and confirmed by ld. Appellate Commissioner is bad and illegal in view of the fact that in the similar nature of business of other assessee the income was disclosed and taken at the rate of one and half percent of receipt, that too without making any deduction towards the cost of running of the business, hence addition made at the rate of 8 percent is bad and arbitrary.

6. For that the computation of income under section 115 BBE and levy of tax on that basis is bad and illegal in view of the fact that the assessee was carrying on business and amount deposited in bank was part of sell of sim and recharge vouchers, as such, addition on account of unexplained investment and levy of tax of higher rate is unjust and unreasonable as such liable to delete.

7. For that the appellate commissioner has failed to construe that the assessing officer in one hand has made addition at the rate of 8 percent on whole of the bank deposit however in other hand assessed income of Rs.52,76,568/- under section 69A for the same business receipt which per se is unreasonable and against the provision of law.

8. For that estimate of income at the rate of 8 percent is highly excessive and unreasonable in view of the fact in the line of business of sell of sim or recharge voucher, the appellant could earn gross income to the extent of one to two percent of gross receipts not more then that.

9. For that the grounds taken herein above are not prejudicial to each other.

10. For that any other grounds may be taken at the time of hearing.”

3. Before us, the Ld. AR pleaded that the assessee is a dealer in Cell Phone re-charge vouchers etc. and used to keep cash accruing from business for smooth operations. However, during demonetization period

he deposited all the cash available with him. The Ld. AR also averred that estimating profit @ 8% of receipts was on the very higher side. He requested for another chance to prove his case before the Ld. AO.

3.1 The Ld. DR relied on the orders of authorities below.

4. We have carefully considered the rival submissions and gone through the documents before us. We are persuaded by the argument of the Ld. AR that due to ignorance of tax procedures, this assessee has suffered the impugned additions. Accordingly, in the interest of substantive justice, it is felt that the assessee deserves another chance to prove his case before the Ld. AO. Accordingly, this case is remanded back to Ld. AO for fresh assessment. Needless to say, while the Ld. AO would give adequate opportunity to the assessee, the assessee on his part would do well to avail of opportunities to present his case.

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

Order pronounced in the court on 04.02.2025

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 04.02.2025
AK, PS

Copy of the order forwarded to:

1. Sujeet Kumar Singh
2. ITO, Ward 6(1), Patna
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches