

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.: 464/PAT/2024
Assessment Year: 2017-18**

Ram Kumar <i>(Appellant)</i>	Vs.	ITO, Ward-3(5), Saharsa <i>(Respondent)</i>
PAN: BDFPK8001C		

Appearances:

Assessee represented by : K N Prasad, Adv. and Vishal Kr. Adv.

Department represented by : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : February 4th, 2025

Date of pronouncing the order : February 19th, 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 28.11.2023,



which has been passed against the assessment order u/s 143(3)/147 of the Act, dated 03.12.2019.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 156 days. An application seeking condonation of delay has been filed by the assessee for condoning the delay stating as follows:

“1. That this application is filed for condonation of delay in the filing of the present appeal.

2. That at the very outset the appellant offers unconditional apology for the delay caused in the filing of present appeal.

3. That the Order of learned CIT(A) has been communicated on email id of previous lawyer who has not communicated the same to the assessee and as such the assessee was not aware of any order passed by learned Commissioner of Income Tax (Appeals).

4. That the petitioner states that the order in appeal was passed by the learned Commissioner of Income Tax (Appeals), Patna on 28.11.23. The appellant in view of the provisions as contained in the act was required to file the present appeal within a period of 60 days from the date of the order. Thus, there is a delay of approximately 154 days in the filing of the present appeal.

5. That it is respectfully submitted that the delay in filing appeal is caused due to not communication of CIT(A) Order to the assessee and also that the assessee was seriously ill from last few months and was advised complete bed rest and as such the assessee could not present the appeal before the Hon'ble Tribunal in stipulated period of time. The assessee was prevented by sufficient cause in presenting this appeal before this Hon'ble Tribunal in stipulated period of time.

6. That the appellant submits that since the delay in filing of the appeal is due to reasonable cause. The appellant submits that the delay in filing of the present appeal be condoned and the appeal be heard on merits.”

1.2. The assessee has also filed an affidavit requesting for condonation of delay on account of serious illness and being on bed rest. Considering the reasons in the application seeking condonation of delay and the affidavit, we are satisfied that the assessee had a reasonable and



sufficient cause and was prevented from filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication on merits.

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

“1. For that the grounds of appeal hereto are without prejudice to each other.

2. For that the Assessment Order as passed by the lower authorities is bad in law. No reasonable opportunity of being heard has been allowed by the learned CIT(A).

3. For that the initiation of proceeding u/s 147 and issue of notice u/s 148 is arbitrary, unjustified, void ab-initio in bad in law. The assessment as complete din pursuance thereof is fit to be cancelled/annulled.

4. For that in the facts and circumstances of the case the department is not justified in making addition of Rs. 17,25,000/- by resorting the provisions of section 69A of the Act. The impugned cash deposit during the period relevant to Assessment Year 2017-18 as depicted in the Assessment Order are not as such. During the demonetization period the assessee deposited only Rs. 1,50,000/- (Rs. 70,000/- in Axis Bank, Supaul, A/c: 91301003118389 and Rs. 80,000/- in Axis Bank, Supaul A/c: 9150200401718823). No cash has been deposited in PNB during the demonetization period. The department wrongly and arbitrarily quantified the amount of deposits as depicted in the Assessment Order. The provision of section 69A is not applicable in the case of the assessee. The addition of Rs. 17,25,000/- as made / sustained is arbitrary, unjustified, void ab-initio and bad in law. The addition as sustained is fit to be deleted.

5. For that the learned CIT(A) has not considered the case of the assessee in proper perspective. No as such fresh materials were furnished before the learned CIT(A). The details which were furnished before the learned CIT(A) were in continuation and reconciliation of the papers and documents already filed before Assessing Officer and available in the record of the department. The addition as sustained is fit to be deleted.

6. For that in the facts and circumstances of the case, the Assessing Officer is not justified in applying the provisions of section 69A read with section 115BBE of the 1. T. Act, 1961. The provision of section 69A read with section 115BBE of the 1. T. Act, 1961 has arbitrarily been applied in the case of the appellant. The imposition of tax at the rate of 60 percent together with surcharge at the rate of 25 percent and cess at the rate of 3 percent is



arbitrary and unjust. The order as passed is fit to be annulled/cancelled/set-aside.

7. For that in the facts and circumstances of the case, the charge of interest u/s 234A at Rs. 2,19,938/- and 234B at Rs. 4,14,000/- is arbitrary, unjust and bad in law. The interest as charged is fit to be deleted.

8. For that the delay in filing of the appeal may kindly be condoned.

9. For that the appellant reserves his right to file detailed submission at the time of hearing.

10. For that the appellant craves leave to urge, add or alter any other ground or grounds at the time of hearing.”

3. Rival contentions were heard and the record and the submissions made have been examined. Brief facts of the case are that the assessee is a small food business dealer and cash was found to be deposited in the bank account during the demonetisation period. The total cash deposit during demonetisation period amounting to ₹17,25,000/- as per the information available was noted by the Ld. AO, who initiated the proceeding under section 147 by issuing notice under section 148 of the Act. The assessee had shown turnover of ₹26,08,400/- from the business on which the Ld. AO applied net profit rate of 8% and also added the cash deposits of ₹ 17,25,000/- during the demonetisation period and computed the total income at ₹ 17,95,672/-. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who, vide order dated 28/11/2023 issued certain directions to the Ld. AO and partly allowed the appeal. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. On perusal of the appellate order it is noticed that the Ld. CIT(A) issued certain directions to the Ld. AO and to pass the consequential order in compliance with his directions within 2 weeks of receipt of the order. The relevant extract from the order of the Ld. CIT(A) is as under:



Decision

5. In this case, the addition is towards the cash deposits of Rs. 17,25,000/- into the bank accounts in Axis Bank and estimated profit on the said turnover amounting to Rs. 70,672/-. In the impugned assessment order, the AO has made an addition of Rs. 17,95,672/- Aggrieved by the said addition, the appellant is in appeal and has raised 6 grounds, which are adjudicated as unde:r

6. Ground No. 1 is regarding addition of Rs. 17,05,672/- made by the AO towards cash deposits and profits earned. For this impugned AY, the addition is towards the cash deposits into the bank accounts in Axis Bank. By going through the appellant's case, it is claimed that appellant has a business the income from which is offered to tax u/s 44AD of the Act. The AO has reopened the assessment on the basis of information received from the bank and completed the assessment accordingly. The appellant is seen to be non co-operative in submissions of the details.

6.1 Further, the cash deposits during demonetization period have to be considered with reference to the cash in hand as on the demonetization date. It is the claim of the appellant that total deposits during demonetization period is only Rs. 1,50,000/- (Rs. 70,000/- in Axis Bank Account No. 8389 and Rs. 80,000/- in Account No. 8823). According to appellant, the AO has held that entire cash deposit during FY 2016-17 has been considered as deposit during the demonetization period. The appellant has not produced any details before the AO. The details produced during appellate proceedings for the first time amount to additional evidence for which the appellant has not furnished any reasons as provided in Rule 46A of the IT Rules, as to why these details were not produced before the AO and why these details should be admitted as additional evidence during the appellate proceedings. Therefore, the additional evidences produced during appellate proceedings are not admitted.

6.2 To take the appellant's case to a logical conclusion, the appellant is given an opportunity to produce the details before the AO within 15 days from the date of receipt of this appellate order and AO shall pass the order giving effect to this appellate order within next two weeks. The AO shall verify the cash in hand of the appellant as on the demonetisation date and even the cash deposits made by the appellant during the demonetisation period in the bank accounts. The appellant was not expected to receive any demonetised notes after the announcement of demonetisation. He was expected only to deposit the cash in hand as on



the date of demonetisation for which he shall get credit. Balance demonetised notes deposited shall be brought to tax as unexplained money. The AO shall pass the order giving effect to the appellate order within 2 weeks of receipt of information from the appellant. If, the appellant does not cooperate in furnishing the information before the AO within the stipulated period of time, the addition made by the AO shall be sustained. Ground No. 1 is partly allowed.

7. Ground No. 2 & 3 is relating to invoking of provisions of section 115BBE of the Act. The AO is right in invoking the provisions of section 115BBE of the Act for the reason that the addition has been made u/s 69A of the Act. Ground No. 2 & 3 are dismissed.

8. Ground No. 4 is relating to levy of interest u/s 234A & 234B of the Act. Levy of interest under these two sections is compensatory in nature and has to be levied. The AO shall re-compute the said interest after considering the relief (if any) granted to the appellant in the order giving effect to the appellate order. Ground No. 4 is partly allowed.

9. Ground No. 5 & 8 are general and hence, not adjudicated.

10. In the result, the appeal is treated as partly allowed for statistical purpose.

4.1 Thus, although the Ld. CIT(A) did not admit the additional evidence yet instead of calling for a remand report and deciding the issue, he directed the Ld. AO to carry out the necessary verification and give a finding whether the addition made was justified or not. Before us the Ld. AR submitted that written submission was filed before the Ld. CIT(A), but the same was not considered while deciding the appeal and he requested that the assessee may be granted another opportunity to represent his case properly. We find that the direction given by the Ld. CIT(A) is tantamount to setting aside the assessment order to the Ld. AO, which power has been withdrawn with effect from 01.06.2001. In this respect, it is relevant to examine the provisions of section 250(6) which are reproduced as under:



“250(6) – The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”

5. Thus, section 250(6) of the Act casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for determination and the decision as well as the reason for arriving at such decision. In the present case before us, the Ld. CIT(A) has not mentioned the reasons after examining the records while disposing of the appeal. The Ld. CIT(A) has neither adjudicated upon various grounds of appeal nor has passed a reasoned order for arriving at the decision, as is required u/s 250(6) of the Act. We further note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

“6. ... The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.

7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of



mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.”

5.1. It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

“7. An appeal is filed with the CIT(A) from appealable orders listed in Section 246A of the Act. We find that the procedure in appeal before the CIT(A) and the powers of the CIT(A) are governed by Sections 250 and 251 of the Act respectively. The relevant provisions for consideration are as under:—

Procedure in appeal

250 (1)

(2)

(3)

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).

(5)

(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(6A)

(7)

Powers of the Commissioner (Appeals)

“Section 251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers —

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

(aa)

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty.”



(c)

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation. - In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.'

8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. **In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn.** Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore, just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”



{emphasis supplied}

6. After examining the facts of the case, we deem it appropriate in the interest of justice and fair play to set aside the order of the Ld. CIT(A) and remit the matter back to the Ld. CIT(A) for disposal of the grounds taken by the assessee on merit, by passing a speaking order as per law. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission he wants to make in support of the grounds of appeal and shall not seek unnecessary adjournments and rule 46A of the I.T. Rules, 1962 shall also be followed and a remand report may be called for, if required. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 19th February, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 19.02.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Ram Kumar, S/o Khushi Lal Yadav, At & PO-Sarojabela, Thana-Nadi Thana, Supaul, Bihar, 847452.**
2. **ITO, Ward-3(5), Saharsa.**
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