

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

Madhuri Devi <i>(Appellant)</i>	Vs.	ITO, Ward-3(4), Saharsa <i>(Respondent)</i>
<b>PAN: AHZPDO033C</b>		

**Appearances:**

**Assessee represented by** : S. K. Dutta, Adv.

**Department represented by** : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : February 4<sup>th</sup>, 2025

Date of pronouncing the order : February 19<sup>th</sup>, 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 02.11.2023,



which has been passed against the assessment order u/s 144 of the Act, dated 11.12.2019.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 30 days. An application seeking condonation of delay has been filed by the assessee for condoning the delay stating as follows:

*“01. That the petitioner has preferred Appeal before your honour online vide Acknowledgement No. 1704299375 dated 03/01/2024 (Copy of Acknowledgement attached).*

*02. That Due some technical reason the appeal could not be submitted properly on ITAT Portal, hence not visible on ITAT portal, however the appellant was under bona fide belief that appeal has been filed properly.*

*03. That the Appellant filing this appeal to-day attaching all the attachments Form 36 etc manually, petitioner is filing this appeal after coming to his knowledge that the appeal filed on 03/01/2024 is not visible on ITAT Portal, as regards delay if any, occurred in filing the appeal, may kindly be condoned and admit the Appeal keeping in view circumstances of the case.*

*In view of the facts, you honour would be graciously pleased to appreciate the submissions made hereinabove and be further pleased to condone the delay as prayed hereinabove. And for this act of your kindness, the petitioner shall ever pray.”*

1.2. Considering the condonation application and the reasons stated therein, we are satisfied that the assessee had 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 Learned Assessing Officer, being ITO, Ward-3(4), Saharsa (Here in after called the "AO") has erred in Assessing the appellant on a total Income of Rs 7001665/- as against Rs. 2,96,510/- Income Returned, on the facts and in the circumstances of the case.*



2. For that the Learned AO has erred in holding that the appellant did not file ITR on the facts and in the circumstances of the case, factual position is that the Appellant had filed ITR on 09/06/2018 vide Acknowledgement No.641375491090618 in response to Notice u/s 142(1) of the IT Act 1961 on total income of Rs.2,96,510/-.

3. For that The Learned AO has erred in not supplying reason of issuance Notice under section 148, to the appellant, without supplying reason recorded for issue notice u/s 148 established position of law is that without supply of reason recorded for reopening of assessment, reassessment notice would be without jurisdiction.

4. For that, the Learned AO has erred in framing assessment proceeding without issuing/serving Notice under section 143(2). The Ld AO never issued /served notice u/s 142(1) till date of passing of re-assessment order.

5. For that the Learned AO has erred in making addition of Rs. 41,50,000/- in total income of the appellant alleging unexplained money under section 69A/115BBE of the act, deposited into the bank accounts during demonetization period. arbitrarily ignoring the fact that the cash Rs. 41,50,000/- were deposited in bank accounts of the appellant from valid and known sources of income i.e. from retail sales of petroleum products of IOCL.

Hence addition made alleging unexplained money deposited in bank accounts during demonetization period under section 69A/115BBE of the act 1961 is fit to be deleted, quashed and cancelled on the facts and in the circumstances of the case.

6. For that, without invoking provision of section 145(3) of the Income Tax Act 1961 to reject books of accounts of the appellant, the learned AO erred in determining turnover of the appellant 1,88,77354/- as against turnover shown by the appellant through audit report at Rs. 2,44,80,018.80.

7. For that without invoking provision of section 145(3) of the Income Tax Act 1961 to reject books of accounts of the appellant the Ld AO has erred in estimating income of the appellant from retail trade of petroleum products Rs.15,10,188/- on presumptive basis @ 8% on Rs. 1,88,77354/-turnover arbitrarily determined by the Ld AO.

Settled position of law is that without rejecting books of account, gross profit of the appellant can not be altered, enhanced or modified on the facts and in the circumstances of the case.

8. For that, the Learned Assessing Officer has erred in making arbitrary addition of Rs. 667114/- alleging unexplained unsecured loan on the facts and in the circumstances of the case.

*Factual position of the case is that alleged Rs 667114/- is amount of unsecured loan was taken during the financial year 2015-16 pertaining to the assessment year 2016-17, the same unsecured loan was not taken or accepted during the Assessment Year in question i.e. 2017-18, The unsecured loan of Rs. 667114/- has duly been shown in ITR for the assessment Year 2016-17 filed on 19/07/2016 vide Acknowledgement No: 270954801190716.*

*Addition of Rs 667114/- has been made in the total income of the appellant arbitrary and non-application of mind.*

*Hence addition of Rs. 667114/- is fit to be deleted, quashed and cancelled, on the facts and in the circumstances of the case.*

*9. For that the Ld. AO has erred in making addition of Rs. 264363/- alleging unexplained sundry creditors without conducting enquiry, examination etc.*

*Factual position is that the sundry creditors of Rs. 264363/- were Suppliers of petroleum products and Lubricant (IOCL & Others) etc, the same sundry creditors were duly shown in Balance sheet appended with the audit report and duly uploaded on portal.*

*The Learned AO arbitrarily made addition of Rs.364363/- in total income of the appellant arbitrarily, without detecting any fault,*

*hence, the same addition of Rs. 264363/- is fit to be deleted, quashed and cancelled on the facts and in the circumstances of the case.*

*10. For that the Learned AO has erred in making addition of Rs. 385000/- alleging un-explained sundry debtors, making addition in total income of the appellant itself shows that the Assessment order was passed by the Ld AO with vanished view and mala fide intention.*

*Sundry debtors are purchasers (consumers) of petroleum products on credit, addition of debtors of Rs. 385000/- was made in total income of the appellant with intention to penalize the appellant.*

*Hence the same addition of Rs. 385000/- is fit to be deleted, quashed and cancelled on the facts and in the circumstances of the case.*

*11. For that whole additions of 6705150/- (7001660/- (-) Rs. 2,96,510/-) is fit to be deleted, quashed and, cancelled, on the facts and in the circumstances of the case.*

*12. For that, The appellant denies to pay Rs. 7336265/- tax demanded by applying special rate of tax u/s 115BBE of the I.T. Act 1961.*



13. For that the Learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi has erred in dismissing appeal, on the facts and in the circumstances of the case.

14. For that the Learned CIT (A) NFAC, Delhi, has erred in not deciding the appeal on merit, on the basis of documents, audit reports available on the portal.

15. For that the Learned Assessing Officer as well as the Learned CIT(A) Bhagalpur has erred in passing the impugned order in utter violation of Rule of Natural Justice and fair play.

16. For that Learned Commissioner of Income Tax (Appeals)-NFAC, Delhi has erred in passing appeal order without application of judicious mind, the Learned Assessing officer as well as Learned CIT(A) NFAC has erred in ignoring establish law of natural justice.

17. For that the Appellant craves leave to add, alter, substitute and delete any or all of the statement of facts urged above. For the above and other statement of facts to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”

3. Brief facts of the case are that the assessee had deposited cash aggregating to Rs. 41,75,500/- during the demonetization period and did not file the return of income. Therefore, notice u/s 148 of the Act was issued and served upon the assessee. The assessee filed the return of income u/s 142(1) of the Act instead of section 148 of the Act and a show cause notice was issued on 21.05.2019 to rectify the mistake failing which she would be deemed to have not filed any return. The Ld. AO also asked for certain details but since the required details were not filed, therefore, the total income was assessed at Rs. 70,01,660/- by making additions on account of sundry creditors and sundry debtors, unsecured loan and income determined on presumptive basis. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who noted that the assessee is a dealer of petroleum products and filed the return for the AY 2017-18 at total income of Rs. 2,88,500/-, went through grounds of appeal and since no submissions

were made by the assessee, the appeal was decided on the basis of material available on record. The decision of the Ld. CIT(A) is as under:

*“5. Decision: In this case, the addition has been made by the Assessing Officer worth Rs. 41,50,000/- u/s 69A of the Income Tax Act, 1961, Rs. 15,10,188/- as income on presumptive basis, Rs. 6,67,114/- as unexplained unsecured loan, Rs. 2,64,363/- as unexplained sundry creditors, Rs. 3,85,000/- as unexplained sundry debtors. The order was completed by the Assessing Officer u/s 144 r.w.s. 147 of the Income Tax Act, 1961. The Assessing Officer has initiated proceedings u/s 147 of the Income Tax Act, 1961 on the basis of information that the appellant has deposited cash worth Rs. 41,75,500/- during the demonetization period. The appellant has not filed Income Tax Return for the A.Y. 2017-18. The appellant did not file Return of Income in response to notice u/s 148 of the Income Tax Act, 1961. Despite various opportunities provided by the Assessing Officer, no details were filed before the Assessing Officer. Hence the Assessing Officer made the addition.*

*5.1 Now before me in the appellate proceedings, no submission has been filed despite various opportunities. I have gone through the statement of facts and grounds of appeal filed by the appellant. Nothing has been annexed to controvert the finding of the Assessing Officer. Hence the addition of the Assessing Officer is confirmed and the appeal of the appeal is dismissed.*

*6. In the result, the appeal of the appellant is dismissed.”*

4. Rival contentions were heard and the submissions made have been examined. It is stated in the statement of facts filed that the assessee is a lady and had got allotted retail outlet (Petrol Pump) of Indian Oil Corporation at Baijnathpur (Saharsa) under the name and style of the firm M/s. Jai Mata Di Fuel Centre in the year 2016 and the business commenced from 12.02.2016. For the first time, the assessee got the accounts audited for AY 2017-18 i.e. the impugned assessment year and after getting the accounts audited the audit report was uploaded on 10.09.2017 on the portal within the extended time on 07.11.2017 declaring turnover of Rs. 2,44,80,018.80/-. In compliance to the notice u/s 142(1) of the Act, the assessee e-filed the ITR u/s



139(4) of the Act on 09.06.2018 at the total income of Rs. 2,96,510/-. It is submitted that notice u/s 148 of the Act was issued on 19.08.2018 without any finding or reason and the reason for issuing the notice has not been supplied till date from passing the re-assessment order dated 11.12.2019. The reasons recorded were received by the assessee on 10.01.2024. The assessee has also pointed out certain procedural and other defects in the re-assessment proceeding as a notice was issued without sanction of the Joint Commissioner and is invalid. It was submitted before us that the assessee had shown net profit rate of 1.62%. It is also alleged that the Ld. AO never issued any notice u/s 143(2) of the Act during the entire re-assessment proceeding till the date of passing the re-assessment order which is evident from the e-proceeding portal and therefore, the assessment order passed is legally unsustainable and the same could not be justified by invoking the provision of section 292BB of the Act. It is also alleged that the Ld. CIT(A) has erred in passing the appeal order without application of mind and both the Ld. AO as well as the Ld. CIT(A) have erred in ignoring the settled law of natural justice.

5. Rival contentions were heard and the submissions made have been examined. On perusal of the appellate order, it is noticed that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent were not complied with but he has not adjudicated the appeal on merit. 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.”*



6. 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.”*



6.1. 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.”



7. After examining the facts of the case, we deem it appropriate 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. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments and rule 46A of the I.T. Rules, 1962 shall also be followed, if required. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.

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

**Order pronounced in the open Court on 19<sup>th</sup> 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. **Madhuri Devi, Prop. Jai Mata Di Fuels, Baijnathpur, Saharsa, Bihar, 852221.**
2. **ITO, Ward-3(4), 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