

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**GUWAHATI BENCH, GUWAHATI**  
**(VIRTUAL HEARING AT KOLKATA)**

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**  
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 36/GTY/2024**  
**Assessment Year: 2020-21**

**Sri Anujit Das,**

Village – Rangamati, Amarpur,  
Gomati, South Tripura, - 799101  
[PAN: CFXPD2292B]

.....**Appellant**

**vs.**

**Assistant Commissioner of Income Tax,**  
**Central Circle-2, Guwahati,**

Aayakar Bhawan, Christian Basti  
Guwahati, Assam - 781005

..... **Respondent**

**Appearances by:**

Assessee represented by : Sanjay Mody, FCA  
Department represented by : Kaushik Ray, JCIT

Date of concluding the hearing : 18.02.2025  
Date of pronouncing the order : 19.02.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. The present appeal arises from the order passed by the Ld. Commissioner of Income Tax (Appeals), Central NER, Guwahati, dated 22.01.2024, passed under Section 250 of the Income Tax Act, 1961 (hereafter 'the Act').

1.1 Facts in brief are that in this case the police had detained the assessee with cash of Rs. 8,84,200/- and some cheques during the course of routine checking. Thereafter, the Investigation Wing executed a requisition under Section 132A of the Act for this seizure. Admittedly, during the course of recording of statement, the assessee admitted that

the said cash belonged to his employer, one Gautam Roy. The assessee also stated that the cheques of Rs. 4,53,000/- found in his possession were also on behalf of Mr. Gautam Roy. Thereafter, the Ld. AO made a protective assessment by treating the amount of Rs. 8,84,200/- under Section 69A of the Act.

1.2 Aggrieved with this action, the assessee approached the Ld. CIT(A) where the action of Ld. AO was confirmed mainly on the ground that the assessee had not been able to prove that the cash belonged to his employer.

2. Further aggrieved with this action, the assessee is in appeal before the ITAT through the following grounds:

*“1. For that the Id. CIT(A) ought to have hold that the order of assessment passed by the id. AO u/s 144 r.w.s 153D is bad in law, facts and procedure.*

*2. For that on the facts and circumstances of the case, the Id. CIT(A) ought to have hold that the id. AO was not Justified in arbitrarily adding huge amount of Rs. 8,84,200/- to the income of the appellant merely to protect interest of revenue and consequently, in raising demand of Rs. 8,13,818/- on the appellant.*

*3. For that the Id. CIT(A) ought to have hold that the Id. AO was not justified in arbitrarily adding Rs. 8,84,200/-to the income of the appellant by ignoring and brushing aside the statement of Shri Gautam Roy recorded by the department under section 131(1A) of the Act without controverting the same or without finding any error in the same and by merely stating that proceeding will get barred by limitation of time on 30.09.2021*

*4. For that the Id. CIT(A) was not justified in not-considering and ignoring the materials produced by the appellant before him.*

*5. For that the Id. CIT(A) ought to have hold that the Id. AO erred on facts in arbitrarily ignoring the submissions made by the appellant on 20.09.2021 and stating that the appellant has not complied with notice issued under section 142(1) of the Act.*

*6. For that the Id. CIT(A) ought to have hold that the order of assessment passed by the Id. AO under section 144 of the Act is without satisfying the pre-requisite conditions of law, without jurisdiction and bad in law.*

*7. For that the Id. CIT(A) ought to have appreciated the facts of the case in proper perspective and ought to have hold that the arbitrary addition made by the Id. AD of huge amount of Rs. 8,84,200/- is against real life facts, impossible and contrary to the materials on record.*

8. For that in absence of computer generated DIN having been quoted in the body of order of assessment by The Id. AQ and in the related Notice of Demand issued u/s 156 of the Act, the same are invalid.

9. For that the Id. CIT(A) ought to have hold that the order of assessment was passed by the Id. AO in gross violation of the principles of natural justice and hence, the same is bad in law and is liable to be quashed.

10. For that the impugned appellate order passed by the Id. CIT(A) being in gross violation of principles of natural justice, the same is bad in law and untenable

11. For that in absence of any valid approval under section 153D of the Act having been obtained by the Id. AO, the order of assessment is bad in law and is liable to be quashed

12. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing.”

2.1 Before us, the Ld. AR pointed out that while the AO had passed a protective order, a substantive order was also passed in the case of Mr. Gautam Roy, who has been treated as the owner of the impugned cash amount through that. Admittedly, an assessment order on Mr. Gautam Roy was passed on 23.03.2023, copy of which has been placed on record for our perusal. The Ld. Authorised Representative also pointed out that the impugned amount has been duly considered by the Ld. AO in the hands of the Mr. Gautam Roy and thus the addition made on protective basis cannot be legally sustained.

2.2 The Ld. DR relied on the orders of authorities below and stated that at no stage did either of the authorities below had the benefit of the proceedings against Mr. Gautam Roy.

3. We have carefully considered the rival submissions and also gone through the records before us. The Ld. AR has placed an assessment order dated 23.03.2023, passed u/s 153C/143(3), in the name of Mr. Gautam Roy to show that the impugned amount has been duly considered in his hands. For the sake of record, relevant portions from that assessment order deserve to be extracted as under:

*“Information was received by the Principal Director of Income Tax (Investigation), NER, Guwahati from the Static Surveillance Team has seized cash amounting to Rs.8,84,200/- from a person named Sri Anujit Das at Maharani Police Outpost Naka Point, Udaipur, Dist-Gomati, Tripura on 09. 04-2019. On receipt of the information, warrant u/s 132A of the Income Tax Act, 1961 (herein referred to as 'the Act') was executed in the case of Sri Anujit Das on 09-04-2021 and the sum of Rs.8,84,200/- was requisitioned by the Income Tax Department.*

*As the search was conducted during the General Assembly Election, 2019 in respect of which a notification has been issued u/s 30 rws 56 of the Representation of People Act, 1951 assessment of income for the assessment year relevant of the previous year in which the search was conducted was required to be completed.*

*In the course of Search and Post Search proceedings, statement of Sri Anujit Das was recorded u/s 131 of the Act on 09-04-2019. In his statement, Sri Anujit Das stated the cash of Rs.8,84,200/-belongs to Sri Goutam Roy and that the said cash was collected by him on behalf of Sri Goutam Roy being the amount of debtors collection. Further, statement of Sri Goutam Roy was also recorded u/s 131(1A) of the Act on 09-04-2019 wherein he has accepted the ownership of the said seized cash.*

*Consequent to the above and as Certificate under Rule 112F was already drawn in the case of Sri Anunt Das, proceedings u/s 153C was initiated in the case of Sri Goutam Roy for A.Y. 2020-21 being the specified year of search. Further notices u/s 142(1) were issued from time to time calling for information as mentioned therein.*

*In compliance to the notices issued, the assessee submitted his response through. The same are examined and placed on records.*

*During the course of assessment proceeding and upon perusal of the submissions made by the assessee it is seen that the during the F.Y. 2019-20, the assessee was in receipt of cash amounting to Rs. 2,00,000/- from one Sri Bapan chakrabarty.*

*As per Section 269ST, no person shall receive an amount of two lakhs or more in aggregate in a day otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through bank account. As such, penalty proceeding u/s 271DA of the Act is initiated for violation of provisions of Sec. 269ST of the Act.”*

3.1 We are aware that none of the authorities below had the benefit of this order passed against Mr. Gautam Roy. Accordingly, we remand this matter back to the file of Ld. AO for verifying the contention of the assessee that the impugned amount not only belonged to Mr. Gautam Roy, but has also been assessed in his hands. After this verification, the Ld. AO is directed to delete the amount added in protective assessment, in case the impugned amount has been duly considered in the hands of Mr. Gautam Roy. We direct accordingly.

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

Order pronounced in the court on 19.02.2025

Sd/-  
**[Manomohan Das]**  
**Judicial Member**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 19.02.2025  
AK, PS

*Copy of the order forwarded to:*

1. Sri Anujit Das
2. Assistant Commissioner of Income Tax, Central Circle-2, Guwahati
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches