

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH  
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**ITA No. 440/PAT/2024  
Assessment Year: 2017-18**

Anil Kumar R. J. Palace, Rai Kashi Nath More Swarajpuri Road, Gaya, Bihar-823001. (PAN: AEJPK7656P)	Vs	ACIT, Circle-1, Gaya
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Jitendra Kr. Singh, Advocate  
Respondent by : Shri Ashwani Kr. Singal, JCIT

Date of Hearing : 27.02.2025  
Date of Pronouncement : 27.02.2025

**ORDER**

**Per Bench :**

This is an appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “the Ld. CIT(A)”] vide order no. ITBA/NFAC/S/250/2024-25/1063876861(1) dated 03.04.2024 passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2017-18.

2. Shri Jitendra Kr. Singh, Advocate appeared on behalf of the assessee and Shri Ashwani Kr. Singal, JCIT appeared on behalf of the revenue.

3. It was submitted by the Ld. AR that the assessee was under the control of another authorized representative and consequently the assessee

was unable to represent in the course of assessment by producing all the evidence. It was the submission before the Ld. CIT(A) that the assessee had produced substantial evidence. It was the submission that the Ld. CIT(A) violated the provisions of Rule 46A of the Income Tax Rules, 1962 did not consider the evidence. It was the submission that there are two basic additions – one in regard to the estimation and the second in regard to the cash credits in the bank account of the assessee which were treated as unexplained cash credit. It was the submission that the assessee is maintaining his books of account and, therefore, the estimation of income is not permissible and in regard to the cash credits the same were recorded in the books of account maintained by the assessee and no addition on this account is also called for.

4. In reply, the Ld. Sr. DR vehemently supported the order of the Assessing Officer and the Ld. CIT(A). It was the submission that the assessee has not produced the evidence before the Assessing Officer. There is violation of rule 46A in regard to the evidence produced before the Ld. CIT(A). The violation of Rule 46A as recorded by the Ld. CIT(A) has not been challenged by the assessee and even before the Tribunal there is no application for admission of the additional evidence under Rule 29 of the ITAT Rules and under Rule 46A of the Income Tax Rules. It was the submission that the order of the Ld. CIT(A) is liable to be upheld.

5. We have considered the rival submissions. A perusal of the facts in the present case coupled with the statement of the Ld. AR at Bar clearly shows that the assessee was not represented before the Assessing Officer. Admittedly, no fault can be found on the part of the Assessing Officer for passing the ex parte order. However, as it is noticed that the assessee has produced evidence before the Ld. CIT(A) and before us also, therefore, in the interests of principles of natural justice, we are of the view that the issues in this appeal must be restored to the file of the Assessing Officer for

re-adjudication after granting the assessee adequate opportunity of being heard.. As the assessee has not represented by producing evidence before the Assessing Officer, a cost of Rs.10,000/- is being levied and the same is to be paid by the assessee within sixty days of the date of this order. The cost should be paid to Gaya Bar Association and the receipt of the payment of the same is to be produced before ther Assessing Officer when the Assessing Officer proceeds with the set aside assessment. Should the assessee fail to make the payment of the cost within the stipulated time and produce the receipt thereof, the order of the Ld. CIT(A) shall stand confirmed.

6. In the result, the appeal of the assessee is partly allowed for statistical purpose with the directions given above.

Order dictated and pronounced in the open court.

Sd/-  
(Sanjay Awasthi)  
Accountant Member

Sd/-  
(George Mathan)  
Judicial Member

***Dated: 27<sup>th</sup> February, 2025***

JD, Sr. P.S.

Copy to:

1. The Appellant: Shri Anil Kumar
2. The Respondent. ACIT, Circle-1, Gaya
3. CIT(A), NFAC, Delhi
4. Pr. CIT
5. DR, ITAT, Patna Bench, Patna
6. Guard file.

True Copy

By Order

Assistant Registrar  
ITAT, Patna