

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. 185/GTY/2024
Assessment Year: 2017-18

Mizoram Rural Bank, Aizwal,

B-5, Babu Tilla Zarkawt,

Mizoram - 796007

[PAN: AAAAM1725F]

.....**Appellant**

vs.

ACIT, Circle, Shillong,

Aaykar Bhawan, M G Road,

Meghalaya - 793001

..... **Respondent**

Appearances by:

Assessee represented by : Sunil Sharma, AR

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 20.02.2025

Date of pronouncing the order : 11.03.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal arises from the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)"] dated 01.07.2024, passed under Section 250 of the Income Tax Act, 1961 (hereafter ‘the Act’).

1.1 In this case, the AO passed an order dated 26.11.2019 under Section 144 of the Act mainly on the ground that the assessee did not, allegedly, furnish the details as required by the Ld. AO from time to time. The Ld. AO made several additions in this case. This matter was carried over to the Ld. CIT(A), who gave partial relief, but confirmed the action of Ld. AO with respect to the following:

(a) Addition of Rs. 5,23,48,834/- on account of alleged variation in service tax returned and over turn reported in income tax return.

(b) Addition of Rs. 25,06,16,075/- on account of alleged non deduction of tax at source on certain payments.

(c) The assessee is aggrieved with the action of Ld. CIT(A) in confirming the action of Ld. AO with respect to the deduction eligible under Section 36(1)(viia) of the Act.

1.2 On account of issues confirmed by the Ld. CIT(A), the assessee is in appeal before the ITAT with the following grounds of appeal:

“1) That the Ld. CIT(A) was not justified in confirming the action of Ld AO in treating the alleged difference between service tax returns and ITR as your appellant's unreported income, even though the alleged difference was reconciled and submitted to Ld AO and was explained through submission, The Ld. CIT(A) did not consider the submissions and confirmed addition of sum of Rs.5,23,48,834/- as unreported income without bringing sufficient material on records justifying such an action. The addition had been made without considering the Service tax returns of your appellant, therefore the entire addition on this count should be deleted. (Addition: Rs.5,23,48,834)

2) Sec 40(a)(ia)- That the Ld. CIT(A) was not justified in confirming the additions made by AO in disallowing 30% various expenses (as detailed in para 6 of his order) amounting to Rs 25,06,16,075/- on presumption that tax has not been deducted at source, even though no such remark was given by the tax auditor in form 3CD. The AO had not examined the details of these expenses and disallowed the quantum of expenses which was not reported in tax audit merely on presumption. Such addition needs to be deleted. (Addition: 250616075/-)

3) That Ld. CIT(A) was not justified in holding the action of AO as correct even though he failed to allow full deduction as per sec36(1)(viia) to your appellant Only partial deduction mandated under the section has been allowed and the word "AND" used in the section for further deduction of 10% in respect of rural advances has been interpreted as "OR" to reject the additional deduction eligible on rural advances item) (Deduction: Not quantified as Contingent

4) Your appellant craves the leave to put forth additional grounds, if any, and amend, modify any of the grounds of appeal at the time of hearing.”

2. Before us, the Ld. AR stated that they had extensively argued before the Ld. CIT(A) regarding the issue of alleged mismatch between turnover shown for service tax return as compared to the turnover shown in income

tax return. It had been emphasized before the Ld. CIT(A) that due to an oversight some amounts were exclusively reported in the service tax return and the same were easily reconcilable. However, the Ld. CIT(A) merely said that no reconciliation was provided and thus, he confirmed the action of Ld. AO. Regarding the addition made under Section 40(a)(ia) of the Act, the Ld. AR mentioned that the Ld. CIT(A) did not consider their submissions and merely mentioned that no details were furnished in justification of the assessee's contention. Needless to say, the Ld. CIT(A) confirmed the action of Ld. AO with respect to the addition of Rs. 25,06,16,075/- under Section 40(a)(ia) of the Act. Lastly, the Ld. AR assailed the action of the Ld. CIT(A) in terms of upholding the action of Ld. AO in the computation of deduction under Section 36(1)(viia) of the Act. It was requested by the Ld. AR that all the issues are fact based and could have been easily resolved at the level of Ld. Assessing Officer had the assessee availed of the opportunity provided by him. It has been averred that due to communication gap and otherwise pre-occupation with the internal functioning of the bank, they could not make a definitive compliance at that stage.

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

3. We have carefully considered the submissions of the Ld. AR/DR and also gone through the orders of authorities below. It is evident that these issues pertain to the facts of the case and the same would be best analysed and examined at the level of Ld. AO so that the assessee is not unnecessarily penalised for any inadvertence at his level. Accordingly, we remand this matter back to the file of Ld. AO for the limited purpose of dealing with the three issues on which the assessee could not succeed before the Ld. CIT(A). Needless to say, while the Ld. AO would give ample opportunity of being heard, the assessee would do well to avail of such opportunities to present his case.

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

Order pronounced in the court on 11.03.2025

Sd/-
[Manomohan Das]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 11.03.2025
AK, PS

Copy of the order forwarded to:

1. Mizoram Rural Bank, Aizwal
2. ACIT, Circle, Shillong
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches