

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. Nos. 186 &187/GTY/2024
Assessment Year: 2017-18

Aluminium Industries (Assam)

Private Limited,

C/o AGSS & Co. Chartered Accountants,
9, Weston Street, 1st Floor, Room No. 126,
Kolkata - 700013

[PAN: AABCA7582M]

.....**Appellant**

vs.

Income Tax Officer,

Ward-3, Tinsukia,

Aaykar Bhawan, Bardoloi Nagar,

Tinsukia, Assam - 786125

..... **Respondent**

Appearances by:

Assessee represented by : Giridhar Dhelia, AR
Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 20.02.2025

Date of pronouncing the order : 06.03.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This is a batch of two appeals pertaining to the same assessee. ITA No. 186/GTY/2024 is on the quantum addition and ITA No. 187/GTY/2024 is on penalty under Section 271AAC(1) of the Act imposed on the quantum. Both the appeals pertaining to A.Y. 2017-18. Considering that the issues are inter-connected, both these appeals are being disposed of through a single order. For the sake of convenience, the lead case shall be the quantum matter (ITA No. 186/GTY/2024).

1.1 The quantum appeal arises from order under Section 250 of the Income Tax Act, 1961 (hereafter 'the Act'), dated 08.07.2024.

1.2 In this case, the Ld. AO passed an exparte order and added Rs. 92,88,618/- under Section 69A of the Act on account of cash deposits in the bank. Admittedly, some cash was also deposited during demonetisation period.

2. Aggrieved with the action of Ld. Assessing Officer, the assessee approached the Ld. CIT(A) where he filed considerable number of documents under Rule 46A of the IT Rules by way of new evidence in support of his claim that the impugned deposits were justified. However, as has been recorded in para 7.1.11. of the impugned order, such additional evidence was refused to be accepted on the ground that the assessee could not establish the bonafide reason as to why he could not present such evidence before the Ld. Assessing Officer. Thereafter, the Ld. CIT(A) is seen to have proceeded to confirm the action of the Ld. AO.

2.1 Aggrieved with this action, the assessee is in appeal before the ITAT with the following grounds:

"1.) For that in the facts and circumstance of the case, Ld. CIT(A) erred in confirming the addition made by the Ld. ITO Ward-3, Tinsukia (hereinafter referred to as "Ld. AO") of Rs.92,88,618/-u/s 69A of the Act on account of Unexplained money being Cash Deposits and normal business credits in Bank account in the matter and therefore the same is illegal and hence the same be deleted.

2) That the Assessment Order dated 26/12/2019 passed by the Ld. AO under section 144 of the Act determining the total income of the assessee company for the Assessment year 2017-18 at Rs. 92,88,618/- is perverse, against law and facts on record

3) That the impugned assessment order dated 26th December, 2019 passed by the Ld. AO is liable to be quashed, since it has been passed in haste without application of mind and without allowing reasonable opportunity of being heard which is in violation of the principles of natural justice and hence the entire proceeding was bad in law and thus the assessment order be quashed.

4) That Ld. AO added the amount with biased mind and high pitched assessment and arbitrarily drawing adverse inference made against the appellant company merely on the ground that the appellant company did not comply and/or complied with a bit delay on account of the difficulty on the part of the appellant company the notice Issued to them under section 142(1) of the said Act.

5) That, on the basis of unfounded allegations, based on stories, gossips and hearsay the Ld. Assessing Officer, the Assessing Officer erred in drawing an adverse inference for addition of Rs. 92,88,618/-.

6) That addition as made by the Ld. AO under section 69A of the Act is inconsistent with the provisions of the Act as the transactions are already recorded in the books of account and therefore bad in law.

7) That the aforesaid additions are arbitrary based on suspicion, surmises and conjectures without any tangible material.

8) For that the additions / disallowances were made by the Assessing Officer without making any independent inquiries. Thus all the additions are bad in law and hence the same be deleted.

9) The Order passed by A O is unjust, unfair, illegal and invalid in law.

10) The appellant prays that leave be granted to produce additional evidence in terms of Rule 46A of the Income Tax Rules 1962 at the time of hearing of the appeal.

11) For that the learned CIT (Appeals) erred in confirming the interest u/s 234A and 234B of the Act, the same was unjustified and hence the same be deleted.

12) The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal Rules 1963).

13) That the appellant company craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid grounds before, or at the time of hearing of appeal.”

2.2 Before us, the Ld. AR argued that all manner of evidences were presented before the Ld. CIT(A) with an application for admitting the same under Rule 46A of the IT Rules. However, such evidences were not admitted and therefore, the Ld. CIT(A) merely affirmed the action of Ld. Assessing Officer without really adjudicating on the merit of the case. The Ld. AR very stated that the assessee was ready to submit necessary documents and evidences before the Ld. AO for assessment at that stage. In conclusion, the Ld. AR assailed the action of Ld. CIT(A) in not admitting the additional evidence under Rule 46A of the IT Rules.

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

3.1 We have carefully considered the arguments of the Ld. AR/DR and also gone through the records before us. It is clear that in the interest of substantive justice, the Ld. CIT(A) should have admitted the new evidence and given the assessee a chance to prove his bonafide. It is felt that since it is the Ld. AO who has to do the basic verification at his level, hence, this matter deserves to be remanded back to the file of Ld. AO for denovo

assessment at his level. To this extent we set aside the order of Ld. CIT(A). Needless to say, the assessee would present all documents and evidences before the Ld. AO and the Ld. AO would do well to provide ample opportunity for doing the same.

3.2. In result, appeal ITA No. 186/GTY/2024 is allowed for statistical purposes.

4. Regarding the appeal pertaining to penalty under Section 271AAC(1) of the Act, it deserves to be held that since the quantum matter has been remanded back to the file of Ld. AO, then the penalty arising thereon cannot survive. However, the Ld. AO would be at liberty to initiate fresh penalty proceedings in case there is any enhancement to the income of the assessee for whatever reason.

4.1 In result, ITA No. 187/GTY/2024 is allowed.

5. In result, ITA No. 186/GTY/2024 is allowed for statistical purposes, whereas ITA No. 187/GTY/2024 is allowed.

Order pronounced in the court on 06.03.2025

Sd/-
[Manomohan Das]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 06.03.2025
AK, PS

Copy of the order forwarded to:

1. Aluminium Industries (Assam) Private Limited
2. Income Tax Officer, Ward-3, Tinsukia
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches