

आयकर अपीलीय अधिकरण  
गुवाहाटी पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य  
एवं  
श्री रकेश मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 255/GTY/2024  
Assessment Year: 2018-19**

Mrinal Das <i>(Appellant)</i>	Vs.	ITO, Ward-Barpeta Road <i>(Respondent)</i>
<b>PAN: BTIPD1965P</b>		

**Appearances:**

**Assessee represented by** : S. P. Bhati, FCA.

**Department represented by** : Kausik Ray, JCIT

Date of concluding the hearing : March 20<sup>th</sup>, 2025

Date of pronouncing the order : March 24<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 2018-19 dated 05.06.2024,



which has been passed against the assessment order u/s 147 of the Act, dated 01.03.2023.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*“1. For that the learned CIT(A) is not justified in assessing business income @ 15% of total turnover even after accepting that your appellant has offered income u/s 44AD.*

*2. For that the learned CIT (A) is not justified in assessing business income @15% of total turnover by observing telescope due to violation of sec. 40A(3) and 40(a)(ia) is as much as in case of presumptive scheme same does not apply.*

*3. The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”*

3. Brief facts of the case are that in the case of the assessee, credible information was received through non-filing of return portal (Non-filers Management system) of the I.T. Department that cash of Rs.71,31,100/- was deposited in one or more accounts (other than a current account and time deposit) of a person held in UCO Bank and TDS u/s 194A of the Act of Rs. 345/- was also deposited. Accordingly, the assessment was reopened u/s 147 of the Act. The Ld. AO issued statutory notices to the assessee but no response was received nor any return was filed within 30 days of the service of the notice u/s 148 of the Act. The assessee however, filed the return of income on 28.04.2022 declaring total income of Rs. 6,16,500/- under presumptive taxation u/s 44AD of the Act being ‘Special provision for computing profits and gains of business on presumptive basis’ on the turnover of Rs. 74,31,100/- after applying net profit rate of 8%. The Ld. AO examined the submissions made by the assessee and issued a final show cause notice as to why the assessment should not be made u/s 144 of the Act.



He considered the submissions made, analysed the bank account nos. i) 06770100108709, ii) 06770210000267 and iii) 06770510005866 in which cash of Rs. 88,72,100/- was deposited and required the assessee to furnish the details of items/goods/articles in which the assessee dealt with in connection with the business and to provide documentary evidence. Since the assessee failed to furnish the same, the Ld. AO added the entire deposits of Rs. 88,72,100/- in the bank account u/s 69A of the Act to the returned income of Rs. 6,16,500/- and the total income was assessed at Rs. 94,88,600/-.

4. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who issued notices for hearing and in response to which the assessee filed written submission. In respect of the four bank accounts maintained, the assessee submitted that the return of income was not filed due to mistake on the part of the assessee as no regular books of account were being maintained. The assessee had shown turnover of Rs. 74,31,100/- which actually should have been Rs. 88,72,100/- and the returned income was to be increased to Rs. 5,94,100/- u/s 44AD of the Act being 8% of Rs. 14,41,000/- and the total income should have been returned at Rs. 7,09,768/- as against the income shown in the return of Rs. 5,94,488/-. It was submitted that before passing the assessment order, the Ld. AO had collected all the bank statements from the banks and copies of the same were also enclosed. It was submitted that on perusal of the bank statement, it would be evident that after depositing the money in cash, all the payments have been made for purchases in the names of various parties mentioned in the bank statement. The assessee also relied upon several judicial pronouncements and disputed the addition made u/s 69A of the Act. The Ld. CIT(A) has discussed the findings of the Ld. AO. He has



also mentioned that the appellant submitted the deed of agreement dated 29.06.2015 between Sri Gagan Basumatari and the appellant where the first party being the holder of license along with hotel/restaurant gave it on rent to the appellant for sale of portable foreign liquor. The Ld. CIT(A) also noted that from the ITRs for the past and subsequent years that the appellant had offered some income from business, the details of which show that income from Rs. 26,90,833/- in AY 2016-17 to Rs. 3,62,28,439/- was shown. He also noted that the assessee had offered income on presumptive basis for all the assessment years except for last two assessment years i.e. AY 2022-23 and AY 2023-24 and he was of the belief that the appellant was running some business, which fact was ignored by the Ld. AO. Since the assessee did not file the return of income, the Ld. CIT(A) was of the view that the addition made by the Ld. AO to the extent of entire turnover shown in the ITR and bringing the same to tax as unexplained money was not justifiable as the Ld. AO could have perused the ITRs for the previous and subsequent years and should have arrived at some reasonable profit by making some estimation. However, the assessee during the course of appellate proceedings had not produced all the supporting documentary evidence nor the assessee had filed any petition for admitting additional evidences. Even in Form No. 35 it was mentioned that no additional evidences were filed. The assessee had also not submitted any reason for non-compliance before the Ld. AO. Further, it was also noted that the assessee was not regular in filing ITRs as no original ITRs were filed for the AY 2017-18 and AY 2018-19. In view of the same and considering the nature of business, it was considered fair and reasonable that profit from business is estimated at 15% of the turnover which also telescopes the violation of the provisions



of sections like 40A(3) and 40(a)(ia) of the Act etc. as there was no opportunity for the Ld. AO to verify the same. The assessee during the course of appellate proceeding had submitted that there had been change in the total turnover for the AY 2018-19 as compared to the turnover shown in the ITR for AY 2018-19 and apart from the total turnover of Rs.74,31,100/- shown in ITR, an additional turnover of Rs.14,41,000/- was offered by the assessee. Thus, the total turnover became Rs. 88,72,100/- (Rs.74,31,100 + Rs. 14,41,000) and the net income became Rs.13,30,815 (which is 15% of 88,72,100/-). Therefore, the Ld. AO was directed to recompute the tax accordingly and the ground nos. 2 and 3 of the appeal were partly allowed and also the appeal of the assessee was partly allowed. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. The Ld. DR stated that the nature of business was not evident, which was countered by the Ld. AO by stating that the Ld. CIT(A) had accepted that the assessee was carrying on the business and the increase in the turnover was requested by the assessee in the course of the appeal. The assessee was into the business of selling liquor in retail and the agreement for the same was also submitted before the Ld. CIT(A) and the payments had been made by cheque. In the past as well as in the future, the same business was continued by the assessee. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

6. We have considered the rival submissions. It is imperative to consider the provisions of section 44AD of the Act which are reproduced as under:

*“44AD. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :*

*Provided that this sub-section shall have effect as if for the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.*

*(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.*

*(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.*

*(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).*

*(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.*

*(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—*



(i) a person carrying on profession as referred to in sub-section (1) of section 44AA;

(ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business.

*Explanation.*—For the purposes of this section,—

(a) "eligible assessee" means,—

(i) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and

(ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C.—Deductions in respect of certain incomes" in the relevant assessment year;

(b) "eligible business" means,—

(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees:

42[Provided that where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed five per cent of the total turnover or gross receipts of such previous year, this sub-clause shall have effect as if for the words "two crore rupees", the words "three crore rupees" had been substituted:

Provided further that for the purposes of the first proviso, the receipt of amount or aggregate of amounts by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the receipt in cash.]”

7. The Ld. CIT(A) did not dispute that the assessee was in retail business for which agreement was filed. The assessee has been carrying the same/similar business in the past as well as in the subsequent assessment years and in view of the evidence filed and the assessee being eligible for the presumptive taxation u/s 44AD of the Act, there was no justification for applying the net profit rate of 15% instead of 8%



as applied by the assessee. Therefore, the order of Ld. CIT(A) as well as the Ld. AO are hereby set aside and the Ld. AO is directed to apply the net profit rate of 8% as per section 44AD of the Act on the total turnover Rs. 88,72,100/- which is reflected by the deposits in the bank account and compute the income accordingly in place of the addition made u/s 69A of the Act which is subsequently modified by the Ld. CIT(A) by treating the same as the turnover by enhancing the net profit rate. Hence, Ground Nos. 1 and 2 of the appeal are allowed. Ground No. 3 is general in nature and does not require any separate adjudication.

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

**Order pronounced on 24<sup>th</sup> March, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.**

Sd/-

**[Manomohan Das]**  
Judicial Member

Sd/-

**[Rakesh Mishra]**  
Accountant Member

Dated: 24.03.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **Mrinal Das, Jalah Dongpur, Jalaghat, Musalpur, Baksa, Barpeta, Assam, 781327.**
2. **ITO, Ward-Barpeta Road.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata