

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 504/RPR/2024

(निर्धारण वर्ष Assessment Year: 2017-18)

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| Bipul Paul, Prop. M/s Maa Bhagwati Stores, 5, Old Market, Main Road, Pakhanjore. Dist. Kanker (C.G.), 494776 | V s | Income Tax Office, Infront of St. Micheals School, Govindpura, Kanker, Distt. Kanker (C.G.), 494334 |
| PAN: BBAPP2195K | | |
| (अपीलार्थी/Appellant) | . | (प्रत्यर्थी / Respondent) |
| निर्धारिती की ओर से /Assessee by | : | Shri R. B. Doshi, CA |
| राजस्व की ओर से /Revenue by | : | Dr. Priyanka Patel, Sr. DR |
| सुनवाई की तारीख / Date of Hearing | : | 25.03.2025 |
| घोषणा की तारीख/Date of Pronouncement | : | 27.03.2025 |

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee against the order of Commissioner of Income Tax(Appeals), NFAC, Delhi, [in short "Ld. CIT(A)"], under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 26.09.2024, for the Assessment Year 2017-18, which in turn arises from the order u/s 143(3) of the Act, dated 17.12.2019, passed by Income Tax Officer, Ward- Pakhanjore, (in short "Ld. AR").

2. The grounds of appeal raised by the assessee are as under:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 96,04,000/- made by Assessing Officer on account of cash deposits in bank account of appellant treating it to be unexplained credits u/s 68 of the I. T. Act, 1961 ignoring and without considering the facts and circumstances of the case properly and judicially. The addition therefore made is being arbitrary, illegal and bad-in-law and the assessee prays that the addition of Rs. 96,04,000/- be deleted.*
2. *The appellant craves leave to add, alter, delete, amend, withdraw, modify, change or substitute any ground or grounds of appeal or to add any new ground or grounds of appeal during or before the hearing of the appeal.*

3. Brief facts of the case are that the assessee had filed his Return of Income (ROI) for the AY 2017-18 on 17.03.2018, declaring total income at Rs.5,60,960/-. The case was subsequently selected for scrutiny through "CASS", for the reason that there are abnormal cash deposits in the bank account of the assessee during the demonetization period. Accordingly, statutory notices u/s 143(2) and 142(1) are issued along with questionnaire and duly served upon the assessee but on the date of hearings none appeared to represent the assessee, neither any submission was filed. After several opportunities, a show cause notice was issued on 15.11.2019 to furnish documents and written explanation regarding cash transaction of Rs.33,19,000/- deposited during demonetization period and other cash transactions from 01.04.2016 to 08.11.2016 to the tune of Rs. 62,84,500/- in the bank account of

the assessee. The assessee was show caused as to why the sum of Rs.96,04,000/- will not be treated as cash credit u/s 68 of the I. T. Act. In response, assessee submitted before the Ld. AO that he is engaged in Commission and Retail Trading Business at Pakhanjore. However, on consideration of assessee's submission, Ld. AO observed that the assessee submitted a single page submission consisting of all the accounts such as Trading Account, Profit & Loss Account, Capital Account and Balance Sheet etc. as on 31.03.2017, therefore, the assessee failed to explain and substantiate with supporting documents regarding the huge cash deposits in his bank account. With the aforesaid observations, Ld. AO concluded that the cash deposit of Rs. 96,04,000/- in bank account of the assessee remains unexplained, hence, the same are liable to be added as income of the assessee on account of unexplained cash credit u/s 68 of the Act. Accordingly, the assessment was completed with an addition of Rs. 96,04,000/- to the income of the assessee.

4. Aggrieved with the aforesaid addition, assessee preferred an appeal before the Ld. CIT(A), wherein assessee furnished a submission to explain the nature of his business and about the genuineness of transactions carried out by him in his bank account, however, the submissions of assessee could not impress upon the Ld. CIT(A), therefore, the appeal of the assessee is dismissed with the following decision:

- 6. Decision:** *I have considered the facts of the case, written submission and case laws relied upon by the appellant as against the observations and findings of the AO in the assessment order. The submissions and contentions of the appellant are discussed and decided as under:*
- 6.1 Ground Nos. 1& 2:** *In this case the addition has been made by the AO on account of cash deposit worth Rs.96,04,000/- u/s. 68 of the Act. During the course of assessment, the appellant explained that it is engaged in the business of retail trading and is deriving commission income. The supporting details to explain the cash were not filed before the AO. Hence, the AO made the addition.*
- 6.1.1** *Before me in the appellate proceedings written submissions has been filed. It has been explained that the appellant is engaged in the business of trading. Cash worth Rs.33,19,000/- was deposited during demonetization period and Rs.62,84,500/- was deposited out of share proceeds. The appellant has mentioned that it is providing installation of DISH TV setup boxes and cash has been received out of the sale.*
- 6.1.2** *I have gone through the Profit and Loss account and the Balance Sheet of the appellant. The appellant has not filed the comparative figures of income and cash deposits in earlier years. The appellant has failed to link the commission income and other receipts with the deposits of cash made in banks from time to time. Even before AO and before me, no attempt has been made to link the deposits with the receipts. Customers statement has been filed before me. They have not been linked with the Bank Statements. Hence, on perusal of the submission of the appellant, it is not clear that cash has been deposited out of the receipts only on account of commission income and other income of the appellant. Hence, the addition of the AO on account of cash deposits is confirmed and appeal of the appellant is dismissed.*
- 5.** Being dissatisfied the aforesaid order of Ld. CIT(A) confirming the addition made by the Ld. AO, assessee carried the matter by way of an appeal before us, which is under consideration in the present case.
- 6.** At the outset, it is noticed that the appeal of assessee is filed with delay of 03 days. To explain the reason for delay, it is submitted that there was some confusion regarding applicability of new provisions for filing of appeal before the

Tribunal, therefore, under Bonafide belief of assessee's counsel, who was under impression that the appeal after 01.10.2024 could be filed within 2 months from the end of the month on which Ld. CIT(A)'s order is passed, thus, the delay for 03 days have been occurred. As the delay involved in filing of appeal is not inordinate, therefore, we find that there is no intentional delay involved in the present appeal, and the reason assigned by the Ld. AR found to be Bonafide and justifiable. Ld. Sr. DR representing department, being the delay involved only for 03 days which is not an unreasonable / excessive, has not objected to the condonation of delay, therefore, we condone the delay and allow the appeal for adjudication.

7. At the threshold of the hearing, it was the submission by Ld. AR that the deposits in bank account of the assessee, pertains to his business commission and retail trading, the same is duly supported with corroborative evidences, which were furnished before the Ld. CIT(A), such as ledger account of assessee in the books of Dish Infra Services Private Limited for the FY 2016-17 placed before us at page no. 30-218 of APB, copy of sample bills (page no. 219-230), copy of Form 26AS (Page No. 231-235), Sales register (Page No.236-243), Bank Statement (Page No.244-301), Purchase Register (Page No. 302-308), copy of Audit Report (Page No. 309-328), copy of revised computation filed along with Challan of Rs.56,730/- (Page No.329-332), Income Tax Return of AY 2017-18 and copy of Balance sheet, profit & loss account, capital account etc.

(Page No. 381-382). It was the submission that all the aforesaid documents are furnished before Ld. CIT(A), however, Ld. CIT(A) before whom all these documents / additional evidences are furnished by the assessee, had not even referred to such documents neither the assessee was show caused to further explain the transactions of Commission Income and other receipts for which cash deposits are made in the bank account. It is argued by the Ld. AR that, the assessee was under belief after filing of all the corroborative evidence a/w submissions, that such details would consider by the Revenue Authorities and would be satisfactory to corroborate the deposits made by him. In case any further information or explanation was required, the assessee would have been called for to furnish further explanation/ clarifications, however, no such action was taken by the Ld. CIT(A), neither any remand report towards additional evidence furnished before him have been called for from the concerned A.O. Under such facts and circumstances, the addition made by the Ld. AO, was arbitrary, illegal and bad in law, which was further erroneously sustained by the Ld. CIT(A) without consulting the evidence furnished by the assessee before him, the addition made by the Ld. AO and confirmed by Ld. CIT(A), therefore, is liable to be deleted in its entirety.

8. Per contra, Dr. Priyanka Patel, (in short "Ld. Sr. DR"), vehemently supported the order of Ld. CIT(A), however, had agreed with the contention of Ld. AR that in case, the additional evidences furnished by the assessee are not

dealt with and deliberate upon the authorities below, then the matter should be restore back to the file of Ld. CIT(A) for *denovo* adjudication.

9. We have considered the rival submissions, perused the material available on record and the contention raised by the parties. Prima facie, it is evident that the assessee had furnished various documents for more than 300 pages before the Ld. CIT(A), which are at first glance found to be relevant to the business of the assessee, however, the appeal was dismissed without referring to such documents, stating that the assessee failed to make any attempt to link the deposits with the business receipts, whereas there was no material on record to show that the assessee was show caused to furnish explanations *qua* such claim by the Ld. CIT(A). We, therefore, after having given a thoughtful deliberation to the entirety of the facts and circumstances of the present case, are of the considered view that in all fairness, following the principle of natural justice, the matter should be restore back to the file of Ld. CIT(A) for *denovo* adjudication, within a period of 03 months from the date of receipt of this order.

10. Needless to say, the assessee shall be afforded with reasonable opportunity of being heard in the set aside appellate proceedings. The assessee is also directed to cooperate and assist proactively in the set aside proceedings, failing which the Ld. CIT(A) would be at liberty to decide the case in accordance with the mandate of law.

11. In result, appeal of the assessee is **partly allowed for statistical purposes**, in terms of over aforesaid observations.

Order pronounced in the open court on 27/03/2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 27/03/2025
Vaibhav Shrivastav

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Bipul Paul
2. प्रत्यर्थी / The Respondent- ITO, Ward-Kanker
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur