

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.: 20/GTY/2024
Assessment Year: 2017-18**

Naren Basak <i>(Appellant)</i>	Vs.	ITO, Ward-2(2), Guwahati <i>(Respondent)</i>
PAN: AFOPB1869H		

Appearances:

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

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : January 23rd, 2025

Date of pronouncing the order : April 17th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax-NFAC, Delhi [hereinafter referred to as "the Ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2017-18 dated 29.12.2023,



which has been passed against the assessment order u/s 143(3) of the Act, dated 24.12.2019.

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

“1. For that the learned A.O. is not justified in making addition of Rs. 16,28,000/- u/s 69A of I.T. Act on account of cash deposited during demonetization period.

2. The Appellant craves the leave to take Additional Grounds at the time of hearing of appeal.”

3. Brief facts of the case are that the assessee filed the returns of income on 16.03.2018 for AYs 2016-17 and 2017-18 and both the returns were selected for scrutiny through CASS. It is stated in the Statement of Facts filed before the Ld. CIT(A) that relevant papers were submitted in support of the returns filed but by mistake the assessee had shown business income as other income under the head “income from other sources”. For the period of AY 2016-17, the Assessing Officer (hereinafter referred to as Ld. 'AO') passed the order considering the submissions of the assessee but for the impugned AY 2017-18, an addition of Rs. 16,28,000/- was made u/s 69A of the Act as unexplained money for the deposits in the bank account during the demonetization period in spite of the fact that the bank statement and records show that the total deposit was Rs. 15,45,000/- instead of Rs. 16,28,000/- added by the Ld. AO. It is also observed from the assessment order that in response to the show cause notice issued by the Ld. AO, the assessee submitted that he is the proprietor of M/s. Royal Electronics, dealing in all kinds of electronic goods and having its registered place of business at A-Hiya Multi Complex, S. S. Road, Lakhtokia, Guwahati since long back. For the previous year relevant to



A.Y. under assessment, he had shown income from the aforesaid business at Rs. 41,42,250/- but the same income was shown under the head “income from other sources” instead of “business income” as he was not maintaining the proper books of account. However, a perusal of the computation of income for AY 2017-18 filed from pages 9 to 12 in the paper book filed during the course of the appeal before the Tribunal shows that at page 10 of the paper book the other income is shown at Rs. 4,14,250/- and not Rs. 41,42,250/- as per the reply filed before the Ld. AO. The main source of depositing the cash into the cash credit account was out of collection from trade receivable goods sold on credit during the financial period 2013-14 to 2015-16 and it was submitted that the same can be cross checked with the audited account already uploaded in the income tax portal during the period 2014-15. A copy of ledger account of Royal Electronics in the books of Computer Vision Works where some transactions had been shown for the FY 2015-16, a rough trading and profit and loss account for the FYs 2014-15 and 2015-16 and some purchase voucher and sale vouchers issued during the FY 2016-17 were also filed before the Ld. AO along with the above reply. The Ld. AO noted that as per the record available in the system and information received from the assessee, he had discontinued his business after AY 2014-15. On one hand while the assessee was stating that the source of cash deposit during the FY 2016-17 was collection from trade receivables to whom he had sold goods on credit during the financial years 2013-14 to 2015-16 but on the other hand, the assessee had submitted purchase and sale vouchers issued during the FY 2016-17 and in the return of income in ITR-1 the assessee had disclosed the income under the head “Other Sources”. The submissions of the assessee were found contradictory and the documents submitted for



claiming income under the head of business and profession during the FY 2016-17 already shown under the head “income from other sources” in the return of income on ITR-1 were rejected by the Ld. AO and the cash deposited in the bank account during the period of demonetization amounting to Rs. 16,28,000/- was treated as unexplained money.

4. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who considered the facts of the case as well as the submissions filed by the assessee including the copy of the assessment order of AY 2016-17 and certified copy of financial statement for the AY 2014-15 to justify genuineness of the existence of business but found no force in the arguments of the assessee. It is held in para 6.2 of the order of the Ld. CIT(A) that the assessee had admittedly not maintained proper books of account for the year and had declared income under the head “other sources” and had also deposited Rs. 16,28,000/- in the bank account during the demonetization period. In the appellate proceedings the assessee wished to explain these as his business receipts. Since there were several contradictions in the explanation given as pointed out by the Ld. AO and the assessee had not been able to resolve these in the appellate proceeding, therefore, the addition of Rs. 16,28,000/- made u/s 69A of the Act was confirmed and the appeal was dismissed. Aggrieved with the order of the Ld. CIT(A) the assessee has filed the appeal before this Tribunal.

5. Rival submissions were heard and the paper book filed was examined. It was submitted that the assessee had closed his business in FY 2014-15 and the returns for AY 2016-17 and AY 2017-18 were filed on the same date i.e. 16.03.2018. Both the returns were taken up for scrutiny for cash deposited in the bank account. The assessee had



mentioned income from other sources but certain stocks relating to the business were sold and no intimation was given to the Ld. AO. For the AY 2016-17, the Ld. AO accepted the cash deposit in the bank account as part of business receipts and the assessee also filed the copy of the assessment order for AY 2016-17 dated 15.12.2018 in which the gross income of Rs. 3,99,443/- is shown and the total income was assessed at Rs. 2,49,017/-. It is mentioned that the assessee was involved in the proprietorship in the name and style of M/s. Royal Electronics in the AY 2014-15. Thereafter he discontinued his proprietorship concern and also failed to maintain the books of account. As per the audited balance sheet of M/s. Royal Electronics for AY 2014-15, the sundry debtors are shown at Rs. 30,63,189/-, security deposits of Rs. 2,50,170/-, closing stock at Rs. 37,03,220/- and cash in hand of Rs. 14,33,450/-. During the period relevant for AY 2016-17, the assessee had deposited cash of Rs. 15,18,000/- in the cash credit account of M/s. Royal Electronics maintained at the Allahabad Bank and Rs. 20,00,000/- in the current account of M/s. Royal Electronics maintained at the State Bank of India, which were stated to be out of the cash realized from business receivables as shown in the ITR for the AY 2014-15. Our attention was also drawn to para 2.0 and 3.0 on page 7 of the paper book being the assessment order relating to the AY 2016-17 in which these transactions are mentioned and the fact of audited balance sheet is also mentioned at para 3.0 of the assessment order. It was submitted that for the AY 2017-18 the facts were similar and as per pages 1 to 5 of the paper book similar explanation was submitted and the Ld. AO did not find any fault for AY 2016-17 but refused to accept the deposits made during the period relevant for AY 2017-18. It was submitted that minor purchases and sales were also made for the customers of the business

and the Ld. AR on behalf of the assessee requested that the matter may be remitted back to the Ld. AO so that the required details could be filed as it is fact that the cash deposit was out of the business receipts. The Ld. DR relied upon page 3 para 4 of the order of the Ld. CIT(A) who has held the same view as of the Ld. AO. The Ld. AR stated that the rule of consistency should be followed and relied upon the decision of **Radhasoami Satsang vs. CIT** reported in [1992] 60 Taxman 248 (SC) in which it has been held as under:

“13. We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

14. On these reasonings in the absence of any material change justifying the revenue to take a different view of the matter—and if there was no change it was in support of the assessee—we do not think the question should have been reopened and contrary to what had been decided by the Commissioner in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under sections 11 and 12.”

6. The Ld. AR requested that as the business receipts were accepted for AY 2016-17 during the scrutiny proceeding, the same explanation ought to have been accepted for AY 2017-18 as well as the assessee had given detailed reply of comparative cash sales and cash deposits during the two financial years in the course of the assessment proceedings and in the appeal before the Ld. CIT(A) for AY 2017-18.

7. We have considered the submissions made and have also gone through the facts of the case. The Ld. AO accepted the returned income



of the assessee for AY 2016-17 in which the income from “other sources” was shown which is now claimed to be on account of cash realized from the debtors and out of sales made but did not accept the submissions for AY 2017-18. Although res judicata does not apply to the income tax proceedings, however, the rule of consistency is applicable and as the sale receipts from business were accepted in AY 2016-17, there was no justification for the Ld. AO to disregard the submission of the assessee in A.Y. 2017-18. Hence, in the interest of justice and in view of the decision in the case of Radhasoami Satsang (supra), the orders of both the Ld. CIT(A) as well as the Ld. AO are set aside and the matter is remitted to the Ld. AO for making the assessment de novo after considering the submissions of the assessee and the fact that the source of deposit in the bank account being out of business receipts has been considered in the assessment for AY 2016-17 and thereby make the assessment afresh as per law. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of the grounds of appeal and shall not seek unnecessary adjournments. Accordingly, the grounds taken by the assessee in this appeal are allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 17th April, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]

Judicial Member

Dated: 17.04.2025

Bidhan (P.S.)

Sd/-

[Rakesh Mishra]

Accountant Member



Copy of the order forwarded to:

1. **Naren Basak, C/o Royal Electronics, A-Hiya Multi Complex, S.S. Road, Lakhtokia, Guwahati, Assam, 781001.**
2. **ITO, Ward-2(2), Guwahati.**
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