

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.: 84/GTY/2020
Assessment Year: 2016-17**

| | | |
|----------------------------|-----|--|
| Ranee Narah (Appellant) | Vs. | ACIT, Circle-3, Guwahati (Respondent) |
| PAN: ABAPN4741N | | |

Appearances:

Assessee represented by : Kishor Jain, FCA.

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : April 7th, 2025

Date of pronouncing the order : April 23rd, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)- 2, Guwahati [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 2016-17 dated 16.12.2019, which has been passed against the assessment order u/s 143(3) of the Act, dated 31.12.2018.



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

“1. For that, the Assessment order passed u/s 143(3) is not based on correct facts and findings and is erroneous on points of law.

2. For that the learned Assessing Officer is not justified in converting the limited scrutiny case into complete scrutiny case without any approval of higher authority as per provision of the Act and Learned CIT Appeals also erred in confirming the same in the facts of the case.

3. For that on the facts and circumstances of the case as well as on the points of law, the learned AO is erred in not accepting the trade debtors Rs.70,30,000/- as genuine one, ignoring the business done in the name of Proprietary concern namely

i) M/S Boginadi Multipurpose Dairy Farm

ii) M/S Dil Mohammed Chowdhury

iii) M/S Tileshwar Narah

in which Cash in hand shown as on 31-03-2015 were not accepted and thereby making an addition of Rs. 8198481/- u/s 68 of IT Act as unexplained cash as PROTECTIVE one in the facts of the case and the learned CIT Appeals also erred in confirming the same.

4. For that on the facts and circumstances of the case as well as on the points of law, the learned AO erred in making an addition of Rs. 7,56,78,097/- u/s 69 of the Income Tax Act 1961 ignoring the Balance Sheet of the appellant as on 31-03-2015 as well as Sworn Affidavit submitted before Election Commission and the learned CIT Appeals also erred in confirming the same.

5. For that Learned CIT Appeals is not justified in stating that appellant failed to comply the provision of Rule 46A of IT Rules in the facts of the case.

6. For that the learned Assessing Officer is not justified in charging the following interest

u/s 234A Rs. 2395096

u/s 234B Rs. 9879771

u/s 234C Rs. 28531

7. For that, any other ground/grounds may kindly be allowed to be urged at the time of hearing”



3. During the course of appeal, the assessee submitted that there were two additions involved; deposit of cash during the demonetization period and protective assessment was made in the impugned year and substantive assessment was made in the subsequent assessment year. The protective assessment is in respect of cash-in-hand as on 31.03.2016 which was out of the repayment of debtors and the amount was not accepted by the Assessing Officer (hereinafter referred to as Ld. 'AO'). In the appeal for AY 2017-18 this cash-in-hand was added on substantive basis. In ground no. 2 of the appeal the assessee has submitted that the chart of the same was available from page 275 to 276 of the paper book and the affidavit in this regard is available from page 261 to 274 of the paper book. The difference in the assets disclosed in the affidavit filed before the Election Commission and the details as per the return of income was added to the income of the assessee. It was submitted that the Ld. AO had not done item-wise comparison. The assessee had failed to support the explanation for the cash which was held by the Ld. AO to be concocted. The source of the assets was not explained satisfactorily and there was a huge difference between the values of assets. The Ld. AR also drew our attention to page 22 of the assessment order. Only one property was shown in the return of income and the others were not included. The assessee requested that the matter may be remitted to the file of the Ld. AO for reconciliation of the item-wise assets. The Ld. AR was also confronted by the Bench as to when the repayment of the debtors was not accepted by the Ld. AO why the substantive addition u/s 68 of the Act should not be considered in AY 2016-17 instead of protective assessment made in AY 2016-17. The Ld. AR requested that the matter may be remitted to the Ld. AO for filing

of necessary evidence and submission in this regard by the assessee and deciding the issue as per law.

4. We have considered the submissions made. Since the Ld. AO disbelieved the repayment from debtors and which money was being shown as cash-in-hand available on 31.03.2016, the addition was liable to be made u/s 68 of the Act in AY 2016-17 on substantive basis, as the same money was claimed by the assessee to have been deposited in the subsequent financial year in the bank account. The provisions of section 68 of the Act are reproduced as under:

“Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

[Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—

(a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that] where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

[Provided also] that nothing contained in the first proviso [or second proviso] shall apply if the person, in whose name the sum referred to therein is



recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

5. Since the assessee could not make proper submission before the Ld. AO and the Ld. AO has also not considered item-wise discrepancy as some of the assets shown in the balance sheet filed before the Election Commission are also not considered while making the addition as no addition has been made in respect of several assets shown. In the interest of justice and fair play the order of the Ld. CIT(A) as well as the Ld. AO are hereby set aside and the Ld. AO is directed to frame the assessment de novo after granting adequate opportunity of being heard to the assessee. The assessee shall be at liberty to raise all legal contentions before the Ld. AO and reconcile the item-wise discrepancy and thereafter the Ld. AO shall make the assessment. Our observation as above should not be considered as a finding for the addition to be made u/s 68 of the Act for AY 2016-17 but the Ld. AO shall examine the provisions of section 68 of the Act and the facts of the case and decide accordingly.

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

Order pronounced on 23rd April, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 23.04.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Ranee Narah, Nayan Bhawan, Japorigog, Guwahati, Assam, 781005.**
2. **ACIT, Circle-3, Guwahati.**
3. CIT(A)- 2, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata