

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. No. 137/GTY/2023
Assessment Year 2017-18

Late Asad Uddin,

(Through Legal Successor Smt. Razia Begum),

Masjid Road, Laxmi Bazar Road,

Karimganj – Assam - 788711

[PAN: AADPU7781P]

.....**Appellant**

vs.

Assistant Commissioner of Income Tax,

Circle-Silchar,

Aayakar Bhawan, PWD Road,

Silchar, Assam - 788001

..... **Respondent**

Appearances by:

Assessee represented by : None

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 03.04.2025

Date of pronouncing the order : 04.04.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereinafter “the Act”), passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter the Ld. CIT(A)] vide order dated 15.12.2022 for AY 2017-18.

1.1 In this case, it is seen from the records available that the hearing in this appeal was fixed for 16.05.2024, 20.08.2024, 14.11.2024, 31.12.2024, 25.02.2025 and finally on 03.04.2025, in all of these days either adjournments have been sought or none have put in any

appearance. Accordingly, we deem it fit to proceed ahead in the matter on the basis of facts already on record.

2. In this case, the Ld. AO passed an order u/s 144 r.w.s. 143(3) of the Act, dated 30.12.2019. Through this order, the Ld. AO examined the cash deposits of Rs. 11,22,27,500/- during the entire financial year 2016-17, which also included an amount of Rs. 15,58,500/- deposited in cash during demonetization period. The Ld. AO attempted to elicit a response from the assessee regarding the cash deposits but could not succeed as there was absence of adequate response from the side of the assessee. However, a perusal of the Ld. AO's order, shows that partial compliance was made to the queries raised by the Ld. AO on some occasions even though the Ld. AO has recorded that satisfactory explanation for the huge cash deposits was not submitted at any stage. The Ld. AO ended up adding Rs. 15,58,500/- u/s 69A of the Act on account of cash deposits during demonetization period.

2.1 Aggrieved with this action, the assessee approached the Ld. CIT(A). It is record in para 4 of the impugned order that three notices sent for fixing the dates of hearing were not responded to at all by the assessee and thereafter the Ld. CIT(A) ended up confirming the action of Ld. AO.

2.2 Aggrieved with the action of Ld. CIT(A), the assessee has filed the present appeal with the following grounds:

"1. For that the id. CIT(A) ought to have hold that the order of assessment passed by the id. AO u/s 144 r.w.s. 143(3) is bad in law, facts and procedure.

2. For that the Id. CIT(A) ought to have hold that in absence of any valid notice under section 143(2) of the Act having been served upon the appellant by the learned AO, the impugned order of assessment is bad in law and without jurisdiction,

3. For that the Id. CIT(A) ought to have hold that in absence of any valid order under section 127 of the Act having been passed and served upon the appellant, the impugned order of assessment passed by the Id. ACIT, Silchar was without jurisdiction and bad in law.

4. For that the Id. CIT(A) ought to have hold that the order of assessment passed by the Id. AD under section 144 of the Act is without satisfying the requisite condition of law, without jurisdiction and bad in law.

5. For that the id. CIT(A) ought to have hold that on the facts and circumstances of the case, the leamed AD was not justified in arbitrarily adding Rs. 1,55,85,000/- to the income of the assessee by invoking provisions of section 60A of the Act. The said addition being beyond the scope of section 69A of the Act, the same is bad in law and unsustainable.

6. For that the Id. CIT(A) failed to appreciate that the arbitrary addition of Rs. 1,55,85,000/-made by the learned AO amounts to double taxation which is bad in law and unsustainable

7. For that the Id. CIT(A) ought to have hold that the arbitrary addition made by the Id. AD of huge amount of Rs. 1,55,85,000/- is against real life facts, impossible and contrary to the materials on record.

8. For that the learned CIT(A) failed to appreciate that the learned AO was not justified in even ignoring Rs. 22,00,000/- declared by the assessee under PMGKY.

9. For that the Id. CIT(A) ought to have hold that the Id. AO was not justified in even ignoring the fact that the cash deposit of Rs. 1,55,85,000/- was also comprised of legal tenders and non-demonetized currencies also.

10. For that the Id. CIT(A) ought to have hold that the leamed AO was not justified in arbitrarily and whimsically stating that the book result is not reliable and in holding that trading result is rejected. The above arbitrary remark is self-contradictory and is able to be expunged.

11. For that the Id. CIT(A) ought to have hold that the order of assessment was passed in gross violation of the principles of natural justice and hence, the same is bad in law and is liable to be quashed.

12. For that the impugned appellate order was passed by the id. CIT(A) in gross violation of principles of natural justice and without allowing any effective and reasonable opportunity of being heard.

13. For that in absence of any notice of hearing dated 04.11.2022 having been ever served, the Id. CIT(A) was not justified in passing the impugned order dated 15.12.2022

14. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing.”

3. We find from the records that the assessee has filed a short paper book comprising 37 pages which shall be used to adjudicate this issue. With the assistance of Ld. DR, we have gone through the facts of the case and we find that the assessee has challenged the Ld. AO's action on several counts, including the issue of assumption of jurisdiction. We find that

since none of these issues have been adjudicated by the Ld. CIT(A), we deem it fit to set aside the impugned order and remand this case back to the file of Ld. CIT(A) for fresh adjudication, including the issue of assumption of jurisdiction by the Ld. AO. We would expect that the assessee would cooperate with the appellate proceedings and Ld. CIT(A) would give adequate opportunity of being heard.

4. With these remarks, appeal of the assessee is partly allowed for statistical purposes

Order pronounced on 04.04.2025

Sd/-
[Manomohan Das]
Judicial Member
Dated: 04.04.2025
AK, PS

Sd/-
[Sanjay Awasthi]
Accountant Member

Copy of the order forwarded to:

1. Late Asad Uddin,(Through Legal Successor Smt. Razia Begum),
2. Asstt/Deputy Commissioner of Income Tax, Circle-1, Dibrugarh
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

1.