

IN THE INCOME TAX APPELLATE TRIBUNAL “PATNA BENCH”, PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI DUVVURU RL REDDY, VICE PRESIDENT
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 366/Pat/2023
(Assessment Year 2017-18)

Brijendra Kumar Singh,
0, Sarai, Mashodha Ramgarh,
Kaimur (Bihar)- 821108
[PAN: AAHFB1813H]

..... **Appellant**

vs.

DCIT, Circle-1,
Gaya

..... **Respondent**

Appearances by:

Assessee represented by : Sh. A.K. Rastogi, Sr. Adv.

Department represented by : Sh. Ashwani Kr. Singal, JCIT

Date of concluding the hearing : 17.04.2025

Date of pronouncing the order : 23.04.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. In this case, the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”], passed u/s 250 of the Income Tax Act, 1961(hereafter “the Act”). In this case, before the Ld. AO, the assessee admittedly did not submit complete and comprehensive details in justification of the returned income shown by him. On this basis, the Ld. AO estimated net income @ 8% of total gross turn over of Rs. 41,48,27,572/-, leading to an estimated net profit of Rs. 3,31,86,205/-. This in turn led to net addition of Rs. 92,50,521/-, after subtracting the profit already shown.

1.1 Aggrieved with this action, the assessee approached the Ld. CIT(A), where he could not make any presentation of facts to as many as three opportunities provided to him by the Ld. CIT(A). Thereafter, the action of Ld. AO was confirmed.

1.2 Further aggrieved, the assessee has approached the ITAT with the following grounds:

“1. For that the Ld. CIT(A) has erred in dismissing the appeal filed by the appellant and upholding the order passed by the A.O.

2. For that the Ld. CIT(A) has erred in deciding the appeal without allowing opportunity of virtual hearing after furnishing of written submission.

3. For that the action of the Ld. CIT(A) in not allowing opportunity of virtual hearing is in utter violation of the basic tenet of law that no person should be condemned unheard.

4. For that the Ld. CIT(A) has erred in not relying on the judicial precedents provided by the appellant that too without distinguishing the same with the appellant's case.

5. For that the Ld. CIT(A) has erred in holding that the orders/ judgments relied upon are not identical on facts whereas the fact remains that all the orders of Jurisdictional Tribunal and judgment of the Jurisdictional High Court are clearly applicable on facts and thus, were required to be followed unreservedly, being binding precedence.

6. For that the Ld. CM(A) has erred in estimating the net profit @ 8% without citing / relying on any comparable case and by arbitrarily rejecting the comparable instances relied upon by the appellant.

7. For that the Ld. CIT(A) has erred in sustaining addition of Rs.92,50,521/- (3,31,86,205 - 2,39,35,684) and thereby upholding estimation of net profit rate of @ 8% of the total gross turnover.

8. For that the Ld. CM(A) has erred in upholding the application of net profit rate of 8% on total gross turnover.

9. For that the Ld. CM(A) has erred in estimating net income @ 8% and making addition of Rs.92,50,521/- although the net income declared by the appellant is in consonance with the past records.

10. For that the order passed by the Ld. CIT(A) is wrong, illegal and unjustified in the facts and circumstances of the appellant's case.

11. For that the appellant reserves its right to furnish detailed written submission along with documents and evidences on or before date of hearing.

12. For that the appellant may be given opportunity of personal hearing physically/virtually at the time of hearing of the appeal.

13. For that the whole order is bad in fact and law of the case and is fit to be modified.

14. For that the other grounds, if any, shall be urged at the time of hearing of the appeal.”

2. Before us, the Ld. AR fairly admitted that the books of accounts and supporting vouchers were not fully produced before either of the authorities below. The Ld. AR read out the important findings from the Ld. AO's order at page 4 and also at page 14 of the impugned order. The Ld. AR mentioned that on somewhat similar facts the Hon'ble jurisdictional High Court has estimated the net profit of civil contractor @ 6%. The Ld. AR read out portions from the case of DCIT Vs. Rishi Builders in MA No. 694 of 2010 (Patna) dated 23.10.2018. However, the Ld. AR fairly mentioned that in case the net profit rate of 6% was adopted then the income would go below the returned income. Accordingly, he prayed that since the return income was more than 6% of the gross turn over then that is what should be sustained. The Ld. AR placed before us the computation of income in both scenarios where 6% net profit rate is adopted and in another case where the return of income is accepted.

2.1 The Ld. AR supported the orders of authorities below and stated that in the absence of books and vouchers the Ld. AO has adopted the rate of income prescribed for presumptive assessment in the case of businesses where books of account are not maintained (section 44AD of the Act). Accordingly, the Ld. AR supported the action of authorities below.

3. We have carefully considered the rival submissions and also gone through the documents placed before us, specially the case law relied upon by the Ld. AR. Respectfully following the said case law (supra), we direct that the returned income of the assessee should be accepted and the addition to the income over and above that must be deleted.

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

Order pronounced on 23.04.2025

Sd/-
(Duvvuru RL Reddy)
Vice President

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 23.04.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Brijendra Kumar Singh
2. DCIT, Circle-1, Gaya
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

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