

आयकर अपीलीय अधिकरण, कोलकाता पीठ "बी", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 1465/Kol/2023

Assessment Year: 2017-18

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| Sukanata Saha (PAN: AUJPS 7295 N) | Vs. | CIT(Appeals), Delhi |
| Appellant / (अपीलार्थी) | | Respondent / प्रत्यर्थी |

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| Date of Hearing / सुनवाई की तिथि | 13.05.2025 |
| Date of Pronouncement/ आदेश उद्घोषणा की तिथि | 22.05.2025 |
| For the assessee / निर्धारिती की ओर से | Shri K. L. Chakraborty, AR |
| For the revenue / राजस्व की ओर से | Shri Sallong Yaden, Addl. CIT DR |

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeals)- NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 30.10.2023 for AY 2017-18.

2. Brief facts of the case are that the assessee is an individual filed his return of income for the A.Y.2017-18 on 31/10/2017, declaring total income at Rs.15,48,380/-. Assessee is engaged in the business of the Whole-sale fish trade. The case was selected for scrutiny assessment through CASS. Accordingly, notices u/s 143(2) and 142(1) of the Act were issued. 3.2 During the demonetization period, the assessee deposited cash of Rs.84,50,000/- into Union Bank of India account. As the assessee has failed to substantiate the sources of cash deposit to the extent of Rs.72,00,000/-, AO has added it to the total income of the assessee. 3.3 Further, the AO estimated the profit @ 5% on total sales of Rs.5,28,37,897/- which comes to RS.26,41,895/-. Since the assessee has already offered an amount of Rs.14,25,894/-, the balance amount of Rs.12,16,001/- is added to the total income of the assessee. 3.4 Further, as the assessee has not filed details of the sources for the investment made in LICICI, an amount of Rs.11,87,500/- is added to the total income of the assessee.

3. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein also the appeal of the assessee has been dismissed.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

4. The Ld. AR challenges the very impugned order thereby submitting that the AO has added out a sum of ₹72,00,000/- and confirmed by the Id. Commissioner of Income-tax (Appeals), U/s 68 of the Income Tax Act 1961 alleging as undisclosed cash deposited into bank during the period of demonetization without considering the nature of business Collection of cash out of sales as explained to the AO. during the course of hearing supported by Cash Book Sales Register and all other details as required by the A.O. and no defect was found or informed. As such no opportunity was given to the appellant to rebut the same Further Ld. A.O. has resorted to make and estimation of profit @ 5% on Gross Sales of Rs. 5,28,37,897/- which comes Rs. 26,41,895/- and confirmed by the Ld. Commissioner of Income Tax (Appeals), ignoring the Audited Accounts, declared profit of Rs. 14,25,894/- from the Business of the appellant for the A.Y. 2017-18, without offering any opportunity to explain the facts to him which is unjustified and bad in law. Further the Ld. A.O. has added Rs. 11,87,500/- and confirmed by the Ld. Commissioner

of Income Tax (Appeals) for investment with LIC out of the maturity amount received from the LIC of India during the year and no opportunity was given to appellant prove the genuineness of investment otherwise could have been explained. Further the Ld. A.O. has estimated the Annual Drawings of Rs. 4,80,000/- as against Rs. 2,00,000/- thereby additions Rs. 2,80,000/-, which is confirmed by the Ld. Commissioner of Income Tax (Appeals) as undisclosed source without considering the size of the family and drawing of the other family members as well. As such no opportunity was given to the appellant to explain the same to the Ld. Commissioner of Income Tax (Appeals). The Ld. AR before us has filed several documents with the paper book and submits that the documents which has been field before this Tribunal are essential piece of evidence to come to just conclusion of the case of the assessee. The Ld. A.R submits that in fact the assessee started business on 27.06.2016 and opened a current bank account on 22.07.2016 as a proprietorship concern or wholesale trading of raw fish and before starting his own business he was the partner of M/s Maa Durga Fish Traders, a partnership concern along with his family member who are also engaged in their respective own business. The ld. A.R submits that the AO as well as the Ld. CIT(A) has erred in expressing his issue about abnormal increase of sale from August, 2016 ignoring the fact that the assessment year for year 2017-18, there was an increasing trade in sale also for the next financial year 2017-18. The submission of ld. A.R is that almost the total purchase were from outside West Bengal and payment was through banking channel as reflected in the bank statement. It has further been submitted that party wise purchase along with respective party ledger account are attached herewith for perusal and appreciation total sale being in cash at open fish market, it was not possible to maintain the particulars of buyers. The ld. A.R has further attached the bank statement for FY 2017-18 for justification of normal rate of such business. The prayer of the Ld. A.R is that the order passed by the AO confirmed by the Ld. CIT(A) is merely on assumption and surmises and liable to be set aside.

5. Contrary to that the Ld. D.R supports the impugned order.

6. Upon hearing the submission of the counsel of the respective parties, it appears to us that the assessee is a wholesale fish trader importing fish mainly from Orissa and Assam and the same was sold to the customer across West Bengal district in cash wholesale through banking system. The AO has added cash deposit an amount of Rs. 72 lakhs as undisclosed income u/s 68 of the Act by observing that the assessee failed to furnish party wise details of sale and purchase and there was no explanation from the assessee regarding abnormal increase of total sales from August, 2016. We further find that the AO has added Rs. 11,87,500/- with his capital account under the LIC maturity by observing that no details and documents have been filed by the assessee. The Ld. CIT(A) has also confirmed the order of AO by observing the same thing that the assessee failed to produce the relevant documents and explanation before the AO. We further find from the submission made by the Ld. A.R that no opportunity was given to the assessee to rebut the same. Before us following documents have been filed which are as follows:

- i) Audited balance sheet and profit and loss account for the year ended 31st March, 2017, relevant to the AY 2017-18.
- ii) copy of bank statements for FY 2016-17.
- iii) Copy of trade license.
- iv) Copy of Income tax return in support of nature of business.

7. Going over the facts of the case and considering the order passed by the AO and submission made by the assessee, we are in this view, that the matter in issue is to be reverified by the AO by affording an opportunity to the assessee to place all those documents before the AO. Accordingly, the appeal of the assessee is remitted back to the file of AO for fresh adjudication after hearing the assessee and after going over the documents and considering the facts of the case. The order passed by the AO confirmed by the Ld. CIT(A) is hereby set aside.

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

Order is pronounced in the open court on 22nd May, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 22nd May, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sukanta Saha, 13/5A, Pearapur Road, Sheoraphuly, WB-712223.
2. Respondent – CIT(A)-Delhi
3. Ld. PCIT- , Kolkata
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata