

IN THE INCOME TAX APPELLATE TRIBUNAL “PATNA BENCH”, PATNA

(VIRTUAL HEARING AT KOLKATA)

**SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 603/PAT/2024
(Assessment Year 2012-13)**

**Nagendra Prasad Liquors LLP,
Buxar,**

Suraj Bhawan, Thatheri Bazar,
Main Road (Bihar) - 802101
[PAN: AAJFN2811P]

..... **Appellant**
vs.

Central Circle-2, Patna,
Central Revenue Building Annexe,
Beer Chand Patel Marg,
(Bihar) - 800001

..... **Respondent**

Appearances by:

Assessee represented by : Sh. N.K. Lal, FCA

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

Date of concluding the hearing : 13.05.2025

Date of pronouncing the order : 14.05.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. This appeal arises from the order u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”), passed by the Ld. Commissioner of Income Tax (Appeals), Patna-3 dated 31.07.2024.

1.1 In this case, the Ld.AO passed a rectification order u/s 154 of the Act dated 30.11.2021. Through this order, the Ld. AO apparently rectified an error arising from writing “Nil” in the notice of demand issued along with the assessment order, even when in the body of the order taxable income was there. Through the said rectification proceedings, the Ld. AO mentioned the figure of Rs. 2,19,445/- as the tax payable.

1.1 The assessee challenged this action of the Ld. AO before the Ld. CIT(A) where it was claimed that a rectification could only be done of the assessment order and not of the demand notice. It was also claimed before the Ld. CIT(A) that the action of Ld. AO was bad in law since no opportunity was given prior to the impugned action. The Ld. CIT(A) has dealt with this issue and has mentioned in para 4 at page 2 of the impugned order that an opportunity was duly given by the Ld. AO to the assessee prior to passing of the rectification order. Thereafter, the Ld. CIT(A) has stated that the notice of demand is an integral part of the assessment order and therefore, it can be rectified u/s 154 of the Act. The Ld. CIT(A) has relied on the case of Kalyan Kumar Ray reported in 191 ITR 634 (SC) in support of his finding that the notice of demand is very much part of the assessment order.

1.2 Further aggrieved, the assessee has filed the present appeal with the following grounds:

- “1. For that the impugned order is bad in law as well as in facts.*
- 2. For that the impugned order is not sustainable in law in as much as it has confirmed creation a second demand notice for the same assessment year despite the fact that one demand notice created prior to passing of the impugned assessment order also exists.*
- 3. For that the Ld. CIT (A) failed to rebut the contentions of the appellant.*
- 4. For that the Ld CIT(A) has gravely erred in deciding the issue which was not the subject matter of the appeal.*
- 5. For that the Ld CIT(A) gravely erred in holding that a demand notice can be rectified under section 154.*
- 6. For that the Ld. CIT(A) has placed reliance on a judgement which is distinguishable on facts.*
- 7. For that for any other ground that may be urged at the time of hearing.”*

2. Before us, the Ld. AR argued that the action of Ld. AO in rectifying the notice of demand was illegal in as much as it was different from the assessment order and only the assessment order could be rectified. The Ld. AR also stated that since the demand was “Nil” therefore, the assessee did

not file any appeal before the Ld. CIT(A) and by time the rectification was done and a tax demand was communicated to the assessee, then it was too late to file the appeal. In this manner, the Ld. AR assailed the action of both the Ld. AO/CIT(A).

2.1 The Ld. DR relied on the orders of authorities below.

3. We have carefully considered the documents before us and heard both Ld. AR/DR, it is a settled position of law that the notice of demand is very much part of the assessment order and in case an error comes to notice then the same is rectifiable u/s 154 of the Act. To this extent, we support the action of Ld. CIT(A) because he has correctly relied on the case of Kalyan Kumar Ray (supra), whereby this issue has been lucidly dealt with as under:

"Assessment" is one integrated process involving not only the assessment of the total income but also the determination of the tax. The ITO has to determine, by an order in writing, not only the total income by also the net sum which will be pay able by the assessee for the assessment year in question and that the demand notice under s. 156 has to be issued in consequence of such an order. The statute does not, however, require that both the computations (i.e., of the total income as well as of the sum payable) should be done on the same sheet of paper, the sheet that is super scribed "assessment order". It does not prescribe any form for the purpose. It will be appreciated that once the assessment of the total income is complete with indications of the deductions, rebates, reliefs and adjustments available to the assessee, the calculation of the net tax payable is a process which is mostly arithmetical but generally time-consuming. If, therefore, the ITO first draws up an order assessing the total income and indicating the adjustments to be made, directs the office to compute the tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the ITO that the process described in s. 143(3) will be complete.

The practice is that, after the "assessment order" is made, the tax is calculated and the necessary columns of LT.N.S. 150 are filled up showing the net amount payable in respect of the assessment year. This form is generally prepared by the staff but it is checked and signed or initialled by the ITO and the notice of demand follows thereafter. The statute does not, in terms, require the service of the assessment order or the other form on the assessee and contemplates only the service of a notice of demand. While the "assessment order" (ITNS 65) used to be generally sent to the assessee, the other form was retained on file and a copy occasionally sent to the assessee. IT.NS. 150 is also a form for determination of tax payable and when it is signed or initialled by the ITO, it is certainly an order in writing by him, determining the tax payable, within the meaning of section 143(3).

It may be only a tax calculation form for departmental purposes, but this does not detract from its being considered as an order in writing determining the sum payable by the assessee. There is no reason why this document, which is also in writing and which has received the imprimatur of the ITO, should not be treated as part of the assessment order in the wider sense in which the expression has to be understood in the context of section 143(3). In the instant case, the ITO had signed the Form I.T.NS. 150. Therefore, the statutory provision had been duly complied with and that the assessment order was not in any manner, vitiated. Judicial decisions also emphasise that all that is needed is that there must be some writing initialled or signed by the ITO before the period of limitation prescribed, for completion of the assessment has expired in which the tax payable is determined and not that the form usually styled as the "assessment order" should itself contain the computation of tax as well".

Considering the totality of facts and circumstances and the position of law, we hold that the Ld. AO did not commit any error in terms of rectifying the notice of demand.

3.1 Before parting with this issue, we are conscious of the fact that the assessee may have technically missed an opportunity to challenge the assessment order before the First Appellate Authority. In this regard, it deserves to be mentioned that as per section 249(3) of the Act there is a provision for admitting belated appeals by the Ld. CIT(A). The assessee is at liberty to approach the first appellate authority within the mandate of section 249(3) of the Act.

4. In result, appeal of the assessee is dismissed.

Order pronounced on 14.05.2025

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 14.05.2025
AK, Sr. P.S.

Copy of the order forwarded to:
1. Nagendra Prasad Liquors LLP, Buxar
2. Central Circle-2, Patna
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches