

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH PATNA
(IN HYBRID HEARING)**

**BEFORE SHRI DUVVURU RL REDDY, VICE PRESIDENT
AND SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**ITA No. 29/PAT/2025
Assessment Year: 2015-16**

Erfan Alam S/o, Wali Alam, NAC Road, Ward No. 08, Khagaria, Bihar-851204. (PAN: AQZPA6999B)	Vs.	ITO, Ward-2(1), Begusarai
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Ranjan Kr. Sinha, Advocate

Respondent by : Sh. Ashwani Kr. Singal, JCIT

Date of Hearing : 01.05.2025

Date of Pronouncement : 26.05.2025

ORDER

Per Sanjay Awasthi, Accountant Member :

The present appeal emanates from order passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") on 21.08.2024 by Ld. CIT(A), NFAC, Delhi.

1.1. In this case, the ITAT Registry has informed of a delay of 88 days in the filing of this appeal. The assessee has filed an affidavit explaining the reasons for the delay requesting for condonation of said delay as under:



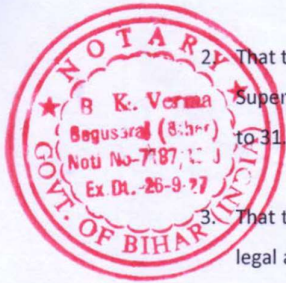
Before,

The Notary Public - Begusarai

AFFIDAVIT

I ERFAN ALAM son of Md.Wali Ahmad age about 38 years bearing Aadhar No.9234 3879 8202 , PAN : AQZPA6999B , Resident of Village & P.o : N.A.C.Road , Ward No.08 , Dist : Khagaria - 851204 , do hereby solemnly affirm and declared as follows:

1. That the deponent is a sole proprietor of ERFAN ALAM, with the head office At & P.o : NAC Road , Ward No.08 , Dist : Khagaria –851204.
2. That the deponent is suffering from health and he is under the treatment of Prime Care , Super Specialty Hospital , Block A, Sector 104, Noida . U.p.-201304 , be complete rest up to 31.12.2024.
3. That the due to suffering from health issues and the deponent is not in position to take legal advice for file Appeal before the Honorable Appellate Tribunal – Patna and this is reason for delay file of Appeal before the Honorable Appellate Tribunal – Patna.
4. That the deponent has request to kindly accept the condonation of delay file of Appeal.
5. That the above statements are true and correct to the best of my knowledge and believe and nothing is concealed.



I identify that the deponent who has signed in presence of me.

Sanil Krishna
Advocate
20.1.2025

[Signature]
20-1-2025

Deponent

Erfan Alam

NOTARY
BEGUSARAI (BIHAR)
Authorized u/s 333 (f) (c) of B.N.S.S. 2003
& (f) (a) of the Notaries Act and
u/s 139 (aa) of C.P.C. 1908
Affidavit No... 378 Date.. 20 1 2025

- 1.2. Considering the reasons given in the said affidavit, the delay is hereby condoned and the appeal is admitted for adjudication.
2. In this case the Ld. CIT(A) passed an order u/s. 250 of the Act dated 21.08.2024. Through this order the Ld. CIT(A) adjudicated the order of Ld. Assessing Officer dated 15.03.2023 passed u/s. 144 of the Act. It is seen that through this order, the Ld. Assessing Officer added Rs.1,23,40,000/- u/s. 68 of the Act, representing cash deposits etc. in the Bank account of the assessee. Apparently, the assessee did not file any return of income and before the Ld. Assessing Officer, he did not file adequate evidence/documents to support his claim that the impugned amount represented the turnover of business. However, the Ld. Assessing Officer has recorded in page 4 (last para) of his order that no withdrawals were visible on account of expenses of business. Also, since no return of income was filed, hence, the Ld. Assessing Officer was, apparently, not able to verify the sources or nature of deposits in the bank account. The Ld. Assessing Officer also noticed some more alleged suspicious aspects in (page 5 to 6) of the Ld. A.O's order). The resultant impugned addition was as a result of these findings.
- 2.1. Aggrieved with this action of Ld. CIT(A), the assessee approached the Ld. CIT(A). Before him the main thrust of the assessee's argument was that the Ld. Assessing Officer had wrongly assumed jurisdiction by an alleged improper initiation of proceedings u/s. 147 of the Act. The assessee could not succeed before the Ld. CIT(A), where his grounds pertaining to alleged illegality in assumption of jurisdiction have been dealt with in pages 6-7 of the impugned order. Briefly, the Ld. CIT(A) found that the Ld. Assessing Officer had correctly followed the procedure required for initiating proceedings u/s. 148/147 of the Act, with an order u/s. 148A(d) of the Act being passed on 31.03.2022 and notice u/s. 148 of the Act being issued on the same date. It is

important to note that before the Ld. CIT(A) the assessee had not specifically challenged the impugned addition. Rather, the main thrust of the challenge focusses on the assumption of jurisdiction.

2.2. Further aggrieved with the order of Ld. CIT(A), the assessee has filed the present appeal in ITAT, with the following grounds:

“1. For that the impugned order of tax and interest dated 15/03/2023 under the provision Income Tax Act 1961 is bad illegal and unjustified.

2. For that the Learned Assessing Officer has completely violated the provision of law in arbitrarily & illegal assuming jurisdiction U/S 147 r.w.s.144 with section 144 B of Income Tax Act 1961 .

3. For that the Learned Assessing Officer has in most arbitrary manner and against all law of justice, has passed the impugned Best judgment tax and interest order in spite of the fact that there is no provision for the same 147 r.w.s.144 with section 144 B of Income Tax Act 1961.

4. For that the Appellant relies upon the legal & factual grounds already mentioned in various paragraph above.

5. For that the appellant has suffering from ill health so he is not in a position to file the Appeal before the honorable court after recover the health he has file an application for supply copy of Appellate order under section 250 before the Jurisdictional Assessing officer on dated 13.01.2025 and received a certified copy of appellate order on dated 13/01/2025, So Appeal is in time.

6. For that these and other grounds to be urged at the time of hearing of the case and the appeal is fit to be allowed.”

3. Before us, the ld. AR vehemently argued that the reopening of the assessee’s case was illegally done. On a query from the Bench regarding the alleged illegality, it was mentioned that the directive contained in the case of Ashish Agarwal [444 ITR 1 (SC)] and others was not followed. The Ld. AR relied on submissions enclosed with the grounds of appeal.

3.1. Per contra, the Ld. AR relied on the orders of authorities below and stated that the Ld. CIT(A) has meticulously dealt with the objections pertaining to proceedings u/s. 147 of the Act.

4. We have carefully considered the submissions and gone through the records before us. It is clear that the assessee has not

filed any return of income and any accounts etc. filed on 03.02.2023 (Ld. Assessing Officer's order at page 4) were examined and found unsatisfactory. Furthermore, it is seen that the assessee has not specifically challenged the action of Ld. Assessing Officer in adding Rs.1,23,40,000/- u/s. 68 of the Act. In fact, neither before the Ld. CIT(A), nor before us have any details regarding turnover of business, sales and purchases thereon or even details of business expenses have been presented or any argument advanced in that direction. Accordingly, we find no fault in the assumption of jurisdiction by the Ld. Assessing Officer, as evidenced by the finding to this extent in the impugned order. Since the main challenge as per the grounds is regarding this aspect, the said grounds fail before us. It also needs to be mentioned that one of the arguments of the Ld. AR pertained to passing of order u/s. 144 of the Act. It needs to be mentioned that since the return of income was not filed in response to notice u/s. 148 of the Act, the Ld. Assessing Officer could only pass an order u/s. 144 of the Act.

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

Order is pronounced in the open court on 26th May, 2025.

Sd/-

Sd/-

(Duvvuru RL Reddy)
Vice President

(Sanjay Awasthi)
Accountant Member

Dated: 26th May, 2025

JD, Sr. P.S.

Copy to:

1. The Appellant: Shri Erfan Alam
2. The Respondent. ITO, Ward-2(1), Begusarai
3. CIT(A), NFAC, Delhi
4. Pr. CIT
5. DR, ITAT, Kolkata Bench, Kolkata
6. Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Patna Bench