

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. 608/PAT/2024
(Assessment Year 2017-18)**

Mahmood Alam,

Shop No. 72, Bazar Samiti Road,
Mahendru S.O, Sampatchak,
Patna - 800006
[PAN: AAWPA9836C]

..... **Appellant**

vs.

**DC/AC, Circle 5,
Patna (Bihar) – 800001**

..... **Respondent**

Appearances by:

Assessee represented by : Pawan Kumar, CA

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

Date of concluding the hearing : 30.04.2025

Date of pronouncing the order : 21.05.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. In this case, there is a delay of 11 days in the filing of the present appeal for which the assessee has filed a delay condonation petition as under:

"1. That I am not convergent with smart phone/computer so that I could not see mail of my own.

2. That I was in Kashmir for business tour while the order was passed & no SMS was received on phone the reason may be the network problem otherwise I use to get SMS of proceeding over my phone.

3. That I could get to know about order around 15 days late the order was passed as I returned back from my business tour in second week of August.

4. That due to audit work for current financial year of my own business and engagement of chartered accountant is audit work filing of appeal got short delayed

by ten days In the meantime CA was also out stationed for her daughter admission in MBBS who has qualified NEET Exams.

5. That I earnestly request to condone the delay that has been caused by reason beyond my control and decide the case on merit so that principal for natural justice could be upheld.

Considering the reasons mentioned in the said petition, we condone the delay and admit the appeal for adjudication.

2. 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 29.07.2024 for AY 2017-18.

2.1 In this case, the Ld. AO is seen to have made two additions of Rs. 36,63,108/- by estimating income @ 8% of the total turnover, as per the provision of section 44AD of the Act and has also made an addition of Rs. 47,75,000/- u/s 69A of the Act, on account of cash deposited during demonetization period.

3. Before the Ld. CIT(A), the assessee could not succeed and the action of Ld. AO is seen to have been upheld. The Ld. CIT(A) has mentioned that a remand report was called for from the Ld. AO and in that it was mentioned that the turnover of the assessee was more than Rs. 2 Crores, hence, the assessee was liable to get his accounts audited, which was obviously not done. Thus, the Ld. CIT(A) sustained the action of Ld. AO in assessing income in the manner prescribed u/s 44AD of the Act. Regarding the addition of Rs. 47,75,000/- u/s 69A of the Act, it has been held by the Ld. CIT(A) that the assessee could not prove the source of cash deposits during the demonetisation period and hence the Ld. AO had correctly applied the provision of section 69A of the Act.

3.1 Aggrieved with this action of Ld. CIT(A), assessee is in appeal before the ITAT with the following grounds:

“1. The order of the learned CIT(A) is bad and erroneous in law and against the principles of natural justice.

2. *The learned CIT(A) erred in not considering the replies filed by the appellant in proper perspective.*

3. *The learned CIT(A) erred in reproducing the assessment order and written submissions filed by the appellant, without any basis, which exhibits non application of mind.*

4. *The learned CIT(A) erred in not considering the scope and effect of the Specified Bank "Notes (Cessation of Liabilities) Act dated 28/02/2017 properly. (Copy of the Act is enclosed).*

5. *The learned commissioner appeal is not justified in up holding the net profit @ 8% on sale proceeds. The assessee is a wholesale dealer of fruits and operates at thin margin of approximately 2 percent. The item dealt by him is highly perishable in nature and huge wastages are involved The product dealt by assessee cannot be equated with business of other products The dealing at wholesale level and nature of product dealt by assessee need to be considered while framing the assessment order.*

6. *The learned A.O is not justified in treating part of the sale proceeds as unexplained money. The learned A.O has considered the deposits made into bank account as sale from business and levied the tax over it @ 8% and at the same time part of sale proceeds were considered as unexplained deposit U/S 69 A The source of fund for cash deposit in bank account was admitted as sale consideration and income is determined over it as business income the same receipt cannot be termed as unexplained source for invocation of section 69A of Income Tax Act 1961.*

7. *The assessee also relies on following judicial pronouncement in support of its contention (Copy of the Act is enclosed).*

Mrs. Umamaheshwari Vs Income tax officer non corporate ward 4(2), Coimbatore [ITAT APPEAL NO-27/chny/2022 of CHENNAI BENCH OF ITAT] kind attention is invited to para 6 of the judgment wherein the provision of Specified Bank Notes (Cessation of Liabilities) Act, 2017, was elaborated & deposit made in demonetized currency was considered and no addition was upheld just for the reason of deposit in demonetized currency. Shri Neralakere Marolaisiddappa Dayananda Vs Income tax officer ward, chiknaglor [ITAT APPEAL NO-261/2023 BANGLORE BENCH OF ITAT] kind attention is invited to para 7,8 & 8.1 of the judgment which elaborates department circulars/ notification relating to line in which deposit during demonization period to be analyzed with past trend However no consideration was made in this respect inspite of submission of complete statistical data during assessment proceeding.

Mohamed Thajudeen Abuthahir Vs Income tax officer ward-2 Nagapattinam [ITAT APPEAL NO 650/chny/2023 of CHENNAI BENCH OF ITAT] kind attention is invited to para 10 of the order were upon considering the fact that sale proceeds is realized in cash substantial portion of deposit made during demonetization period were treated as opening cash balance having regard to nature and volume of business. Opening cash balance of Rs. 25 lacs were considered upon turnover of Rs. 1.65 crore whereas in assessee's case Rs. 0 is considered as opening cash balance on a sales consideration of Rs. 5.52 crores during the financial year.

8. *For that other grounds, if any, shall be urged at the time of hearing of the appeal."*

3. Before us, the Ld. AR forcefully explained that the total deposits in the bank account were to the tune of Rs. 5,52,44,978/- on which 8% was applied to work out the profit from business. The Ld. AR submitted that section 44AD can be applied only when the turnover is less than Rs. 1 crore and in this case, the turnover was significantly more than that. It was submitted that the assessee did not get the accounts accounted under the belief that since he is the wholesaler of fruits hence the provision of getting the accounts audited did not apply to him. It was submitted that the cash deposit of Rs. 47,75,000/- has been doubly taxed, once as part of turnover of business and significantly a second time u/s 69A of the Act. The Ld. AR pointed out through his paper book that the profit disclosed by the assessee was 1.34% for FY 2014-15, 2.10% for FY 2015-16 and 1.93% for FY 2016-17. However, it was fairly admitted by the Ld. AR that quite a few of these years had been dealt with u/s 143(1) of the Act only.

3.1 The Ld. DR relied on the orders of authorities below and stated that in the absence of audited books accounts and other supporting material the AO was left with no option but to assess profits on the basis of mechanism provided u/s 44AD of the Act. The Ld. DR also stated that the source of cash deposited during demonetisation period was never presented by the assessee and hence such amount was exigible to tax u/s 69A of the Act.

4. We have carefully considered the rival submissions and also gone through the records before us. Admittedly, the assessee has not been able to produce good evidence in support of his claim of net profit or even the justification for cash deposit during demonetisation period. However, it is a settled position that a particular item of receipt cannot be taxed twice under the tax provisions. In this case, what appears to be evident is that Rs. 44,75,000/- has been taxed once as part of turnover of business and a second time u/s 69A of the Act. Considering the nature of business of the assessee it is seen that year after year (as seen from the paper book), the assessee has been depositing substantial amounts of cash in his bank

account throughout the year. In fact, the data made available from FYs 2014-15 to 2016-17 shows that the minimum deposit during the year is Rs 4.63 crores and maximum is Rs 5.53 crores. Thus, it is not appropriate to single out cash deposited during the demonetisation period for adverse treatment by showing that there is no evidence for the same. It bears some repetition that throughout the year the assessee is seen to have deposited substantial cash and thereafter only cash during the demonetisation period cannot be treated as being devoid of evidence as compared to the activity during the course of the full year. Accordingly, the Ld. AO is directed to verify whether the amount of Rs. 47,75,000/- has been treated as part of the turnover by him for working out net profit on a presumptive basis and in case the same has been done then there cannot be any addition u/s 69A of the Act on this amount. Also, the Ld. AR was queried on his inability to present evidences and documents to justify his turnover of business and net profit shown by him, especially in the absence of audited accounts. The Ld. AR admitted deficiencies and was agreeable to a net profit of more than whatever was disclosed by the assessee. Considering the totality of facts and circumstances of the case, we deem it fit to apply a net profit rate of 6% instead of 8%, with consequential relief.

5. In result, appeal of the assessee is partly allowed.

Order pronounced on 21.05.2025

Sd/-
(Duvvuru RL Reddy)
Vice President

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 21.05.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Mahmood Alam
2. DC/AC, Circle 5, Patna (Bihar)
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches