

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 466/Bang/2025
Assessment Year : 2017-18

Mr. Kallimuddanahalli Thammannagowda Lokesh, P.W.D. Contractor Kallimuddanahalli Village, Hethagowdanahalli, Post Arkalgud Taluk, Hassan District Kallimuddanahalli. Karnataka – 573 102. PAN: ABXPL8209N	Vs.	The Deputy Commissioner of Income Tax, Circle – 1, Hassan.
APPELLANT		RESPONDENT

Assessee by	:	Shri Siddesh Nagaraj Gaddi, CA
Revenue by	:	Ms. Neha Sahay, JCIT-DR

Date of Hearing	:	07-05-2025
Date of Pronouncement	:	29-05-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the Addl/JCIT(A)-6, Kolkata dated 08/01/2025 in respect of the A.Y. 2017-18 and raised the following grounds:

“1. The impugned order passed by the Learned CIT(A) and AO, to the extent prejudicial to the Appellant, is not justified in law and on the facts and circumstances of the case.

2. *The learned CIT(A) has erred in law and on facts in upholding the order of the Learned AO.*

3. *The learned AO and CIT(A) have erred in law and on facts in not appreciating that there was a reasonable cause in filing the appeal under section 246A belatedly.*

4. *The learned AO and CIT(A) have erred in law and on facts in passing the orders against the principles of natural justice.*

5. *The Learned CIT(A) and AO have erred in law and on facts in not appreciating that the addition in the impugned intimation is not covered within the scope of addition as can be made under section-143(1) of the Act.*

6. *The Learned CIT(A) and AO/CPC have failed to appreciate that the income has already been taxed under income from business under section 44AD of the Act.*

7. *The Learned CIT(A) and AO/CPC have erred in fact and in law in taxing the same income again to the extent of Rs. 44,06,446/-.*

8. *The impugned addition is amounting to double taxation of the same income twice and the same is not permissible under the statute.*

9. *The impugned adjustments being merely based on presumption and surmises are to be deleted.*

10. *The order is unreasonably high-pitched for liable to be quashed in its entirety.*

11. *The Learned CIT(A) and AO has erred in raising demand vide issue of notice under section 156 of the Act.*

12. *The Learned CIT(A) and AO/CPC has erred in fact and in law in levying interest under section 234A/B and C of the Act.*

On the basis of the above grounds and other grounds which may be urged at the time of hearing with the consent of the Hon'ble Commissioner of Income Tax (Appeals), it is prayed that the order passed under section 143(1) of the Act be quashed and the relief sought to be granted. granted."

2. The brief facts of the case are that the assessee derives income from business and from other sources and filed his return of income on 15/09/2017. The Ld.CPC while processing the said return had sent an intimation u/s. 143(1) in which some adjustments were made.

3. The assessee challenged the said addition made in the intimation by contending that the income was already declared u/s. 44AD of the Act and the necessary tax was also paid along with the returns. Therefore the intimation of the CPC in which the income from other sources of Rs. 44,06,446/- was added, is nothing but double taxation. The assessee filed the appeal with a delay of 2142 days and in the delay condonation petition, the assessee submitted that he came to know about the intimation only on 29/08/2024 and the appeal was filed on 10/09/2024 and therefore there is no delay in filing the appeal. The assessee further contended that even assuming that the said intimation was sent on 01/10/2018, the said intimation was sent to the email ID of the auditor which was not brought to the knowledge of the assessee. The assessee also submitted that only when the bank account was attached in the month of August, 2024 he found that an order was passed and immediately he contacted the said auditor for which the auditor replied that a rectification application has been filed as against the outstanding demand on 08/12/2018 itself. Believing his words, the assessee had not pursued the matter. Therefore the assessee sought for the condonation of the delay since the mistake is not on his part. On merits, the assessee submitted that the Ld.CPC had added the income chargeable under the head business and profession to an extent of Rs. 44,06,447/- based on the amount appearing in form 26AS, without considering the fact that the said amount was already included in the return and tax has been calculated and paid at 8%. The Ld.CIT(A) had considered the delay condonation application and not satisfied with the reasons stated in the said application and observed that the appeal should be dismissed on the ground of limitation. But the Ld.CIT(A) has adjudicated the issue on merits and gave a finding that the assessee is not entitled to disclose the income on presumptive basis u/s. 44AD of the Act since his gross receipts

in his business was more than Rs. 2 crores. Therefore the Ld.CIT(A) had dismissed the appeal on merits also.

4. The assessee challenged the said order of the Ld.CIT(A) before this Tribunal.

5. At the time of hearing, the Ld.AR submitted that the assessee had filed his return of income on presumptive basis u/s. 44AD of the Act by calculating the business income at 8% of the gross receipts. The Ld.AR further submitted that in the said return, the assessee had included the sum of Rs. 42,60,500/- which is 8% of the gross receipts of Rs. 5,50,80,585/-. It was further contended that the CPC had accepted the 8% as the income but while processing the return, the sum of Rs. 5,50,80,585/- was again added as if the assessee had not reported the income. Therefore the Ld.AR submitted that the addition of the income again by the CPC when the income was already offered on presumptive basis is not correct and it amounts to double taxation. The Ld.AR also filed a paper book and enclosed the submissions made before the Ld.CIT(A) along with the annexures and the screenshots of the IT portal and the ITR forms and form 26AS. The Ld AR further submitted that the order of the Ld CIT on merits is not correct since the issue before the the Ld CIT was about the double addition made by the CPC and not about the eligibility of the assessee to pay tax u/s 44AD of the Act.

6. The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeal.

7. We have heard the arguments of both sides and perused the materials available on record.

8. We have perused the order of the Ld.CIT(A) in which the Ld.CIT(A) had not accepted the delay in filing the appeal before him since the delay was not properly explained. In spite of that, the Ld.CIT(A) had proceeded to

decide the appeal on merits and gave a finding that the assessee is not eligible to disclose the income u/s. 44AD of the Act since his gross receipts in business exceeds Rs. 2 crores. Therefore we are proceeding to decide the appeal on merits.

9. We have considered the fact that the assessee had calculated the income at 8% on the gross business receipts and reported in the return of income filed u/s. 139(1) of the Act. The CPC also accepted the quantification of income at 8% based on the gross receipts declared by the assessee in form 26AS but again added the gross receipts at Rs. 5,50,80,585/- and quantified the income at 8% of the said receipts and again added this to the total income of the assessee. The contention of the assessee is that already he had calculated and included the income based on the gross receipts and tax was also paid on presumptive basis and therefore again adding the gross receipts and estimating the income at 8% would amount to double taxation. We have considered the written submissions submitted by the assessee before the Ld.CIT(A) in which in paragraphs 35.1 to 35.3, the assessee had clearly narrated how the mistake has been occurred. From the above said written submissions filed by the assessee, it seems that the income was added twice one by the assessee at the time of filing their returns and the another by the CPC while processing the return u/s. 143(1) of the Act. Even though the specific plea was raised by the assessee, this plea was not considered by the Ld.CIT(A).

10. The Ld.CIT(A) had given a finding that the assessee is not entitled to pay tax under presumptive basis since his gross receipts exceeds Rs. 2 crores as contemplated u/s. 44AD of the Act. The said finding of the Ld.CIT(A) is not correct since the CPC itself had estimated the income at 8% by accepting the return filed by the assessee and therefore the finding of the Ld.CIT(A) is not correct. The assessee had disputed the further addition made by the CPC when the income was already included in the return and tax has been paid u/s. 44AD of the Act, the present finding of the Ld.CIT(A) on merits is not correct. In fact, there is no dispute with the quantification

of income at 8% and the said quantification was also accepted by the CPC but the only grievance of the assessee is that the income which was already offered was again added to the income of the assessee by the CPC while processing the return. Instead of giving a finding that whether the income has been added twice or not, the Ld.CIT(A) had given a finding that the assessee is not entitled to pay tax u/s. 44AD of the Act, which in our opinion is not correct.

11. To find out the facts based on the records submitted by the assessee, we thought it fit to remit this issue to the file of the jurisdictional assessing officer for denovo consideration. The assessee is also permitted to adduce evidences before the jurisdictional assessing officer and demonstrate that the income was added twice which is not correct. We, therefore, set aside the order of the Ld.CIT(A) and remit the issue to the file of the jurisdictional assessing officer for passing fresh assessment order in accordance with law after hearing the assessee.

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

Order pronounced in the open court on 29th May, 2025.

Sd/-
(PRASHANT MAHARISHI)
Vice – President

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 29th May, 2025.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore