

आयकर अपीलीय अधिकरण
कटक पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
CUTTACK BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष (कोलकाता क्षेत्र)
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI DUVVURU RL REDDY, VICE PRESIDENT (KZ)
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 160 & 161/CTK/2025
Assessment Years: 2017-18 & 2018-19**

Gajendra Mohanty	Vs.	Income Tax Officer, Ward- Jeypore
<i>(Appellant)</i>		<i>(Respondent)</i>
PAN: CYJPM4739F		

Appearances:

Assessee represented by : N. Anand Rao, AR.

Department represented by : S.C. Mohanty, Sr. DR.

Date of concluding the hearing : 05-May-2025

Date of pronouncing the order : 04-June-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

Both these appeals filed by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2017-18 and AY 2018-19 dated 05.02.2025, which have been passed against the

assessment orders u/s 144 and 147 r.w.s. 144B of the Act, dated 24.09.2019 and 25.03.2023, respectively. Since the issues are common, both the appeals were heard together and are being decided vide this common order for the sake of convenience and brevity.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

I. I.T.A. Nos.: 160 /CTK/2025; AY 2017-18:

“1. That the order of the learned CIT (Appeals) is unjust and not in reference to the facts and circumstances of the case.

2. That the appellants turnover for the period was Rs 67,00,000/-. The LAO has estimated the profit @ 8% on Rs. 45,45,061/- and for the balance of Rs 21,08,500/- the entire deposit is treated as undisclosed income which is unjust.

3. That the demonetization was announced on 9.11.2016 but the provident assessment had come on 14.12.16 hence the entire period cash deposit can't be taken in to account.

4. That the appellant prays your honour to consider the cash balance as on 1.4.16 for deposit in the Bank.

5. That the appellant had turnover of Rs 67,00,000/- for which he need not maintain Books of account and income is to be estimated. Hence addition entire deposit during period of Rs 9.11.16 to 31.12.16 is unjust and not tenable.

6. That the real income is to be taxed as per the provisions of section 3 and 4 of the Income Tax Act as decided in the matter of Seetaramanna Vs CIT reported in 57 ITR 53L (SC).

7. For these and other reasons to be adduced at the time hearing the appellant prays your honour to reduce the assessment to the returned figures.”

II. I.T.A. Nos.: 16 /CTK/2025; AY 2018-19:

“1. That the order of the LC IT(Appeals) is unjust and not in reference to the facts and circumstances of the case.

2. That the estimation of income @8% is unjust when the appellant has maintained the books of account.



3. *That the deposits are taken as turnover and the income is estimated without considering withdrawals for purchases and expenses.*

4. *That the authority making a Best Judgment assessment must make an honest and fair estimate of the income of the assessee and though arbitrariness can't be avoided in such an estimate and the same must not be capricious but should have a reasonable nexus to the available material and circumstances of the case. Brij Bhusan Lan Pradhann Kumar Vs CIT (1978) 115 ITR 524(SC).*

5. *That for these and other reasons to be adduced at the time of hearing the appellant prays your honour to reduce the assessment to the returned figures.”*

3. We will first take up the appeal in ITA No. 160/CTK/2025 for AY 2017-18. Brief facts of the case are that the assessee had deposited cash in the bank account during the period of demonetisation i.e. from 09.11.2016 to 31.12.2016 in his bank account with the State Bank of India, Balimela and had not filed the return of income. The assessment was made u/s 144 of the Act by making an addition of Rs. 21,08,500/- under section 69A and Rs.3,63,604/- as business profits after applying the profit rate of 8% on the balance amount. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who vide order dated 05.02.2025 dismissed the appeal. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival submissions were heard and the record and the submissions made have been examined.

5. Ground nos. 1 and 7 being general in nature do not require any separate adjudication.



6. Ground nos. 2, 3, 4, 5 and 6 relate to addition of Rs. 45,45,061/- on estimation of profit @ 8% on the turnover shown and the balance amount of Rs. 21,08,500/- u/s 69A of the Act. Before the Ld. CIT(A) in this regard, the assessee made submissions and the order of the Ld. CIT(A) is extracted as under:

"7.0 Grounds 3 to 8 relate to addition of Rs. 21,08,500/- made under section 69A is unwarranted, arbitrary and unjustified. The appellant contends that the cash deposit made during the demonetization was out of business transaction and brought forward of cash balance from earlier previous Year 2015-16 and cash available with family members. The appellant also argues that no enquiry has been made with the bank. The appellant argues to produce relevant evidence to substantiate his stand.

8.0 The appellant argues that he has been carrying business in grocery and seasonal goods since 2014 and filing income tax return up to Assessment Year 2016-17 by estimating the profit u/s 44AD of the Income tax Act. Unfortunately, the legal advisor of the assessee had not filed Income tax Return for the Asst Year 2017-18 due the reason best known to him. Subsequently the assessee has withdrawn the file from him and assigned the legal matter to another advocate for filing for the above assessment year. On receipt of notice u/s 142(1) of the Act, he computed the statement of income and paid tax.

9.0 Ld. AO in the assessment order has discussed the issue as under-

Please furnished the above details as called for, failure to which cash deposits amounting to Rs. 21,08,500/- deposited into your alleged bank account No. 36138921906 during the period of demonetization shall be treated as undisclosed/unexplained cash deposited into your bank account and added the same to your total income u/s.69A of the I.T.Act, 1961. Further total deposits/credits made into your above Bank Accounts were at Rs. 66,53,561/- However you have disclosed turnover for Rs. 67,00,000/- in your trading account. Therefore Rs. 67,00,000/- (-) Rs. 21,08,500/- Rs.45,91,500/- shall be treated as your business transactions and determine your Income by estimating @ 8% of the same u/s. 44AD of the I.T.Act, 1961 i.e. Rs.3,67,320/- as your business income".

But the assessee has failed to comply with the show cause letter issued as on supra and remained silent. No details were furnished through E-proceedings. The Assessing Officer is left with no option but to complete the best judgment assessment on the basis

of material evidences gathered during the assessment proceedings. Further, it is concluded that the assessee has nothing to say regarding the cash deposits made during the period of demonetization amounting to Rs. 21,08,500/- into his bank account vide no. 36138921906 maintained with State Bank of India, Orkel Branch, Orkel. The assessee offered no explanation about the nature and sources of acquisition of the money/cash deposited into the alleged bank account and the earlier explanation offered by the assessee on 24.08.2019 is not satisfactory, hence, Rs. 21,08,500/- is treated as unexplained money deposited into the bank account during the F/Y 2016-17 relevant to the A/Y 2017-18. Therefore, Rs. 21,08,500/- is treated as the income from unexplained sources and added u/s 69A of the Act to the total income of the assessee. Income tax shall be calculated on the above addition of Rs. 21,08,500/- as per the provision of the section 115BBE of the Act, i.e. @ 60% of income added u/s 69A of the Act.

10.0 The appellant was provided with sufficient opportunity of being heard at the time of appeal proceedings. However, the appellant has failed to produce documents to establish the nature and sources of the cash deposited in the bank during the period of demonetization. Under the circumstances, the amount of Rs 21,08,500/- remains unexplained. Therefore, the contention of the appellant that Ld. AO has erred in making above addition does not have any merit.

11.0 It is a well settled principle of law as declared by the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT, (214 ITR 801) (SC) that the true nature of transaction have to be ascertained in the light of surrounding circumstances. It needs to be emphasized that a standard of proof beyond reasonable doubt has no applicability in the determination of matters under taxing statutes. In the present case, it is clear that apparent is not the real as evidenced from the observation made by Ld. AO. Further, the Hon'ble Supreme Court, in the case of Chuhar Mal V CIT (1988) 172 ITR 250, highlighted the fact that the principle of evidence law are not to be ignored by the authorities, but at the same time, human probability has to be the guiding principle, since the AO is not fettered, by technical rules of evidence, as held by the Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills v CIT (1954) 261 TR 775. The Hon'ble Supreme Court, in the case of Chuhar Mal V CIT (supra) held that what was meant by saying that evidence Act did not apply to the proceedings under Income-tax Act, 1961, was that the rigors of Rules of evidence, contained in the Evidence Act was not applicable; but that did not mean that when the taxing authorities were desirous of invoking the principles of Evidence Act, in proceedings before them, they were prevented from doing so. It was further held by the Hon'ble



Apex Court that all that Section 110 of the Evidence Act, 1872 did was to embody a salutary principle of common law, jurisprudence viz, where a person was found in possessing of anything, the onus of proving that he was not its owner, was on that person. Thus, this principle could be attracted to a set of circumstances that satisfies its conditions and was applicable to taxing proceedings. Ld. AO has therefore necessarily to consider the surrounding circumstances, which he indeed has done in a very meticulous and careful manner.

12.0 Thus, I find that the appellant has not been able to substantiate the sources of cash deposit with documentary evidence. Accordingly, I do not agree with the contentions of the appellant and hold that Ld. AO has correctly treated the cash and other deposits in the bank account as income from undisclosed sources u/s 69A of the Act. The grounds of the appellant are dismissed.”

7. Before us, it was contended that part of the deposits was treated as turnover of the business on which profit @8% was applied and for the balance amount of Rs. 21,08,500/- deposited during the demonetization period, the addition u/s 69A of the Act was made. The finding of the Ld. AO for making addition u/s 69A of the Act have been reproduced in the order of the Ld. CIT(A) as above. The Ld. AO however, noted that the assessee had made total deposits in the year, both in cash and by cheque of Rs. 66,53,561/- in the bank account no. 36138921906 during the year and during the demonetisation period i.e. from 08.11.2016 to 31.12.2016 he had deposited Rs. 21,08,500/-. However, only the cash deposit during the demonetization period has been treated as undisclosed/unexplained cash u/s 69A and the balance of Rs. 66,53,561/- (-) Rs.21,08,500/- i.e. Rs.45,91,500/- has been treated as business receipts/turnover of the assessee on which profit rate of 8% has been applied. As the assessee had disclosed turnover in his trading account for the financial year under consideration and as no further compliance was made to the show cause letter issued, the net profit rate of 8% was estimated u/s 44AD of the Act and a sum of



Rs. 3,63,604/- was treated as business income besides Rs. 21,08,500/- which was added u/s 69A of the Act and the total income was assessed at Rs. 24,72,100/-. It was argued by the Ld. AR that only the deposits in the remaining period excluding the demonetisation period were treated as business receipts which is not justified. Further in AY 2018-19 the assessee had himself shown net profit rate of 5% on the turnover of Rs. 1.53 Crore. It was therefore, requested that the entire transactions ought to have been treated as business transactions and reasonable opportunity should have been provided to the assessee to explain his case.

8. We have considered the submissions made. The assessee's turnover for AY 2017-18 being the deposits in the bank account was Rs. 66,53,561/- while the sum for AY 2018-19 was Rs. 1,52,26,490/-. In AY 2018-19, the Ld. AO himself has applied the net profit rate of 8% on the total deposits in the bank account in the assessment order passed u/s 147/144/144B of the Act as income from the grocery shop and the difference between the income shown and the income estimated was added in AY 2018-19 and the appeal was dismissed by the Ld. CIT(A). The Bench was of the view that since the facts are identical, the assessment order was passed u/s 144 of the Act, the Ld. AO was justified in estimating the profit as no return of income was filed. However, there was no justification for not treating the part of the deposits in the bank account during the demonetisation period only as non-businesses receipts and adding the same under section 69A of the Act while for the rest of the period during the year, the same have been treated as business receipts. Therefore, for the AY 2017-18, the entire deposits in the bank account are treated as the total turnover being Rs. 66,53,561/- on which the net profit rate of 8% u/s 44AD of the Act shall



be applied which works out to Rs. 5,32,285/- and the same shall be assessed by the Ld. AO as the income of the assessee for A.Y. 2017-18 as against Rs. 66,53,561/- assessed by the Ld. AO and the assessee will get consequential relief. Hence, the appeal for AY 2017-18 is partly allowed.

8. Since the facts for AY 2018-19 are similar in which the net profit rate of 8% has been upheld by the Ld. CIT(A) in view of the provisions of section 44AD of the Act, therefore, the decision of Ld. CIT(A) is upheld and no relief is allowable to the assessee.

9. In the result, the appeal filed for AY 2017-18 is partly allowed and the appeal filed for AY 2018-19 is dismissed.

Order pronounced in the open Court on 4th June, 2025.

Sd/-

[Duvvuru RL Reddy]

Vice President (KZ)

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 04.06.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Gajendra Mohanty, Balimela, Malkangiri, Odisha, 764051.**
2. **Income Tax Officer, Ward-Jeypore.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Cuttack Bench, Cuttack.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata