

IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA BENCH", PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI PRADIP KUAMR CHOUBEY, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 621/PAT/2024
(Assessment Year 2017-18)

Md. Rehan Alam,

P.O. Baturbari, P.S. Tarabari,
Dist- Araria, Bihar - 854311
[PAN: AJFPA4325E]

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

ITO Ward 3(1),
Purnea

..... **Respondent**

Appearances by:

Assessee represented by : K.P. Jalan, CA

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

Date of concluding the hearing : 15.05.2025

Date of pronouncing the order : 03.06.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. In this case, there is a delay of 156 days of filing of the present appeal for which a petition has been filed as under:

"01. That the Deponent Mr. Rehan Alam is the proprietor of the firm, M/s Sathi Construction, and hence is fully conversant of the facts deposed below:

02. That the deponent received order passed by Commissioner (Appeals) u/s 250 of the Income Tax Act, 1961 on 28/06/2024.

03. That appeal before Honourable ITAT was to be filed by 27/08/2024.

04. That deponent was served with the CIT(A) order u/s 250 dated 28.06.2024 electronically on Income Tax Portal. No email or physical communication was made regarding the said order which would have alerted the Deponent to react in a timely manner. The Deponent could not check the Income Tax Portal on time as he was not aware that such a notice has been issued. Only upon late learning of the matter, the Deponent sought legal counsel on 24.10.2024 and the time lapsed in gathering of material information and preparation of the memorandum of appeal caused further delay.

05. That the deponent will file the appeal manually on ITAT office at Patna.

06. That in this way there is a delay of only 75 days for which an application as per Section 253(5) of the Income Tax Act, 1961 has been filed along-with memorandum of appeal.

07. That delay in filing the appeal is because of electronic service of order for which no intimation/alert message was received by the deponent that could have enabled him to react sooner coupled with delay in seeking legal counsel and drafting of grounds of appeal after gathering relevant information. For this deponent cannot be held responsible.”

1.1 Considering the reasons given in the said petition, the delay is hereby condoned and the appeal is admitted for adjudication.

2. This appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”), passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, vide order dated 28.06.2024.

2.1 In this case, both the Ld. AO/CIT(A) have passed exparte orders since the assessee did not make any presentation of facts either of the authorities below. It is seen that the Ld. CIT(A) has recorded exclusively on pages 12 and 13 of the impugned order that the assessee was unresponsive to two notices issued fixing the case for hearing. Needless to say, the Ld. AO estimated his income by rejecting the books of accounts u/s 145(3) of the Act.

2.2 Further aggrieved, the assessee has approached the ITAT and has mainly challenged the action of Ld. AO in resorting to estimation without pointing out any specific defects in the books of accounts. We find that the grounds of appeal are lengthy and argumentative and hence they are not reproduced here. Suffice it to say that the action of the authorities below has been challenged on merit.

3. Before us, the Ld. AR assailed the orders of authorities below. But it was pointed out that the assessee has not cared to make any worthwhile presentation before either of the authorities below and hence the facts of the case are largely unverified. On this issue, the Ld. AR mentioned that the assessee was not well-versed with tax proceedings and also, he was not

properly advised by his tax consultant, hence he did not make any presentation before either of the authorities.

4. The Ld. DR supported the orders of authorities below and stated that there was no option available with the Ld. CIT(A) but to confirm the action of Ld. AO since the assessee was non-responsive to two notices sent for hearing.

5. We have carefully considered the rival submissions and also gone through the records. While the carelessness on the part of the assessee in not responding to two notices issued from the office of Ld. CIT(A) is something that is very much visible from the documents before us. Further, it is also a settled position that the tax authorities will work out the correct taxable income on any assessee within the framework of law. Accordingly, we set aside the impugned order and remand the case to the file of Ld. AO for fresh assessment. It is expected that the assessee would present all books of accounts and vouchers to essentially prove the bonafides of his reasons. The Ld. AO would provide adequate opportunity of being heard.

6. With these remarks, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 03.06.2025

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 03.06.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Rehan Alam
2. ITO Ward 3(1), Purnea
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches