

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

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 68/GTY/2024
Assessment Year 2018-19

DEG Fashion and Lifestyles,

Maruti Hardware, 29,
Cantonment, Meghalaya
[PAN: AAJFD7417P]

.....**Appellant**

vs.

ACIT, Central Circle-2,
Guwahati,

Aayakar Bhawan, Christian Basti,
Guwahati - 781005

..... **Respondent**

Appearances by:

Assessee represented by : Sanjay Mody, FCA

Department represented by : Sanjay Jha, JCIT

Date of concluding the hearing : 21.05.2025

Date of pronouncing the order : 06.06.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. 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), Central NER, Guwahati [hereafter the Ld. CIT(A)] vide order dated 20.02.2024 for AY 2018-19.

1.1 In this case, a survey u/s 133A of the Act was conducted on the assessee on 14.03.2018. During the course of such survey, books of accounts were impounded. During the course of such survey, partner of the assessee firm, Sh. Pawan Agarwala, admitted that certain investments were made in the post office which were not disclosed in the books of

account amounting to Rs. 7,20,000/- and he also admitted that an undisclosed amount of Rs. 15,00,000/- was spent on interior decoration of show room. Thus, a sum total of Rs. 22,20,000/- was disclosed as unaccounted expenditure and unaccounted investment by the assessee. Thereafter, the Ld. AO added Rs. 7,20,000/- u/s 69 of the Act and added Rs. 15,00,000/- u/s 69C of the Act. Thereafter, he levied tax u/s 115BBE of the Act.

1.2 Aggrieved with this action, the assessee approached the Ld. CIT(A), where also he could not succeed. Some of the critical finding of the Ld. CIT(A) deserve to be extracted as under:

“6.4.1. The appellant submitted during the assessment proceedings that there was no expenditure on account of interior decoration during the year. However, it is observed that the Appellant had shown Rs. 15 lakh as addition to Fixed assets in the audited financials and further, depreciation of Rs. 75,000/- was also claimed. The Appellant failed to furnish any documentary evidence regarding the same. The appellant is selectively quoting from the statement of the partner recorded during the survey. However, it failed to explain the basis of disclosure of additional income in the ITR.

6.4.4. In order to give further opportunity to Appellant, the undersigned had issued a notice u/s 250 dated 11/01/2024 requiring the appellant to furnish the following details :

- 1. Copy of return of income filed for the relevant year reflecting detailed computation of income and taxes paid.*
- 2. Audited financial statements and Audit Report.*
- 3. Deed of incorporation of the appellant-firm. 4.*
- 4. Copies of returns of income of all the partners of the appellant-firm for the relevant year.*
- 5. Details of expenses incurred for interior decoration upto the year under consideration, alongwith documentary evidence.*
- 6. Details of investments made during the year by the appellant/partners, along with documentary evidence.*
- 7. Ledger extracts from the Books of account highlighting the entries pertaining to undisclosed income. 8. If you are relying on the submissions furnished before the AO, copy of the same set may be submitted in this office.*

The appellant replied vide letter dated 10/02/2024 that the undersigned has to rely on the earlier submissions. The details called for in the questionnaire have not yet

been furnished. The appellant does not intend to submit the details called for, since such details would further strengthen the observations made in the assessment order. It means that the appellant has nothing further to say in this matter.

6.4.5. It can be concluded that the source of expenditure incurred for interior decoration remains unexplained. Hence, the amount of Rs. 15,00,000/- shall be treated as Unexplained expenditure and deemed income within the meaning of provisions of Section 69C of the IT Act. Thus, the addition u/s 69C is sustained. Ground No. 5 is dismissed accordingly.

6.5.1. The Appellant declared Rs. 720,000/- on account of investment in post office. However, during the assessment proceedings, the Appellant retracted from the disclosure and stated that Recurring deposits were maintained in the names of partners of the firm and their relatives. Confirmation from some investors and agents were furnished. The Appellant contends that Daily collection books of agents working in local post offices are continuously kept in the appellant's premises for the sake of convenience and their accounts were maintained there on regular basis. The partner, Mr Pawan Agarwal further stated that he was nervous, tensed & in a confused state of mind at the time of recording of statement on oath during the survey proceedings. But he did not elaborate whether similar situation prevailed even at the time of filing of return for the relevant year.

6.5.3. As stated in para 6.4.4. above, the appellant was issued a questionnaire calling for certain details which could have supported his arguments. However, even basic details like composition of the partnership-firm and the returns of partners were not submitted. The ledger extracts from Books of account were also not furnished. It can be inferred that the Appellant has nothing further to say in this matter. The appellant does not intend to submit the details called for, since such details would further strengthen the observations made in the assessment order. It is clear that the appellant is trying to suppress the facts of its own case while relying on the facts of other cases in the judicial pronouncements.

6.5.4. In such circumstances, it can be concluded that the appellant could not substantiate its claims. Thus, the undisclosed investments in post office are deemed to be Unexplained investment and deemed income within the meaning of provisions of Section 69 of the IT Act. Thus, addition u/s 69 amounting to Rs. 7,20,000/- is hereby confirmed. Ground No. 6 is dismissed accordingly.”

1.3 Further aggrieved, the assessee has approached the ITAT with the following grounds:

“1. For that the Id. CIT(A) ought to have hold that the order of assessment passed by the Id. ACIT, Central Circle-1, Guwahati (AO) under section 143(3) of the Act on 05.06.2021 was bad in law, facts and procedure.

2. For that the Id. CIT(A) was not justified in not holding that in absence of any valid notice under section 143(2) of the Act having been issued by the Jurisdictional Assessing Officer, the order of assessment passed under section 143(3) of the Act by the Id. AO is without jurisdiction, void and bad in law

3. For that the id. CIT(A) ought to have hold that in absence of any valid order under section 127 of the Act having been passed and served upon the appellant,

the impugned order of assessment passed by the id. ACIT, Central Circle-2, Guwahati is without jurisdiction and is void ab-initio.

4. For that on the facts and circumstances of the case, the Id. CIT(A) ought to have hold that the id. AO without bring on record any material to show that any actual expenditure was incurred during the year under consideration on account of interior decoration was not justified in arbitrarily assessing the said amount of Rs. 15,00,000/-under section 69C of the Act during the year under appeal.

5. For that on the facts and circumstances of the case, the Id. CIT(A) ought to have hold that the Id. AO without bringing on record any material to show that any actual Investment of Rs. 7,20,000/-was made by the appellant firm during the year under consideration, was not justified in arbitrarily assessing the same by invoking provisions of section 69 of the Act.

6. For that the Id. CIT(A) ought to have hold that the impugned order of assessment having been passed by the Id. AO without providing a copy of draft assessment order to the appellant and without allowing the proper opportunity of hearing to the appellant, the same is bad in law and is liable to be quashed.

7. Por that the Id. CIT(A) ought to have hold that the order of assessment has been passed by the Id. AO in gross violation of principles of natural justice and without allowing reasonable opportunity of hearing to the appellant, the same is bad in law and is liable to be quashed

8. For that the impugned appellate order passed by the Id. CIT(A) being in gross violation of principles of natural justice, the same is bad in law and untenable.

9. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing.”

2. Before us, we find that the Ground Nos. 1 to 3 have not specifically been argued but it is not a case where they are not pressed hence, the same will need to be adjudicated as well. The Ld. AR mentioned that Rs. 15,00,000/- surrendered pertained to the initial year of business (AY 2014-15). The Ld. AR stated that this fact was duly brought to the notice of Ld. CIT(A) and the same has been recorded on page 14 of the impugned order. Furthermore, the so-called undisclosed investment in post office were in the name of some partners of the firm and the impugned amount in this regard, had been surrendered by the assessee to buy peace of mind only. It was further submitted that the impugned amount could not be subjected to tax u/s 69 or 69C of the Act, with consequential tax liability u/s 115BBE of the Act. The Ld. AR relied on certain case laws in this

regard also to canvass the point that disclosures made by the assessee could not be subjected to additions u/s 69 or 69C of the Act.

2.1 The Ld. DR supported the orders of the authorities below and stated that there is a clear-cut finding in the order of Ld. CIT(A) regarding the year of taxability of Rs. 15,00,000/- and also regarding the taxability in the hands of the assessee for the amount of Rs. 7,20,000/-.

3. We have carefully considered the rival submissions and also gone through the order of authorities below. Regarding Ground Nos. 1 to 3 where the assumption of jurisdiction has been challenged, it needs to be mentioned that notice u/s 143(2) of the Act was served on the assessee and the same has been recorded in the first paragraph on page 2 of the Ld. AO's order. Thereafter, it is seen that the assessee has participated in the assessment proceedings since the notice issued by Ld. AO dated 12.04.2021 has been duly responded to and it is only after considering the submissions by the assessee that the Ld. AO has passed the order dated 05.06.2021. We are conscious of the fact that for any challenge of jurisdiction u/s 127 of the Act, the assessee has to file his objections before the Ld. AO. In this regard, the provision of section 124(3) of the Act and provision of section 124(4) of the Act prescribe a mechanism for an assessee to ventilate the grievance regarding the issue of jurisdiction. Admittedly, as per the documents and material before us it is revealed that the procedure laid down has not been followed by the assessee and hence, we are unable to provide any kind of relief on this issue, more so because proceedings under chapter XIII provide a mechanism for settlement of grievance, if any, and strictly speaking are not within the domain of the powers of ITAT as derived from section 253 of the Act. In this regard, the case of Kalinga Institute of Industrial Technology reported in 454 ITR 582(SC) is a guiding force for deciding any issue in this regard. To this extent, Ground Nos. 1 to 3 are dismissed.

3.1 Regarding the issue of taxability of Rs. 15,00,000/- and Rs. 7,20,000/-, we are aware of the fact that before the Ld. CIT(A), the assessee could not fully avail of the opportunity provided through notice u/s 250 of the Act dated 11.01.2024. This fact is recorded in paras 6.4.4 and 6.4.5 of the impugned order. There is a further recording to this extent in para 6.5.4 of the impugned order also [reference extracts (supra)]. Accordingly, giving the benefit of doubt to the assessee, we feel that he deserves another chance to present the facts before the Ld. CIT(A) and to this extent, we set aside the impugned order and remand the same to the file of Ld. CIT(A) for fresh adjudication after giving an opportunity of being heard.

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

Order pronounced on 06.06.2025

Sd/-
[Manomohan Das]
Judicial Member
Dated: 06.06.2025
AK, Sr. PS

Sd/-
[Sanjay Awasthi]
Accountant Member

Copy of the order forwarded to:
1. DEG Fashion and Lifestyles
2. ACIT, Central Circle-2, Guwahati
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches