

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PATNA
BEFORE SHRI DUVVURU RL REDDY, VICE PRESIDENT
(THROUGH VIRTUAL HEARING AT KOLKATA)

ITA No.363/PAT/2024

(निर्धारण वर्ष /Assessment Year : 2017-2018)

Jai Durga Surgicals Pvt. Ltd. 101, Lotus Apartment, New Patliputra Colony, Bihar	Vs	ITO, Ward-1(1), Patna
PAN No. :AABCJ 7962 N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Nishant Maitin, CA
राजस्व की ओर से /Revenue by	:	Shri Ashwani Kr. Singal, JCIT
सुनवाई की तारीख / Date of Hearing	:	30/04/2025
घोषणा की तारीख/Date of Pronouncement	:	05/06/2025

आदेश / ORDER

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 03.04.2024 passed for Assessment Year 2017-18.

2. The sole ground raised by the assessee is with regard to sustenance of addition of Rs.15,00,000/- made by the Assessing Officer.

3. Facts stated briefly are that the assessee is a private limited company having main object of carrying of civil construction work. During the relevant year, it had not carried out any business and as such did not file its return of income. Subsequently, return for the year was filed on 10.10.2019 declaring NIL income. The Id AO framed the assessment order determining income at Rs 24,69,000/- by making addition of Rs.2,00,000/- on account of loan received from Lord Vishnu Constructions Private Limited; Rs.24,15,000/- on account of refunds received from

Buddha Institute of Dental Sciences & Hospital and Rs.15,00,000/- on account of cash deposited during demonetization period. In appeal, the Id. CIT(A), NFAC deleted the addition of Rs.2,00,000/- made by the AO on account of loan received from Lord Vishnu Constructions Private Limited and Rs.24,15,000/- made by the AO on account of refunds received from Buddha Institute of Dental Sciences & Hospital. However, the Id. CIT(A), NFAC sustained the addition of Rs.15,00,000/- made by the AO on account of deposit in cash during the demonetization period in absence of any positive materials to substantiate the same. Now, the assessee is in further appeal before the Tribunal against the addition confirmed by the Id. CIT(A) to the tune of Rs.15,00,000/-.

4. Ld. Counsel for the assessee, at the outset, filed his written submission which read as under :-

Event	Date
<i>Notice u/s.148</i>	<i>29.03.2019</i>
<i>Return filed in response to Notice</i>	<i>10.10.2019</i>
<i>Request for supply of reasons recorded for reopening</i>	<i>04.12.2019</i>
<i>Completion of assessment u/s.147/143(3)</i>	<i>05.12.2019</i>
<i>Due date for completion of assessment</i>	<i>31.12.2019</i>

Synopsis

Coming to the facts of the case, the instant appeal has been filed against the order passed by Id Commissioner of Income-tax, NFAC confirming the order passed by Id Income-tax Officer, Ward 1(1), Patna (hereinafter referred to as AO for the sake of brevity) under the provisions of Section 147/143(3) of Income-tax Act, 1961.

The Id AO framed the assessment on 05.12.2019 determining income at Rs 41,15,000/-, Matter was carried before id CIT(A), who deleted addition for Rs 24,15000/- and Rs 2,00,000/- on account of cash credits but confirmed addition of Rs 15,00,000/- by treating cash deposited in bank account as unexplained deposits.

We are furnishing our ground wise synopsis in respect of our grounds of appeal before this Hon'ble Tribunal.

1. That the order passed by Id Commissioner of Income-tax (Appeals) is unjust, unwarranted and bad in law.

1.1 The Id CIT erred in confirming the order passed by Id AO pursuant to reopening of the assessment proceedings for assessment year 2017-18.

1.2 Notice u/s 148 of the act was issued by Id AO on 29.03.2019. The appellant company filed its return in response to the said notice on 10.10.2019 and requested for supply of reasons so recorded for invoking the provisions of section 147 of the act. The same was requested online vide acknowledgement no 04121912496083 dated 04.12.2019.

1.3 That the Id AO ignored to supply any reasons so recorded, thereby depriving the appellant for raising objections thereto.

1.4 Ld AO has not treated the return as non-est and has framed the assessment order u/s 147/143(3) of the act.

1.5 Ld CIT(A) erred in observing "From the chronology of events, it is found that the appellant filed its return for the first time on 10.10.2019 against the notice u/s 148 issued on 29/03/2019 (almost after 7 months) and requested to provide the reasons for reopening on 04.12.2019 after issue of final show cause notice 26.11.2019 by the AO." Request for reasons along with evidence of filing Annexure 1 (PB Page-1-2)

1.6. The Id CIT(A) quoted the much celebrated case of GKN Driveshafts (India) Ltd. Vs. ITO [2003] 259 ITR 19 (SC) and concluded that the above observation of the Hon'ble Supreme Court should not be interpreted in such a manner that entitles the appellant to ask for reason for reopening at any stage, even after issue of final show cause notice. (pg 27 CITA)

1.7 The Id CIT(A) grossly erred in misinterpreting the GKN judgement wherein the Hon'ble Supreme Court (in para 5 of order) clarified that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if the appellant so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order.

1.8 The Id CIT(A) grossly erred in misinterpreting the above judgement wherein the Hon'ble Supreme Court categorically clarified that the assessee is entitled to reasons recorded for reopening of the assessment.

1.9 The proposition of GKN Driveshafts has been followed in various decisions on the issue. Reliance is placed on various other judicial pronouncements noted herein under

Arun Kumar V. Union of India - 2006 (9) TMI 115

Raza Textiles 87 ITR 539

CIT vs. Trend Electronics 2015-TIOL-2393-HC-Mum

CIT vs. Videsh Sanchar Nigam Ltd. 340 ITR 66 (Bom.)

Telco Dadajee Dhackjee Ltd. VS. DCIT 2(3) 2012 TIOL-532-ITAT-MUM-TM

M/s Synopsys International vs. DDIT (Int. Taxation) ITA No. 549/Bang/11

Sh. Sunil Kumar vs. DCIT 2015-TIOL-1929-ITAT-Ranchi

S. Prasad Raju Vs. DCIT 96 TTJ 832.

In the light of this fact alone, the impugned order is liable to be quashed.

1.10 The Id CIT further relied upon dismissal of SLP by Hon'ble Supreme Court of India in the matter of Home Finders Housing Ltd, 256 Taxman 59(SC) against the judgement of Hon'ble Madras High Court. It is humbly submitted that the above facts are not applicable to the appellant as in that case, the Id AO had supplied the reasons for reopening and had not passed speaking order against the objections of the appellant as regards thereto.

2. That the Commissioner of Income-tax (Appeals) erred in confirming the observations of the Id AO that the sum of Rs 15,00,000/- deposited in bank account of the appellant is income of the appellant.

3. That the by Id Commissioner of Income-tax (Appeals) erred confirming the addition of Rs 15,00,000/-, made by the Id AO in spite of the fact that the same was duly accounted for in the books of account of the assessee, thereby tantamounting to double addition.

3.1 That during the period under review, the appellant had deposited Rs 15.00 lakh in its bank accounts, out of cash withdrawals made by the company and held in hand. Copy of Bank Book for the relevant period - Annexure 4 (PB Page-16-

17) and Bank statement for the relevant period -Annexure 5 (PB Page-18-19)

3.2 In the assessment proceedings, it was submitted that appellant company was in search of better business opportunities and as such retained cash in hand.

3.3 It was further submitted that the appellant company was in dispute with banking institutions and charge of Rs 329.09 lakhs on the assets of the company was being shown on the website maintained by Ministry of Corporate Affairs. MCA snapshot-Annexure 2 (PB-3)

3.4 It was submitted that appellant company apprehended that surplus money, if any kept in bank account may be impounded by bank and as such it withdrew amount so credited within a span of 3 to 4 days. Due to this reason, appellant did not make any deposit to earn interest and preferred to retain the amount at its disposal.

3.5 The Id AO further noted that the company was "inactive" but failed to appreciate that the same was marked "inactive" by Registrar of Companies, Bihar in terms of provisions contained in Section 455(4) of The Companies Act, 2013 which permit the Registrar of Companies to mark the same in case the company failed to file its financial statements for given period of time. Marking the company as Inactive did not preclude the company from taking steps for search of better business opportunities.

3.6 This was later regularised by filing of pending statements in terms of Company Fresh Start Scheme, 2020. CFSS Challans-Annexure 3 (PB 4-15)

3.7 That there is no evidence with the department that the money so withdrawn was used elsewhere so as to deprive the appellant from depositing the same in its bank accounts.

3.8 Your kind attention is invited to classical observations of Apex court in case of KP Varghese 131 ITR 597 holding that "It is a well settled rule of law that the onus of establishing that the conditions of taxability are fulfilled is always on the Revenue, to throw the burden of showing that there is no understatement of the consideration on the assessee would be to cast an almost impossible burden upon him to establish the negative, namely that he did not receive any consideration beyond that declared by him". Thus, it was imperative upon the Id AO to prove that the amount of cash so deposited, was undisclosed income of the appellant.

3.9 It may be submitted that the said bank account wherein the impugned money was deposited was duly disclosed in books of account of the appellant and the bank was duly intimated of the PAN and other KYC details of the appellant company and its directors.

5. Apart from the above submissions, Id. Counsel for the assessee has filed paper book containing 51 pages and submitted that the assessee had withdrawn an amount of Rs.24 lakhs in the month of August, 2016 for his civil construction work. He further submitted that the assessee spent some portion of the withdrawn amount and balance amount of Rs.15 lakhs had been with the assessee and because of the announcement of the demonetization the assessee deposited the entire amount of Rs.15 lakhs which was withdrawn from the bank and deposited the same on 12.11.2016. However, both the lower authorities did not consider the withdrawal of the amount and erroneously made this addition. Therefore, Id. Counsel pleaded to delete the addition made by the AO.

6. On the other hand, Id. Departmental Representative submitted that the assessee could not explain properly about the cash deposit of Rs.15 lakhs during the demonetization, therefore, the AO has made the addition of Rs.15 lakhs, which was also rightly confirmed by the Id. CIT(A). Thus, Id. Sr. DR pleaded to uphold the orders passed by both the authorities below.

7. I have heard the rival submissions and perused the material available on record. It is an admitted fact that the assessee had withdrawn an amount of Rs.24 lakhs in the month of August, 2016 and the reason for withdrawal was to meet his civil construction work for labour charges,

other miscellaneous expenses and he spent some amount. Thereafter the balance amount of Rs.15 lakhs was deposited during the demonetization period. It is also an admitted fact that the nature of the business of the assessee is carrying on civil construction work. Therefore, considering the facts and circumstances of the case, I am of the view that the assessee had made the deposits only out of the cash withdrawals from the bank and also there is no other evidence to establish the assessee was having some other source to make the cash deposits. Therefore, the AO is directed to delete the addition so made for an amount of Rs.15 lakhs. Thus, the sole ground raised by the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 05/06/2025.

Sd/-
(DUVVURU RL REDDY)
उपाध्यक्ष / VICE PRESIDENT

कोलकाता Kolkata; दिनांक Dated 05/06/2025

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अद्योषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पटना / DR, ITAT, Patna
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
Income Tax Appellate Tribunal, Patna