

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

[वर्चुअल कोर्ट]
[Virtual Court]

श्री जॉर्ज माथान, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 351/PAT/2023
Assessment Year: 2017-18**

Rajbansh Ram <i>(Appellant)</i>	Vs.	ITO, Ward-3(5), Sasaram <i>(Respondent)</i>
PAN: ASRPR3108D		

Appearances:

Assessee represented by : Manish Rastogi, Adv.

Department represented by : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : 08-April-2025

Date of pronouncing the order : 04-July-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order 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 dated 09.10.2023,



which has been passed against the assessment order u/s 144 of the Act, dated 10.12.2019.

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

"1. That on the facts and circumstances of the case the learned Commissioner of Income-tax (Appeal) has failed to appreciate that the assessee has been carrying on the business under the name and style SHRI RAM PETROLEUM of petroleum products as authorised retail distributor of Hindustan Petroleum Company Limited under Explosive License

2. That on the facts and circumstances of the case the learned Commissioner of Income-tax (Appeal) has erred in stating as under

2. "Considering the facts of the case..... The taxpayer has stated that the cash deposits during demonetisation period relates entirely to deposits made and not sale of diesel and petrol. The entire amount has to be brought to tax.

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without giving any reference regarding when had the assessee given such statement.

3. That on the facts and circumstances of the case the learned Commissioner of Income-tax (Appeal) has erred in stating as under

3. RTGS of Rs.2500000 was returned back on 19/12/2016 and 20/12/2016. This is taxed separately.

4. That on the facts and circumstances of the case the learned Commissioner of Income-tax (Appeal) has further erred in stating as under

TOTAL ADDITIONS UPHELD/ENHANCED = Rs.3228967 + Rs. 17523300+25,00,000 = Rs.23252267. This entire amount of Rs.23252267/- is to be taxed in its entirety or in the alternative the entire amount of Rs.107632265 is to be taxed...since the assessee failed in proving these transactions relate to sale of petrol/diesel the entire amount of Rs.107632265 is brought to tax as cash deposits u/s 68.

5. That on the facts and circumstances of the case the learned Commissioner of Income-tax (Appeal) has failed to appreciate that the aggregate credits in the account is Rs.11,58,97,154.13 (Rs.9,40,38,210 cash plus Rs.2,18,58,944.13 deposits through banking channels)



6. That on the facts and circumstances of the case the learned Commissioner of Income-tax (Appeal) has erred in stating that "the assessee failed in proving these transactions relate to sale of petrol/diesel" without bringing on record any documents as evidence to contradict the claim of the assessee that the credits in the bank account has been against the sales of petroleum products supplied by Hindustan Petroleum Company Limited.

7. That on the facts and circumstances of the case the learned Commissioner of income-tax (Appeal) has failed to appreciate that the total credit in the bank account is Rs.10,76,32,265 which includes Rs.25,00,000 (Rs.12,50,000/- on 19.12.2016 and Rs.12,50,000/- on 20.12.2016) is due to failed RTGS,

8. That on the facts and circumstances of the case the assessee is not aware of any notice from CIT(A) with regard of his intention of enhancing the income as assessed by the Assessing Officer hence the supposed to enhance the "income" is not only bad in law but also against natural justice.

9. That on the facts and circumstances of the case the Commissioner of Income-tax (Appeal) erred in stating that "the entire amount of Rs.107632265 is brought to tax as cash deposits u/s 68"

10. That on the facts and circumstances of the case the learned Commissioner of Income-tax (Appeal) has very strangely has stated as under

Addition upheld: Rs.107632265

whereas the Assessing Officer has assessed the assessee at Rs.32,28,967/- being 3% NP of alleged turnover determined at Rs.10,76,32,265/-

11. That on the facts and circumstances of the case the appellate order of Commissioner of Income-tax (Appeal) is bad in law being against the provisions of IT Act, 1961 and the appellate order is also based on incorrect presumption of facts and also against natural justice therefore the Commissioner of Income-tax (Appeal)'s order dated 09.10.2023 is liable to quashed.

12. That the appellant craves leave to add, alter, modify, vary, delete any ground of appeal before or at the time of hearing, if necessary."

3. Brief facts of the case as appearing in the order of the Ld. CIT(A) are that the assessee is an individual and during the year under consideration was engaged in the business of Petroleum in the name



and style of M/s Sri Ram Petroleum and had not filed the ITR for the AY 2017-18. As per information available with the AIMS module on the ITBA system of the Income Tax Department, it was found that the assessee had made huge cash transactions in his bank account during the financial year 2016-17 in general and especially during the demonetization period, i.e. from 08.11.2016 to 30.12.2016. A notice u/s 142(1) dated 13.03.2018 was issued and served upon the assessee to file the return of income for the AY 2017-18 but the assessee failed to file any return of income till 31.03.2018, which was the last date of filing of the return. As per the information available, the assessee was found to have made cash deposits of Rs. 1,75,23,300/- in his bank account No. 3007002100002568 at Punjab National Bank, Bhabhua during the demonetization period. As no return of income was filed, the Ld. AO proposed to make an assessment under section 144 of the Act. No compliance was made by the assessee to the show cause notice issued in this regard. Enquiry was also conducted from the bank and the details were received. The assessee filed a written submission through the Authorised Representative stating that the assessee sold petroleum products and the government had allowed the petrol pumps to take old currency during the demonetization period. On perusal of the bank statement, it was found that credit entries were mostly in cash and were made throughout the year. The assessee failed to submit the details and produce the books of account. In response to the statutory notices, the assessee could only give written submission stating only about the business. The Bank A/c statement was also submitted along with the reply. The analysis of the bank account statement showed that regular debit/credit entries had been recorded in the account and payment had been made to the petroleum company M/s. Hindustan Petroleum. The



turnover of the assessee was found to be Rs. 10,76,32,265/-. The Ld. AO accordingly made a best judgment assessment in this case u/s 144 of the Income-tax Act 1961 by taking NP @ 3% on the gross turnover of Rs. 10,76,32,265/- and the total income was assessed at Rs. 32,28,967/-. Penalty notices were also issued for the default noticed.

4. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who vide order dated 09.10.2023 enhanced the addition to Rs. 10,76,32,265/- and dismissed the appeal. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival submissions were heard and the record and the paper book filed/submissions made have been examined. It was submitted by the Ld. AR that the assessee is a dealer of petroleum in the name and style of M/s Sri Ram Petroleum for Hindustan Petroleum Corp Ltd. and the copy of dealership agreement with the company had been filed before us. It was submitted during the appeal before us that in the year under consideration, the total turnover was taken by the Ld. AO at Rs. 10,76,32,265/- and as no return of income was filed, a best judgement assessment under section 144 of the Act was made by applying the net profit rate of 3% to the turnover so estimated at Rs. 10,76,32,265/-, being the total of cash and other deposits in the bank account during the relevant financial year. Although the Ld. AO assessed the income at Rs. 32,28,967/-, however the Ld. CIT(A) was of the view that the cash deposits during the demonetisation period had to be separately taxed. The cash deposits and credits during demonetisation were Rs. 1,75,23,300/- and the Ld. CIT(A) has mentioned that the assessee in his written submission during the appellate proceedings before the Ld.



CIT(A) categorically stated that the entire turnover relates to cash deposits/credits made during the year and not from the sale of petrol/diesel; which statement however has been denied by the assessee in the Ground No. 2 of the appeal before us. The income assessed at Rs. 32,28,967/-, a sum of Rs. 1,75,23,300/- deposited during the demonetisation period and another sum of Rs. 25,00,000/- by way of RTGS, which was written back on 19/12/2016 and 20/12/2016, were all to be added in the opinion of the Ld. CIT(A) i.e. the amount of Rs. 2,32,52,267/- was to be taxed in entirety or in the alternative the entire amount of Rs. 10,76,32,265/- was to be taxed. Relying upon the decision of Shiva Goods Carriers Private Ltd vs DCIT, Shiva Veneer (India) Pvt. Ltd. in ITA No. 256/LKW/2020 in which the proceedings were set aside for framing assessment *de novo*, the entire deposits during the year at Rs. 10,76,32,265/- were held to be added under section 68 of the Act by the Ld. CIT(A).

6. Before us, it was submitted by the Ld. AR that the total deposits in the bank account were Rs. 11,58,97,154/- comprising Rs. 9,40,38,210/- in cash and Rs. 2,18,58,944/- through banking channel but the turnover was estimated by the Ld. AO at Rs. 10,76,32,265/-. The order of the Ld. CIT(A) is stated to be against the principles of natural justice and on incorrect assumption of facts. In the course of the appeal before the Ld. CIT(A), a show cause notice was issued by the NFAC requiring the assessee to explain why profit rate of 15% on Rs. 10,76,32,265/- should not be charged and a copy of the show cause notice has been enclosed in the paper book at page 1; however, the entire deposits in the bank account have been added under section 68 of the Act, which is stated to be fit to be reversed on the ground that no valid show cause notice as mandated in section 251(2) of the Act was



issued by the NFAC. Further, the entire transactions and the source of the bank deposits not being out of the sale proceeds of petrol pump has no basis as there is no recording at page 2 of the assessment order that the deposits in the bank accounts are not out of the sale proceeds of the petrol pump but on the contrary, there is clear recording of the facts by the Ld. AO that the assessee is engaged in the business of running a petrol pump in the name and style of M/s Sri Ram Petroleum. It is further stated in the written submission that in the past and in the subsequent assessment years, the returns for which are available on the departmental portal, the assessee had been carrying on the business of petrol pump. However, the return of income of the assessment year under consideration could not be filed due to unavoidable circumstances. The bank statement requisitioned under section 133(6) shows that the payments were made to HPCL and therefore, the NFAC has vaguely concluded that the deposits in the bank accounts are not of sale proceeds of the petrol pump. The assessee has given a comparative chart of other dealers in this line of business in whose cases the net profit percentage was varying from 0.62% to 0.75% while in the case of the assessee in the earlier assessment year 2014-15, the net profit was 0.36% which varied from 0.41%, 0.40% and 0.47% in A.Y. 2015-16, 2016-17 and 2017-18 respectively, which is at par with other comparable cases. It is requested that applying the doctrine of consistency, the net profit on the gross turnover may be directed to be estimated at 0.47%.

7. We have considered the submissions made. As per the paper book filed, the net profit rate of the assessee during the assessment year 2014-15 is worked out to 0.36%. The Ld. AO did not consider the net profit of other petrol pumps of nearby locality which were varying from



0.62% to 0.75%. According to the assessee, on the estimated turnover of Rs. 11,58,97,154/- and estimated purchases of Rs. 11,48,07,000/-, the difference is Rs. 10,90,154/- which gives the estimated gross profit of Rs. 10,32,216/- after deducting bank charges and works out to 0.896% as the gross profit rate. However, since neither the return of income was filed nor the details were furnished to the Ld. AO, the Ld. AO was justified in making the assessment to the best of his judgement under section 144 of the Act. However, there is no justification for the Ld. CIT(A) to enhance the addition to Rs. 10,76,32,265/-, more so when no show cause notice in this regard was issued. Hence, the order of the Ld. CIT(A) is hereby set aside. Further, the Ld. AO has also not given any basis for applying the net profit rate of 3% on the turnover estimated. It has been held in the case of **Kachwala Gems v. Joint Commissioner of Income-tax, Jaipur [2007] 158 Taxman 71 (SC)** that *it is well-settled that in a best judgment assessment, there is always a certain degree of guess work. No doubt, the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts. There was no arbitrariness in the instant case on the part of the authorities. Thus, there was no force in the instant appeal and the same was to be dismissed accordingly.* [Para 11]

8. Therefore, Considering the totality of facts of the case and the past history of the assessee's own case, we are of the view that the net profit rate of 0.5% on the total turnover of Rs. 10,76,32,265/- may be applied. The Ld. AO is directed to apply the net profit rate of 0.5% on the total turnover for the entire financial year estimated by him at Rs.



10,76,32,265/- and delete the rest of the addition with consequential relief to the assessee.

9. In the result, the appeal of the assessee is partly allowed.

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

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 04.07.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Rajbansh Ram, Sisri, Chainpur, Bhabhua, Sasaram, Bihar, 821106.**
2. **ITO, Ward-3(5), Sasaram.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata