

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH", KOLKATA

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 442/KOL/2025
(Assessment Year 2017-18)**

Biprajit Deb,

C/o Manindra Nath Deb,
Ghosh Para Bye Lane Ward,
Sadar Coochbehar - 736101

[PAN: AKRPD8229K]

..... **Appellant**

vs.

Income Tax Officer,

Ward – 2(1), Coochbehar,

IT Building, Biswan Singha Road,
Coochbehar – 736101

..... **Respondent**

Appearances by:

Assessee represented by : Anil Kochar, Advocate

Department represented by : Sandeep Kumar Mehta, Sr. DR

Date of concluding the hearing : 02.07.2025

Date of pronouncing the order : 07.07.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. This appeal arises from order dated 10.02.2025, passed u/s 250 of the Income Tax Act, 1961 (hereafter "the Act"), by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.

1.1 In this case, the Ld. AO passed an order u/s 144 of the Act dated 16.12.2019, mainly on the ground that the assessee did not respond to any of the notices issued by the Ld. AO. Through this assessment order, the Ld. AO has made a total addition of Rs. 4,12,73,429/- u/s 69 of the Act. This addition also includes an amount of Rs. 8,46,650/- deposited during the demonetisation period.

1.2 The assessee carried this matter in appeal where the Ld. CIT(A) remanded back the matter to the Ld. AO u/s 251(1) of the Act. The Ld. CIT(A) did this because he found that the Ld. AO had passed a best judgement assessment order u/s 144 of the Act.

1.3 Aggrieved with this action of the Ld. CIT(A), the assessee has filed the present appeal with the following grounds:

“1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT(A) erred in dismissing Additional Grounds of Appeal taken by the appellant in respect of proceedings initiated u/s 142(1) of the Act, calling for return of income.

3. For that the Additional Grounds of Appeal ought to have been properly considered by the Ld. CIT(A) and consequently to have held that the assessment framed by A.O. was bad in law.

4. For that the Ld. CIT(A) ought to have held that the impugned notice u/s 142(1) of the Act issued by A.O. on 28.11.2017 calling for return of income for AY 2017-18 was bad in law,

5. For that the Ld. CIT(A) ought to have held that the proceedings-initiated u/s 142(1) of the Act calling for return of income was entirely without any jurisdiction and hence the assessment framed by A.O was totally bad in law.

6. For that the Ld. CIT (A) ought to have held that there being time available w/s 139 before the end of relevant assessment year no Notice u/s 142(1) could have been issued by the A.O. calling for the return of income as per the provision of Sec. 142(1)(1) of the Act.

7. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

2. Before us, the Ld. AR stated that the notice u/s 142(1) of the Act was wrongly issued by the Ld. AO when there was extended time available for filing the return of income (i.e. 31.03.2018). The Ld. AR also argued that the Ld.AO had not followed the SOPs issued by the Department due to which the Range Head was supposed to issue directions from time to time u/s 144A of the Act, in case a best judgement assessment was contemplated [SOP issued by the CBDT, dated 05.03.2019, a copy of which has been placed on record by the Ld. AR]. In this manner, the Ld. AR challenged the legality of the action of Ld. AO and argued that the

assessment order needed to be treated as null and void. On a query from the Bench regarding the filing of return of income by the assessee, it was replied by the Ld. AR that no return was ever filed for this year by the assessee since he was absconding due to some financial and mental problems.

2.1 The Ld. DR relied on the orders of authorities below and stated that this is a case where there was no compliance whatsoever before the Ld. AO and therefore, he had no option but to pass an exparte order. The Ld. AR pointed out that the Ld. CIT(A) had merely remanded back the issues to the Ld. AO for fresh assessment.

3. We have carefully considered the facts of this case, heard both the Ld. AR/DR and have also gone through the documents before us. In this case, there is a peculiar set of facts which deserve to be highlighted briefly. In this case, the assessee was absconding on account of unpaid loans and mental depression since 29.05.2017. This fact was apparently brought to the notice of Ld. AO by the father of the assessee. Thereafter, the Ld. AO collected information from the assessee's banks using powers u/s 133(6) of the Act. Thereafter admittedly notices issued to the assessee failed as all such notices came back unserved. It has been stated at the Bar by the Ld. AR that apart from this particular year, the assessee has been filing return of income and is being assessed on the same also. In light of these facts, it is clear that there are substantial deposits in the assessee's bank accounts which certainly need to be investigated and examined. Regarding the issue of notice u/s 142(1) of the Act, it is seen that the section clearly mentions as under:

“For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return under section 115WD or section 139 or in whose case the time allowed under sub-section (1) of section 139 for furnishing the return has expired a notice requiring him, on a date to be therein specified,-

(1) where such person has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, to furnish a return of his income or the income of any other person in respect of which he is

assessable under this Act, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.”

From a plain reading of the section, we do not find any infirmity in the action of Ld. AO in terms of issuing the said notice. However, as has been mentioned earlier, the assessee's accounts show huge transactions which certainly need to be examined and his correct income determined. We cannot be oblivious to the facts that no return of income has been filed for the year under consideration and thus, the assessee has not admitted to any tax liability in spite of huge deposits in his bank accounts. Accordingly, we support the order of Ld. CIT(A) in as much as the matter has been remanded back to the file of Ld. AO for fresh assessment, after giving an opportunity of being heard to the assessee. Accordingly, we confirm the order of Ld. CIT(A).

3. In result, appeal of the assessee is dismissed.

Order pronounced on 07.07.2025

Sd/-
(George Mathan)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 07.07.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Biprajit Dev
2. Income Tax Officer, Ward – 2(1), Coochbehar
3. CIT(A)
4. CIT
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches