

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH AT KOLKATA**

**[Virtual Court]**

**Before**

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 281/PAT/2024  
Assessment Year: 2017-18**

Pavan Kumar Bhagat <b>(Appellant)</b>	Vs.	ITO, Ward-3(4), Saharsa <b>(Respondent)</b>
<b>PAN: AMUPB8304J</b>		

**Appearances:**

**Assessee represented by** : Abhi Sarkar, Adv.

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

Date of concluding the hearing : 23-July-2025

Date of pronouncing the order : 02-September-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 12.01.2024, which has been passed against the assessment order u/s 147 r.w.s. 144 of the Act, dated 28.11.2019.

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

*"1. For that the grounds of appeal hereto are without prejudice to each other.*

*2. For that the appellate order dated 12/01/2024 bearing DIN & Order No: ITBA/NFAC/S/250/2023-24/1059656637(1) passed under Section 250 of*



*the Income Tax Act, 1961 (hereinafter called the Act) by the ld. First Appellate Authority, viz. the Commissioner of Income Tax (Appeal) at National Faceless Appeal Centre (NFAC), Delhi, is bad both in law and on facts.*

*3. For that the order of assessment dated 28/11/2019 bearing DIN & Order No: NIL passed under Section 144 read with Section 147 of the Act by the Ld. assessing officer, viz. the Income Tax Officer, Ward 3(4), Saharsa, is bad both in law and on facts.*

*4. For that the appellant was not given any opportunity, much less sufficient opportunity, to put forth his contentions and place evidences henceforth at the time of assessment proceeding.*

*5. For that the order of the Ld. Commissioner of Income Tax (Appeal) as well as the order of the Ld. assessing officer is based on presumption, surmises and conjectures.*

*6. For that the order of the ld. Commissioner of Income Tax (Appeal) as well as the order of the Ld. assessing officer is wholly perverse in as much as the same are contrary to and at variance with the materials available on record.*

*7. For that the order of assessment passed under Section 144 read with Section 147 of the Act by the Ld. assessing officer is far from best judgment assessment as envisaged in law.*

*8. For that the Id assessing officer has erred in not taking into consideration the return of income filed under Section 148 of the Act on the sole ground that the same was filed after the specified date, notwithstanding the fact that the appellant was not well and was suffering from cancer and had prayed for sometime to file the return under Section 148 of the Act.*

*9. For that the Ld. assessing officer has erred in not providing the appellant the reason recorded for initiation of reassessment proceeding under Section 147 of the Act and has grossly acted in violation of the directions of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs ITO reported in [2002] 125 Taxman 963 (SC) and [2003] 259 ITR 19 (SC).*

*10. For that the Ld. Assessing officer has erred not serving any notice u/s 143(2) of the Act upon the appellant and has grossly acted in violation of the directions of the Hon'ble Supreme Court in the case of ACIT vs Hotel Blue Moon reported in [2010] 188 Taxman 113 (SC) and [2010] 321 ITR 362 (SC).*

*11. For that the Ld. Commissioner of Income Tax (Appeal) as well as the Ld. assessing officer has erred in holding that the cash deposit of Rs.20,08,500 deposited in bank account (bearing account number 916020006466996)*



with Axis Bank, during the demonetization period (09.11.2016 to 30.12.2016) is unexplained money u/s 69A of the Act and assessed the same under Section 115BBE of the Act, notwithstanding the fact that the cash deposits were from sale proceeds of the business of the appellant and at the time of declaration of demonetization the appellant had sufficient cash balance.

12. For that the ld. Commissioner of Income Tax (Appeal) as well as the ld. assessing officer has erred in not considering the fact that the impugned cash deposits were in respect of the business transactions of the assessee and that all the sales of the assessee were in cash and cash deposits have been consistently made in the bank in whole year.

13. For that the Ld. Commissioner of Income Tax (Appeal) as well as the Ld. assessing officer has erred in not disclosing to the appellant, as to how the said sum relates to demonetized notes deposited during demonetization period.

14. For that the Ld. Commissioner of Income Tax (Appeal) as well as the Ld. assessing officer has erred in disallowing and adding under Section 37 of the Act Rs.89,37,394 claimed as commission expenses by the appellant, solely on the basis of estimate and surmise that the same are not genuine, without considering the fact that the commission have been paid genuinely and through banking mode and in the business of lottery tickets it is general norm to give commissions.

15. For that the ld. Commissioner of Income Tax (Appeal) as well as the Ld. assessing officer has erred in disallowing and adding Rs.11,65,739 claimed as commission expenses by the appellant, solely on the ground that the said deduction is not allowable in view of violation of provision of section 194G of the Act and section 40(a)(ia) of the Act, without considering the fact that the commission have been paid genuinely and through banking mode and in the business of lottery tickets it is general norm to give commissions.

16. For that the ld. assessing officer has erred in initiating penalty proceeding under Section 271AAC, 272A(1)(d) and 271F of the Act.

17. For that the appellant shall place any other point/points at the time of hearing of the appeal.”

3. Brief facts of the case are that the assessee had not filed his return of income for the year under consideration and as per information available with the Assessing Officer (hereinafter referred to as Ld. 'AO'), the assessee had deposited ₹20,08,500/- in Axis Bank account No.



916020006466996 during the demonetization period. Accordingly, the assessment was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued. Subsequently, notices u/s 142(1) of the Act were issued to the assessee but there was no compliance from the assessee. Accordingly, the assessment was finalised u/s 144 of the Act. The Ld. AO noted that the assessee was an authorised seller of lottery tickets on principal-to-principal basis through remittances made to M/s. Divyajyoti Distributors and others. The assessee had shown gross profit of ₹89,37,394/- in the trading account from the sale and purchase of lottery tickets and had debited the exact same amount in the profit and loss account as commission to retailers and claimed the same as an expense. The Ld. AO issued notice to the assessee for furnishing the specific details with regard to the payments of commission to the retailers, names and addresses of the parties to whom the commission was paid and details of TDS deducted thereon, but there was no compliance in response to the notice and no details were furnished. Accordingly, the amount of ₹89,37,394/- was added to the income of the assessee. The Ld. AO noted that the assessee had also debited an amount of ₹11,65,739/- to the profit and loss account under the head commission to retailers on sale of tickets. Since there was no compliance from the assessee, the Ld. AO added the same to the income of the assessee u/s 40(a)(ia) of the Act and assessed the total income of the assessee at ₹1,21,11,630/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A). During the appellate proceeding, the assessee filed written submission which were examined by the Ld. CIT(A) and considering various judicial pronouncements grounds relating to reopening were dismissed. As regards ground relating to ₹20,08,500/- added u/s 69A of the Act, the Ld. CIT(A) went

through judicial pronouncements in the cases of **i. Sreelekha Banerjee v CIT (1963) 49 1TR 112 (SC)**, **ii. Kale Khan Mohammad Hanif v CIT [1963] 50 ITR 1 (SC)**, **iii Roshan Di Hatti v CIT [1977] 107 ITR 938 (SC)**, **iv. Sumati Dayal v. CIT [1995] 80 Taxman 89 (SC)**, **v. CIT v. P. Mohanakala [2007] 161 Taxman 169 (SC)**. The assessee had stated that he had e-filed his return declaring total income of ₹7,54,620/-. He also held that the return filed on 24.05.2018 could not be considered as the return filed in response to the notice u/s 142(1) of the Act and as the assessee had failed to discharge the burden of proof, the addition of ₹20,08,500/- was confirmed. Similarly, the commission to retailers and the commission to retailers on sale of tickets claimed at ₹89,37,394/- and ₹11,65,739/- were confirmed.

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before this Tribunal.

5. Rival contentions were heard and the submissions made have been examined. At the time of hearing the Ld. AR filed an adjournment application but subsequently withdrew the same. He requested that the matter may be remanded to the Ld. CIT(A) as the assessment order was made *ex parte* u/s 144 of the Act and adequate opportunity was not provided by the Ld. CIT(A) for the reliefs claimed.

6. The Ld. DR supported the order of the Ld. CIT(A) and stated that the appeal of the assessee may be dismissed as both before the Ld. AO as well as before the Ld. CIT(A) the assessee failed to discharge the burden placed upon him as the required evidence was not filed.

7. We have considered the rival submissions. While the assessment order has been made u/s 144 of the Act, the appeal has also been decided *ex parte*. Therefore, we deem it appropriate in the interest of



justice and fair play that another opportunity needs to be provided to the assessee to represent his case properly before the Ld. CIT(A) as the additions were confirmed on account of improper representation before the Ld. CIT(A). We, therefore, set aside the order of the Ld. CIT(A) and remit the appeal to him to be decided afresh, who shall allow an opportunity of being heard to the assessee and also grant an opportunity of representing the case and be heard to the Ld. AO as per rule 46A of the Income Tax Rules, 1962, if required, and thereby pass an order in accordance with law. For statistical purposes, the appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 2<sup>nd</sup> September, 2025.**

*Sd/-*

**[Sonjoy Sarma]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 02.09.2025

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **Pavan Kumar Bhagat, Marufganj, Near Purani Jail, Saharsa, Bihar, 852201.**
2. **ITO, Ward-3(4), Saharsa.**
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