



**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA ' D' BENCH, KOLKATA**

**BEFORE S/SHRI AND RAJESH KUMAR, ACCOUNTANT MEMBER AND
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

ITA Nos.228, 229, 230 & 231/Kol/2025

Assessment Year : 2013-14

Vineet Bajoria, C/O. S.N.Ghosh & Associates, Advocates, 2, Garstin Place, 2 nd floor, Suite No.203, Off hare street, Kolkata	Vs.	ITO, Ward 45(4), Kolkata
PAN/GIR No. ADUPB 1299 F		
(Appellant)	..	(Respondent)

Assessee by : Shri Somnath Ghosh, Adv
Revenue by : Shri S.B.Chakraborty, Sr DR

Date of Hearing : 01/09/2025
Date of Pronouncement : 09 /09 /2025

ORDER

PER: RAJESH KUMAR, AM

ITA No.228/Kol/2025: Asst.Year: 2013-14

This is an appeal filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NAFC), New Delhi NFAC), Delhi dated 26.11.2024 in Appeal No.NFAC/2012-13/10038647 passed for Assessment Year 2013-14.

2, At the time of hearing, Id AR did not press Ground Nos.1 to 3. Hence, these grounds are dismissed as not pressed.

3. The issue raised in Ground No.4 is against the confirmation of addition of Rs.6,57,501/- as made by the Assessing Officer on account of unexplained money.

4. Facts in brief are that the Assessing Officer during the course of assessment proceedings observed from the bank statement of State Bank of India that the assessee has earned interest of Rs.6,57,501/- during the year under consideration. Accordingly, a show cause notice was issued by the Assessing Officer on 4.12.2015 to explain as to why the same should not be added to the income of the assessee. The assessee did not file any reply and finally, the AO added the same to the income of the assessee.

5. In the first appellate proceedings, the Id CIT(A) upheld the order of the Assessing officer stating that the assessee has not furnished any information regarding the proposed addition.

6. After hearing the rival submissions, we find that the assessee has duly shown the interest of Rs.99,566/- as "income from other sources" on which TDS of Rs.11,761/- was deducted as corroborated by the bank certificate annexed at page 16 of paper book. We also find that same was duly appearing in Form 26AS. Therefore, we do not find any substance in the addition made by the Assessing Officer and as confirmed by the Id CIT(A).

Accordingly, we set aside the order of Id CIT(A) and direct the AO delete the same. This ground no. 4 of appeal stands allowed.

7. The next issue raised in Ground No.5 of appeal is against the confirmation of Rs.4,36,922/- by the Id CIT(A) as made by the AO in respect of interest paid on borrowed capital u/s.24(b) of the Income tax Act, 1961.

8. Brief facts of the case are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed loss of Rs,1,84,982/- under the head "income from house property". Accordingly, a show cause notice was issued to the assessee. As there was no compliance, the Assessing officer rejected the claim of the assessee of interest paid of Rs.4,36,922/- claimed under section 24(b) of the Act and added the same to the income of the assessee.

9. In the appellate proceedings, Id CIT(A) simply confirmed the addition made by the Assessing officer.

10. After hearing the rival submissions, we find that the assessee has borrowed money from ICICI Bank of Rs.42 lakhs for house property on which interest was paid to the tune of Rs.4,36,922/-, which was claimed u/s.24(b) of the Act as deduction. The certificate from ICICI Bank to this effect is placed at page 18 of paper book. Therefore, we set aside the order of Id CIT(A) and direct the Assessing Officer to delete the addition to this effect. The ground no. 5 is allowed.

11. The next issue raised in Ground No,.6 is against the denial of deduction of Rs.1,17,708/- comprising the claim of Rs.1,00,000/- u/s. 80C of the Act, Rs.5,282/- u/s.80TTA of the Act and Rs.12,426/- u/s. 80D of the Act.

12. During the course of assessment proceedings, the Assessing Officer required the assessee to furnish the details of deduction alongwith evidences. The assessee did not respond and, accordingly, the claim of deduction was disallowed by the AO and upheld by the Id CIT(A).

13. After hearing the rival submissions, we find that the assessee has paid LIC premium, the proofs whereof are available at pages 19 to 25 of paper book, along with proofs of payment to National Insurance Company of Rs.12,426/- claimed under section 80D of the Act. We find that Rs.5282/- was claimed u/s.80TTA towards interest of saving account. We do not find any wrong in claiming the said amounts by the assessee. Therefore, we set aside the order of Id CIT(A) and direct the Assessing Officer to delete the disallowance.

14. The next issue raised in Ground No.7 is against the action of the Id CIT(A) in confirming the addition of Rs.19,25,000/- as made by the Assessing Officer u/s.68 of the Act as unexplained cash credit.

15. Facts in brief are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has deposited cash of Rs.19,25,000/- on four occasions, the details thereof are mentioned in page

4 of the assessment order, aggregating to Rs.19,25,000/-. According to the AO, the assessee has not explained the source of cash deposit and hence added the same to the income of the assessee. The addition was confirmed in the first appeal.

16. After hearing the rival submissions, we find that the assessee has filed the return of income on presumptive basis u/s.44AD of the Act. We also note that the said amount was deposited by the assessee out of cash in hand available, proof of which was filed in the paper book. In our opinion, once the assessee has offered the income u/s.44AD of the Act on presumptive basis, the assessee is not required to maintain any books of account. We find support from the decision of Hon'ble P&H High Court in the case of CIT vs. Surinder Pal Anand (2011) 242 CTR 61 (P&H), wherein, it has been held that when the assessee has filed the return of income under special provision of section 44AD of the Act, then the assessee is exempted from maintaining of books of account as presumptive tax @ 8% of gross receipt itself is the basis for determining taxable income. The assessee is not under obligation to explain individual entry of cash deposit in bank unless such entry has no nexus with gross receipts. Accordingly, we set aside the order of Id CIT(A) and direct the Assessing Officer to delete the addition.

17. The next issue raised in Ground No.8 is against the action of the Id CIT(A) in confirming the addition of Rs.2,10,517/- as made by the Assessing Officer on account of alleged unexplained cash credits.

18. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has disclosed gross receipts of Rs.38,95,689/- in the return of income, whereas as per the bank statement, the total receipt was Rs.65,27,153/- (Rs.84,52,153 – Rs.19,25,000). The Assessing Officer accordingly asked the assessee to explain as to why certain percentage on difference amount of Rs.26,31,464/- @ 8% should not be added back to the income of the assessee. As the assessee failed to explain the same, the Assessing Officer added 8% on the difference amount of Rs.26,31,464/- which comes to Rs.2,10,517/-. On appeal, Id CIT(A) confirmed the same.

19. Ld AR during the course of hearing it was submitted that the money was received by the assessee on account of refund of loan of Rs.43.20 lakhs and cancellation of cheque of Rs.3.90 lakhs and Rs.3.24 lakhs. Therefore, we find substance in the arguments of Id AR of the assessee that the difference is on account of suppression of receipts. We have examined the evidences filed by the assessee in the paper book corroborating various averments made on this behalf. Accordingly, we set aside the order of Id CIT(A) and direct the AO to delete the addition.

20. In the result, appeal in ITA No.228/Kol/2025 is allowed.

ITA No.229/Kol/2025:

21. This is an appeal filed by the assessee against the order of Id CIT(A), NFAC, Delhi dated 26.11.2024 in confirming the penalty of Rs.25,000/- imposed by the AO u/s.271A of the Act.

22. At the outset, Id AR of the assessee submitted that the penalty proceedings were initiated by the Assessing Officer vide notice dated 1.1.2016 issued u/s.274 r.w.s 271 A of the Act, copy of which is available at page 11 of paper book. Ld counsel submitted that the Assessing Officer has issued notice without mentioning whether the assessee has concealed the particulars of income or furnished inaccurate particulars of such income, thereby without mentioning any specific charge and, therefore, same is invalid. Ld counsel submitted that the Assessing Officer has not indicated the relevant limb under which penalty has been proposed. Therefore, the notice issued u/s.274 r.w.s 271A is without application of mind and is invalid, rather the penalty order itself is null and void ab initio in the eye of law.

23. On the other hand, Id Sr DR submitted that the notice is just a format and the assessee has attended the proceedings before the Assessing Officer. Therefore, the assessee cannot be allowed to take advantage of the technicality in issuing the notice u/s.274 r.w.s 271A of the Act and accordingly prayed that the appeal of the assessee be dismissed on this issue.

24. After hearing the rival submissions, we find that the notice has been issued in a mechanical manner without application of mind and in a standard

format. The Assessing Officer has failed to indicate one of the two limbs under which penalty has been proposed. In other words, the AO has mentioned that the assessee has concealed particulars of income and or furnished inaccurate particulars of income. In our opinion said notice is invalid and in consequence thereto, the penalty order is invalid and nullity in the eyes of law. Our view finds support from the judgment of Hon'ble Jurisdictional High court in the case of KPC Medical College and Hospital vs PCIT (2025) 173 taxmann.com 581 (Cal) dated 19.3.2025. We accordingly delete the penalty levied u/s.271A of the Act.

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

ITA No.230 & 231/Kol/2025

26. The issue raised in these appeals is common which is against the confirmation of penalty by the Id CIT(A) as levied by the AO u/s.271(1)(c) of the Act.

27. After hearing the rival submissions, we find that the penalty u/s.271(1)(c) has been initiated by the Assessing Officer vide notice issued u/s.274 r.w.s 271(1)(c) of even date 1.1.2016 for both the assessment years, copies of which are available at the respective paper book. We note that the Assessing Officer has not struck off the relevant limb or specified the limb under which the penalty was proposed to be levied. In other words, the AO has stated both the limbs in the said notices that the assessee has concealed

the particulars of income or furnished inaccurate particulars of income, thereby denying the assessee the legitimate right to respond to the notice issued for imposing the penalty. Therefore, said notice is invalid as the same is issued without application of mind and in a standard format, which is invalid and nullity in the eyes of law. Consequently, the penalty order passed in pursuance to notice u/s.274 r.w.s 271(1)(c) of the Act is also invalid and we quash the same. Our view finds support from the decision of the Hon'ble Jurisdictional High Court in the case of KPC Medical College and Hospital (supra).

28. In the result, both the appeals are allowed.

Order dictated and pronounced in the open court on 9 /9/2025.

Sd/-

PRADIP KUMAR CHOUBEY
Judicial Member

Sd/-

(RAJESH KUMAR)
Accountant Member

Kolkata: Dated /09/2025
B.K.Parida, Sr. PS (OS)

Copy of the Order forwarded to :

1. The Appellant : Vineet Bajoria, C/O. S.N.Ghosh & Associates, Advocates, 2, Garstin Place, 2nd floor, Suite No.203, Off hare street, Kolkata
2. The Respondent : ITO, Ward 45(4), Kolkata
3. The CIT(A)-,NFAC, Delhi
4. Pr.CIT
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Asst.Registrar,
Itat, Kolkata

