

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

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 822/KOL/2025
(Assessment Year:2018-19)**

Santlal Enterprise
Santdeep Building, Sevoke Road,
Siliguri-734001

Vs.

ITO, Ward 1(1)
Aaykar Bhawan Poorva,
Matigara, Siliguri-734004,
West Bengal

(Appellant)

(Respondent)

PAN No. ADOFS3041C

Assessee by : Shri Giridhar Dhelia, AR
Revenue by : Shri Manas Mondal, DR

Date of hearing: 17.09.2025
Date of pronouncement: 15.10.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 19.03.2025 for the AY 2018-19.

02. The issue raised in ground no.1 by the assessee is against the order of learned CIT (A), NFAC, Delhi passed u/s 250 of the Act dated 19.03.2025 is bad in law and the same may be quashed.

03. The Id. Counsel for the assessee submitted that the assessee filed the return of income on 08.06.2018, declaring total income at ₹nil. Subsequently, the case of the assessee was selected for scrutiny under CASS, statutory notices along with questionnaire were duly served upon the assessee. The assessee complied with the said

notices by filing various details/ evidences before the learned AO electronically. Thereafter, the learned AO issued show cause notice along with draft assessment order on 13.04.2021, calling upon the assessee to furnish various documents along with reasons for disputing draft assessment order. The assessee requested for the adjournment till 15.04.2021. On 15.04.2021, the assessee moved an adjournment petition upto 25.04.2021, stating that the assessee is engaged in the process of gathering material. However, the learned AO passed the final assessment order on 21.04.2021, making the addition of ₹2,73,30,000/- to the total income of the assessee comprising addition u/s 56(2)(x) of the Act of ₹2,50,00,000/- and addition u/s 68 of the Act read with section 115BBE of the Act of ₹23,30,000/-.

04. In the appellate proceedings, the learned CIT (A) partly allowed the appeal of the assessee by deleting the addition of ₹2,50,00,000/- as made by the learned AO u/s 50(2)(x) of the Act and the Revenue is not in appeal before us while the learned CIT (A) sustained the addition of ₹23,30,000/-.

05. After hearing the rival contentions and perusing the materials available on record, we find that ₹23,30,000/- was added by the learned AO on protective basis u/s 68 of the Act read with section 115BBE of the Act as unexplained cash deposit. In our opinion the protective assessment is a type of assessment made in order to protect the interest of the Revenue nonetheless there is no provision in the Income Tax Act to charge tax on a person other than a person on whom the tax is lawfully payable but its customary to make protective / alternative addition if it is not ascertainable as to who is the real person who is liable to pay the tax. In other words, if the

assessee is not in a position to ascertain on which person the tax is to be charged and recovered then the assessment is made on substantive basis on the person whom the learned AO believes that the tax should be levied and also makes addition on protective basis, where other than a person in whose hands the substantive addition is made. Once the assessment attains finality then the protective assessment becomes redundant. Thus, we find merit in the contention of the learned Authorized Representative that the cash deposits in the bank account of the partners out of their taxable income were already included in the income tax returns and due tax were paid therefore, the protective addition done by the learned AO on the assessee firm becomes redundant and otiose. The case of the assessee find support from the decision of CIT vs. Ram Chand Tilli Works (2013) 217 Taxman 76 (Allahabad), wherein it has been held that in case of doubt or ambiguity about the real entity in whose hands a particular income has to be assessed the learned AO is entitled to have recourse to make protective assessment. There is no doubt as to the real entity or a person in whose hands the cash deposited is to be assessed as the partnership of the firms have already paid the tax on this amount. Accordingly, we set aside the order of the learned CIT (A) on this issue and directed the learned AO to delete the addition.

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

Order pronounced in the open court on 15.10.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 15.10.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata