

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

Before

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

**ITA No.: 159/PAT/2025
Assessment Year: 2017-18**

Shankar	Vs.	ITO, Ward-6(1), Patna
<i>(Appellant)</i>		<i>(Respondent)</i>
PAN: FQIPS9040D		

Appearances:

Assessee represented by : None

Department represented by : Shri Ashwani Kr. Singal, JCIT

Date of concluding the hearing : 14-October-2025

Date of pronouncing the order : 03-December-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Id. 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 04.03.2024.

1.1 The Registry has informed that the appeal is barred by limitation in filing the appeal by 306 days. However, the assessee has filed a petition before the ITAT requesting for condonation of delay of 306 days for the reason that he was not in a condition to file any reply because he was suffering from acute diabetes and hypertension along with arthritis in both knee joints with extreme weakness and a copy of the prescription has also been attached with the petition. He has also stated in the petition that he has no knowledge of computer and e-mail system



and, therefore, could not pay proper attention to any notices or order issued by the Id. CIT(Appeals). He has also stated that the delay in filing the appeal was purely unintentional and occurred due to circumstances beyond his control as he was not aware of the order passed by the Id. CIT(Appeals) and when he came to know about the same, he approached the Id. A.R. to prefer an appeal, due to which there is a delay of 306 days in filing the appeal before the Tribunal. Therefore, he has pleaded to condone the delay.

1.2. We have considered the facts and circumstances of the case mentioned in the petition seeking condonation of delay and are of the view that the assessee had a reasonable and sufficient cause and was prevented from filing the appeal within the stipulated time. Therefore, we condone the delay of 306 days and the appeal is admitted for adjudication.

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 order of the learned assessing officer and also the learned Commissioner of Income Tax (Appeal) is bad both in law and on facts.

3. For that the order of the learned assessing officer and also the learned Commissioner of Income Tax (Appeal) is based on presumption, surmises and conjectures.

4. For that the learned assessing officer and also the learned Commissioner of Income Tax (Appeal) has erred in passing the respective order of assessment and appeal without grant of the adequate opportunity of being heard in the matter.

5. For that the learned commissioner of income tax appeals has erred in confirming the assessed income Rs. 15,85,575.00



6. For that the learned Commissioner of Income Tax (Appeal) has erred in confirming the addition of Rs.12,81,455.00

7. For that in any view of the matter the order of assessment is per se arbitrary and illegal and therefore, merit to be set aside.

8. For that other various grounds which may be urged at the time of hearing.

3. Brief facts of the case are that the assessee is an individual, who derives income from business in the name and style of Shankar Traders in Bihar and is a native of Tamil Nadu. The assessee had filed his return of income for the assessment year 2017-18 on 31.03.2018 showing total income of Rs.3,04,120/-. The case was selected for complete scrutiny through Computer Assisted Scrutiny Selection (CASS). Accordingly notice under section 143(2) was generated on 21.09.2018 and was served through mail upon the assessee, requiring him to submit documents relating to the reasons for scrutiny online electronically in e-proceeding facility through his account in e-filing website of the Income Tax Department. The Bank account statement in Bank of Baroda, ICICI Bank and Punjab National Bank of Patna had been obtained and verified by the Id. Assessing Officer. The turnover of the assessee shown in the return of income of income was Rs.31,05,950/- and the assessee had also shown the commission income of Rs.1,12,537/-. The assessee was requested to submit the details and ledger copy of salary, sundry creditors and sundry debtors. The assessee submitted P&L Account and Balance-sheet along with the statement of total income only, but did not upload any other ledger copy or the cash book. It was seen from the return of income that the total income aggregated to Rs.32,18,487/- while the total deposits in the three Bank accounts amounted to Rs.44,99,942/-and the deposits during the demonetisation period were ₹ 27,32,500/-. The assessee was



asked to furnish the explanation and the documents for the difference amount of Rs.12,81,455/- and in reply the assessee explained that the difference amount was received from different parties by supplying goods on commission basis. As the assessee did not file any copy of the ledger account in support of the difference between the turnover shown and the deposits in the bank account, the ld. Assessing Officer treated the difference amount as unexplained cash credit under section 68 and assessed the same to tax and also charged tax as specified under section 115BBE of the Act and the total income was assessed at ₹15,85,575/-.

4. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who issued six notices for hearing during the period from 27.01.2021 to 21.02.2024, but no compliance was made to substantiate the claim in support of the grounds of appeal though enough opportunities of being heard were provided to the assessee. The assessee failed to furnish any documentary evidence during the appellate proceedings despite various notices issued and had also failed to discharge the onus of explaining the nature and source deposits treated as unexplained cash credits. Accordingly, the appeal was dismissed.

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

6. None appeared on behalf of the assessee; therefore, the case was heard with the assistance of the ld. Departmental Representative ("the Ld. DR"). The ld. Departmental Representative vehemently supported the order of ld. CIT(Appeals) and pleaded that the appeal of the assessee may be dismissed as no compliance was made either before the ld.



Assessing Officer or even before the ld. CIT(A). It was noted that both before the ld. Assessing Officer as well as before the ld. CIT(Appeals), the assessee did not make any compliance. The assessee had three bank accounts in which the total deposits during the year were Rs.44,99,942/-. The turnover of the assessee was Rs.31,05,950/- as per the return of income and the assessee had also shown the commission income of Rs.1,12,537/-. As there was no explanation for the difference between the total deposits in the Bank accounts and the gross receipt of commission income, therefore, the amount of ₹12,81,455/- being the difference, was added to the income of the assessee under section 68 of the Act and charged to tax under section 115BBE of the Act and the total income was assessed at ₹15,85,575/-. Before the ld. CIT(Appeals), there was no explanation from the assessee to substantiate the grounds of appeal, therefore, the appeal of the assessee was dismissed on account of non-prosecution by the Ld. CIT(Appeals).

7. Apparently, the representation could not be made properly as the assessee was not well as is mentioned in the application seeking condonation of delay and also because of lack of computer literacy. We note that section 250(6) of the Act casts a duty upon the Ld. CIT(A) to pass an order in appeal which should state the points for determination and a decision as well as the reason for arriving at such decision. We note that in **Aji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that the Assessing Officer's order is a self-speaking order which requires no interference. It has also been held in



the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** after discussing the provisions of sections 250(1) and 251(1) that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. 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). We, therefore, set aside the order of the Ld. CIT(A) and restore 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 to be heard to the Ld. AO as per rule 46A of the Income Tax Rules, 1962, if required, and thereafter pass an order in accordance with law. The assessee shall produce cash book, ledger and other relevant documents, as required, which he has claimed to have maintained and the Ld. CIT(A) shall consider the submission to be made by the assessee and thereafter, pass an order in accordance with law. Thus, all the grounds raised by the assessee are partly allowed for statistical purposes.

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

Order pronounced in the open Court on 3rd December, 2025.

Sd/-

Sd/-

[Sonjoy Sarma]
Judicial Member

[Rakesh Mishra]
Accountant Member

Dated: 03.12.2025



Copy of the order forwarded to:

1. **Shankar, H/o. Arun Prasad, Opp. Shiv Mandir, Nala Road, Kadamkuan, Patna-800003, Bihar**
2. **ITO, Ward-6(1), Jay Prakash Bhawan, Income Tax Department, Patna-800001, Bihar**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata

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