

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH, KOLKATA**

Before

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

**ITA No.: 343/PAT/2025
Assessment Year: 2014-15**

Sanjay Kumar (Appellant)	Vs.	ITO, Ward-4(5), Patna (Respondent)
PAN: CJVPS7179G		

Appearances:

Assessee represented by : None.

Department represented by : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : 13-October-2025

Date of pronouncing the order : 08-December-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 2014-15 dated 10.02.2023.

1.1. The Registry has informed that the appeal is barred by limitation by 833 days. The assessee has filed a petition for condonation of delay explaining the reasons that the appellate order was not physically communicated to the assessee and was not sent on the email due to change in email ID. The assessee came to know about the order only when he visited the IT portal. After perusing the same, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.



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

“1. The Appellate order of the National Faceless Appeals Centre (NFAC)-Delhi. Is bad and erroneous both on facts and in law.

2. The order of the National Faceless Appeals Centre (NFAC)-Delhi has dismissed the appeal without appreciating the facts and circumstances of the case.

3. On the facts and in circumstances of the case (NFAC)-Delhi has erred in making the appellate order by violating the principal of the natural in justice and by not granting proper and real opportunity of being heard and considered the submission of the assessee.

It ought to have consider and granted adjournments as requested and uploaded in the I.T. Portal. Finally appellate order is made without any hearing of the appellant.

4. On the facts and in circumstances of the case (NFAC)-Delhi has erred in the erred in making addition on account of works Contractors payments of Rs. 77,53,000/- completely ignoring to bring to tax only the net profit embedded in such payments made to such contractors and by ignoring the directions of the Pr. CIT in sec. 263 order to consider and compare the profit percentage of other assesses in the similar trade.

It ought to have added profit amount instead of entire amount of works contractor payment.

5. On the facts and in the circumstance of the case, the NFAC has erred in not considering the fact of non-violations of sec. 40A(3). It ought to have granted adjournments and hear the case of the assessee properly and consider the material that would have produced by the appellant had real hearing is granted.

6. On the facts and in the circumstances on the case the NFAC has erred in making additions of (i) Rs. 77,53,000/- on account of income from undisclosed sources out of disclosed receipts of Rs. 82,53,000/- by alleging that provisions of section 44AD and 44AB have not been complied with even though books of account were not required to be audited u/s 44AB r.w.s 44AD as gross turnover was less than Rs. 1 Crore and Net Profit was @11.18% without hearing the appellant and without considering the material that would be submitted had proper hearing is granted. Hence, addition of Rs 77,53,000/- is bad in law and liable to be deleted.



7. *On the facts and in the circumstances on the case the NFAC has erred both in fact and in law in treating receipts of Rs 77,53,000/- out of disclosed turnover of Rs 82,53,000/- as income from undisclosed sources only on the basis of doubt and suspicion without bringing in any evidence on record and also without appreciating material available on record that he has such income in earlier FYs. Hence, addition of Rs 77,53,000/- out of disclosed turnover as income from undisclosed sources on the basis of doubt and suspicion is bad in law, liable to be deleted.*

8. *The National Faceless Appeals Centre (NFAC)-Delhi or Assessing Officer has wrongly assessed the amount of Rs. 77,53,000/- as income from other sources instead of income from works contract business and considered as deemed to the income of the assessee for F.Y-2013-14 and taxed and taxed u/s. 115BBE which is not sustainable and the same need to be deleted.*

9. *Such other ground/grounds that may be urged at the time of hearing of the appeal.”*

3. Brief facts of the case are that the assessee is an individual and had filed the return of income showing total income of ₹8,22,420/-. The return was selected for scrutiny under Computer Assisted Scrutiny Selection (in short 'CASS'). The statutory notices issued were not complied with. The assessee had not shown his business income u/s 44AD of the Act properly and had not got the accounts audited. The total receipt was shown at ₹82,53,000/- but from Form No. 26AS it was found that the TDS u/s 194C of the Act had been made on the balance works contract receipt of ₹77,53,000/-. Since the required details were not filed, the amount of works contract receipt of ₹77,53,000/- on which no TDS was made was treated as income from other sources and added back to the total income of the assessee. The total income of the assessee was assessed at ₹85,75,420/- u/s 144 of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who issued 9 notices for hearing to furnish ground-wise written submission and documentary evidence to substantiate his claim. The adjournments sought on three occasions were granted but further



notices issued were not complied with. Therefore, the appeal was decided *ex parte* and the addition made was confirmed and the appeal was dismissed.

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

5. None appeared on behalf of the assessee and the case was heard with the assistance of the Ld. DR. In Ground no. 3 it is mentioned that the principle of natural justice was violated as the adjournment sought was not granted and no proper and real opportunity of being heard was provided. It is also agitated that there is no justification in treating ₹77,53,000/- out of disclosed turnover of ₹82,53,000/- as income from undisclosed sources only on the basis of doubt and suspicion without any evidence on record.

6. The Ld. DR submitted that since there was non-compliance both before the Ld. AO as well as the Ld. CIT(A), the addition should be confirmed and the appeal of the assessee is liable to be dismissed.

7. We have considered the submissions of the Ld. DR. The only ground on which the Ld. AO has made the addition is that there was no TDS on the works contract of ₹77,53,000/- out of the disclosed turnover of ₹82,53,000/- being the gross receipts of the assessee and TDS was deducted only on ₹5 Lakh. Mere non-deduction of TDS does not make the entire gross receipts taxable if there is no liability for deduction of tax. Therefore, the Bench was of the view that in the interest of justice and since the assessee was not properly represented before both the Ld. AO as well as the Ld. CIT(A), the order of the Ld. CIT(A) ought to be set aside for granting another opportunity to the assessee of being heard. Hence, after examining the facts of the case, we hereby set aside the



order of the Ld. CIT(A) and remit the matter back to the Ld. AO for making the reassessment *de novo*. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 8th December, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 08.12.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Sanjay Kumar, Ca-13, Kankarbagh Pc Colony, Po Lohianagar
Kankarbagh, Patna, Bihar, 800020.**
2. **ITO, Ward-4(5), Patna.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Benches, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata