

**INCOME TAX APPELLATE TRIBUNAL: GAUHATI BENCH: GUWAHATI
BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

AND

SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

ITA No. 129 / GTY / 2023

AY: 2018-19

Yaswi Commercial 501, Amaze Shopping Mall Paltan Bazar, A.T. Road Guwahati-781001 (Assam) PAN: AAIFY6939Q	The ITO, Ward- 1 (3), Guwahati
(Appellant)	(Respondent)

Assessee By:	Shri Ramesh Goenka, Advocate
Respondent By:	Shri Amit Kr. Pandey, JCIT
Date of Hearing:	16-12-2025
Date of Pronouncement:	17 .12.2025

ORDER

PER MANOMOHAN DAS, JM

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the ("CIT(A)" dated 12.09.2023 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and pertains to the Assessment Year [AY] 2018-19.

The grounds of appeal of the assessee are as under:-

(i) *That the Id. Commissioner of Income Tax (Appeals) ought to have held that the assessment order passed U/s 143(3) of the Income Tax Act, 1961 without providing personal hearing through video conferencing, despite repeated specific requests, was in violation of provisions of section 144B of the Income Tax Act, 1961 and hence, was illegal, void and liable to be quashed.*

(ii) *That neither the Id. Assessing Officer was justified in making the addition of Rs. 60,50,000/- U/s 69C of the Income Tax Act, 1961 on account of unexplained expenditure and charging to tax U/s 115BBE of the Income Tax Act, 1961 nor the Id. Commissioner of Income Tax (Appeals) was justified in confirming the aforesaid addition.*

(iii) *That the addition of Rs. 60,50,000/- made U/s 69C of the Income Tax Act, 1961 by the Id. Assessing Officer and sustained by the Id. Commissioner of Income Tax (Appeals) is contrary to the materials on record, based on irrelevant considerations and non-consideration of relevant material and therefore, not sustainable either in facts or in law.*

(iv) *That the addition of Rs. 60,50,000/- made U/s 69C of the Income Tax Act, 1961 by the Id. Assessing Officer and sustained by the Id. Commissioner of Income Tax (Appeals) is totally mis-conceived as the pre-conditions for invoking section 69C of the Act are totally absent in this case.*

2. The brief facts of the case are that, the assessee is engaged in the business of manufacturing and trading of cement with their plant located at Guwahati, Assam. The ITR for the AY 2018-19 was filed by way of revised return on 17.08.2019 at an income of Rs. 11,83,320/-. The case was selected for scrutiny and after obtaining the details, the AO noted that the assessee has purchased a machine from one related party for an amount of Rs. 60,50,000/- . After considering the various details including the mode of payment, the invoice and the method of accounting adopted by the assessee in respect of the said machine, the AO raised suspicion about the genuineness of the transaction in respect of acquisition of the machine by the assessee and held the same to be non-genuine, and completed the assessment by making an addition of Rs. 60,50,000/- u/s 69C of the Act.

3. Being aggrieved, the assessee filed 1st appeal before the Id. CIT(A). The Id. CIT(A) vide order dated 12.09.2023 dismissed the appeal of the assessee.

4. Being aggrieved, the assessee filed the appeal before the Tribunal.

5. Heard the representatives of both the parties and perused the materials on record.

6. The Ld. AR submitted that, the Id. AO did not provide personal hearing through video conferencing facility to the assessee despite such a request was made by the assessee and thus, the Id. AO did not provide opportunity to the assessee so as to make more effective submission in support of his claims. The Ld. AR also submitted that, the addition u/s 69C made by the Id. AO was on suspicion and on surmises only. The Ld. AR submitted that, all the necessary materials were submitted before the Id. AO during the assessment proceedings and the Id. AO also made enquiry from the supplier of the machine accordingly, the upholding the addition by the Id. CIT(A) was not justified. On the other hand, the Ld. DR supports the orders of the lower authorities.

7. We have observed that, the Id. Assessing Officer did not provide personal hearing to the assessee. No reasons also stated in the assessment order why the request for personal hearing was not provided to the assessee.

8. The Id. CIT(A) suggested the assessee to make submission which were to be submitted before the Id. AO. At the same time, the Id. CIT(A) has relied on the judgment of the Hon'ble Supreme Court of India in the case of State Bank of Patiala -Vs- S.K. Sharma and rejected the contention of the assessee that giving the personal hearing to him is compulsory. We observe that, the facts of the case as relied on by Id. CIT(A) are totally different than the case of the assessee. The case relied on by Id. CIT(A) was related to domestic enquiry in a disciplinary matter. Whereas, the instant case is related to payment/ recovery of income tax. The matter is a money related matter and there is a necessity to give every opportunity to the assessee to make

submissions in support of his claims. Otherwise, there may be an irreparable loss to the assessee by paying of his money as income tax which is not the object of the Income Tax Act. The assessee must get every opportunity for defending his claims. The assessment of income tax must be free from any doubt and surmises.

10. We observe that, the assessee made a request before the Id. AO for a personal hearing through video conferencing as provided in the Income Tax Act. Section 144B (6)(viii) provides such a provision for granting of personal hearing where such a request comes from the assessee. The section provides as under—

“ Where the request for personal hearing has been received, the income tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board”.

11. We observe that, the aforesaid opportunity of personal hearing is a statutory opportunity to be provided to an assessee where such a request is received by the Revenue. Where such a request is received, it is mandatory for the income tax authority to provide personal hearing through video conferencing or video telephony as the case may be. It is mandatory because, the word “shall” has been used in that provision. That means, it is compulsory. We again see the relevant provision which says as – **where the request for personal hearing has been received, the income tax authority of the relevant unit shall allow such hearing**

12. From the aforesaid provision as provided under section 144B(6)(viii) of the Act, it is clear that, the income tax authority is bound to allow personal hearing when such a request is made by an assessee.

13. In the case in our hands, the assessee had made a request before the Id. AO for a personal hearing, the no such hearing was provided by the Id. AO which is a violation of the statutory provision by the Id. AO. Again, no reason was stated in the assessment order why personal hearing was not provided to the assessee.

14. We have already expressed our views that, the assessee must get every opportunity to substantiate his claims before the income tax authority. Hence, non-granting of personal hearing to the assessee by the Id. AO certainly deprived the assessee in substantiating his claims before the Id. AO. Further, the Id. AO has made addition on doubt. The Id. CIT(A) in his decision has stated as under----

“After considering the various details including the mode of payment, the invoice and the method of accounting adopted by the assessee in respect of the said machine, the AO raised suspicion about the genuineness of the transaction in respect of acquisition of the machine by the assessee and held the same to be non-genuine, and completed the assessment by making an addition of Rs. 60,50,000/- u/s 69C of the Act”.

15. We observe that, the assessee reiterated his claims before the Id. CIT(A). The Id. CIT(A) finally dismissed the appeal of the assessee by observing that, the assessee failed to prove his case before both the lower authorities.

16. In view of the aforesaid, discussions, it is our considered opinion that, the assessment completed by the Id. AO by violating the provisions of section 144B(6)(viii) of the Act and addition was made on suspicion cannot be upheld. Hence, it would be proper to remand the case of the assessee to Id. AO for assessment afresh. Accordingly, we set aside the order of the Id. CIT(A) dated 12.09.2023 as well as the assessment order dated 27.05.2021 and remand the matter to Id. AO for reframing of the assessment. We direct Id.AO to reconsider the case of the assessee after giving the assessee an opportunity of being heard. Thus, we allow the appeal of the assessee for statistical purposes only.

17. Since, we remand the case to Id. AO due to violation of the provision of section 144b(6)(viii) of the Act, we think it proper not to adjudicate the addition made u/s 69C of the Act separately.

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

19. Order pronounced in the open court on this 17th day of December, 2025.

Sd/-

(Rajesh Kumar)

Accountant Member

Date: 17.12.2025

Sd/-

(Manomohan Das)

Judicial Member

Copy forwarded to:-

1. Yaswi Commercial, 501, Amaze Shopping Mall, Paltan Bazar, A.T. Road, Guwahati-781001 (Assam)
2. The ITO, Ward-1 (3), Guwahati
3. The Pr.CIT
4. The CIT(A)
5. The DR
5. Guard file

By Order

Assistant Registrar
ITAT, Guwahati / Kolkata