IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA

[Virtual Court]

Before

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

ITA No.: 205/PAT/2025
Assessment Year: 2014-15

Bijay Kumar Saraf	Vs.	DC/AC Circle-1, Muzffarpur
(Appellant)		***(Respondent)***
PAN: APDPS4735C		

Appearances:

Assessee represented by **:** Amar Kriti, Adv.

Department represented by **:** Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : 06-January-2026
Date of pronouncing the order : 30-January-2026

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 25.02.2025.

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

> *"1. For that the learned commissioner of income tax appeals had erred in law and in facts in passing the order u/s 250 of the I.T act, 1961(herein referred to as 'the act').*
>
> *2. For that the grounds of appeals are without prejudice to one another.*
>
> *3. For that the learned commissioner of income tax (Appeals) had erred in consideration of the fact and the law that the notice u/s 148 of the act had been served to the appellant on 07:38 AM on 01.04.2022 which is barred by the limitations as per the provisions of the existing act.*

4. For that the learned commissioner of income tax (Appeals) should have considered the fact that the appellant had not been given a reasonable opportunity of being herd as the notice u/s 142(1) dated 26.11.2021 and 16.12.2021 had not been served to the appellant.

5. For that the learned commissioner of income tax (Appeals) had erred to consider the fact that the proceedings have been initiated on the basis of audit objection by the O/o the Pr. Director of Audit (Central) Lucknow. There is no independent application of mind by the A.O to arrive at on "reasons to believe" that income chargeable to tax has escaped assessment. The initiation of proceedings u/s 147 and issue of notice u/s 148 of the I.T Act, 1961 is wrong, illegal, invalid and beyond jurisdiction.

6. For that the leaned commissioner of income tax (Appeals) had erred in consideration of the fact that the assessment in the present case was completed u/s 143(3) of the I.T Act, 1961 on 31.08.2016. The present notice has been issued on 31.03.2021 i.e. beyond the period of 4 years. The reopening of the case u/s 147 of the Act beyond the period of 4 years is covered by the condition stipulated by the first proviso below section 147 of the Act. The notice issued u/s 147 is beyond jurisdiction.

7. For that the learned commissioner of income tax (Appeals) had failed to appreciate the fact that the appellant has disclosed all material facts, produced books of account, audit report, TDS statement in Form 26Q, etc. at the time of assessment. The books of account had been accepted by the AO during regular assessment. The A.O has not mentioned in the reasons recorded that escapement of income was because of failure on the part of the appellant to disclose fully and truly all material facts necessary for assessment.

8. For that the learned commissioner of income tax (Appeals) had failed to appreciate the audit report duly concluded by the auditor of the appellant.

9. For that the learned commissioner of income tax (Appeals) had failed to appreciate the fact that the column 5 of annexure-3 of point no. 34(a) of the Form 3CD which Is read as 'Total amount on which tax was required to be deducted or collected out of (4)" had been filled as NIL by the auditor which clearly states that there was no any requirement by the appellant to deduct and deposit the tax as per the prevailing provisions of the act.

10. For that the learned commissioner of income tax (Appeals) had failed to appreciate the fact that the appellant had duly complied with the prevailing law that the appellant had duly filed the quarterly returns in FORM 26Q for the payment of freight of Rs 54,59,700/- with the details of the PAN and name of the transporter as per section 194(7) of the act to whom the details appellant had made the payment of above Rs 1 Lakhs during the year under consideration as per section 194C(6). All the compliance had been complied

by the appellant during the year under consideration as per the prevailing law during the said period.

11. For that the learned commissioner of income tax (Appeals) had failed to appreciate the fact that the payment made in respect of the accounting charges of Rs 60,000/- by the appellant during the period had been made to two different persons and as per the provisions of the 194J of the act the liability to deduct and deposit TDS for the specified payment made to any person by the appellant would arise in case of the payment to any person during a particular year exceeds Rs 30,000/-.

12. For that the learned commissioner of income tax (Appeals) should have appreciated the fact that the above liability to deduct and deposit the TDS u/s 194C and 194J of the act had been duly verified by the respective A.O during the assessment proceedings.

13. For that the above order is bad in fact and law of the case and is fit to be annulled.

14. For that the appellant craves to add, amend and alter any of the grounds of appeal during the proceedings of appeal."

3. Brief facts of the case as per the assessment order are that the assessee deals in the wholesale trading of sugar and had filed his return of income for the A.Y. 2014-15 on 26.11.2014 declaring the total income of ₹10,10,280/-. The case was selected for scrutiny under CASS to examine low net profit or loss shown from large gross receipts for the A.Y. 2014-15. Subsequently, scrutiny assessment proceedings were completed u/s 143(3) of the Income Tax Act, 1961 on 31.08.2016 and the income was assessed at the total income of ₹10,22,750/-. An audit was conducted for the said year and it was found that the assessee had shown freight charges amounting to ₹61,12,102/- out of which on an amount of ₹54,59,700/-, the assessee had not deducted any TDS u/s 194C of the Act relating to payment made to the contractors. It was also found that an amount of ₹60,000/- was shown as accounting charges in the P & L accounts and the assessee had not deducted any TDS u/s 194J on the said amount. The assessment was reopened and the Assessing Officer ("the Ld. AO") issued a notice u/s 148, in response to

which, the assessee did not file any return of income. Since no compliance was made to the notice issued in the course of reassessment proceedings, the Ld. AO disallowed the sums of ₹55,19,700/- (being the sums of ₹54,59,700/- out of freight charges plus ₹60,000/- on account of accounting charges) for non-deduction of TDS and another sum of ₹61,12,102/- on account of freight charges for low profit shown and the freight charges not being disallowed for the said year and completed the assessment u/s 147 r.w.s 144 and assessed the total income ₹1,26,54,552/-. Being aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who considered the grounds of appeal, the assessment order and has given its finding as under:

> *9.9 In view of the above discussion, it is found that the appellant made payment amounting to Rs. 61,12,102/- and duly accounted in the books of accounts under the head freight charges. After examination of the said details, it is found that the appellant has non-compliance of TDS amounting to Rs. 55,19,700/- (Rs. 54,59,700/- u/s 194C and Rs. 60,000/- u/s 194J) on the account of freight charges. Hence, the said amount of Rs. 55,19,700/- has remained non-compliance of TDS is required to be brought under tax as per provision of Income tax Act, 1961. Hence, the addition made by the Assessing officer is restricted to the extent of Rs. 55,19,700/- only.*
>
> ***Hence, the ground is noted as partially allowed.***

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

5. Rival submissions were heard and the record and the submissions made have been examined. The Ld. AR stated that the assessment order was made *ex parte* as only one notice was served upon the assessee which was issued on 07.03.2022 and the rest of the two notices were not served on the email and the email had bounced. Our attention was drawn to pages 81 to 84 of the paper book filed which contains the copy of the letter received from the Department in this regard acknowledging

the fact that the emails sent on to the email address had bounced.26.11.2021 and 16.12.2021 had bounced. A copy of the order dropping the penalty under section 271(1)(b) of the Act was also filed. It was stated that the Ld. CIT(A) sustained part of the disallowance even though the assessee was not liable for deduction of any TDS as the assessee is trading in sugar and the liability for deduction did not arise as only if the aggregate payment of ₹ 75,000/- is made, the TDS liability u/s 194C arises and the TDS is to be deducted. A copy of Form No. 26Q was filed before the Ld. CIT(A) which is also filed in the paper book from pages 51 to 74. Our attention was also drawn to page 5 of the paper book in which the details of the PANs of the transporters were filed for the amount paid at ₹ 54,59,700/-. It was stated that the amendment in the Act had taken place from 01/06/2015 for liability to deduct TDS under section 194J and for the assessment year 2014-15, no such liability had arisen. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

6. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The assessment was reopened on account of non-deduction of tax on the amount of ₹ 54,15,700/- for payment made to contractors and for non-deduction of tax on accounting charges of ₹ 60,000/-. The Ld. AO made the addition of ₹ 55,19,760/- and ₹ 61,12,102/-. The assessee filed the PANs of the transporters in the course of the appeal before us and stated that it was not liable for deduction of tax as per the proviso to sub-section (5) of section 194C as the aggregate payment did not exceed ₹ 75,000/-. Further, as per sub-section (6), in the case of the contractors owning 10 or less goods carriages at any time during the previous year and on his furnishing a declaration to that effect along

with the permanent account number to the payer, no deduction u/s 194C is liable to be made. It was also stated that no liability arose u/s 194J for accounting charges as the total amount paid was only ₹60,000/- to two accountants and the liability for deduction of tax u/s 194J arises only if the amount exceeded ₹30,000/-. The accounting charges were paid to two accountants which did not exceed ₹ 30,000/- in the aggregate for each of them.

7. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The accounting charges of ₹ 30,000/- each were paid to Shri Ranjan Kumar and Shri Gunjan Kumar, which did not exceed the amount specified for deduction of TDS u/s 194J. Hence, there was no liability to deduct any TDS on the said payments. As regards section 194C, the assessee had paid a sum of ₹54,59,700/- to 10 transporters and the aggregate amount in each case had exceeded the specified limit of ₹75,000/- for deduction of TDS. However, as per sub-section (6), thereof no deduction is to be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum. The Ld. AR submitted that earlier the requirement was only of furnishing the PANs and the amendment relating to number of vehicles owned had been made w.e.f. 01.06.2015 and was not applicable for the year under consideration. Prima face, the contention appears to be correct. Hence, in view of the legal provisions in this regard, Ground No. 11 is allowed. In respect of

Ground No. 10, the Ld. AO is directed to verify the details furnish by the assessee relating to the PANs of the transporters and the provisions in this regard and after verification delete the addition as per law as the assessee contends that adequate opportunity was not provided to him and there was no liability to deduct the TDS as PANs of the transporters were provided to the Ld. AO.

8. As regards Ground No. 3, the notice under section 148 of the Act was served upon the assessee on 01/04/2021 and not on 01/04/2022, as mentioned. The grounds relating to the reassessment proceedings have been adjudicated by the Ld. CIT(A) and there is no reason to interfere with his finding. It is a settled principle of law that the notice u/s 148 has to be issued within the limitation period and on account of extension of dates by TOLA, the limitation for issue of notice u/s 148 for A.Y. 2014-15 had been extended and the notice has been issued during the extended period. Hence, all the grounds relating to the reopening of the assessment are dismissed. Other grounds being general in nature are not adjudicated upon.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 30th January, 2026.

Sd/-	*Sd/-*
[**Sonjoy Sarma**]	[**Rakesh Mishra**]
Judicial Member	Accountant Member

Dated: 30.01.2026

Bidhan (Sr. P.S.)

Copy of the order forwarded to:

1. ***Bijay Kumar Saraf, Daldali Bazar, Muzaffarpur, Bihar, 842001.***
2. ***DC/AC Circle-1,Muzffarpur.***
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