

**IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH,
VIRTUAL HEARING AT KOLKATA**

Before
Dr. Manish Borad, Accountant Member
&
Shri Manomohan Das, Judicial Member

I.T.A. Nos.46 & 47/GTY/2024
Assessment Year: 2017-18

Rotluanga Stephen **Appellant**
PB No. 45, Bishop 3 House, Ramthar Reng,
Aizawal, Mizoram-796001.
(PAN: FHBPS7033E)

Vs.

Income tax Officer, Ward-1, Jorhat **Respondent**

Appearances by:

Shri Sapan Usrethe, AR appeared for Appellant.
Shri soumendu Sekhar Das, DR appeared for Respondent.

Date of concluding the hearing : 28.08.2024
Date of pronouncing the order : 04.09.2024

ORDER

Per Dr. Manish Borad, Accountant Member:

Both these appeals filed at the instance of the assessee pertaining to the Assessment Year (in short “AY”) 2017-18 are directed against the separate orders passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax, (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 25.08.2023 arising out of the assessment order and penalty order framed u/s. 147 r.w.s 144/144B and u/s. 271AAC(1) of the Act by ITO, Ward-1, Jorhat dated 16.03.2022 and 19.09.2022 respectively.

2. Grounds of appeal raised by the assessee in respect of ITA No. 46/GTY/2024 read as under:

“1. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the penalty levied by AD without considering the detailed statements of facts which is filed along with the appeal and without following the spirits of faceless appeals scheme.

2. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the penalty levied by AD without appreciating the facts that addition was made on the vague ground.

3. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the penalty levied by AD of Rs.63,957 without appreciating that the money deposited during the demonetization period does not belong to the appellant and also the bank account in which it was deposited does not belongs to the appellant as it belongs to society which was duly explained by the appellant in assessment proceedings and therefore section 69A is not applicable in the present case.

4. The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal.”

3. Grounds of appeal raised by the assessee in respect of ITA No. 47/GTY/2024 read as under:

“1. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the additions made by the AO without considering the detailed statements of facts which is filed along with the appeal and without following the spirits of faceless appeals scheme.

2. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the additions made by the AD without appreciating that a detailed reply and documents filed by the appellant during the course of assessment proceeding and AD have wrongly passed the order under section 144 of the IT Act and addition was made on the vague ground.

3. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the addition of Rs.8,27,933 without appreciating that the money deposited during the demonetization period does not belong to the appellant and also the bank account in which it was deposited does not belongs to the appellant as it belongs to society which was duly explained by the appellant in assessment proceedings.

4. The learned Commissioner of Income tax (Appeal) of NFAC New Delhi was not justified in confirming the action of AO without appreciating the fact that the proceeding initiated by AO itself is bad in law as AO have issued notice under section 148 on 01.04.2021 which is null and void as from 01.04.2021 act was amended and new provision was inserted and thus issuance of notice after 01.04.2021 is invalid and it was not issued to anybody as it was not issued in any email and hence it is void.

5. The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal.”

4. ITA No. 47/GTY/2024 is against the addition of Rs.8,27,933/- made u/s. 69A of the Act for the unexplained cash deposits and ITA No. 46/GTY/2024 is against the levy of penalty u/s. 271AAC(1) of the Act amounting to Rs.63,957/- levied on the alleged addition for unexplained cash deposit of Rs.8,27,933/-. Since the penalty is dependent upon the addition, we first take up ITA No. 47/GTY/2024.

5. At the outset, Ld. Counsel for the assessee submitted that the assessee is a Catholic Religious priest and a senior citizen and is the Bishop for the Catholic Diocese of Aizawl, Mizoram. The bank account referred by the AO in the assessment order is in the name of Seva Kendra, Silchar and the assessee being the chairperson of the organisation has submitted his PAN for the KYC procedure. The alleged cash deposits are the voluntary contribution received by Seva Kendra, Silchar for which complete details are available with the Seva Kendra. However, the alleged cash deposits do not relate/belong to the assessee and, therefore, the impugned addition is uncalled for.

6. On the other hand, Ld. DR supported the orders of the lower authorities.

7. We have heard rival contentions and perused the records placed before us. The assessee is aggrieved with the addition made u/s. 69A of the Act on account of unexplained cash deposit of Rs.8,27,933/- deposited in bank account No. 12360100083181 of Federal Bank. On perusal of the paper book containing 27 pages and specifically from pages 14 to 19 where the copy of alleged bank account has been placed we observe that the bank account is in the name of Seva Kendra, Silchar and not in the name of the assessee. All the entries containing in this bank account pertain and belong to the regular day to day activities, receipt of funds as donation or transfer from other concerns and the withdrawals made for making payment for various activities of Seva Kendra. Income tax return of Seva Kendra for AY 2017-18 filed under the PAN: AAAAS1243C on 26.10.2017 placed in the paper book page 27 asserts the fact that Seva Kendra is the regular income tax assessee and for the impugned assessment year it has also filed its income tax return. Now, going through the order of the AO, we notice that the impugned addition has been made only for the unexplained cash deposit of Rs.8,27,933/- in the same bank account of Federal Bank Ltd. On going through the facts discussed above and also observing that the assessee being the Bishop for the Catholic Diocese of Aizawl, Mizoram also holds the post of President/Chairman of Seva Kendra and as part of the banking formalities gave his PAN no. for the KYC procedure. We thus find

that based on the information of PAN in the data base of the income tax, attached to the bank account in the name of Seva Kendra, Ld. AO was provided with the information of the alleged cash deposit. We are thus, satisfied that the alleged cash deposit transactions are not at all related/pertain to the assessee but are of another assessee M/s. Seva Kendra which is duly assessed to tax. We are aware of the fact that assessee did not appear before the lower authorities but considering the smallness of the issue and the facts duly established on record, we set aside the finding of the Ld. CIT(A) and delete the impugned addition of Rs.8,27,933/- and allow the ground no. 3 raised on merits of the case. Remaining grounds being general/consequential in nature needs no adjudication. The appeal of the assessee is allowed as per terms indicated hereinabove.

8. As regards appeal vide ITA No. 46/GTY/2024 the assessee has challenged the levy of penalty u/s. 271AAC(1) of the Act on the addition for the unexplained deposit in the bank account held with Federal Bank. Since in the preceding paras we have already adjudicated the merits of the case in ITA No. 47/GTY/2024 and held that alleged bank account does not belong to the assessee and deleted the addition made in the hands of the assessee. Levy of penalty is consequential to the addition and since the addition has itself been deleted the impugned penalty has no legs to stand. Thus, finding of the Ld. CIT(A) is set aside and penalty of Rs. 63,957/- levied u/s. 271AAC(1) of the Act is deleted.

10. In the result, both the appeals of the assessee i.e. ITA Nos. 46 & 47/GTY/2024 are allowed.

Order is pronounced in the open court on 4th September, 2024.

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Dr. Manish Borad)
Accountant Member

Dated : 04.09.2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant – Shri Rotluanga Stephen**
2. **Respondent – ITO, ward-1, Jorhat, Assam**
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata