

IN THE INCOME TAX APPELLATE **TRIBUNAL "C" BENCH**, KOLKATA

BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI SONJOY SARMA, JM

ITA Nos. 2230 & 2229/KOL/2024  
(Assessment Years: 2015-16 & 2017-18)

**MD Mahimud SK**  
S/o Abdul Razzak,  
Village-Kismat narayanpur  
P.O. Sirampur, SD-English  
Bazar, Malda,  
West Bengal 732216  
(Appellant)

Vs.

ITO, Ward 3(1)  
Income Tax Office, Netaji  
Market complex,  
Rathbari, Malda,  
West Bengal 732101  
(Respondent)

PAN No. BQYPS8209L

Assessee by : Shri S.K. Tulsian, AR  
Revenue by : Shri Prabhakar Prakash Ranjan,  
DR

Date of hearing: 21.01.2025  
Date of pronouncement : 04.03.2025

ORDER

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the orders of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") even dated 25.09.2024 for the AY 2015-15 and 2017-18 respectively.

02. The assessee has challenged the appellate order passed by the Id. CIT (A) on various grounds of appeal as mentioned in the memorandum of appeal, besides the assessee has raised additional ground challenging the jurisdiction of national faceless assessment center u/s 151 read with section 144B of the Act when it did not have any power under any notification. First of all we shall adjudicate the additional ground raised in A.Y. 2015-16 which is extracted below: -

"1. That, on the facts and in the circumstances of the case, the National Faceless Assessment Centre (NFAC) erred in having assumed jurisdiction u/s 151A r.w.s. 144B



*of the I.T. Act, 1961 from 09/02/2022 when they were not empowered under any Notification about the applicability of the faceless scheme for making assessment in faceless manner prior to 29.03.2022"*

03. The Id. Counsel for the assessee vehemently submitted before us that the provisions of Section 151A of the Act came on the statute book on 01.11.2020 and the same was notified on 29.03.2022, vide notification no.18/2022 on the e-Assessment of Income Escaping Assessment Scheme, 2022. The Id. AR submitted that in the instant case the migration of assessment proceedings for A.Y. 2015-16 was communicated to the assessee vide issue of notice u/s 142(1) of the Act dated 09.02.2022 under DIN: ITBA/AST/F/142(1)/2021-22/1039573181(1). The Id. AR submitted that this notice was followed by SCN dated 17.03.2022 under DIN:ITBA/AST/F/147(SCN)2021-22/1040949460(1). The Id. AR therefore submitted that it is evident from the above that assumption of jurisdiction to the impugned assessment under faceless assessment scheme was all prior to 29.03.2022, when the provisions of Sec. 151A of the Act had not come into operation. Thus, the assumption of jurisdiction by NFAC is without jurisdiction and consequently, the whole assessment is without jurisdiction and unsustainable in the eyes of the law. The Id. AR therefore, prayed that the additional ground arises out of the assessment order passed by the assessment unit, IT department NFAC Delhi dated 23.03.2022, as well as the appellate order of the Id. CIT (A) NFAC Delhi dated 25.09.2024. The Id. AR submitted that the additional ground raised by the assessee is purely a legal issue and no further verification or any clarification on facts is required from any quarter whatsoever as all the facts and notices in relation to the assessment proceeding as well as the appellate proceedings were already available on records. The Id. AR therefore, prayed that the said ground may kindly be admitted for adjudication by relying on the



decision of Jute Corporation of India Ltd. Vs CIT in 187 ITR 688(SC) and National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 (SC).

04. The Id. DR on the other hand opposed the admission of the additional ground for the reason that it was never raised before the authorities below by the assessee. Therefore, at this stage the assessee should be pre-concluded from raking up this legal issue.
05. After hearing the rival contentions and perusing the materials available on record, we find that the additional ground raised by the assessee is purely on the legal issue of wrong assumption of jurisdiction by the NFAC u/s 151A read with section 144B of the Act, prior to 27.03.2022. In our opinion, the issue involved does not require any verification from any end whatsoever and all the facts in relation to the assessment proceedings as well as appellate proceedings were in appeal folder. Therefore, by relying on the decision of the Hon'ble Apex Court in the case of CIT Vs. National Thermal Power Co. Ltd. Vs. CIT (*Supra*), we are inclined to admit the same for adjudication.
06. The facts in brief are that credible information was received that the assessee had an aggregate credits of ₹ 16.99 lacs and aggregate debits of ₹16.99 lacs during the period commencing from 01.04.2014 to 31.03.2015 in the bank account maintained with the bank of Baroda accountant number 006975. Accordingly, the AO initiated the proceedings u/s 147 of the Act after recording the reasons to belief and after obtaining the prior approval of the PCIT. Notice u/s 148 of the Act was issued on 31.03.2021 and was served through email requiring the assessee to file the return of income within 30 days. In compliance, the assessee filed the return of income on 28.04.2021,



declaring total income of ₹ 2,25,800/-. Finally, the addition of ₹21,06,182/- was made to the income of the assessee on account of unexplained credit in the books of account as discussed by the Id. AO in Para 5 in the assessment framed u/s 147 read with section 144B of the Act dated 23.03.2022.

07. In the appellate proceedings, the Id. CIT (A) dismissed the appeal in limine by not condoning the delay of 183 days for which the assessee filed the affidavit before us explaining the delay, the reasons for the delay in filing of the appeal.
08. The Id. Counsel for the assessee vehemently submitted before us that the assessment framed by the Id. AO u/s 147 read with section 144B of the Act dated 23.03.2022, is without jurisdiction and required to be quashed. The Id. AR submitted that the notice u/s 142(1) of the Act dated 09.02.2022, was issued by National faceless assessment centre, Delhi under DIN No. DIN: ITBA/AST/F/142(1)/2021-22/1039573181(1), meaning thereby that the migration of assessment proceedings for A.Y. 2015-16 was communicated by this notice. Thereafter, the assessee was issued a show cause notice on 17.03.2022 by NFAC with DIN:ITBA/AST/F/147(SCN)2021-22/1040949460(1). The Id. AR submitted that the assumption of jurisdiction of National faceless assessment centre, Delhi prior to 29.03.2022, was invalid as the provisions of Section 151A of the Act were not operational prior to 29.03.2022. The Id. AR submitted that the provisions of Section 151A of the Act, were brought on the statute book from 01.11.2020 and the same were notified on 29.03.2022 vide notification no. 18/2022 on e-assessment of income escaping income of 2022. The Id. Counsel therefore submitted that the



assumption of jurisdiction is invalid and so is the assessment framed by the National Faceless Assessment Centre.

09. The Id. DR on the other hand submitted that the proceeding under the NFAC was a continuous proceeding and there was nothing wrong in it and therefore, the legal issue raised before the Bench by the assessee may kindly be dismissed.
010. After hearing the rival contentions and perusing the materials available on record, we find that the notice to the assessee was issued u/s 148 of the Act on 31.03.2021, through e-mail after the case was reopened u/s 147 of the Act. Notice u/s 143(2) read with section 147 of the Act was issued on 29.06.2021 and thereafter, the proceedings would be taken over by National Faceless Centre, Delhi and notice u/s 142(1) dated 09.02.2022, was issued and thereafter show cause was issued to assessee by the NFAC on 17.03.2022. Finally, the assessment was framed u/s 147 read with section 144B of the Act vide order dated 23.03.2022.
011. We have perused the section of Section 151A of the Act, which deals with the faceless assessment of income escaping assessment and was brought on the statute book by taxation and other law (realization and amendment of certain provisions) Act, 2020, with effect from 01.11.2020 which was notified on 29.03.2022 vide notification no.18/2022/F. No. 370142/16/2022-TPL(Part)]. Therefore, the assessment proceedings were taken by the National Faceless Assessment Centre, Delhi by issuing notice u/s 142(1) dated 09.02.2022 and thereafter the assessment was framed accordingly after issuing show cause notice which in our opinion is without jurisdiction. The provisions of Section 151A of the Act were brought



on the statute book with effect from 01.11.2020. However, the same were made effective and applicable with effect from 29.03.2022 vide notification no. when the CBDT notified the new scheme for assessment of income escaping assessment scheme, 2022. In our considered view the assessment framed is without jurisdiction and cannot be sustained. The case of the assessee find force from the decision of Nabiul Industrial Metal Pvt. Ltd., Paschim Medinipur VS. I.T.O., in ITA no. 1328/KOL/2024 for A.Y. 2017-18, the order dated 15.10.2024, wherein a similar issue has been decided in favor of the assessee. For the sake of ready reference, the notice issued u/s 142(1) dated 09.02.2022 and show cause notice dated 17.03.2022, are extracted below: -

GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT National Faceless Assessment Centre Delhi			
To, MD MAHIMUD SK S/O ABDUL RAJJAK VILL-KISMAT NARAYANPUR,PO- SRIRAMPUR SD-ENGLISHBAZAR MALDA 732216,West Bengal			
PAN: BQYPS8209L	Assessment Year: 2015-16	Date: 09/02/2022	DIN: ITBA/AST/F/142(1)/2021- 22/1039573181(1)
<b>Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961</b>			
Dear Taxpayer,			
Kindly refer to ongoing assessment proceedings in your case for A.Y. 2015-16 under Faceless Assessment Scheme, 2019.			
2. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2015-16.			
3. You are requested and required to kindly furnish or cause to be furnished on or before 12/02/2022 by 04:47 PM, the accounts and documents specified in the Annexure to this notice.			
4. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website ( <a href="http://www.incometaxindiaefiling.gov.in">www.incometaxindiaefiling.gov.in</a> )			
Yours faithfully, Additional / Joint / Deputy / Assistant Commissioner of Income Tax, National Faceless Assessment Centre, Delhi			





GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
National Faceless Assessment Centre  
Delhi



25

To,  
MD MAHIMUD SK  
S/O ABDUL RAJJAK VILL-KISMAT  
NARAYANPUR ,PO-SRIRAMPUR SD-  
ENGLISHBAZAR  
MALDA 732216 ,West Bengal  
India

PAN: BQYPS8209L	Assessment Year: 2015-16	Date: 17/03/2022	DIN: ITBA/AST/F/147(SCN)/2021- 22/1040949460(1)
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**Show cause Notice as to why the proposed variation should not be made**

Ms/ Mr/ M/s,

1. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year **2015-16**.

2. The variations as per the draft assessment order may be seen which are proposed to be made in your case:-

Credible information had been received for the FY 2014-15 relevant to AY 2015-16, that the assessee had aggregated credit turnover is Rs. 16.99 lacs and debit turnover is 16.99 lacs during the period 01.04.2014 to 31.03.2015 in the bank accounted maintained in Bank of Baroda bearing a/c no. 39920100006975. Prima facie there was reason to believe that the assessee had total credit/deposit in bank account during the FY 2014-15 relevant to AY 2015-16 is Rs. 38,65,557/-, which has escaped assessment within the meaning of section 147 of the Act. Assessment proceedings u/s 147 were initiated after recording reasons and seeking prior approval of Pr. Commissioner of Income-tax. Accordingly, statutory notice U/s 148 of the Act was issued & sent to the assessee by DIN & Document No. ITBA/AST/S/148/2020-21/1032066973(1) dated 31.03.2021 through E-mail requiring the assessee to file his Income Tax Return for the A.Y 2015-16 within 30 days of service of the said notice. In compliance of notice u/s 148, the assessee filed her return of income vide acknowledgement No. 345878730280421 dated 28.04.2021 declaring an income of Rs. 2,25,800/-. During the year under consideration the assessee earned income under the Head Income from Business and Income from other Sources. Statutory notices u/s 143(2), 142(1) alongwith questionnaire were issued to assessee.

2. During the course of assessment proceedings it has been noticed that assessee had deposited cash in Bank of Baroda bearing a/c no. 39920100006975 and in State Bank of India bearing A/c No. 31561107456. In response to notice u/s 143(2) dated 29.06.2021, assessee submitted his reply dated 11.08.2021 stating that he has filed his return of Income for the AY 2015-16 showing a turnover of Rs. 25,46,080/- and Net Profit u/s 44AD of Rs. 2,25,780/- besides this assessee receives S/B interest of Rs. 3,280/- during the A.Y. 2015-16. He is doing mainly labour Contract business on the different part

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of the country and sometimes in local basis. He receives cash from different contractee and paid to the daily workers on cash basis. Whenever, he does not receive any contract he deposited the cash in the bank accounts and later on he again withdraws cash from Bank and pay the daily workers if he receive any contract work. Notice u/s 142(1) dated 29.12.2021 was issued to the assessee to furnish detailed computation of income, brief note indicating the nature of business/professional activities carried out by him and explain the source of cash deposit in the above said accounts. In response to notice u/s 142(1) dated 29.12.2021, assessee did not submit his reply. After that, again a notice u/s 142(1) dated 09.02.2022 was issued to furnish detailed computation of income, copy of cash flow statement, details of contract made with documentary evidence and details of payment to the labour with documentary evidence. But, assessee again did not submit his reply.

3. A final show cause notice u/s 144 of the I.T Act, 1961 was issued to the assessee on 23.02.2022 for the sake of natural justice and providing one more and last opportunity to explain requesting him to furnish the requisite details on or before 25.02.2022. The assessee again failed to furnish any reply.

4. It is a part of record that during the course of assessment proceedings sufficient opportunity and reasonable time was granted to the assessee but he did not bother to comply with the notices and to provide the vital information /documents so as to enable the assessing officer to complete the assessment. Needless to mention here that when a statutory notice has been issued, it is the duty of the assessee to respond and to furnish the required information. Further, while scrutinizing the case it would be of great importance to have an idea about assessee's intention behind the non co-operation. The immediate idea that can be formed is that the assessee might have taken it beneficial to evade the proceedings rather than to co-operate in furnishing the information to avoid further investigation in the matter. Therefore, in the absence of relevant reply from the assessee, the matter is being decided as per the record available.

5. After pursuing the reply of the assessee and the return of the income filed u/s 148 that the assessee is deriving income from the business and income from other sources. After considering the reply of the assessee, the reply is not found tenable because the assessee has not produced proper books of account coupled with non-production of documentary evidence of contract business. Hence, cash deposited in Bank of Baroda bearing a/c no. 39920100006975 amounting to Rs. 16,96,682/- and in State Bank of India bearing A/c No. 31561107456 amounting to Rs. 4,09,500/- totaling to Rs. 21,06,182/- is treated as unexplained credit entries in book of the assessee and accordingly, addition of Rs. 21,06,182/- is proposed to be added back to the income of the assessee u/s 69A r.w.s. 115BBE of the Income Tax Act, 1961 Penalty proceedings u/s 271(1)(c) of the Income tax act, 1961 for inaccurate particulars of the income are initiated separately.

Returned Income	Rs. 2,25,800/-
Add:- as per para 5	Rs. 21,06,182/-
Assessed Income	Rs. 23,31,982/-.

Issue Penalty notice u/s 271(1)(c) and 271(1)(b) of the Income Tax Act, 1961.

Assessed issue requisite documents to the assessee.



This order is being passed u/s 147/143(3) r.w.s. 144B of the I.T. Act, 1961.

You are hereby given an opportunity to show cause why proposed variation should not be made and the assessment should not be completed accordingly.

3. Kindly submit your response through your registered e-filing account at [www.incometax.gov.in](http://www.incometax.gov.in) by 23:59 hours of 21/03/2022, whereby you may either:-

a. accept the proposed variation; or  
b. file your written reply objecting to the proposed variation; or  
c. if required, after filing written reply you may request for personal hearing so as to make oral submissions or present your case. The request can **only** be made by clicking the Seek Video Conferencing button available against the SCN in the view notices of this proceeding in the e-proceedings tab on e-filing portal. The request can be made only before expiry of compliance date & time. On approval of request, personal hearing shall be conducted exclusively through video conference.

4. In case no response is received by the given time and date, the assessment shall be finalized as per the draft assessment order.

Yours faithfully,  
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/  
Income-tax Officer,  
National Faceless Assessment Centre,  
Delhi

012. Considering the above facts and legal position, we are of the considered opinion that the order passed by the NFAC, Delhi is without jurisdiction and is hereby quashed. The appeal of the assessee is allowed.

013. The additional ground raised in ITA No. 2230/Kol/2024 A.Y.2017-18 is similar to one as decided by us in ITA No. 2229/Kol/2024 A.Y. 2015-16. Therefore, our decision would, mutatis mutandis, apply to this appeal as well. The appeal of the assessee is allowed.

014. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 04.03.2025.

Sd/-  
(SONJOY SARMA)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 04.03.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata