

आयकर अपीलीय अधिकरण  
कोलकाता 'एसएमसी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य  
एवं  
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
के समक्ष  
Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER  
&  
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 388/KOL/2024  
Assessment Year: 2017-18**

***Shri Ankit Kumar Gupta.....Appellant  
[PAN: BIPPG 9674 N]***

***Vs.***

***ACIT, Cir.-3(2), Gangtok.....Respondent***

**Appearances:**

***Assessee represented by:*** Sushil Kumar Parnsukhka, FCA.

***Department represented by:*** L.N. Dash, Addl. CIT (D/R).

Date of concluding the hearing : May 9<sup>th</sup>, 2024

Date of pronouncing the order : June 12<sup>th</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 15.11.2023 arising out of the assessment order framed u/s 144 of the Act dated 17.12.2019.

2. Registry has informed that the appeal filed by the assessee is time barred by 43 days. Condonation application has been filed by the assessee stating as follows:

*“The undersigned appellant is a citizen of the state of Sikkim and staying far away from Kolkata. For filing an appeal before the Hon’ble ITAT, Kolkata I could not go and contact a senior council in Kolkata due to my illness. A copy of the medical certificate is submitted herewith for your kind perusal and necessary consideration. This resulted the delay in filing the appeal before Hon’ble ITAT Kolkata. The appeal order u/s 250 was received by me on 15.11.2023. So, the due date for filing an appeal was on 14.01.2024. Thus, there is a delay for 42 days in filing an appeal before your kind honour. The aforesaid delay in filing the appeal was unintentional and was due to medical grounds.*

*I, therefore, fervently draw your kind favour to condone the aforesaid delay in filing the appeal and would humbly request you to kindly treat the appeal as duly filed as per law in Consideration of my illness as well as my place of stay being far away from Kolkata.*

*I shall always remain grateful to you for your kind favour in condoning the delay.”*

2.1. Considering the condonation application and the reasons stated therein, we are satisfied that the assessee was prevented for reasonable cause from filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication on merits.

3. The brief facts of the case of the appellant are that one Shri Ankit Kumar Gupta did not file his return of income for the AY 2017-18 consequent thereto the Assessing Officer (in short Id. 'AO') on the basis of data analysis and information gathered during the phase of online verification under operation claimed money, found that the appellant had deposited cash in bank accounts during the demonetization period but not filed return for the relevant year. The AO issued a notice u/s 142(1) of the Act. In response to the last notice the appellant filed a VAT return in the name of M/s. Achhey Lall Mangal Prasad and claimed that his income is not taxable u/s 10(26AAA) of the Act. After considering the fact, the AO concluded that the assessee is not covered u/s 10(26AAA) of the Act assessing the total income at Rs. 21,82,000/- with an addition u/s 69A of the Act on account of unexplained money and levied tax thereof at Rs. 27,30,605/-. The present order has been placed before the Id. CIT(A) by the appellant wherein notices have been issued to the appellant but appellant did not respond to the notice and ultimately the Id. CIT(A)

disposed of the appeal on the material available on the record. Being aggrieved and dissatisfied with the appeal order, the present appeal has been preferred.

4. Ld. Counsel for the assessee before us, submitted that the appellant being a member of Association of Old Settlers of Sikkim raised the following grounds of appeal:

*“1. For that the appellant being an old settler of the State of Sikkim prior to 26th April 1975 or since birth as per the residential certificate issued by the District Collector East District Gangtok Govt of Sikkim is not liable to pay Income Tax for his income earned in the state of Sikkim in terms of order of the Hon’ble Supreme Court in the matter of “Association of Old Settlers of Sikkim & Ors. Versus Union of India & Anr. (Writ Petition (Civil) 59/2013)” and for that the addition of Rs.21,82,000/- being gross sales proceeds earned from the family group concern of M/s. Achheylall Mangai Prasad of which appellant’s father Mr. Anil Kumar Gupta being the proprietor was wrongly added u/s 69A of the IT Act, 1961 by the Ld. AO and sustained by the Ld. CIT (A) NF AC and thus is liable to be deleted in full.*

*2. For that, the appellant, an old settler in the state of Sikkim has been carrying on business under the trade name of family group concern of M/s. Achheylall Mangai Prasad at M.G. Road, Gangtok, of which appellant’s father Mr. Anil Kumar Gupta being the proprietor and income earned out of business turnover of Rs.21,82,000/- is not taxable as per IT Act, 1961 in view of the amended provisions of section 10(26)AAA of the Income Tax Act, 1961 vis-a-vis the order of the Hon’ble Supreme Court of India in the matter of “Association of Old Settlers of Sikkim & Ors. Versus Union of India & Anr. (Writ Petition (Civil) 59/2013)”*

*3. For that the appellant did not file an Income Tax Return on the basis of his honest contention that his income is not taxable in Sikkim being an old settlor in the state of Sikkim prior to 26th April 1975 or since birth.*

*4. For that the Ld. CIT (Appeal) NFAC did not consider the applicable legal provision of the Income Tax Act on old settler in Sikkim while passing the appeal order.*

*5. For that on the basis of the recent order of the Hon’ble ITAT Kolkata in the matter of “Shri Bhagirath Prasad Garg vs Income Tax Office, Ward 3(1), Gangtok (ITA No 436/Kol/2023)” the income earned in the state of Sikkim by an old settlor of Sikkim is not taxable and as such the assessed income of Rs. 21,82,000/- wrongly made u/s 69A of the Income Tax Act by the Ld. AO and sustained by Ld. CIT(A) NFAC in the hand of the appellant being an old settlor is liable to be deleted in full.*

6. For that the appellant craves, seeks leaves to modify/amend and add to the ground(s) of appeal on or before or at the time of hearing of the appeal.”

4.1. Ld. Counsel for the assessee in course of arguments instead of pressing above grounds gave emphasis that he has not been noticed nor he has given an opportunity to place his case. We have perused the order of the ld. CIT(A) and find that ld. CIT(A) has dismissed the appeal by saying that -Except for the statement made in the above appeal memo, the appellant had not provided any details regarding the nature and source of cash deposits. It is audacious and improper if the appellants are not forthcoming with any details but expect that they get relief.

It is apparent from the order that order has been passed behind the back of the appellant as the appellant did not respond to the notices issued nor did he file any written submission. The ld. Counsel for the assessee submits that he is a member of Association of Old Settlers in the State of Sikkim and has been carrying on business under the trade name of family business of M/s. Achhey Lall Mangal Prasad at M.G. Road, Gangtok of which appellant's father Mr. Anil Kumar Gupta being the proprietor and income earned on the business turnover of 21,82,000/- is not taxable as per Income Tax Act in view of the amended provisions of Section 10(26AAA) of the Act. He has also placed the order of Hon'ble Supreme Court passed in the case of *Association of Old Settlers of Sikkim & Ors. vs. Union of India & Anr. [Writ Petition (Civil) 59/2013]*. He has also brought an order passed by ITAT, Kolkata in the case of *Shri Bhagirath Prasad Garg vs. ITO in ITA No. 436/KOL/2023* order dated 24.07.2023.

5. Keeping in view the facts as mentioned above that the appellate order has been passed behind the back of the appellant and considering the facts as well cited decisions of the Hon'ble Apex Court and decision of the Coordinate Bench of this Tribunal, we are of this view that it is a fit case to be remanded back to the file of CIT(A) to decide the matter afresh after giving an opportunity to the appellant to place his case. Accordingly, the appeal of the assessee is allowed, case is remanded back to the file of ld. CIT(A). The order passed by A/O as well as Cit(A) is here by set-aside.

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

**Order pronounced in the open Court on 12<sup>th</sup> June, 2024.**

*Sd/-*

**[Manish Borad]**

Accountant Member

Dated: 12.06.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Shri Ankit Kumar Gupta, M/s. Achheylall Mangal Prasad, M.G. Marg, Gangtok, Sikkim, 737101.**
2. **ACIT, Cir.-3(2), Gangtok.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata