

ITA No. 1346/KOL/2024 (A.Y. 2014-2015)
ITA No. 1347/KOL/2024 (A.Y. 2014-2015)
ITA No. 1348/KOL/2024 (A.Y. 2015-2016)
ITA No. 1349/KOL/2024 (A.Y. 2015-2016)
Utpal Dorjee Yongda

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. Nos. 1346 & 1347/KOL/2024
Assessment Year: 2014-2015**

&

**I.T.A. Nos. 1348 & 1349/KOL/2024
Assessment Year: 2015-2016**

***Utpal Dorjee Yongda,.....Appellant
Kyong House, Tiljek,
Pelling, West Sikkim-737113
[PAN:AFFPY5957E]***

-Vs.-

***Assessing Officer, NFAC
/DCIT, Ward-3(1), Gangtok,.....Respondent
Income Tax Department,
White Hall, Bhanu Path Road,
Sungava, Gangtok, Sikkim-737101***

Appearances by:

*Shri Sujit Basu, Advocate and Shri Rajib Mukherjee,
Advocate, appeared on behalf of the assessee*

*Shri Raja Sengupta, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

**Date of concluding the hearing : September 12, 2024
Date of pronouncing the order : September 13, 2024**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present bunch of four appeals are directed at the instance of assessee. ITA Nos. 1346 & 1348/KOL/2024 are the quantum appeals filed against the orders of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 19th April, 2024 and 23rd April, 2024 passed for Assessment Years 2014-15 and 2015-16 respectively.

2. ITA Nos. 1346 & 1349/KOL/2024 emanate from the penalty imposed by the ld. Assessing Officer u/s 271(1)(c) vide his order dated 13th September, 2022 passed in both these assessment years. These orders have been upheld by the ld. CIT(Appeals) vide his orders dated 23.04.2024 and 24.04.2024 passed in A.Ys. 2014-15 and 2015-16 respectively.

3. We take quantum appeals first. The grounds of appeal taken by the assessee in both the years are verbatim same. He has taken four grounds of appeal, but his grievances revolve around a single issue, namely “whether the assessee is entitled for the benefit of section 10(26)(AAA) of the Income Tax Act or not”?

4. The facts on all vital points are common in both the years, therefore, for the facility of reference, we are taking up the facts mainly for A.Y. 2014-15. The assessee did not file return of income in both these assessment years. Ld. Assessing Officer got an

information that during F.Y. 2013-14 & 2014-15, assessee has made deposit of Rs.1,34,72,020/- and Rs.1,56,04,550/- in cash in the Savings Bank Account maintained with State Bank of India, Pelling Branch. The ld. Assessing Officer has issued notice under section 148 of the Income Tax Act because the assessee did not file the return under section 139(1) of the Income Tax Act in both the years. According to the ld. Assessing Officer, the assessee did not respond to the notices. Hence, he passed an *ex-parte* assessment order under section 144 of the Income Tax Act. He treated the alleged cash deposits in the Bank account as unexplained cash deposits and made an addition under section 69A of the Income Tax Act.

5. Dissatisfied with the additions, the assessee carried the matter in appeals before the ld. CIT(Appeals). He contended that his father Shri Sonam Yongda, Son of Shri Peda Lama is a Sikkim Subject and his name is recorded in Sikkim Subject Register at Serial No. 411, Volume No. XI under Block Tiljek, West Sikkim, therefore, he is a Sikkimese. He had been carrying on his Petrol Pump business in the State of Sikkim at Melli, South Sikkim under his proprietorship concern in the name and style of M/s. Shangrila Oil Depot. The trade license was duly renewed upto 31st March, 2023. In order to buttress his contention, he relied upon the Certificate of Identification and a Notification of the Government of Sikkim. He further contended that being a Sikkimese, his income is exempt under section 10(26)(AAA). The ld. CIT(Appeals) has

rejected this contention of the assessee on the ground that the assessee did not file return and he did not claim this benefit by way of return filed under section 139(1) of the Income Tax Act. The ld. CIT(Appeals) thereafter made reference to the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Limited -vs.- CIT and held that in the absence of return filed by the assessee, he cannot claim the benefit. Accordingly. ld. CIT(Appeals) dismissed the appeals of the assessee in both the years.

6. Before us, ld. Counsel for the assessee reiterated his contention. He emphasized that section 10(26)(AAA) contemplates that income of a Sikkimese individually from any source in the State of Sikkim is exempt from payment of income tax. He filed a copy of the Certificate of Identification, Government Notification dated 9th April, 1981, which provides as to how a person would be treated as a Sikkimese resident. He also filed an affidavit and deposed as under:-

1. *That I am a "Sikkimese" within the meaning of clause (26AAA) of Section 10 of the Income Tax Act, 1961.*
2. *That my father is known to public by his name "Sonam Yongda" as well as "Sonam Yongda Lama" and also as "Yapa Sonam Yongda".*
3. *That "Sonam Yongda", "Sonam Yongda Lama" and "Yapa Sonam Yongda" all are the names of my father.*
4. *That the name of my father Sri Sonam Yongda S/o Peda Lama has been registered at Seril No. 411, Vol. No. XI of Sikkim Subject Register, under Block - Tikjey, maintained -under the Sikkim Subject Register, 1961, read with the Sikkim Subject Rules, 1961, immediately before the 26th day of April, 1075, in*

which my name (Utpal Dorjee Yongda) being his son is also included as per certificate No. 3923 DC(W), dated 21.11.2009.

5. *That I have been carrying on a petrol pump business under my proprietorship control under the name and style of Sangrila Oil Depot at Meili, South Sikkim.*
6. *That I did not earn any other income in any part of India, except from my business Sangrila Petrol Pump situated at Melli, South Sikkim as above.*
7. *That I am an individual and being a Sikkim Subject, my income earned in the state of Sikkim from my business as above is totally exempted u/s 10(26AAA) of the Income Tax Act, 1961.*

That the statements made above are true to my knowledge and belief and I sign this affidavit on this 4th day of September, 2024 at Siliguri Court.
DEPONENT

7. On the other hand, ld. D.R. relied upon the orders of the ld. CIT(Appeals).

8. We have duly considered the rival contentions and gone through the record carefully. It is pertinent to note that assessment orders are *ex-parte* in both the years. The ld. CIT(Appeals) has not entertained the plea of the assessee to determine about his status as a Sikkimese. In other words, both the authorities have not recorded any specific finding of fact about the status of the assessee for the purpose of assessment of his income. This Tribunal is not meant for deciding the title of any civil dispute or status of a person. In the absence of any finding at the end of both the revenue authorities, it is quite difficult to decide the status of the assessee being a Sikkimese as claimed by the assessee. Apart from the above observation, we are of the view that

if a person is identified as a Subject of Sikkim on the appointed date, then, he and his family will be entitled for the benefit of section 10(26)(AAA) of the Income Tax Act. The income of such a subject would be exempted from levy of taxes. As far as the finding of Id. CIT(Appeals) is concerned, that assessee has not filed the return under section 139(1) of the Income Tax Act, we are of the view that the moment taxability of the income is being decided in the hands of any tax payer, then it is naturally to be decided whether such taxes could be recovered from such person or not under the law. If a particular section of the Income Tax Act excludes an individual from a particular source of income from levy a tax, then without deciding that issue, the taxability cannot be determined. It is an incorrect interpretation of the Id. CIT(Appeals). In other words, whether an assessee has filed the return or not filed, the moment some taxable income is being determined, then, it has to be examined whether within the meaning of section 10(26)(AAA), such taxes could be levied from the assessee being a Sikkimese or not. Therefore, we set aside these observations of the Id. CIT(Appeals) and remit the issue to the file of Id. Assessing Officer with the following directions:-

- (a) The Id. Assessing Officer shall first determine whether assessee is a Sikkimese and he has earned the income from any source within the State of Sikkim or not. If answer to the above question is in positive, then Id. Assessing Officer will decide the

admissibility of exemption under section 10(26)(AAA) of the Income Tax Act, rather he will grant the exemption to the assessee.

(b) The ld. Assessing Officer shall determine the taxable income because assessee was running a Petrol Pump, then all the cash deposits would not become his income. Assessing Officer has to determine the outflow of the amounts from those bank accounts which must have been travelled towards the Oil companies, who are supplying the Petroleum products to the assessee. Therefore, total cash deposits cannot be added to the income of the assessee. The ld. Assessing Officer shall decide this aspect also and determine if any addition could be made or not.

(c) The moment taxable income, if any, is determined, then ld. Assessing Officer would decide whether exemption under section 10(26)(AAA) is to be provided to the assessee or not?

Therefore, both the impugned orders in the quantum appeals are set aside in both the years. The issues are relegated to the file of ld. Assessing Officer in both the years for deciding in the above terms.

9. **ITA Nos. 1347 & 1349/KOL/2024**

These two appeals are penalty appeals. Once we have set aside the additions made by the ld. Assessing Officer and remitted this issue back to the ld. Assessing Officer to redetermine the taxable income, then the very basis for computing the penalty stands extinguished. These penalty appeals are also allowed. Impugned orders are set aside. The ld. Assessing Officer shall again decide whether the assessee deserves to be visited with penalty or not. Such an exercise will be carried out after determination of taxable income, if any, in the hands of the assessee.

10. In the result, all the four appeals are allowed for statistical purposes.

Order pronounced in the open Court on 13/09/2024.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 13th day of September, 2024

*Copies to :(1) Utpal Dorjee Yongda,
Kyong House, Tiljek,
Pelling, West Sikkim-737113*

*(2) Assessing Officer, NFAC/ DCIT, Ward-3(1),
Gangtok,
Income Tax Department,
White Hall, Bhanu Path Road,
Sungava, Gangtok, Sikkim-737101*

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- (3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*
- (4) *CIT - , Kolkata;*
- (5) *The Departmental Representative;*
- (6) *Guard File*
- TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.