

आयकर अपीलिय अधिकरण, कोलकाता पीठ 'C', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**Before Shri Sanjay Garg, Judicial Member and
Shri Rajesh Kumar, Accountant Member**

**I.T.A. Nos.1892 & 1893/Kol/2024
Assessment Years: 2014-15 & 2015-16**

Brij Gopal Daga **Appellant**
86, Canning Street, GPO, Kolkata-700001.
(PAN: ADPPD3525P)

vs.

ACIT, Circle-34, Kolkata **Respondent**

Appearances by:

Shri A. Kochar, AR appeared on behalf of the Appellant
Shri Subhro Das, Addl. CIT, Sr. DR appeared on behalf of the Respondent

Date of concluding the hearing: 25/11/2024
Date of pronouncing the order: 17/12/2024

आदेश / ORDER

Per Sanjay Garg, Judicial Member :

Both the captioned appeals have been preferred by the assessee against the separate orders dated 14.02.2023 and 14.07.2023 for Assessment Years (AYs) 2014-15 & 2015-16 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "Ld. CIT(A)"] passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

2. Since facts are identical, issues are common and both the appeals have been heard together, we dispose of both the captioned appeals by this consolidated order for the sake of convenience and brevity. First, we take up ITA No. 1892/Kol/2024 for AY 2014-15.

ITA No. 1892/Kol/2024 :

3. The assessee in this appeal has contested the action of the lower authorities in making/confirming the addition of Rs.3,41,80,329/- on account of alleged bogus unsecured loans and interest paid there upon.

4. The appeal of the assessee as per the note of the Registry is time barred by 510 days. A separate application along with an affidavit has been filed for condonation of delay.

5. At the outset, Ld. Counsel for the assessee has invited our attention to the impugned order of the Ld. CIT(A) to submit that the same is an ex parte order of the Ld. CIT(A). Ld. Counsel for the assessee, in this respect, has submitted that the assessee did not receive notice of hearing in physical mode. The notices of hearing, if any, sent by the Ld. CIT(A) were sent on e-mail. The assessee, being an old aged person, has not been habituate in checking e-mail etc. That the alleged e-mail has never come to the notice of the assessee, therefore, the case of the assessee remained unrepresented before the Ld. CIT(A). That even the physical copy of the impugned order of the Ld. CIT(A) was not ever received by the assessee. That the assessee has come to know of the passing of the impugned order of the Ld. CIT(A) on receipt of penalty notice. The Ld. Counsel, therefore, has submitted that the absence of the assessee before the Ld. CIT(A) was not intentional but because of the aforesaid reasons. Similar reasons have been pleaded for delay occurred in filing the appeal. The averments made by the Ld. Counsel are supported with the affidavit of the assessee. Considering the aforesaid averments, the delay in filing the appeal is hereby condoned.

6. Further, in view of the above averments, the Ld. Counsel has pleaded that the assessee did not get the requisite opportunity to present his case before the Ld. CIT(A). The Ld. Counsel for the assessee has

further invited our attention to the impugned order of the Assessing Officer (in short 'the AO') to submit that even the AO did not provide the proper and adequate opportunity of hearing to the assessee to present his case and submit necessary explanation and evidences to prove genuineness of the aforesaid transactions of loan. Ld. Counsel inviting our attention to page 3 of the assessment order has pointed out that the Ld. AO has issued notice vide his letter No. ACIT/Cir-34/Kol/Scrutiny/AY 14-15/2016-17 dated 26.12.2016 received by the assessee at about 4.30 PM on 26.12.2016, whereby, the assessee was required to produce the loan creditors on 27.12.2016 before him. The assessee was just preparing the reply of the said notice, that in the morning of 27.12.2016 at 11.30 AM, another show cause notice was issued by the AO to the assessee. The Ld. Counsel has further invited our attention to page 4 of the paper book has submitted that thereafter on the next day, the AO issued another notice dated 28.12.2016 through e-mail at 7.30 PM. Thereafter, the AO issued letter No. ACIT/Cir-34/Kol/Scrutiny/AY 14-15/2016-17 dated 28.12.2016 requiring the assessee to submit his response by 12.30 PM on 29.12.2016. The Ld. Counsel has demonstrated that the AO did not grant proper opportunity to the assessee to present his case and furnish the necessary details and submissions. The assessment order has been passed in a hurried manner violating the principles of natural justice.

7. The Ld. DR could not rebut the factual position on the file.

8. Considering the aforesaid submissions and facts on the file, in our view, the interests of justice will be well served, if the assessee is given an opportunity to present his case before the AO. We, accordingly, set aside the impugned orders of the Ld. CIT(A) and restore the matter to the file of the AO for de novo assessment on this issue. Needless to say, assessee be given proper and adequate opportunity of being heard and the AO is

directed to pass a speaking order. With the above observations, the appeal of the assessee is treated as allowed for statistical purposes.

ITA No. 1893/Kol/2024 (AY 2015-16)

9. The facts and issue involved in this appeal are identical to that has been discussed above. Our findings given above will apply mutatis mutandis apply to this appeal also. The impugned order of the Ld. CIT(A) is, accordingly, set aside and the matter is restored to the file of the AO for de novo assessment in terms as enumerated above. Both the appeals of the assessee are treated as allowed for statistical purposes.

10. In the result, both the appeals of the assessee stand allowed for statistical purposes.

Order is pronounced in the open court on 17.12.2024.

Sd/-

[Rajesh Kumar]
लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 17.12.2024.

JD Sr. P.S

Copy of the order forwarded to:

1. **Appellant – Shri Birj Gopal Daga**
2. **Respondent – ACIT, Circle-34, Kolkata**
3. **CIT(A), NFAC, Delhi**
4. **Pr. CIT**
5. **CIT(DR),**

True Copy

By Order

Assistant Registrar, ITAT, Kolkata