

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 77/GTY/2024
Assessment Year: 2017-18**

Mikolas Lyngdoh <i>(Appellant)</i>	Vs.	Income Tax Officer, Delhi <i>(Respondent)</i>
PAN: AEQPL2942G		

Appearances:

Assessee represented by : None.

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : January 1st, 2025

Date of pronouncing the order : January 17th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as "the Ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the AY 2017-18 dated



21.02.2024, which has been passed against the assessment order u/s 147/144B of the Act, dated 24.03.2022.

2. The grounds of appeal raised are as under:

A. For that the Learned Appellate Authority erred both in law and on facts and as such, the Proceedings under Section 147 of the Act, initiated by way of AO. Notice under Section 148 of the Act, is liable to be dropped, and the Assessment Order dated 24/03/2022 as well as the impugned Order dated 21/02/2024, set aside and quashed.

B. For that the Learned Appellate Authority failed to appreciate the records of the instant case to arrive at a judicious decision and as such the Proceedings under Section 147 of the Act, initiated by way of AO. Notice under Section 148 of the Act, is liable to be dropped, and the Assessment Order dated 24/03/2022 as well as the impugned Order dated 21/02/2024, set aside and quashed.

C. For that the learned Appellate Authority failed to appreciate the true nature and background of the facts and circumstances of the instant case.

D. For that the learned Appellate Authority, while passing the impugned Order dated 21/02/2024, did not consider and discuss the contentions made by the Appellant and passed the Order without properly going through the true and correct facts of the case, which indicates total non-application of mind on the part of the learned Assessing Officer, and as such, the Proceedings under Section 147 of the Act, initiated by way of AO. Notice under Section 148 of the Act, is liable to be dropped, and the Assessment Order dated 24/03/2022 as well as the impugned Order dated 21/02/2024, set aside and quashed.

E. For that your humble Appellant is a resident of Ladrymbai, Sohkympchor-793160, under the East Jaintia Hills District of Meghalaya, and by profession, a businessman, dealing in coal, broom sticks and vegetables and other agricultural produce. Your humble Appellant is the owner of a Paddy Field, known as the "Liar long Bang", measuring an area of 91,680 square meters approximately in the said area. Initially your humble Appellant undertook agricultural activities over the said area, but upon extract of coal deposits being detected in the said area, your humble Appellant let out the said area on lease with another person, and accordingly, your humble Appellant has been involved in business of agriculture and extracting of coal in the said area, and his income entirely arises/accrues within the said area.

Copies of the Certificate of Identification and Confirmation dated 28/05/2007 issued by the Dorbar Shnong Sohkympchor Pohmission, and the Gift Deed dated 08/03/2004 as well as the Lease Deed dated 09/06/2007 are annexed hereto as Annexures-1, 2 and 3 respectively.

F. For that your humble Appellant is a member of a Scheduled Tribe Community as defined in clause (25) of Article 366 of the Constitution of India and his residence is situated in the Jaintia Hills District of the State of Meghalaya, which is specified in Part II of the Table appended to Paragraph-20 of the Sixth Schedule



to the Constitution of India, and further, the earning of your humble Appellant, squarely, accrues/ arises from within the Khasi Hills District, which is a Tribal Area.

A copy of the Scheduled Tribe Certificate is annexed hereto as Annexure-4

G. For that Sec. 10 (26) of the Income Tax Act, 1961 (hereinafter referred to as the Act), provides an exemption from income tax for members of scheduled tribes, as specified in clause 25 of Article 366 of the Constitution, who are residents in a Sixth Schedule Region. The exemption under Section 10 (26) may only be claimed by persons who satisfy the conditions specified in the provision, hence, in terms of section 10(26) of the Income Tax Act, 1961, the Appellant is not in any manner whatsoever liable to any kind of income tax in as much as the income of your humble Appellant squarely arises and accrues within the Sixth Schedule Area, does not form part of the total income and is within the Sixth Schedule Areas, and as such, the Proceedings under Section 147 of the Act, initiated by way of AO. Notice under Section 148 of the Act, is wholly erroneous, arbitrary, illegal and capricious, and the same is liable to be dropped, and the learned Appellate Authority has passed the impugned Order dated 21/02/2024, without considering such a vital issue, renders the same to be set aside and quashed.

H. For the Government of India, On November 8th, 2016, declared that the Rs. 500 and Rs. 1000 notes would not be considered legal tender, your humble Appellant during the Financial Year 2016-17 pertaining to the Assessment year 2017-18 had on 25/11/2016 made cash deposit amounting to Rs. 1,19,37,000/- (Rupees One Crore Nineteen Lacs and Thirty-Seven only) into his Bank A/C No. 0000087005652875 of Meghalaya Rural Bank, Sohkyphor Branch. The said cash deposits related to the Sale Proceeds of the extracted coals and agricultural produce since the year 2007. It is categorically averred that since the location of the Bank is far away from the area of his business, the money, and hence, it is not practically possible to deposit the amount on regular basis, which was deposited in the said Bank Account simultaneously, and your humble Appellant duly submitted the relevant documents before the Authority concerned, but the Authority, illegally and arbitrarily, did not consider the contentions and documents of your humble Appellant and the same was erroneously treated as unexplained money and wrongly brought under the ambit of Section 69A of the Act as taxable income, which clearly smacks of arbitrariness and total non-application of mind, and the Appellate Authority, while passing the impugned Order dated 21/02/2024, has totally ignored such a vital and relevant issue, and as such, the Proceedings under Section 147 of the Act, initiated by way of AO. Notice under Section 148 of the Act, is liable to be dropped, and the Assessment Order dated 24/03/2022 as well as the impugned Order dated 21/02/2024, set aside and quashed.

A copy of the relevant extract of the Bank Account is annexed hereto as Annexure-5

I. For the A.O. had tremendously failed to consider that the Appellant belongs to the Scheduled Tribe community of Meghalaya, despite the fact that he had proof beyond reasonable doubt, that he is an indigenous tribal, as the Scheduled Tribe Certificate were issued by the competent authority of the State of Meghalaya and



that he a resident of Ladrymbai, Sohkympbor - 793160, under the East Jaintia Hills District of Meghalaya, and by profession, a businessman, dealing in coal, broom sticks and vegetables and other agricultural produce, as such, his income has fairly arisen and accrued from any source within the district of the State of Meghalaya, as such the Assessment Order dated 24/03/2022 so as well the Dismissal Order dated 21/02/2024 passed by the CIT (A), NFAC ought to be quashed and set aside at its very threshold for the ends of justice and fairplay.

J. For that the Authorities ought to have undertaken a substantive assessment in case of your Appellant, even though, there was no Books of Account maintained by the Appellant against the transactions in the said bank account as your humble Appellant is lawfully entitled for exemption under Section 10(26) of the Act.

K. For that the Appellant Authority has wrongly held that your humble Appellant had failed to discharge its burden and the citations relied upon by the Appellant Authority are not at all attracted in the case of your humble Appellant and same shall not come to the aid of the Authority.

L. For that it is a settled law that the Hon'ble Tribunal, under Section 252 of the Act, has ample power and wide jurisdiction to interfere in any proceeding, which has been instituted in violation of certain settled positions of law. The instant case is of such a nature, where the Authority has committed gross illegality, arbitrariness, malafide in as much as your humble Appellant has rightly discharged its burden to prove that your humble Appellant belongs to Scheduled Tribe Community as defined in clause (25) of Article 366 of the Constitution of India and his aforesaid income squarely, accrues/ arises from within the Jaintia Hills District of the State of Meghalaya, which is a Tribal Area, and the Appellate Authority, while passing the impugned Order dated 21/02/2024, gave a complete go by to such a vital and important issue, and as such, the Proceedings under Section 147 of the Act, initiated by way of AO. Notice under Section 148 of the Act, is liable to be dropped, and the Assessment Order dated 24/03/2022 as well as the impugned Order dated 21/02/2024, set aside and quashed.

M. For that it is a settled position of law that there is nothing in the Income Tax Act, or Rules of the Appellate Tribunal Rules which prevents a party to urge a new ground which it had not mentioned in the grounds of appeal or to lead additional evidence, either documentary or oral or by way of filing Affidavits by obtaining leave of the Tribunal, and hence, your humble Appellant craves leave to add new grounds and alter/ modify any grounds or to lead additional evidence, at the time of hearing, if so desires.

N. For that the Proceedings under Section 147 of the Act, initiated by way of AO. Notice under Section 148 of the Act, and the Assessment Order dated 24/03/2022 as well as the impugned Order dated 21/02/2024, on the face of it being prima facie illegal, arbitrary, discriminatory, and in any event is liable to be set aside and quashed so that ends of justice is met.

In the premises aforesaid this Hon'ble Tribunal, be pleased to admit the instant Appeal, and upon hearing the parties be pleased to set aside the impugned Order dated 21/02/2023 and/or be pleased to remand back the Proceeding before the



Assessing Officer to proceed by giving complete opportunity to your humble Appellant.

-AND-

Pending disposal of the instant Appeal, this Hon'ble Tribunal be pleased to stay the operation of the impugned Order dated 21/02/2024.

And for this your humble Appellant, as in duty bound, shall ever pray.

The grounds of appeal are argumentative and are more in the nature of submissions made by the assessee.

3. None appeared on behalf of the assessee, therefore, the case was heard with the assistance of the Ld. DR. We have heard the Ld. DR and perused the records placed before us. From perusal of the impugned order, we find that there was no appearance on behalf of the assessee either before the Ld. AO or even before the Ld. CIT(A) and the impugned order as well as the order of the Ld. AO have been passed ex-parte. A prayer has been made vide the grounds of appeal to restore all the issues in the instant appeal for fresh adjudication to the AO. Ld. DR was fair enough in not raising any objection if the issues raised in the instant appeal are restored to the Ld. AO to be decided afresh.

4. After examining the facts of the case, we deem it appropriate to set aside the orders of the Ld. CIT(A) as well as of the Ld. AO and remit the matter back to the file of the Ld. AO for passing the assessment order de novo as the evidence filed before us along with the grounds of appeal for claiming exception under section 10(26) of the Act were not filed before the Ld. AO or even before the Ld. CIT(A). Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of the relief claimed. The assessee shall not seek unnecessary adjournment. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.



8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 17th January, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 17.01.2025

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Mikolas Lyngdoh, C/o Shit Lyngdoh, Sohkymphor, Pohmission, East Jaintia Hills District, Shillong, Meghalaya, 793160.**
2. **Income Tax Officer, Delhi.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata