

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**SHRI SANJAY GARG, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. Nos. 2078-2080/Kol/2024
Assessment Year: 2017-18**

Bhagawan Ram Sharma,
C/o Subash Agarwal & Associates,
Advocates Siddha Gibson, 1,
Gibson Lane, Suite 213, 2nd Floor,
Kolkata - 700069
[PAN: CIWPS3679H] **Appellant**

vs.

**Income Tax Officer,
Ward – 3(1), Gangtok**
Aayakar Bhawan, Bhanupath
Near White Memorial Hall,
Sikkim - 737101 **Respondent**

Appearances by:

Assessee represented by : Siddharth Agarwal, Advocate
Department represented by : Chandan Das, Addl. CIT, Sr. DR

Date of concluding the hearing : 15.01.2025
Date of pronouncing the order : 04.02.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This is a batch of three appeals pertaining to the same assessee for Assessment Year (AY) 2017-18. These three appeals arise from orders of the Ld. Commissioner of Income Tax (Appeals) (hereafter "the Ld. CIT(A)] passed u/s 250 of the Income Tax Act, 1961 (hereafter "the Act") as under:

(a) ITA No. 2078/Kol/2024, order u/s 144 of the Act dated 29.08.2024

(b) ITA No. 2079/Kol/2024, order u/s 271AAC(1) of the Act dated 29.08.2024

(c) ITA No. 2080/Kol/2024, order u/s 272A(1)(d) of the Act 29.08.2024

For the sake of convenience, the lead case will be ITA No. 2078/Kol/2024 pertaining to the quantum matter. In this case, three additions have been made as under:

- (a) Cash deposit during demonetization period of Rs. 18,38,000/-
- (b) Amount of Rs. 22,02,476/- added u/s 69 of the act on account of deposits in bank for which allegedly no explanation was furnished.
- (c) An amount of Rs. 7,02,595/- made by the estimating income @ 8% as business receipts.

Admittedly, the assessment order was completed in an exparte manner.

1.1 Before the Ld. CIT(A) also it is recorded in para 4.1 at page 2 of the impugned order that the assessee did not make any fruitful compliance before him and thereafter, the addition made was confirmed by not condoning the delay in filing of appeal.

1.2 Regarding ITA No. 2079/Kol/2024, penalty u/s 271AAC(1) of the Act was levied since in quantum the three additions (supra) attracted the said provision for the levy of penalty. In this case also, since the assessee did not make any compliance before the Ld. CIT(A) hence the matter was decided against the assessee by not condoning the delay in filing the appeal.

1.3 Regarding ITA No. 2080/Kol/2024 arise from the order u/s 272(A(1)(d) of the Act. The Ld. AO seen to have levy of penalty for non-attendance. This penalty was confirmed on account of the fact that there was no compliance to the notices issued by the Ld. CIT(A) fixing the dates for hearing.

2. Aggrieved with the action of Ld. CIT(A), the assessee has filed the present three appeals. For the sake of convenience, the grounds of appeal in quantum are reproduced as under:

ITA No. 2078/Kol/2024

- “1. For that, on the facts and in the circumstances of the case, Ld. CIT(A) was not justified in passing an ex-parte order without giving any opportunity of hearing.*
- 2. For that, on the facts and in the circumstances of the case, Ld. CIT(A) was not justified in dismissing the appeal of the assessee in limine wrongly rejecting the assessee's prayer for condonation of delay.*
- 3. For that, on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have held that the A.O. was not justified in invoking the provisions of section 144 and deleted the addition of Rs. 47,43,071/- made by the A.O.*
- 4. For that the Ld. CIT(A) ought to have held that the assessee was entitled to exemption u/s 10(26AAA) of the Act.*
- 5. For that the Ld. CIT(A) ought to have deleted the addition of Rs. 18,38,000/- in respect of cash deposited by the assessee in his bank accounts during the demonetization period made by the AO. u/s 69A of the Act.*
- 6. For that the Ld. CIT(A) ought to have deleted the addition of Rs. 7,02,595/- [being 8% of Rs. 87,82,439/- (being the total of credit entries appearing in the books during the year excluding cash deposits during demonetization period) made by the A.O. by wrongly treating the same as business income.*
- 7. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have deleted the addition of Rs. 22,02,476/- made by the A.O. on account of term deposits wrongly treating the same as unexplained investment by wrongly invoking the provisions of section 69A of the Act.*
- 8. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”*

3. Before us, the Ld. AR mentioned that the assessee is a resident of Sikkim and is covered under the provisions of Section 10(26AAA) of the Act. He mentioned that due to a communication gap between the Ld. AO and the assessee, the assessee could not pursue the tax matters with diligence. The Ld. AR further mentioned that while the penalty u/s 271AAC(1) of the Act directly arises from the assessment order in quantum, the penalty levied u/s 272A(1)(d) of the Act was unjustified considering that the assessee was eligible for relief u/s 10(26AAA) of the Act and therefore, he had no liability to file any return of income and was therefore uncertain about his role and responsibility in terms of complying with the income tax proceedings. It is for this reason that there was delay in filing of first appeal in all the three matters, for which the Ld. CIT(A) should have been sensitive and admitted the matters for adjudication.

3.1 The Ld. DR on the other hand was content to support the orders of authorities below.

4. We have carefully considered the submissions of the Ld. AR/DR and also gone through the records. It is clear that the assessee deserves a chance to establish his case before the first appellate authority and therefore, considering the total facts and circumstances, we condone the delay and direct the Ld. CIT(A) to hear all the three appeals filed before him. Regarding the levy of penalty u/s 272A(1)(d) of the Act while the Ld. AR has made a strong case for “reasonable cause”, for deleting the said penalty. It is felt that the Ld. CIT(A) must be allowed to adjudicate on that issue also, along with the other two matters. With these remarks all the three appeals are remanded to the file of Ld. CIT(A) for fresh adjudication after giving an opportunity of being heard to the assessee

5. In the result, these three appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the court on 04.02.2025

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 04.02.2025

AK, P.S.

Copy of the order forwarded to:

1. Bhagawan Ram Sharma
2. Income Tax Officer, Ward – 3(1), Gangtok
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches