

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.1989/Kol/2024  
(Assessment Year 2012-13)**

**&**

**I.T.A. No.1990/Kol/2024  
(Assessment Year 2012-13)**

**M/s Moonlight Residency Pvt. Ltd.,**

2<sup>nd</sup> Floor, Room No. 2C, 56, Metcalfe Street,  
Kolkata- 700013

[PAN: AAFCM8966P]

..... **Appellant**

**vs.**

**Income Tax Officer-13(1), Kolkata,**

Aayakar Bhawan (Poorva),

110, Santipally, Kolkata - 700107

..... **Respondent**

**Appearances by:**

Assessee represented by : Manoj Kataruka, Advocate

Department represented by : S.B. Chakraborty, JCIT, Sr. DR

Date of concluding the hearing : 05.02.2025

Date of pronouncing the order : 07.02.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. The present two appeals arise from order u/s 250 of the Income Tax Act, 1961 (hereafter 'the Act'), passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereafter 'the Ld. CIT(A)', dated 02.09.2024. The appeal in ITA No. 1990/Kol/2024 pertains to order dated 02.09.2024 involving a penalty levied u/s 271(1)(c) of the Act. Since, both appeals have similar facts, they are being disposed of through a common order.

1.1 In this case, the Ld. Assessing Officer (AO) passed an order dated 25.03.2015 u/s 144 of the Income Tax Act, 1961 (hereafter 'the Act'), primarily because there was admittedly no compliance at the level of AO. Accordingly, the Ld. AO passed an exparte order adding Rs. 1,29,96,784/- as unexplained investment u/s 69B; and also, two additions of Rs. 3,69,450/- and Rs. 3,65,75,550/- as unexplained cash credit u/s 68 of the Act. Before the Ld. CIT(A) also the assessee could not succeed primarily because there was an alleged delay of more than 7 years in the filing of first appeal. The Ld. CIT(A) did not condone the delay and thereafter dismissed the assessee's appeal.

2. Aggrieved with the action of Ld. CIT(A), the assessee has filed the present appeal with the following grounds:

*"1. That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the addition made by the A.O. on the reason that the appeal filed was beyond the statutory time limit and therefore, not maintainable is arbitrary, excessive, illegal and bad in law.*

*2. That without prejudice to the Ground No. 1 and on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the addition made by the A.O. by rejecting the condonation of delay petition is in violation of the principles of natural justice and therefore the order passed is bad in law.*

*3. That without prejudice to the above grounds, the action of the Ld. CIT(A) to confirm the addition made by the A.O. of Rs. 3,69,450/- and Rs.3,65,75,550/- as unexplained cash credit u/s 68 of the I.T. Act, 1961 is arbitrary, excessive and bad in law.*

*4. That the action of the Ld. CIT(A) confirm the addition made by the AO of Rs.1,29,96,784/- as unexplained investment u/s 698 of the I.T. Act, 1961 contrary to the material evidences on record and the addition is arbitrary, excessive and bad in law.*

*5. That the order of the Ld. CIT(A) confirming the addition made by the A.O. is arbitrary. excessive and illegal.*

*6. That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary. modify or rectify the statement of facts and grounds of appeal at or before the time of hearing."*

2.1 Before us, the Ld. AR pointed out that in Para No. 2 of the impugned order, it is mentioned that the assessee has received the order only on 17.06.2022 and thereafter he has filed the said appeal on 07.07.2022. The Ld. AR vehemently argued that the Ld. CIT(A) fell in error in computing the said delay from the date of the order (25.03.2015) and did not consider the date on which the assessee actually received the said order. Further, the Ld. AR requested that the assessee has a reasonably good case on merit and hence in case the same is remanded back to the file of the Ld. AO, then there would be an opportunity to present the documents and evidences before him for a fair assessment of income.

2.2 The Ld. DR relied on the order of authorities below.

3. We have carefully considered the facts of the case, the documents before us and the averments of Ld. AR. It is clear from Para No. 2 of the impugned order that the delay was certainly condonable on the basis of claim of the assessee about the date of receipt of order being 17.06.2022. Additionally, it is felt that since the issues involved demand considerable fact finding hence, we deem it fit to remand the matter back to the file of Ld. AO for fresh adjudication at his level. Needless to say, the Ld. AO would give ample opportunity and the assessee would do well to avail of such opportunities for presenting his case.

3.1 Regarding ITA No. 1990/Kol/2024 since the quantum matter has been remanded back to the file of Ld. AO, this penalty cannot survive and the same is directed to be deleted. However, in case, there is any addition at the level of Ld. AO, which merits the initiations of penalty proceedings, then the Ld. AO would be at liberty to take necessary action as per law.

4. In result, ITA No. 1989/Kol/2024 is, accordingly, allowed for statistical purposes. ITA No. 1990/Kol/2024 is allowed with the deletion of penalty levied.

Order pronounced in the court on 07.02.2025

Sd/-  
**(Pradip Kumar Choubey)**  
**Judicial Member**

Sd/  
**(Sanjay Awasthi)**  
**Accountant Member**

Dated: 07.02.2025  
AK, P.S.

*Copy of the order forwarded to:*

1. M/s Moonlight Residency Pvt. Ltd
2. Income Tax Officer-13(1), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches