

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**ITA No. 1406/KOL/2024  
Assessment Year: 2017-18**

Ajay Kumar Chiripal 149, M. G. Road, Kolkata- 700007. (PAN: AECPC2815F)	Vs	ITO, Ward-43(1), Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri A. N. Keshri, FCA  
Respondent by : Smt. Amuldeep Kaur, JCIT

Date of Hearing : 24.03.2025  
Date of Pronouncement : 24.03.2025

**ORDER**

**Per Bench :**

The captioned appeal 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)”] vide order no. ITBA/NFAC/S/250/2024-25/1065110307(1) dated 24.05.2024 passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2017-18.

2. Smt. Amuldeep Kaur, JCIT appeared on behalf of the Respondent and Shri A. N. Keshri, FCA appeared on behalf of the assessee.

3. It is submitted by the Ld. AR that the assessee is a stock broker registered with the Calcutta Stock Exchange. It was the submission that the assessee had filed his original return u/s. 139(1) of the Act on 19.09.2017. Subsequently, notice u/s. 148 of the Act came to be issued

on the assessee. The notice was issued dated 26.02.2019. The assessee admittedly did not respond to the notice. The Assessing Officer subsequently issued various other notices on 16.04.2019 and 30.09.2019. As there was no response from the assessee, the Assessing Officer issued a show cause notice on 22.10.2019. There was no response to this show cause notice also. Consequently, the Assessing Officer issued a last show cause notice on 27.11.2019. In response to the show cause notice issued on 27.11.2019, the assessee filed his response on 05.12.2019. The assessment came to be passed on 06.12.2019. It was the submission that with regard to the reopening there is violation of principles laid down by the Hon'ble Supreme Court in the case of in GKN Driveshafts v. ITO [2002] 125 Taxman 963(SC). It was further submitted that the Assessing Officer has treated the clients' accounts maintained by the assessee as the undisclosed income of the assessee and estimated 1% of the total credit in the said clients' accounts. It was the submission that this is arbitrary and is liable to be deleted. It was further submitted that the fact that the Assessing Officer had the bank account details with him clearly shows that the bank account was related to the assessee's clients. It was a further submission that the addition of Rs.65 lakh made u/s. 69A of the Act was on account of funds received by the assessee for purchase of shares. It was the submission that the bills are available in the paper book. It was a specific query as to why any fresh document which have been filed either before the Ld. CIT(A) or before the Tribunal should be considered in so far as the reasonable cause for not producing the same before the Assessing Officer has not been tendered before us and there is violation of the provisions of rule 46A of the Rules. It was the submission by the Ld. AR that even if, admitting that there is a failure on the part of the assessee then the Assessing Officer should have done the verification thoroughly when all the details were before him. The Ld. AR further drew our attention to pages 62 to 65 of the paper book which are the bills raised in respect of the contract

notes in respect of the share transactions for Realstep Agencies Pvt. Ltd. and pages 66 to 70 being the contract notes in respect of the Headfirst Vinimay Pvt. Ltd. It was the submission that he had no objection if the issues are restored to the file of the Assessing Officer for examination and verification afresh.

4. In reply, the Ld. Sr. DR submitted that admittedly the contract notes and confirmation letters were not before the Assessing Officer. All that was available with the Assessing Officer was the bank account. It was the submission that she has no objection if the issue is restored to the file of the Assessing Officer for detailed examination.

5. We have heard the rival submissions. There are possibly two additions in the present case. A perusal of the assessment order clearly shows that statements had been recorded from the assessee. Multiple number of opportunities have been given to the assessee just before the assessment order is passed i.e. on 06.12.2019. The assessee has surprisingly filed a letter on 05.12.2019. This clearly shows which indicates that the assessee was aware of what was happening in the Assessing Officer's office. The fact that for months together there is no response and on one day just before the assessment order is passed some correspondence is made to block the Assessing Officer from passing the order. Admittedly, a perusal of the assessment order shows that statements had been recorded from the assessee as early as on 01.05.2015 and these statements have not been withdrawn. The non-cooperation of the assessee in the course of the assessment proceedings admittedly has given rise to the Assessing Officer being compelled to complete the assessment to the best of his judgment on the basis of the evidence available with him. Coming to the submission of the Ld. AR and the Ld. Sr. DR regarding restoring the issues to the file of the Assessing Officer, a perusal of the evidence in respect of the alleged unexplained investment

u/s. 69A, the assessee has made a claim that these are transactions in respect of two companies namely, Realstep Agencies Pvt. Ltd. and Headfirst Vinimay Pvt. Ltd. There is no evidence available to show that the funds have come therefrom. In the circumstances, this issue is restored to the file of the Assessing Officer. Before the Ld. Assessing Officer the assessee shall produce the directors of Realstep Agencies Pvt. Ltd. and Headfirst Vinimay Pvt. Ltd. to prove and confirm the transactions in respect of the purchase of the shares. The Assessing Officer, after examining such persons, shall proceed to examine further evidence which are required to be examined to verify genuineness, creditworthiness and identity of the persons. In regard to the transactions of the alleged clients' bank accounts in respect of which 1% has been added, the assessee shall produce before the Assessing Officer the clients or their directors along with evidences to prove that the transactions with the assessee are actually that of the said clients only. Failure on the part of the assessee to produce the said individuals would give the Assessing Officer the liberty to draw adverse inference. The non-cooperation by the assessee before the Assessing Officer is taken serious note of and the failure on the part of the assessee to cooperate in these set aside proceedings before the Assessing Officer would give the Ld. Assessing Officer liberty to draw adverse inference. We may mention here that the estimation of 1% as done by the Assessing Officer appears to be substantially reasonable considering the fact that there has been no cooperation on the part of the assessee before the Assessing Officer.

5.1. We may add that the Ld. Assessing Officer would give adequate opportunity to the assessee for presenting his case and presenting documents etc. for enabling the Ld. Assessing Officer to arrive at a correct determination of income.

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

Order dictated and pronounced in the open court.

Sd/-

(Sanjay Awasthi)  
Accountant Member

Sd/-

(George Mathan)  
Judicial Member

***Dated: 24th March, 2025***

JD, Sr. P.S.

Copy to:

1. The Appellant: Shri Ajay Kumar Chiripal.
2. The Respondent. ITO, Ward-43(1), Kolkata.
3. CIT(A), NFAC, Delhi
4. Pr. CIT
5. DR, ITAT, Kolkata Bench, Kolkata
6. Guard file.

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata