

आयकर अपीलीय अधिकरण  
कोलकाता 'सी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

श्री जॉर्ज माथान, न्यायिक सदस्य  
एवं  
श्री रकेश मिश्रा, लेखा सदस्य  
के समक्ष  
**Before**

**SHRI GEORGE MATHAN, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 2336 & 2337/KOL/2024  
Assessment Years: 2013-14 & 2014-15**

Khusendra Prasad Sharma	Vs.	Income Tax Officer, Ward- 3(1), Gangtok
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN: CGFPS1445E</b>		

**Appearances:**

**Assessee represented by** : Parna Datta, Adv. and  
Siddharth Agarwal, Adv.

**Department represented by** : Vineet Kumar, Addl. CIT.

Date of concluding the hearing : March 26<sup>th</sup>, 2025

Date of pronouncing the order : March 26<sup>th</sup>, 2025

**ORDER**

**PER BENCH:**

These appeals filed by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as Ld. 'CIT(A)']-NFAC, Delhi passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2013-14 & 2014-15 dated 14.03.2024. Since both the appeals were heard together and the issues



are common, they are being decided vide this common order for the sake of convenience and brevity.

1.1. The Registry has informed that both the appeals filed by the assessee are barred by limitation by 192 days. Applications for both the assessment years seeking condonation of delay have been filed by the assessee. The contents of the application for AY 2013-14 are as follows:

*“1. That an order was passed u/s 250 of the Act by the Ld. CIT(A) for the A.Y.: 2013-2014 on 14.03.2024.*

*2. The last day of filing the appeal before the Hon'ble Tribunal was on or around 13.05.2024.*

*3. The appeal was filed on 21.11.2024.*

*4. That there is a delay of around 192 days in filing of the appeal.*

*5. The delay is explained hereunder -*

*a) That your petitioner was under the bonafide belief that Mr. Karan Bhutra, FCA who was entrusted with the work of looking after income tax matters, made proper compliance.*

*b) That due to various ailments caused to him, Mr. Karan Bhutra was unable to attend office on a regular basis. Hence, proper compliance could not be made in response to the notices issued during the course of appellate proceedings.*

*c) That eventually the appellate proceedings were completed by the Ld. CIT(A), NFAC by passing an ex parte order dated 14.03.2024 which was also delivered in the email of the said consultant and the assessee was never informed about the receipt of order since the mail skipped his attention. However, copy of order was never received by the assessee physically.*

*d) That recently on or around the first week of November, 2024 when your petitioner received a notice in respect of outstanding demand then the income tax portal was accessed and the said order was located.*

*e) That then your petitioner approached Shri Siddharth Agarwal, Advocate on or around 15.11.2024 for filing appeals before the Ld. Tribunal and handed over him all the relevant documents.*



f) That the office of the said counsel prepared the appeal and finally deposited in the office of the Hon'ble Tribunal on 21.11.2024.

g) Thus, there is a reasonable cause for not filing appeal within time and it is humbly prayed that the delay of around 192 days may please be condoned and the case of your petitioner be heard on merit.

In the circumstances, your petitioner prays that the delay in filing appeal before this Ld. Tribunal may kindly be condoned and the case be heard on merits or such order/orders be passed as this Ld. Tribunal deems fit and proper.

And for this kind act out of kindness, your petitioner as in duty bound shall ever pray.”

1.2. Considering the application for condonation of delay and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeals within statutory time limit. We, therefore, condone the delay and admit the appeals for adjudication on merits.

3. The assessee has raised the following grounds of appeal for the AY 2013-14:

“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.

2. For that the Ld. CIT(A) ought to have held that the re-opening proceedings u/s 147 is bad in law and is liable to be quashed.

3. For that the Ld. CIT(A) ought to have held that the re-opening proceedings are bad in law due to the fact that the purported sanction u/s 151 was not obtained or was not in accordance with law which vitiated the reopening process.

4. For that the Ld. CIT(A) ought to have allowed the claim of the assessee of exemption u/s 10(26AAA).

5. For that the Ld. CIT(A) ought to have deleted the addition of Rs. 1,36,38,126/- made by the A.O. on account of alleged unexplained cash deposit u/s 69A.

6. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”



4. During the course of appeal though the assessee sought adjournment, however, the Bench rejected the request of the assessee. Rival contentions were heard and the submissions made have been examined. It is observed from the assessment order as well as the order of the Ld. CIT(A) that the assessment was made u/s 147/144/144B of the Act and the assessee has contended before us vide the grounds of appeal that the Ld. CIT(A) was not justified in passing an *ex parte* order. Since proper submission could not be made even before the Ld. AO, the assessment order is also made *ex parte*. Our attention was drawn to paragraph nos. 4.2 and 4.4 of the order of the Ld. CIT(A) as also the statement of facts as per Form No. 35 filed before the Ld. CIT(A). It was submitted that the income of the assessee was exempt under section 10(26AAA) of the Act and the matter may be remanded back to the Ld. AO for deciding the issues raised including the exemption claimed u/s 10(26AAA) as in the absence of proper compliance, the addition was made to the income of the assessee. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

5. Since the assessee could not make proper representation, therefore, it was observed by the Bench that in the interest of justice, the matter may be set aside to the Ld. AO and the assessee may be granted a final opportunity of being heard and make proper representation before the Ld. AO. Hence, both the orders of the Ld. CIT(A) as well as the order of the Ld. AO are set aside and the Ld. AO is directed to make the assessment afresh after granting an opportunity of being heard to the assessee. Needless to say, the assessee shall not seek unnecessary adjournment and shall also make due compliance before the Ld. AO.



6. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

**Order pronounced in the open Court on 26<sup>th</sup> March, 2025.**

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

*Sd/-*

**[George Mathan]**  
Judicial Member

Dated: 26.03.2025

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Khusendra Prasad Sharma, C/o. Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2<sup>nd</sup> Floor, Kolkata, West Bengal, 700069.**
- 2. Income Tax Officer, Ward-3(1), Gangtok.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata