

**आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

**I.T.A. No. 2110/Kol/2024**  
**Assessment Year: 2016-17**

DCIT, Circle-1, Siliguri	Vs.	Sunil Kumar Kundu  (PAN: AAWFS 9435 R)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	17.03.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	03.04.2025
For the assessee / निर्धारिती की ओर से	Shri Siddharth Agarwal, Advocate
For the revenue / राजस्व की ओर से	Smt. Ranu Biswas, Addl. CIT DR

**ORDER / आदेश**

**Per Pradip Kumar Choubey, JM:**

This is the appeal preferred by the revenue against the order of Commissioner of Income Tax (Appeals)- NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 05.08.2024 for AY 2016-17.

2. It appears from the report of the registry that the appeal has been filed after a delay of 10 days, for this the assessee has filed condonation petition., which are as follows-

*“Your petitioner states that there are sufficient grounds for condoning the delay of filing the appeal under Section 253 of the Income Tax Act, 1961 which are as follows:*

- i) *The Ld. CIT(A) passed the order on 5<sup>th</sup> August, 2024 which was received by this office on same day i.e. 05.08.2024 and against which appeal was to be filed before Hon’ble ITAT, Kolkata within 04.10.2024. Erstwhile jurisdictional Assessing officer i.e. DCIT, Circle-1, Siliguri had proceeded on leave from 24.09.2024 and further he retired on superannuation on 30.09.2024. From 01.10.2024, charge was handed over to Smt. T.Y. Bhutia, ACIT, ASR and grounds of appeal was submitted and appeal has not been filed as there occurred some technical glitch in website. Further, Smt. T.Y. Bhutia, ACIT proceeded to leave from 07.10.2024 and undersigned taken the charge of this office. In between, office was closed due to Durga Puja holidays and thus there is delay of 10 days in filing appeal before Hon’ble Tribunal.*
- ii) *In the aforesaid facts and circumstances of the case your petitioner most humbly submits that due unavoidable situation and circumstances, which were beyond the control of the petitioner, there is delay in filing the appeal, such delay is unintentional and said delay may be condoned by this Hon’ble Tribunal and appeal may be heard.*
- iii) *In the above circumstances, your petitioner prays to your Lordships for the following order:-*
  - a) *To condone the delay of 10 days in preferring the appeal under section 253 of the Income Tax Act, 1961 against the order dated 5<sup>th</sup> August, 2024 passed by the Ld. CIT(A) for the AY 2016-17 having DIN & order NO. ITBA/NFAC/S/250/2024-25/1067326351(1).*
  - b) *Appeal be registered and restored to file.*
  - c) *Appeal be admitted.*
  - d) *Such other or further order or orders and/or direction or directions as would afford complete relief to your petitioner.*

*And your petitioner is in duty bound shall ever pray.”*

On perusal of the condonation petition, the reason for delay in filing the appeal seems to be genuine and bonafide. The Ld. D.R did not raise any objection in condoning the delay. Keeping in view, the condonation petition as well as judicial pronouncement that the case should be decided on merit not on technical issue, the delay is hereby condoned.

3. Brief facts of the case of the assessee is that the assessee is a partnership firm furnished its return of income for AY 2016-17. During the course of assessment u/s

143(3) of the Act, it was found from the examination of assessee's ledger of M/s Tarai Transport Corporation that the assessee had repaid advance received by it from M/s Tarai Transport Corporation in cash, thereby violating the provision of Section 269T of the Act as a result of which the penalty proceedings u/s 271( e) of the Act was initiated and penalty of Rs. 1,00,00,000/-.

4. Aggrieved by the said penalty order the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been allowed and penalty levied by the AO has been directed to be deleted.

Being aggrieved and dissatisfied the revenue has preferred an appeal before us.

5. The Ld. D.R has challenged the impugned order thereby submitting that the Ld. CIT(A) erred in deleting the penalty u/s 271(e) ignoring the reality that the present case is not squarely covered by the decision of Hon'ble ITAT, Kolkata bench passed in its sister concern i.e. M/s Tarai Transport Corporation for the same assessment year. The Ld. D.R further submits that in the case of M/s Tarai Transport Corporation, the Kolkata Tribunal has deleted the penalty as similar to its case of AY 2001-02 and there is no doubt that the said order travelled up to the Apex Court wherein SLP filed by the Department has dismissed but the present case is totally on a different facts.

6. Contrary to that the Ld. A.R supports the impugned order thereby submitting that the assessee firm and its sister concern shared same business premises and had one common partner and all the partners in the assessee firm and the sister concern are the immediate blood family members and no outsider party is a partner in either the assessee firm or its sister concern M/s Tarai Transport Corporation. The Ld. A.R further submits that the transaction was not in the nature of loan transaction rather the transaction had arisen due to payment of some expenses like freight and labour charges of the sister concern. It has further been argued that in fact amount was transferred to the account of assessee through banking channel. The Ld. Counsel further submits that in fact the assessee firm had not taken or accepted any loan or deposit or any other specified sum rather in fact paid certain amount on behalf of M/s Tarai Transport Corporation which

was reimbursed to it through banking channel so there was no violation of Section 269T of the Act. The Ld. Counsel submits that the Ld. CIT(A) has deleted the penalty after going over the several judicial pronouncements and further giving full emphasis on the order passed by the ITAT, Kolkata Bench in the case of M/s Tarai Transport Corporation for the same assessment year. So, there is no illegality in the impugned order.

7. Upon hearing the submission of the counsel for the respective parties, we have perused the order passed by the Ld. CIT(A) as well as the order of AO. It admits of no doubt that the penalty u/s 271(d) amounting to Rs. 17,00,00,000/- was imposed for the same assessment year of M/s Tarai Transport Corporation allegedly for taking or accepting the loan in violation of provision of Section 269SS and for the same transaction penalty u/s 271(e) of the Act amounting to Rs. 1 crore has been imposed on the assessee company allegedly for violating the Section 269T of the Act. The submission of the AR is that his case is squarely covered in the decision of Kolkata ITAT passed in the case of M/s Tarai Transport Corporation vs. JCIT in ITA NO. 273/Kol/2024 for AY 2016-17 dated 5.6.2024. We further find that the order passed in M/s Tarai Transport Corporation by ITAT, Kolkata has been travelled to the Hon'ble Calcutta High Court and upto the Apex Court and SLP filed by the department has also been dismissed by the Hon'ble Supreme Court so the order passed in ITA NO. 325/Kol/2007 in case of M/s Tarai Transport Corporation becomes its finality. The submission of Ld. D.R is that there is no connection with the assessee company and M/s Tarai Transport Corporation. We find that there is a transaction between the assessee company and its sister concern namely M/s Tarai Transport Corporation. The transaction between the assessee company and its sister concern is essential to the nature of current account. It is further pertinent to mention here that Shri Sanjit Kundu is a common partner in both the firms. It is well settled that the withdrawal of addition made in the partners capital account in cash is not a violation of Section 269SS or 269T of the Act. The operative portion of the order passed by the Ld. CIT(A) held thus:

*“5.2 I have carefully gone through the grounds of appeal, facts of the case, penalty order passed by the AO, written submission uploaded as well as judicial pronouncements relied upon by the appellant. It has been submitted by the appellant that penalty u/s 271D amounting to Rs 1,00,00,000/- was imposed for the same assessment year on M/s Tarai Transport Corporation*

*allegedly for taking or accepting loan in violation of the provisions of section 269SS. For the same transactions, penalty u/s 271E amounting to Rs. 1,00,00,000/- has been imposed on the appellant allegedly for violating section 269T. It the case of the appellant that case is squarely covered in its favour by the decision of Hon'ble Jurisdictional ITAT, Kolkata Bench in the case of M/s Tarai Transport Corporation for the same A.Y. to whom it has paid the alleged advance amounting to Rs. 1 crore in cash. The appellant has submitted that a similar issue came before the ITAT in its own case of M/s Tarai Transport Corporation in ITA no. 325/KOL/2007 for A.Y. 2001-02 which was decided in favour of the assessee. Further, the Hon'ble Calcutta High Court has also dismissed the appeal of the department vide ITA no. 694 of 2007, GA No. 3440 of 2007 dated 31.01.2008. The matter then travelled to the Hon'ble Supreme Court where the SLP filed by department was dismissed vide CC 872/2009 dated 30.10.2009. While adjudicating the same issue in the case of M/s Tarai Transport Corporation the Hon'ble ITAT for the A.Y. 2016-17 has relied upon its earlier order passed for the A.Y. 2001-02 in the case of same assessee and deleted the penalty imposed u/s 271D imposed for the A.Y. 2016-17. In the year under consideration also the appellant has entered into the transaction with M/s Tarai Transport Corporation against which the penalty u/s 271E of the Act was levied on the appellant for alleged violation of provisions of Section 269T of the Act."*

8. Going over the facts of the case and order passed by the Ld. CIT(A), we do not find any infirmity in the impugned order. Accordingly, the order passed by the Ld. CIT(A) did not require any interference and the appeal of the revenue is dismissed.

In the result, the appeal filed by the revenue is here by dismissed.

Order is pronounced in the open court on 3<sup>rd</sup> April, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 3<sup>rd</sup> April, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-1, Siliguri
2. Respondent – Sunil Kumar Kundu, Siliguri, Kundu Bhawan, Bidhan Road, West Bengal-734001.
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata