

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

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

**I.T.A. No. 334/Kol/2024
(Assessment Year 2015-16)**

Income Tax Officer, Kolkata,
P-7, Chowringhee Square,
Kolkata – 700069

..... **Appellant**

vs.

Gajraj Steel Merchants Private Limited,
Room No. 408, 4th Floor,
Bajrang kunj, 2B Grant Lane,
Kolkata - 700012
[PAN: AADCG6013D]

..... **Respondent**

Appearances by:

Department represented by : Ranu Biswas, Addl. CIT, Sr. DR

Assessee represented by : None

Date of concluding the hearing : 28.04.2025

Date of pronouncing the order : 30.04.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. In this case, there is a delay of 114 days in filing of the present appeal.

The assessee has requested for condonation of the same as under:

"1. The order of Ld. CIT(A) NFAC, Delhi has been received by the office of the Ld. Pr CIT-1, Kolkata on 30.08.2023 through ITBA.

2. The order was forwarded to the office of the Income Tax Officer, Ward-1(1), Kolkata on 27.10.2023.

3. It is also to be mentioned that the assessment record were requisitioned through mail to the Writer Information Management Service on 03.11.2023 and the file was received by the office of the office of the ITO, Ward-1(1), Kolkata on 11.12.2023. Thereafter the ASR was submitted on 18.12.2023 to the JCIT, Range-1, and Kolkata.

4. However the ASR was returned by the JCIT, Range-1, Kolkata on 20.12.2023 as there was no explanation why the order of Ld CIT-(A) was not acceptable.

5. Thereafter the ASR was resubmitted on 03.01.2024.

6. *The JCIT, Range-1, Kolkata has forwarded the ASR to the office of the Ld PR CIT-1, Kolkata on 04.01.2024.*”

1.1 In light of the reasons given in the said petition, the delay is hereby condoned and the appeal is admitted for adjudication.

2. The present appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereinafter “the Act”), passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”] vide order dated 30.08.2023 for AY 2015-16.

2.1 In this case, the Ld. AO passed an order u/s 144 of the Act on account of non-compliance by the assessee before the Ld. AO. This case was selected for limited scrutiny for verifying the quantum of income in comparison to very high investments; and for verifying large increase in investment in unlisted equity shares during year. It is seen that the Ld. AO passed an exparte order by adding Rs. 1,50,59,966/- by estimating alleged interest income earned from investments. The Ld. AO has also added Rs. 3,25,00,280/- as unexplained cash credit u/s 68 of the Act and has finally added an amount of Rs. 1,41,000/- u/s 14A read with Rule 8D of the Rules.

2.2 Before the Ld. CIT(A), the assessee could succeed with respect to all the additions and the Revenue is in appeal with the following grounds:

“1. That on the fact and circumstances of the case, the Ld. CIT(A), NFAC, erred in passing the order by deleting the amount Rs. 1,50,59,966/- on estimating notional interest @ 12% on investment in equities treating these as loans & advances.

2. That on the fact and circumstances of the case, the Ld. CIT(A), NFAC, erred in passing the order by deleting the amount Rs. 3,25,00,280/- as unexplained cash credit u/s 68.

3. That the appellant craves for leave to add, delete, amend or modify or modify any grounds before or at the time of appellate proceedings.”

3. Before us, the Ld. DR pointed out that while the assessee did not make any presentation of facts before the Ld. AO however, it was not clear from the impugned order as to what were the facts before the Ld. CIT(A) which persuaded him to grant relief on all counts. The Ld. DR read out relevant portions from the Ld. AO’s order and the Ld. CIT(A)’s order. The

Ld. DR argued that the Ld. CIT(A) has doubted the method adopted by the Ld. AO in estimating interest income and he has categorically given a finding that no sum of money was actually found credited in the books of accounts of the assessee to make any application of section 68 of the Act. The Ld. DR stated that when the factual material regarding the credit in the books of account was certainly not before the Ld. AO and hence it was possible that the Ld. CIT(A) had the benefit of some documents which persuaded him to take a different view. Regarding the last ground of addition (Rs. 1,41,000/- on account of section 14A of the Act). The Ld. DR fairly mentioned that such addition was beyond the scope of limited scrutiny in this case. However, he pointed out that the Department had not taken any ground with respect to that addition.

3.1 It is seen that in this case the matter has been fixed on as many as 5 occasions but none have appeared on behalf of the assessee. Accordingly, we are constrained to pass an order in this matter on the basis of the averments of Ld. DR and on the basis of documents before us.

4. We have carefully considered the documents before us and the averments of Ld. DR. We find that a perusal of the impugned order reveals that the Ld. CIT(A) has arrived at a different conclusion from the Ld. AO on the basis of some facts which evidently were not before the Ld. AO. We find that there is no mention of any remand report or even any filing of some documents before the Ld. CIT(A) to enable us to understand as to what prompted him to arrive at a different conclusion from the Ld. AO, who was constrained to pass an ex parte order. Accordingly, while it is clear that the concept of “notional income” comes in very rarely and is always a fact-based exercise, it is a judicially settled principle that only “real income” has to be assessed. At this stage, some benefit of doubt deserves to be given to the Ld. AO since he has clearly mentioned that the assessee did not file any details regarding the alleged interest-bearing loans and advance. Secondly, the amount added under the provision of section 68 of the Act needs to be clearly verified whether such an amount is credited in the books of

accounts or not. Since, the Ld. CIT(A) has apparently been persuaded by some facts or documents before him, which were clearly not before the Ld. AO, hence we deem it fit to consider remanding this matter back for a fresh assessment.

4.1 In light of the discussion above, we deem it fit to remand this matter to the file of Ld. AO, after setting aside the impugned order. The Ld. AO would examine the facts surrounding the loans given by the assessee and bring out clearly if any interest income was due to him. The Ld. AO would keep in mind, the settled principle that only “real income” has to be taxed and not “notional”. Regarding the alleged cash credit, the Ld. AO would verify whether any sum was actually credited in the books of accounts and thereafter in case it is shown like that then appropriate enquiries would be made for ascertaining the genuineness of such amounts. Needless to say, the Ld. AO would give ample opportunity of being heard to the assessee.

4. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 30.04.2025

Sd/-

(Pradip Kumar Choubey)
Judicial Member

Sd/-

(Sanjay Awasthi)
Accountant Member

Dated: 30.04.2025

AK, Sr. P.S.

Copy of the order forwarded to:

1. Gajraj Steel Merchants Private Limited,
2. Income Tax Officer, Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

