

आयकर अपीलीय अधिकरण, कोलकाता पीठ "बी", कोलकाता

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

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य एवं श्री संजय अवस्थी, लेखा सदस्य के समक्ष
[Before Shri Pradip Kumar Choubey, Judicial Member & Shri Sanjay Awasthi, Accountant Member]

I.T.A. Nos. 2526 to 2530/Kol/2024
Assessment Year: 2007-08 to 2011-12

Bajrang Lal Agarwal (PAN: ACRPA 8848 B)	Vs.	DCIT, Central Circle-3(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	29.04.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	15.05.2025
For the assessee / निर्धारिता की ओर से	Shri Sujit Basu, Advocate Shri Rajib Mukherjee, Advocate
For the revenue / राजस्व की ओर से	Smt. Ranu Biswas, Addl. CIT Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

All the appeals preferred by the assessee against the separate orders of Commissioner of Income Tax (Appeal)-21, Kolkata (hereinafter referred to as the Ld. CIT(A)] dated 22.10.2024 for AY 2007-08 to 2011-12 respectively. Since issues are

common in all the appeals hence taken up together for disposal. We shall take in ITA No. 2526/Kol/2024 as a lead case.

2. Brief facts of the case of the assessee are that the assessment of the assessee was completed u/s 153C/ 143(3) on 21.12.2015 when fixed deposit of Rs. 1,95,00,000/- in Bhutan had been duly considered by the AO. During the course of assessment, it was contended that according to Bhutan Income Tax Act, 2001 interest earned on fixed deposit by individual is not taxable income under personal income tax. Since no interest of FD is taxable, the assessee did not offer any income being interest on fixed deposit. The said assessment was set aside u/s 263 and in pursuant to the order passed u/s 263 interest on FD for Rs. 13,65,000/- had been added back on accrual basis. In penalty proceedings, it was submitted through e-mail that income accrues or arise in Section 5(1)(c) referred to income accrues or arises not in India but outside in India. It was contended that no income has been concealed by the assessee in the return, however, the penalty proceedings u/s 271(1)(c) for Rs. 4,09,500/- has been levied.

3. Aggrieved by the said penalty order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed by the Ld. CIT(A) as there was no response on behalf of the assessee during the appellate proceedings.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

4. The Ld..R instead of arguing into the merit of the case has only prayed that as there was no concealment of income. The Ld. A.R has filed an affidavit that the assessee will co-operate if the appeal of the assessee be restored into the file of the Ld. CIT(A).

5. The D.R though supports the impugned order did not raise any objection in remitting the appeal of the assessee to the file of Ld. CIT(A).

6. Upon hearing the submission of the counsel of the respective parties, we have perused the order of Ld. CIT(A) in all the appeals and find that appeal of the assessee has been dismissed by the Ld. CIT(A) as there was non-compliance by the assessee before him The assessee has filed an affidavit which is as below:



পশ্চিমবঙ্গ পশ্চিম বঙ্গ WEST BENGAL



Before the Notary Public at Kolkata
 Regn. No. 88407
 Govt. of W.B.



Bajrang Lal Agarwal

Before the Notary Public at Sealdah

AFFIDAVIT

I **BAJRANG LAL AGARWAL**, aged about 79 years, son of Late Laxmi Chand Agarwal, all by Faith - Hindu, by Occupation - Business, residing at "Laxmi Nivas", N.S. Road, Jaigaon, Jalpaiguri-736182 do hereby solemnly affirm and declare as follows:-

Contd.....

29 APR 2025

- WES**
1. That since I am an old person, my PAN has been registered by my accountant Sri Vikey Sharma at his email id vikki143@gmail.com and at his mobile no. 9609730936
 2. That I had a fixed deposit account in Bhutan at Rs. 1,95,00,000/-
 3. That according to Bhutan Income Tax Act and Rules of Kingdom at Bhutan 2001, the interest income, earned from the fixed deposits by the individual from any of the institution of Bhutan is not taxable income under personal Income Tax.
 4. That accordingly I did not consider any interest income earned in Bhutan in my return filed in India.
 5. That the Ld. A.O. had estimated interest income on my fixed deposit in Bhutan for Rs. 13,65,500/- in Asst. year 2007-08, Rs. 13,89,375/- in Asst. year 2008-09, Rs. 14,62,500/- in Asst. year 2009-10, Rs. 15,11,250/- in Asst. year 2010-11, Rs. 16,23,375/- in Asst. year 2011-12 at his own estimation.
 6. That the Ld. A.O. had also levied penalties u/s. 271(1)(c) for all the above 5 (five) assessment years against which I had preferred appeals before the Ld. CIT (A). Kolkata - 21.
 7. That the Ld. CIT (A) had served notices for hearing through ITBA portal on 02/01/24, 11/09/24 and 01/10/24 and no manual notices had been served for hearings by the Ld. CIT(A).

- 8) That I am aged about 79 years and have no idea about the computer and I had no knowledge about the notices sent by the Ld. CIT(A) at ITBA portal.
- 9) That as I have stated above that my PAN has been registered against the email id and mobile no of my accountant Sri Vikey Sharma who had also never apprised me regarding the notices sent by the Ld. CIT(A) for hearing and the Ld CIT (A) has passed ex-party order for all the five assessment years.
- 10) That I have preferred appeals before the Hon'ble ITAT Kolkata for all the aforesaid assessment years vide ITA No. 2526/KOL/2024 for Asst. year 2007-08, ITA No. 2527/KOL/2024 for Asst. year 2008-09, ITA No. 2528/KOL/2024 for Asst. year 2009-10, ITA No. 2529/KOL/2024 for Asst. year 2010-11 and ITA No. 2530/KOL/2024 for Asst. year 2011-12.
- 11) That the Ld. A.O. had levied penalties u/s. 271(1)(c) on estimated incomes, estimated by him and as no penalties can be levied u/s. 274(1)(c) on estimated income, the penalty orders for all 5 (five) Asst. years are bad in law.
- 12) That the Ld, A.O. in his assessment orders has initiated penalty proceedings u/s. 271(1)(c) for "concealment of particulars of income" and had also issued show cause notice u/s. 274 of the Act read with section 271(1)(c) on the charge of concealment of particulars of incomes, But the Ld. A.O. has



271(1)(c) on the charge to furnishing inaccurate particulars of income.

- 13) That the "concealment of particulars of income" and "furnishing inaccurate particulars of income" carry different connotation and or different charges.
- 14) That as the Ld. A.O. had framed charge in his assessment orders for one (01) ground and levied penalty in his penalty orders on different grounds, penalty orders for all the aforesaid 05 (five) Asst. years are liable to be quashed.
- 15) That I swear this Affidavit to submit before the Hon'ble ITAT, Kolkata , 'B' bench declaring the above facts and requesting to set aside appellate orders for all the 05 (five) assessment years to be file of the Ld. CIT (A) with liberty to the appellant to raise any additional ground/grounds. And I undertake to extend my all co-operation in disposing the appeals by the CIT (A) Kolkata - 21 afresh.

That the aforesaid statements are true to the best of my knowledge and belief and I sign this affidavit on this 29th day of April, 2025 at Kolkata.

Bajrang Lal Agarwal

Deponent

affirmed &

verified by me

7. It is a fact all the appeals of the assessee have been dismissed on account of non-prosecution and assessee filed an Affidavit of undertaking that the assessee will cooperate in proceeding if the appeal of the assessee be restored into file of the Ld. CIT(A). Keeping in view, the order passed by the Ld. CIT(A), considering the affidavit filed by the assessee and for the interest of justice, we are inclined to restore all the appeals of the assessee before the Ld. CIT(A) with a direction to pass afresh order with a liberty to assessee to raise an additional ground as per law.

In the result, all the appeal filed by the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 15th May, 2025

Sd/-

Sd/-

(Sanjay Awasthi /संजय अवस्थी)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 15th May, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Bajrang Lal Agarwal, laxmi Niwas, N. S. Road, Jaigaon, WB-736182.
2. Respondent –DCIT, Central Circle-3(1), Kolkata
3. Ld. CIT(A)-21, Kolkata
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata