

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.23/Alld/2025
Assessment year:2008-09

Aroti Ghosh A-103, Vinayak Le Grand LBS Marg, Prayagraj. PAN:ACDPG1510E (Appellant)	Vs.	Income Tax Officer, Ward-1(1), Allahabad (Respondent)
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Appellant by	Shri S. K. Jaiswal, C.A.
Respondent by	Shri A. K. Singh, Sr. D.R.

ORDER

PER ANADEE NATH MISSHRA, A.M.

(A) This appeal vide I.T.A. No.23/Alld/2025 has been filed by the assessee for assessment year 2008-09 against impugned appellate order dated 04/12/2024 (DIN & Order No.ITBA/NFAC/S/250/2024-25/1070895860(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. In this appeal the assessee has raised the following grounds:

- "1. *BECAUSE the National Faceless Appeal Centre (NFAC) has erred in law and on facts in dismissing appeal in limine by holding that there is delay of 74 days in filing of appeal filed on 14.06.2016 and appellant has not filed any application for condonation of delay and there is mismatch in particular of challan of appeal filing fee as furnished in Form No. 35 and copy of challan furnished.*

2. *BECAUSE the NFAC has failed to appreciate the fact that appellant has filed appeal manually in Form No. 35 on 26.04.2016 vide Acknowledgement No. Book No. 2 SI No. AD 000062 dated 26.04.2016 which is within 30 days of service of notice of demand and deposited appeal filing fee of Rs. 1000/- on 04.04.2016. Latter on in terms of Notification dated 01.03.2016 appellant has digitize the appeal and filed Form No. 35 electronically on 14.06.2016 giving detail of filing fee deposited on 04.04.2016.*
3. *BECAUSE the reassessment proceeding under section 147 has neither been validly initiated nor concluded therefore the assessment order dated 31.03.2016 passed under section 143(3) read with section 147 is invalid and liable to be quashed as illegal and without jurisdiction.*
4. *BECAUSE the reasons recorded for initiation of reassessment proceeding under section 147 is altogether fallacious and not into existence at all.*
5. *BECAUSE no notice under section 143(2) has been served upon appellant within stipulated time, therefore the whole of the assessment proceeding is vitiated for want of valid jurisdiction.*
6. *BECAUSE the NFAC has erred in law and on facts in sustaining addition of Rs.39,67,163.69 made on account of long term capital gain on sale and purchase of shares through Kotak Securities Ltd.*
7. *BECAUSE the NFAC has erred in law and on facts in working out the long term capital gain of Rs.39,67,163.69 on sale of shares without deducting the cost of acquisition of shares purchased in earlier years.*
8. *BECAUSE the NFAC has failed to appreciate the fact that long term capital gain arising from the transfer of a long term capital assets being equity shares in a company is exempted under section 10(38) of the Income tax Act, 1961.*
9. *BECAUSE the NFAC has erred in law and on facts in sustaining addition of Rs.4,23,000/- made by invoking the provision of section 69 on account of net receipts from Katak Securities Ltd.*

i.e. (8,23,000-4,00,000) treating as investments from undisclosed sources.

- 10. BECAUSE the NFAC has failed to note that all the receipts and payments from Kotak Securities Ltd. are fully and truly disclosed in the income tax return filed originally.*
- 11. BECAUSE the NFAC has failed to appreciate the fact that receipts and payments from and to Kotak Securities Ltd. are against the sale and purchase of shares which has been added separately to the income of the appellant and no separate addition was called for on this score.*
- 12. BECAUSE the NFAC has erred in law and on facts in not allowing the deduction of Rs.1,00,000/- claimed under Chapter VI-A on the ground that appellant fails to produce the proof of deduction claimed.*
- 13. BECAUSE the NFAC has failed to appreciate the fact that proof of claim of deduction under Chapter-VI-A was never called for.*
- 14. BECAUSE appellant denies for levy of interest under section 234A of the Act."*

(B) At the time of hearing, learned Authorized Representative for the assessee drew our attention to ground No. 2 of appeal and submitted that the assessee had already filed appeal in the office of learned CIT(A), in Form-35, on 26/04/2016 in a timely manner; which however, escaped the attention of learned CIT(A). He also submitted that the learned CIT(A) took the cognizance of only electronically filed Form-35 (filed on 14/12/2016) without taking into consideration the appeal already filed earlier, in Form-35, manually on 26/04/2016. Therefore, he contended, the learned CIT(A) should be directed to pass de novo order in accordance with law after providing reasonable opportunity to the assessee taking into consideration, the appeal filed by the assessee in manual form in Form-35 on 26/04/2016 (evidenced by acknowledgement No. Book No. 2 Sl.No. AD 000062 dated

24/12/2016. The learned Departmental Representative for Revenue expressed no objection to this.

(C) We have heard both sides. We have perused the materials on record. From the records it is clear that the assessee had already filed appeal in the office of learned CIT(A), in Form-35, on 26/04/2016 in a timely manner; which however, escaped the attention of learned CIT(A). The learned CIT(A) took the cognizance of only electronically filed Form-35, filed on 14/12/2016, without taking into consideration the appeal already filed earlier, in Form-35, manually on 26/04/2016. In view of the foregoing, the order of learned CIT(A) is set aside and the learned CIT(A) is directed to pass de novo order in accordance with law after providing reasonable opportunity to the assessee taking into consideration, the appeal filed by the assessee in manual form in Form-35 on 26/04/2016.

(D) In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 04/06/2025)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:04/06/2025
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T., Lucknow