

**INCOME TAX APPELLATE TRIBUNAL : GAUHATI BENCH : GUWAHATI**  
**BEFORE SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER**  
**AND**

**SHRI RAKESH MISHRA, HON'BLE ACCOUNTANT MEMBER**

ITA No. 214 / GTY / 2024

AY: 2017-18

Kivito Sema H. No. 37, Pukhato Village, Kuhuboto Area PIN- 797112 (Nagaland) <b>PAN: FGUPS2877A</b>	The ITO, Ward-1, Dimapur
<b>(Appellant)</b>	<b>(Respondent)</b>

<b>Assessee By:</b>	Shri Ramesh Goenka, Advocate
<b>Respondent By:</b>	Shri Kaushik Ray, JCIT
<b>Date of Hearing:</b>	10.03.2025
<b>Date of Pronouncement:</b>	18.03.2025

**ORDER**

**PER MANOMOHAN DAS, JM**

The assessee filed this appeal against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the "CIT-A") dated 13.08.2024 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and pertains to the Assessment Year [AY] 2017-18.

The grounds of appeal of the assessee are as under:-

(i) *That the Id. Commissioner of Income Tax (Appeals) ought to have held that the transfer of the appellant's case from the office of the Income Tax Officer, Ward-1, Dimapur to the office of the Income Tax Officer, Ward-3, Jorhat without passing any order U/s 127 of the Income Tax Act, 1961, by the appropriate authority was illegal, and therefore the consequent assessment order dated 31.12.2019 passed by the Income Tax Officer, Ward-3 Jorhat was without jurisdiction, illegal and liable to be quashed.*

(ii) *That the Id. Commissioner of Income Tax (Appeals) ought to have held that on the basis of evidence produced before him, the appellant was eligible for benefit of provisions of section 10(26) of the Income Tax Act, 1961 as the appellant belonged to a Scheduled Tribe as defined under Article 366 of the Constitution of India.*

(iii) *That both the Assessing Officer as well as the Id. Commissioner of Income Tax (Appeals) erred in treating the purported peak -credit of Rs. 28,86,905/- as income from other sources of the appellant.*

(iv) *That neither the Assessing Officer was justified in making addition of Rs. 22,95,000/- U/s 69A of the Income Tax Act, 1961, on account of cash deposits made during the demonetization period and charging to tax U/s 115BBE of the Income Tax Act, 1961 nor the Id. CIT(A) was justified in sustaining addition to the extent of Rs. 17,95,000/- out of the same.*

(v) *That the aforesaid addition of Rs. 17,95,000/- made U/s 69A of the Income Tax Act, 1961 as sustained by the Id. CIT(A) is contrary to the materials on record, based on irrelevant considerations and non-consideration of relevant material and therefore not sustainable either in facts or in law.*

2. The brief facts of the case are that, the assessee deposited huge cash during the year under consideration and he did not file any return of income for the previous year 2016-17 relevant to the assessment year 2017-18 voluntarily before the due date for filing of return under section 139(1) of the Act or thereafter and since the substantial cash transaction in the assessee's bank account was not matching with his profile available with the Income Tax Department, there was a strong reason to suspect that the appellant's income was much higher than the maximum amount not chargeable to tax for the AY 2017-18 and he was liable to declare such income by filing a return and to pay tax on it. Therefore, a notice under section 142(1) of the Act was issued to the appellant on 22.12.2017 calling for the return of income. Several opportunities of being heard were given to the assessee, but there was

no compliance on the part of the assessee. Hence, the Id. Assessing Officer [AO] completed the assessment under section 144 of the Act as under:-

Total Income of the assessee as discussed in order	Rs. 28,86,905/-
Add: Unexplained money u/s 69A	Rs. 22,95,000/-
Assessed	Rs. 51,81,905/-

3. Being aggrieved, the assessee filed 1<sup>st</sup> appeal before the Id. CIT(A). The Id. CIT(A) vide order dated 13.08.2024 partly allowed the appeal of the assessee.

4. Aggrieved, the assessee filed the present appeal before the Tribunal.

5. We observe that, the Id. CIT(A) has not accepted the claim of the assessee that his income is exempted from income tax due to non-filing of return of income under section 10(26) of the Act as also due to failure in discharging the duty of the assessee under section 69A of the Act before the Id. AO. The Id. CIT(A) observed that the Id. AO has rightly added to the income of the assessee.

6. We further observe that, the Id. CIT(A) allowed relief of Rs. 5,00,000/- to the assessee and the assessment was under section 144 of the Act. It is our opinion that, the assessee may get more relief if he gets another opportunity to substantiate his claims.

7. observe that, the assessee is a resident of the State of Nagaland and belongs to Tribal community who can claim exemption under section 10(26) of the Act by filing return of income and areas of income exempted from income tax by furnishing relevant evidences before the Id. AO if he gets another opportunity. Accordingly, we set aside the order of the Id. CIT(A) dated 13.08.2024 and remand the case of the assessee to the file of the Id. AO. We direct the Id. AO to reframe the assessment after giving the assessee an adequate opportunity of being

heard as the assessee is resident of remote area of the State of Nagaland. The parties also have no objection in remanding the case of the assessee to the Id. AO for a fresh assessment. We direct the assessee also to substantiate his claims before the Id. AO.

8. In the result, the appeal of the assessee is allowed for statistical purposes only.

9. Order pronounced in the open court on this 18<sup>th</sup> day of March, 2025.

Sd/-  
(Rakesh Mishra)  
Accountant Member

Sd/-  
(Manomohan Das)  
Judicial Member

Date: 18.03.2025

Copy forwarded to:-

1. Kivito Sema, H No. 37, Pukhato Village, Kuhuboto area, PIN-797113 (Nagaland)
2. The ITO, Ward-1, Dimapur
3. The Pr.CIT
4. The CIT(A)
5. The DR
6. Guard file

By Order

Assistant Registrar  
ITAT, Guwahati / Kolkata