

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

I.T.A. No. 495/Kol/2025
Assessment Year: 2017-18

Nitesh Kumar (PAN: ALLPK 9936 B)	Vs.	ACIT, Ward-3(1), Malda
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	09.06.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	16.06.2025
For the assessee / निर्धारिती की ओर से	Shri S Jhajharia, AR
For the revenue / राजस्व की ओर से	Shri Praveen Kishore, CITDR

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the assessee against the order of Learned Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 21.10.2024 for AY 2017-18.

2. It appears from the report of the registry that the appeal has been filed after a delay of 66 days for this assessee has filed condonation petition, which are as follows-



Before Notary Public at Islampur Dist Uttar Dinajpur

AFFIDAVIT

I, Nitesh Kumar son of Late Surendra Prasad, residing at Lokenath Para, Ward No. 09, P.O+P.S-Dalkhola, Dist.-Uttardinajpur, West Bengal,733201 being the Appellant do hereby solemnly affirm that –

1. That, I will be preferring an Appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata;
2. That the Appeal is for Assessment Year 2017-18 and the Appeal is against an order passed under section 250 of the Act, by the CIT(A)- NFAC, Delhi dated 21st October, 2024

**Solemnly Affirm and
 declare before Notary
 Islampur Dist Uttar Dinajpur**

3. That, there has been a delay of the delay of 12 days in filing of the before the Hon'ble Income Tax Appellate Tribunal, Kolkata;

4. The reasons for delay in filing of the Appeal before the before the Hon'ble Income Tax Appellate Tribunal, Kolkata are mentioned below-

- a) My accountant / tax consultant who was looking after my financial and tax affairs did not represent my case properly before the Learned CIT(A) as well as never informed me of the order of CIT(A)- NFAC, Delhi dated 21st October, 2024

**SAHANAWAZ ALAM
 NOTARY
 Govt. of West Bengal
 Reg. No 129/2022
 En No. F/110/95/2012
 Islampur, Dist. U/D**

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SI No. 81 - Date

Before Notary
Islampur, Uttar Dinajpur

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- b) I came to know about the order passed by the CIT(A)- NFAC, Delhi dated 21st October, 2024 only in the last week of February and immediately contacted a Chartered Accountant, who advised me to file the Appeal before the Learned Income Tax Appellate Tribunal, Kolkata;
- c) On the advice of the new Chartered Accountant, I have got the Appeal drafted, paid the Appeal fee and now filing the Appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata;

It is humbly submitted that this Hon'ble Income Tax Appellate Tribunal, at Kolkata, on scrutinising the facts and circumstances in the accompanying application, may please construe facts and circumstances as "sufficient cause" for condoning the delay in filing of the Appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata. The facts and circumstances elucidated in the accompanying application involves the question of "substantial justice", where gross delay of 12 days, deserves to be condoned in the overall interest of justice. On the other hand if condoning the delay is being denied it would seriously undermine the cause of justice, resulting into miscarriage of justice for the appellants.

VERIFICATION

I, Nitesh Kumar son of Late Surendra Prasad, residing at Lokenath Para, Ward No. 09, P.O+P.S-Dalkhola, Dist.-Uttardinajpur, West Bengal,733201, do hereby verify that the contents of the above paragraphs are correct and true to the best of my knowledge and belief.

Affirmed at Islampur this 28th day of February, 2025.

Solemnly Affirm and
declare before Notary
Islampur, Uttar Dinajpur

Nitesh Kumar

Signature of Declarant
Identified by me

[Signature]

[Handwritten mark]

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 are that the assessee being an individual is engaged in the wholesale business. The return of income was filed on 24.03.2018 admitting a total income of Rs. 19,42,880/-. The return was processed u/s 143(1) on 06.05.2018. The case was selected for scrutiny under CASS and notice u/s 143(2) was issued on 09.08.2018. Notice u/s 143(2) was issued on 01.07.2019 calling for certain information but there was no response. Even several reminder letters were issued. A show cause letter was also issued on 11.11.2019 but still there was no response accordingly, the assessment was completed and the total income is computed as under:

Income from business on estimate (as discussed)	Rs. 39,52,413/-
Add. Income from agro input import export zone firm &	
Income from other sources	Rs. 3,03,424/-
Unexplained money u/s 69A (as discussed)	Rs. 1,16,15,600/-
Gross total income	Rs. 1,58,71,437/-
Less: Deduction u/s 80TTA	Rs. 4,947/-
Total income	Rs. 1,58,66,437/-

4. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed as there was non-compliance on behalf of the assessee.

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

5. The Ld. A.R in stead of arguing into the merit of the case has only prayed that the assessee has to give an opportunity to place its case before the AO as the order passed by the AO confirmed by the Ld. CIT(A) are an ex-parte order. The AR submits that the appeal should be restored into the file of AO instead of Ld. CIT(A) as AO is the competent person to verify the documents. The Ld. A.R in course of argument undertakes that the assessee will co-operate in the proceedings.

6. Contrary to that the Ld. D.R did not raise any objection in remitting the appeal of the assessee back to the file of A.O.

7. Upon hearing the submission of the counsel of the respective parties, we have perused the order of AO as well as Ld. CIT(A), and there is no dispute that the order passed by the AO and the Ld. CIT(A) are an ex-parte order when there was no response from the side of assessee. The prayer of the assessee is only to this effect that the assessee has to give an opportunity to place its case before the AO. Interest of justice demands to give an opportunity to assessee to place his case before the AO. Accordingly, we set aside the order passed by the AO confirmed by the Ld. CIT(A) and the appeal of the assessee is remitted back to the file of AO for fresh adjudication.

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

Order is pronounced in the open court on 16th June , 2025

Sd/-

Sd/-

(Rakesh Mishra /राकेश मिश्र)
Accountant Member/लेखा सदस्य

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

Dated: 16th June, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Nitesh Kumar, C/O, M/s Salarpuria jajodia & Co., 7, C.R Avenue,
3rd Floor, Kolkata-700072
2. Respondent – ACIT, Ward-3(1), Malda
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata