

आयकर अपीलीय अधिकरण  
कोलकाता 'डी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'D' BENCH, KOLKATA**

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
एवं  
श्री राकेश मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 157/KOL/2025  
Assessment Year: 2017-18**

Siliguri Heights Pvt. Ltd. <i>(Appellant)</i>	Vs.	ITO, Ward-1(3), Siliguri <i>(Respondent)</i>
<b>PAN: AABCG6836E</b>		

**Appearances:**

**Assessee represented by** : A.K. Tibriwal, FCA.  
**Department represented by** : S.B. Chakraborty, Addl. CIT, Sr. DR  
Date of concluding the hearing : 19-June-2025  
Date of pronouncing the order : 24-June-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)- NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2017-18 dated 24.09.2024, which has been passed against the assessment order u/s 143(3) of the Act, dated 06.12.2019.



1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 51 days. An affidavit seeking condonation of delay has been filed by the assessee stating as under:

*"I, Sandeep Agarwal, son of Late S. L. Agarwal, aged 36 years, residing at Khalpara, Siliguri - 734005, West Bengal do hereby solemnly affirm and state as follows;*

*1. That I am the director of Siliguri Heights Private Limited, having its registered office at S.F. Road, Metro Plaza, 3rd Floor, Darjeeling, Siliguri 734 005, West Bengal and I am duly authorized to make this affidavit on behalf of the appellant company in connection with the delay in filing the appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata.*

*2. That an order was passed assed by the Ld. Commissioner of Income Tax (Appeals), NFAC on 24<sup>th</sup> September, 2024 vide Appeal No. CIT(A), Kolkata-4/10507/2019-20 for the AY 2017-18 in respect of appeal filed by us against the Assessment Order dated 06.12.2019 passed in our case u/s 143(3) of the Act.*

*3. That the time for filing the appeal against the aforesaid order passed by Ld. CIT(A) before this Tribunal expired on 23.11.2024.*

*4. That the company intended to file an appeal against the order dated 24-09-2024 passed by the learned Commissioner of Income Tax (Appeals) for Assessment Year 2017-18 within the prescribed time.*

*5. That unfortunately, I suffered a fall in Bathroom resulting in serious injuries in the Hip Bone and Neck.*

*6. That due to the said injuries, I was advised complete bed rest by the attending doctors. Copy of the prescription are annexed herewith as Annexure-A*

*7. That during this period of rest and recovery, I was unable to attend to my professional responsibilities, including overseeing the filing of the appeal before the Hon'ble Tribunal.*

*8. That the delay in filing the appeal was not intentional or due to any negligence but arose solely due to the unforeseen health condition as mentioned above*

*9. That as soon as my health condition permitted, I took immediate steps to ensure the filing of the appeal without any further delay.*

*10. That the appellant company has a strong case on merits, and the delay in filing the appeal was purely due to bona fide reasons beyond my control.*



11. I, therefore respectfully pray that the Hon'ble Tribunal may kindly condone the delay of 58 days in filing the appeal and admit it for adjudication on merits.”

1.2. Considering the application for condonation of delay and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in dismissing the appeal of the assessee when the impugned proceedings were without jurisdiction, illegal and void ab initio in as much as the proceedings have been initiated by issue of Notice u/s 143(2) of the Act by a Non-Jurisdictional Assessing Officer.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the addition of Rs.1,34,50,000 which was made on the arbitrary allegation that the cash deposited in bank during Demonetisation Period was unexplained income u/s 69A of the Income Tax Act, 1961.

3. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the action of the Assessing Officer in assessing the aforesaid sum of Rs. 1,34,50,000 as unexplained income under section 69A of the Act when admittedly the said amounts were duly recorded in books of accounts.

4. That on the facts and in the circumstances of the case, the Ld. CIT(A) NFAC erred in treating the sum of Rs.134,50,000 as unexplained income under section 69A of the Act chargeable to tax at special rate of the tax prescribed under section 115BBE of the said Act

5. That the Ld. CIT(A), NFAC erred in confirming the action of the Assessing Officer in charging interest of Rs.34,26,984 under section 234B which is otherwise not chargeable and / or excessive and/or unreasonable.

6. That the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”



3. Brief facts of the case are that the assessee is a private limited company engaged in the business of contract business of labour supply. The assessee filed its return of income for AY 2017-18 showing total income of ₹'NIL' with current year loss of ₹24,672/-. The case was selected for scrutiny through Computer Assisted Scrutiny Selection (in short 'CASS'). The Assessing Officer (hereinafter referred to as Ld. 'AO') issued the statutory notices. The Ld. AO however, came into possession of an information that the assessee had deposited ₹1,10,00,000/- in Specified Bank Note (SBN) (old currency ₹500 & ₹1000 notes) in bank account(s) maintained with the Federal Bank Limited during the demonetisation period. The assessee was asked to furnish the source of the said cash deposits. The assessee neither explained the sources of cash deposited during demonetization period nor the cash deposited during pre and post demonetization period by producing cash book and other papers and documents. The assessee also failed to correlate the deposits with regard to its disclosed turnover. Therefore, the Ld. AO was of the view that the entire cash deposits made for the period from 01.04.2016 to 31.03.2017 amounting to ₹1,34,50,000/- (₹24,50,000/- (+) ₹1,10,00,000/-) remained unexplained deposits. Accordingly, the Ld. AO treated the entire cash deposit totalling to ₹1,34,50,000/- as unexplained cash credit u/s 68 of the Act r.w.s 115BBE of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who dismissed the appeal of the assessee after observing as under:

*“7. Having considered the factual matrix of the case, I find that the above mentioned additions were made by the AO as there was no proper and complete response from the assessee to various notices/SCN issued by the AO. During the Course of assessment proceedings, the AO had asked the assessee to furnish the details of cash deposits during the year and other credits. I also find that the assessee did not file any submissions supported*



*by proper evidence along with a petition under Rule 46A for admission of evidence the appellate proceedings. The assessee has not controverted the findings of the AO supported by proper evidence. I also find that the additions made by the AO are based on solid evidence which was confronted to evidence whatsoever has been filed by the assessee to substantiate and buttress the assessee by the AO and the additions are made as per the provisions of law. No grounds of appeal. The assessee has not submitted any proof in support of its contention that it had been carrying on some business during the year. The assessee has also not established that it had been carrying on some business in the earlier years and subsequent years and that it had the consistent practice of depositing a large amounts of cash in its bank accounts every year before and after the A.Y.2017-18. In the circumstances, I do not see any reason to interfere with the well reasoned and speaking order of the AO. Therefore, the additions on account of cash deposits of Specified Bank Notes (SBN) of Rs. 1,34,50,000/- in assessee's account as cash credit u/s. 68 of the Act made by the AO are confirmed.*

*Hence, the grounds of appeal are Dismissed.”*

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made and the details filed have been examined. It was submitted by the Ld. AR that the additional grounds/evidence filed were not admitted and our attention was drawn to page 9 paras 4 and 5 of the appeal order, which are reproduced as under:

*“4. Prayer for admitting additional ground of appeal:*

*The assessee had filed a petition for admitting an additional ground of appeal with a prayer to allow submission thereon (Enclosed at page 1-2):*

*"26. For that in the facts and circumstances of the case the DIN (Document Identification number) was not allotted & quoted in the body of the assessment order on 06/12/2019 violating Circular No. 19/2019 dated 14/08/2019 of the Hon'ble Central Board of Direct Taxes and hence the assessment order, be held invalid"*

*5. Prayer for allowing additional evidence:*



5.1 The assessee is in the business of land trading located at Siliguri, North Bengal. The assessee filed its income tax return on 02/11/2017. The return was selected for scrutiny and a notice u/s 143(2) dated 23/09/2018 was served upon the assessee. Subsequently notice was served u/s 142(1) of the IT Act. The assessee asked its Authorized Representative (AR) to make a visit to the Siliguri Office of Income Tax Department as to enquire how notice u/s143(2) can be issued by ITO Ward- 12(2), Kolkata when its principal place of business is situated at Siliguri. However, the Siliguri office did not pay any heed to the same. Thereafter, the AR contracted with the Income Tax Department at Kolkata from where it was informed that the assessee may make an application to the Pr. CIT-4, Kolkata for transfer of the IT file but also advised to make due compliance by participating in the assessment proceeding

5.2 On getting this feedback, from the AR, the assessee had made partial compliance in the e-proceedings by uploading the files on 07/09/2019 and also filed application before the Pr.CIT-4, Kolkata for transfer of its file from Kolkata to Siliguri. Subsequently, the assessee was in receipt of notice u/s 142(1) of the IT Act and also a show cause notice. However, the AR of the assessee had advised the assessee that since its file is in its way for transfer to Siliguri, it would be better to make compliance only thereafter. Later, the assessee came to know that the application was processed and forwarded by the office of PCIT-4, Kolkata. On making enquiry with the Siliguri Office of the Income Tax Department, the same was acknowledged but without any information about the time line of transfer. On 30/11/2019, the AR of the assessee was contacted by the AO who drawn attention that since the PCIT Siliguri shall transfer the file only after the assessment, the assessee had to comply with the final hearing notice dated 30/11/2019 immediately. The AR, who was at that point of time was in Kolkata with his pre-scheduled tax related jobs only for other clients, had asked for a week's time so that on returning to Siliguri, he can upload the files. On 10/12/2019 the assessee received the assessment order dated 06/12/2019 passed u/s 143(3) of the IT Act and found that a huge addition for a sum of Rs. 1,34,50,000, was made u/s 68 of the IT Act.

5.3 From the above it can be seen that the though there were at least 3 weeks' time to avoid time barring, the assessment was completed hurriedly by the Ld. AO and thereby the assessee could not represent its case with necessary explanation Supported by documents. Under such circumstance, the appellant prays to allow Submission of explanations & documents as additional evidence before Your Honour, which may kindly be admitted in terms of clause (b) & (c) of Rule 46A of the Income Tax Rules, 1962. The rule reads as under:



"46A. Production of additional evidence before the Appellate Assistant Commissioner.-(1) The appellant shall not be entitled to produce before the Appellate Assistant Commissioner any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Income-tax Officer, except in the following circumstances, namely:-

(a) where the Income-tax Officer has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Income-tax Officer, or

(c) where the appellant was prevented by sufficient cause from producing before the Income-tax Officer any evidence which is relevant to any ground of appeal

(d) where the Income-tax Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under Sub-rule (1) unless the Appellate Assistant Commissioner records in writing the reason for its admission.

(3) The Appellate Assistant Commissioner shall not take into account any evidence produced under Sub-rule (1) unless the Income-tax Officer has been all owed a reasonable opportunity-

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the Appellate Assistant Commissioner to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Income-tax Officer) under Clause (a) of Sub-section (1) of Section 251 or the imposition of penalty under Section 271."

5.4 The appellant further made a prayer for allowing to make submission with the relevant additional evidences as were prayed to be allowed in the interest of justice."



5.1. It was requested that the matter may be remanded to the Ld. Assessing Officer to consider the documents filed before the Ld. CIT(A).

6. The Ld. DR did not raise any serious objection to the request made by the Ld. AR.

7. We have considered the submissions made. It was considered by the Bench that in the interest of justice and fair play the request of the assessee to set aside the case before the Ld. AO may be allowed so that proper opportunity of being heard may be provided. Hence, after examining the facts of the case, we deem it appropriate to set aside both the orders of the Ld. CIT(A) as well as the Ld. AO and remit the matter back to the Ld. AO for making the assessment *de novo*. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments. Accordingly, the grounds taken by the assessee in the appeal are allowed for statistical purposes.

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

**Order pronounced in the open Court on 24<sup>th</sup> June, 2025.**

Sd/-

**[Pradip Kumar Choubey]**

Judicial Member

Sd/-

**[Rakesh Mishra]**

Accountant Member

Dated: 24.06.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **Siliguri Heights Pvt. Ltd., C/o Sandeep Agarwal, Metro Plaza, S.F. Road, Siliguri, West Bengal, 734005.**
2. **ITO, Ward-1(3), Siliguri.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata