

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

श्री जॉर्ज माथान, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 376, 391, 392 and 393/KOL/2025
Assessment Years: 2018-19, 2019-20, 2020-21 and 2021-22**

Gurupada Maji	Vs.	Additional Commissioner of Income Tax, Central Range – 2, Kolkata
(Appellant)		(Respondent)
PAN: AKZPM0990L		

Appearances:

Assessee represented by : Aakash Kumar, AR.

Department represented by : P.N. Barnwal, CIT, DR.

Date of concluding the hearing : 16-June-2025

Date of pronouncing the order : 25-June-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

These appeals filed by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-26, Kolkata [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2018-19, 2019-20, 2020-21 and 2021-22 dated 24.12.2024, which have been passed against the assessment orders u/s penalty u/s 271D of the Act, dated 28.12.2022.

Since the issues in all the four appeals are common, they were heard together and are being decided vide this common order for the sake of convenience and brevity

2. We will take up the appeal for A.Y. 2018-19 first. The assessee has raised the following grounds of appeal:

I. I.T.A. No: 376; AY 2018-19:

“1. Quantum Appeal Pending:

The penalty order under Section 271 DA has been passed and confirmed without considering the fact that the quantum appeal against the assessment order is still pending before the CIT(A). The appellant contends that until the quantum addition is finalized, the penalty imposed on the same ground is premature and unjustified.

2. Violation of Natural Justice - No Opportunity of Being Heard:

The condonation of delay was rejected without providing the appellant an opportunity of being heard. The appellant was in an unavoidable situation, which led to the delay, and the rejection without considering the genuine cause is against the principles of natural justice.

3. Best Judgment Assessment - Order Pending Revision under Amended Finance Act:

The assessment order was framed under best judgment assessment and is currently under challenge before the CIT(A). As per the amended Finance Act provisions, the case should be remanded back to the AO for reconsideration. Therefore, the penalty order should also be set aside in light of the pending outcome of the revised assessment.

4. Request for Stay of Penalty Proceedings:

Since the main quantum appeal is pending, the penalty imposed under Section 271 DA should not be enforced until the final adjudication of the assessment order. The appellant requests a stay on the penalty demand till the quantum appeal is heard and disposed of.

5. Penalty Proceedings Should Have Been Kept in Abeyance:

The penalty under Section 271 DA has been imposed even though the primary issue is under litigation, and the appellant had requested to keep the penalty proceedings in abeyance. The rejection of this request is contrary to established judicial precedents

6 Any Other Grounds:

The appellant reserves the right to add, amend, alter, or modify any of the above grounds before or during the course of the appeal hearing.”



2.1 Similarly worded Grounds of appeal have been raised in the remaining three appeals as well.

3. Brief facts of the case are that the assessee is an individual and was searched on 05/11/2020 u/s 132 of the Act and assessment u/s 153A r.w.s. 143(3) of the Income Tax Act 1961 was completed on 24/03/2022. The assessee, being aggrieved with the assessment made, preferred an appeal before the Ld. Commissioner of Income Tax (Appeals). Meanwhile, the Ld. AO had initiated the penalty proceedings for violation of the provisions of section 269ST of the Act. Copy of the appeal preferred along with the request to keep the penalty proceedings in abeyance till the disposal of the first appeal were duly submitted along with proof of appeal before the Ld. AO. However, the Ld. AO did not accede to the request of the assessee and passed the order and levied penalty u/s 271DA for violation of the provisions of section 269ST of the Act on the basis of documents found and seized during the course of the search. Aggrieved with the penalty order, the assessee preferred an appeal before the Ld. CIT(A). It was submitted before the Ld. CIT(A) that the penalty u/s 271DA of the Act was levied despite the fact that the assessee had preferred an appeal before the Ld. Commissioner of Income Tax (Appeals) against the assessment orders. It was submitted that the penalty proceedings are not barred by limitation and when the additions and/or disallowances made while framing the assessment are under appeal, the Ld. AO could have kept the penalty proceedings in abeyance till the disposal of first appeal. However, the Ld. CIT(A) vide the impugned order dated 24.12.2024 dismissed the appeal as he did not find any justification for the delay in filing the appeal against the penalty order. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.



4. Rival submissions were heard and the record and the submissions made have been examined.

5. It was submitted by the Ld. AR that proper representation could not be made and the appeal was delayed as the assessee was in jail yet the delay was not condoned by the Ld. CIT(A). A perusal of the appeal order shows that before the Ld. CIT(A) the assessee raised 3 issues as under:

1. That the appellant was in prison.
2. No intimation of such penalty order u/s 271 DA was received on his email id gmalikyc@gmail.com which is the registered email for the e-filing portal of Income Tax.
3. Also, it was informed that no physical delivery of the order was acknowledged from our end.

5.1 The Ld. CIT(A) dismissed the last 2 contentions after verifying the facts and in respect of the assessee being in prison he noted that there had been compliance by the assessee's son in the course of the appeal and the screenshots of the same have been reproduced in the appeal order. However, a perusal of the reply filed by the assessee's son Shri Sourav Maji shows that he has mentioned that he was acting on behalf of the assessee as the assessee was in the custody of the Enforcement Directorate and as such it became very difficult to access his email in time to respond to the aforesaid notices within the time mentioned therein and he was also unable to access all the relevant documents needed for the submission. It is further stated in the letter dated 05.02.2024 that due to the above stated reasons, he was not in a position to complete the preparation for the appeal. It is also submitted in the same letter that in the event the said the Ld. CIT(A) was not agreeable to the aforesaid submission, further time was requested to file



a detailed reply. Another letter dated 04/03/2024 has also been reproduced in the appeal order. Thereafter relying upon Hon'ble Supreme Court's decision, the delay of 264 days in filing the appeal was not condoned as the reasons given by the assessee were not found to be justified in the earlier paragraphs of the order of the Ld. CIT(A). The Ld. DR argued that the assessee was not vigilant and the appeal was filed late which has been rightly dismissed by the Ld. CIT(A).

6. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). It is an undisputed fact that the assessee was under arrest and therefore, even his son was finding it difficult to access the emails and submit the reply. Thus, there was sufficient cause within the meaning of sub-section (3) of section 249 of the Act and the Ld. CIT(A) was not justified in dismissing the appeal on account of delay alone without discussing the merits of the case. At the same time, the penalty under section 271DA has been imposed for violation of the provisions of section 269ST of the Act, which is imposed for the default of receiving cash exceeding Rs. 2,00,000/- as per the provisions of section 269ST and is independent of the assessment of income in the assessment order against which the appeal was pending. Therefore, the assessee was required to furnish the reply to the notices issued for imposition of penalty which had been initiated and had to be disposed of within the limitation provided under the act. We find that before the Ld. AO also proper representation was not made on behalf of the assessee. However, since the Ld. CIT(A) has not disposed of the appeal on merits, the Bench was of the view that the delay in filing the appeal before the Ld. CIT(A) is to be condoned and another opportunity may be provided to the assessee to represent his case before the Ld. CIT(A) as the assessee



being imprisoned could not furnish the required response. Therefore, we deem it appropriate in the interest of justice and fair play that another opportunity needs to be provided to the assessee to represent his case properly before the Ld. CIT(A). We, therefore, set aside the order of the Ld. CIT(A) and remit the appeal to him to be decided afresh, who shall allow an opportunity of being heard to the assessee and also grant an opportunity to the Ld. AO for representing the case and be heard as per rule 46A of the Income Tax Rules, 1962, if required, and thereafter pass an order in accordance with law. For statistical purposes, the appeal of the assessee is allowed for A.Y. 2018-19.

7. Since the Grounds of appeal in I.T.A. Nos.: 391, 392, and 393/KOL/2025 are similar to the Grounds of appeal in I.T.A. No. 376/KOL/2025, the findings as in A.Y. 2018-19 shall *mutatis mutandis* also apply to the appeals for the A.Ys. 2019-20, 2020-21 and 2021-22 as well and the orders of the Ld. CIT(A) are set aside the appeals are remitted to him to be decided afresh and all these appeals of the assessee are also allowed for statistical purposes.

7. In the result, all the four appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 25th June, 2025.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 25.06.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Gurupada Maji, Balitora, Murulia Santuri, Purulia, West Bengal, 723121.**
2. **Additional Commissioner of Income Tax, Central Range - 2, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata, West Bengal, 700069.**
3. CIT(A)-26, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata