

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं/ITA No.2690/KOL/2024

(निर्धारण वर्ष / Assessment Year :2012-2013)

Suwendu Chatterjee, 8D, Krishna Laha Lane, 1 st Floor, near AITUC Office, Kolkata-700012	Vs	DCIT, Circle-48, Kolkata
PAN No. : ACBPC 4347 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Miraz D. Shah, AR
राजस्व की ओर से /Revenue by	:	Shri Shankar Naskar, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	24/07/2025
घोषणा की तारीख/Date of Pronouncement	:	24/07/2025

आदेश / O R D E R

This is an appeal filed by the assessee against the order dated 06.04.2018 passed by the Id. CIT(A)-14, Kolkata for the Assessment Year 2012-2013.

2. Shri Miraj D. Shah, Id.AR appeared on behalf of the assessee and Shri Shankar Naskar, Id. Sr. DR appeared on behalf of the revenue.

3. The appeal of the assessee is delayed by 92 days. In this regard, the assessee has filed an application for condonation of delay supported with an affidavit stating sufficient reasons which are plausible and not found to be false. Accordingly, the delay of 92 days is condoned and the appeal is admitted for hearing.

4. It was submitted by the Id. AR that the AO has made disallowance of Rs.19,55,401/- representing alleged service tax received but not deposited to the account of the Government. Consequently, the AO has added the same as the income of the assessee. It was the submission that

the Id. CIT(A) has confirmed the order of the AO without considering the submission of the assessee that the assessee has not received the said service tax amount. The assessee has also filed an affidavit before me which reads as under :-

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भारतीय गैर न्यायिक

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रु.10

भारत

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RUPEES
Rs.10

INDIA

INDIA NON JUDICIAL

पश्चिम बंगाल WEST BENGAL

GOVT. OF INDIA
SWARNALI MUKHERJEE
NOTARY
588412025
KOL-27
Alipore Judges' Court

BEFORE THE NOTARY PUBLIC
ALIPORE JUDGES' COURT
KOLKATA-700 027

GOVT. OF INDIA
SWARNALI MUKHERJEE
NOTARY
588412025
KOL-27
Alipore Judges' Court

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AFFIDAVIT

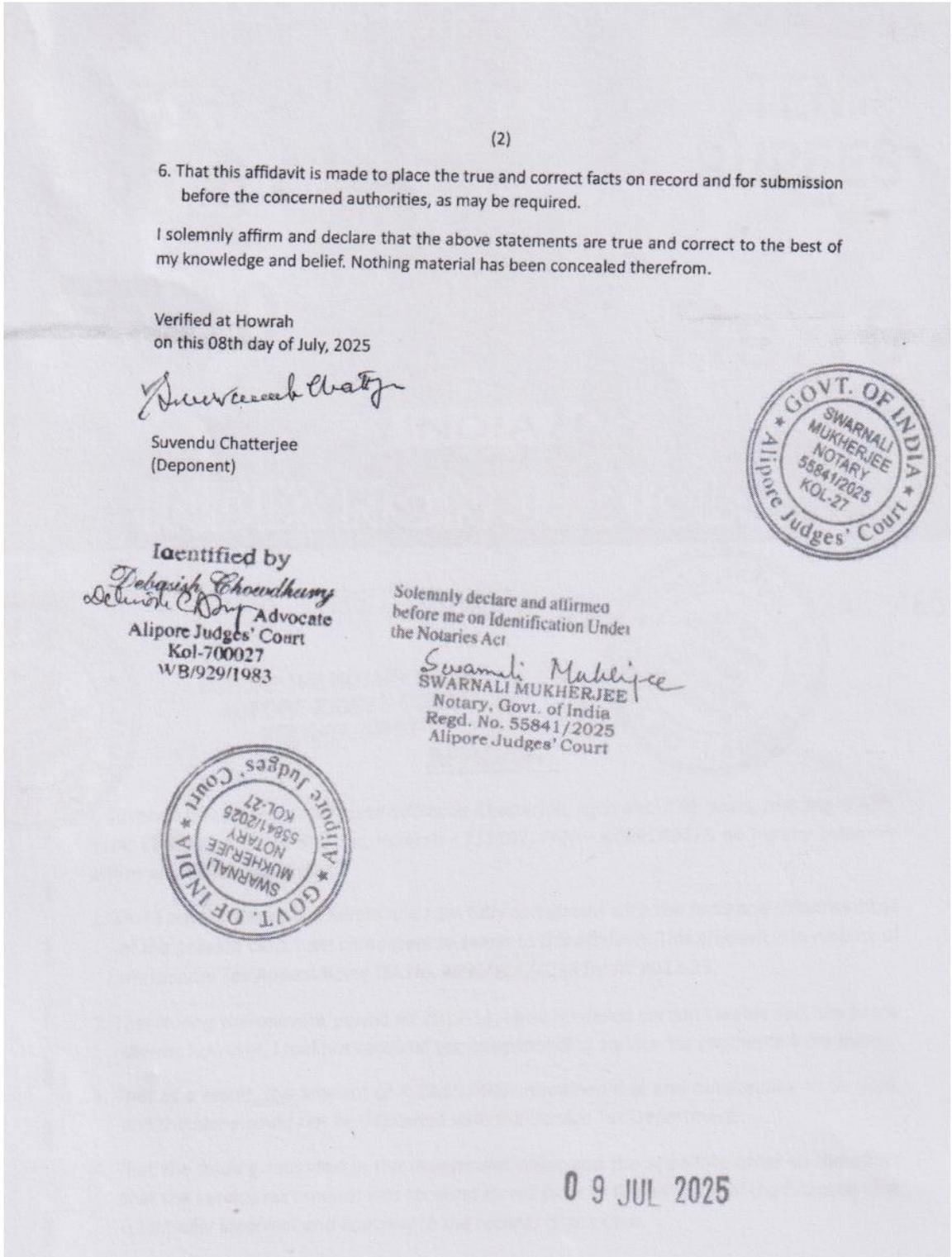
I, Suvendu Chatterjee, son of Late Sudhakar Chatterjee, aged about 65 years, residing at 635, Sarat Chatterjee Road, Shibpur, Howrah - 711102, PAN – ACBPC4347B do hereby solemnly affirm and declare as under:

1. That I am the deponent herein and I am fully conversant with the facts and circumstances of the present case. I am competent to swear to this affidavit. This affidavit is in respect of my Income Tax Appeal being ITA No. 2690/KOL/2024 for AY 2012-13.
2. That during the relevant period AY 2012-13, I had rendered certain taxable services to my clients; however, I had not received the corresponding service tax payments from them.
3. That as a result, the amount of ₹ 19,55,401/- remained due and outstanding to be paid, and the same could not be deposited with the Service Tax Department.
4. That the finding recorded in the assessment order and the appellate order to the effect that the service tax amount was received by me prior to the last date of the financial year is factually incorrect and contrary to the records of the case.
5. That I respectfully state that the said finding is erroneous and does not reflect the true and correct factual position, as the service tax amount was not received by me at the relevant time.

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Suvendu Chatterjee

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5. It was the submission that he has no objection if the issues are restored to the file of AO for verification as to whether the assessee has received the said service tax.

6. In reply, Id. Sr. DR submitted that the issues may be restored to the file of Id. AO in view of the affidavit now filed by the assessee before the Tribunal.

7. I have considered the rival submissions. A perusal of the facts shows that the assessee has filed this affidavit on 8th July, 2025. The assessee has claimed that the assessee has not received the said service tax amount of Rs.19,55,401/-. The assessee submits that the said amount is also shown in the balance sheet of the assessee as receivable. Consequently, I am of the view that this needs verification and, therefore, issues are restored to the file of the Id. AO for verification after granting the assessee adequate opportunity of being heard. The AO shall examine the bills by which the services taxes have been raised and how much of the said bills have been paid and received. If the service tax which has been recorded by the assessee is shown to have not been received then no addition is liable to be made on this count. Should the converse be found in view of the affidavit now filed before the Tribunal, the Assessing Officer shall draw adverse inference in accordance with law.

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

Order dictated and pronounced in the open court on 24/07/2025.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता Kolkata; दिनांक Dated 24/07/2025

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
Income Tax Appellate Tribunal, Kolkata