

आयकर अपीलीय अधिकरण  
कटक पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
CUTTACK BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य  
एवं  
श्री रकेश मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 173 & 174/CTK/2025  
Assessment Years: 2011-12 & 2012-13**

Nisha Data Com Limited	Vs.	Income Tax Officer, Ward-3, Rourkela
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN: AACCN2331A</b>		

**Appearances:**

**Assessee represented by** : None.

**Department represented by** : Ashim Kumar Chakraborty, CIT DR.

Date of concluding the hearing : 14-May-2025

Date of pronouncing the order : 25-July-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

Both these appeals filed by the assessee are against the separate orders 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 AYs 2011-12 and 2012-13 dated 13.01.2025, which have been passed against the assessment



orders u/s 144 and 143(3) of the Act, dated 15.03.2016 and 26.03.2015, respectively.

1.1. Since the issues are common, both the appeals were heard together and are being decided vide this common order for the sake of convenience and brevity.

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

**I. I.T.A. Nos.: 173/CTK/2025; AY 2011-12:**

*"1. For that the addition of Rs.2,09,04,400.00 made for the Assessment Year 2011-12 is against the weight of evidence, unreasonable, arbitrary and is liable to be annulled.*

*2. For that non-confronting the report of the information received u/s 133B of the IT Act, from the Oriental Bank of Commerce, Rourkela and addition on the basis of this information amounting to Rs.2,20,309.00 is illegal, violative of rules of natural justice and is liable to be deleted.*

*3. For that the addition of Rs.90,20,461.00 by rejecting the Assessee's explanation and making the addition as income from other sources as interest income, is totally unjustified and illegal and is liable to be annulled.*

*4. For that the disallowance of expenditure of Rs.5,80,067.00 u/s Section 40(a)(ia) of the Income Tax Act, is illegal, arbitrary and liable to be annulled.*

*5. For that the disallowance of Rs.24,84,000.00 claimed as business expenditure, has been made under suspicious and frivolous grounds which is illegal and arbitrary and liable to be annulled.*

*6. For that the CIT(A) without affording adequate opportunity of hearing dismissed the appeal and confirmed the assessment order, which is violative of principles of natural justice and therefore the order of the Appellate Authority is also illegal and is liable to be set aside.*

*7. For that the additions having been made under pure surmises and conjectures without bringing any corroborative evidence, the additions are liable to be annulled.*

*8. That the Appellant craves leave of this Hon'ble Tribunal to urge any other ground/grounds if any at the time of hearing."*

**II. I. I.T.A. Nos.: 174/CTK/2025; AY 2012-13:**



*“1. For that the addition of Rs.1,99,08,650.00 made for the Assessment Year 2012-13 is against the weight of evidence, unreasonable, arbitrary and is liable to be annulled.*

*2. For that the addition of Rs. 13,79,000.00 as bogus claim under share application money is illegal and violative of principle of natural justice and is liable to be annulled.*

*3. For that the addition of Rs. 1,01,95,050.00 under the head unexplained cash credit is illegal, arbitrary, erroneous and is liable to be annulled.*

*4. For that the CIT(A) without affording adequate opportunity of hearing dismissed the appeal and confirmed the assessment order, which is violative of principles of natural justice and therefore the order of the Appellate Authority is also illegal and liable to be set aside.*

*5. For that the additions having been made under pure surmises and conjectures without bringing any corroborative evidence, the additions are liable to be annulled.*

*6. That the Appellant craves leave of this Hon'ble Tribunal to urge any other ground/grounds if any at the time of hearing.”*

3. We shall first take up the appeal for AY 2011-12. Brief facts of the case are that the assessee had filed the return of income on 30.09.2011 declaring total income of ₹1,77,350/- which was subsequently revised on 31.12.2012 and the total income was again shown at ₹1,77,350/-. During the year under consideration the assessee company had claimed to have been engaged in the business of providing I.T. education, data conversion and software development through its franchisees located all over India. Information was received from the DDIT (Inv.), Rourkela that the assessee had made substantial cash deposits in the bank accounts during the FY 2010-11 relevant to the AY 2011-12; hence, the proceeding u/s 147 of the Act was initiated and accordingly notice u/s 148 of the Act was issued and served upon the assessee for compliance. As there was no compliance to the notice issued u/s 148 of the Act, a notice u/s 142(1) of the Act was also issued. The assessee appeared through the Authorized Representative, Sh. Santosh Kumar Agarwalla,



FCA and submitted copy of Audit report, computation of total income, brief description of business and bank statements. The submission made was considered by the Assessing Officer (hereinafter referred to as Ld. 'AO'). However, a sum of ₹2,09,04,400/- as unexplained cash deposit in the bank account, ₹2,20,309/- as FDR with Oriental Bank of Commerce, ₹5,80,067/- as Expenditure disallowed u/s. 40(a)(ia) of the Act, ₹24,84,000/- as loss on sale of investment and ₹90,20,461/- as interest as income from other sources were added and the total income was computed at ₹3,33,86,590/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who issued several notices of hearing but since the assessee did not respond to any of the notices till the passing of the order, hence, the appeal was dismissed and the order of Ld. AO was confirmed.

4. Rival submissions were heard and the record and the submissions made have been examined. The Ld. AR submitted that there were multiple issues involved and for the FDRs with Oriental Bank of Commerce, the balance could not be tallied. The cash deposits were made by 28 parties from different stations and the deposits were not income and the income had been offered for tax. The non-deduction of TDS on account of advertisement expenses also could not be explained by the assessee. There was loss on investment on sale of shares and deposits on which interest was charged and the notional interest was added to the income of the assessee. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

5. We have considered the submission made. The Ld. CIT(A) has discussed the merits of the case and has simply dismissed the appeal of the assessee. On perusal of the appellate order, it is noticed that while

the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent by e-mail were not complied with but he has not adjudicated the appeal on merit. In this respect, it is relevant to examine the provisions of section 250(6) which are reproduced as under:

*“250(6) – The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”*

6. Thus, section 250(6) of the Act casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for determination and the decision as well as the reason for arriving at such decision. In the present case before us, the Ld. CIT(A) has not mentioned the reasons after examining the records while disposing of the appeal. The Ld. CIT(A) has neither adjudicated upon various grounds of appeal nor has passed a reasoned order for arriving at the decision, as is required u/s 250(6) of the Act. We further note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

*“6. ... The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.*

7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.”

6.1 It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

*“7. An appeal is filed with the CIT(A) from appealable orders listed in Section 246A of the Act. We find that the procedure in appeal before the CIT(A) and the powers of the CIT(A) are governed by Sections 250 and 251 of the Act respectively. The relevant provisions for consideration are as under:—*

*'Procedure in appeal*

*250 (4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).*

...

*(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*

...

*Powers of the Commissioner (Appeals)*

*"Section 251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers —*

*(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.*

...

*(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty."*

...



(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

*Explanation.* - In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.'

8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”

7. After examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) and remit the matter back to the



Ld. CIT(A) for disposal of the grounds taken by the assessee on merits by passing a speaking order. 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 and rule 46A of the I.T. Rules, 1962 shall also be followed, if required. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.

8. As regards the appeal for AY 2012-13, the Ld. AR conveyed that the advance was received against sale from the franchisees and there was difference in opening balance. The assessee had received share application money and the investors could not be produced despite several notices issued by the Ld. AO and the share application money was treated as unexplained cash deposit and added to the income of the assessee. A perusal of the assessment order shows that the assessee was required to furnish the details with ledger account of the parties for liability claimed under the head 'advance against sales' amounting to Rs. 1,22,40,000/- as only the list which contained the name of the party, amount of advance with incomplete postal address was filed. The assessee furnished a copy of the list which contain the details of 39 parties/franchisees. The assessee also furnished the ledger account copy, which has been annexed to the assessment order as Annexure 'A'. The Ld. AO issued notices under section 133(6) for verification of the same, but no reply was received from 2 parties in whose case letters were not returned by the postal authorities and in respect of 35 parties the notices issued through speed post were returned unserved. The assessee failed to furnish the original agreement copy and also failed to produce the franchises for examination and other details were not filed. The Ld. AO also doubted the agreements as the stamp papers were



issued much after the date on which such agreements were made. The assessee also failed to produce the books of account for examination and bills/vouchers of expenses for verification. Therefore, a sum of Rs. 1,99,08,650/- was added as unexplained income and bogus liability. Further, the sum of Rs. 1,22,00,000/- shown as share application money refundable received in cash was also examined and a sum of Rs. 13,79,000/- was added which was received during the year. Another sum of Rs.1,01,95,050/- under the head cash deposits and unexplained transfer transaction was also added.

9. Before the Ld. CIT(A) the assessee could not succeed. The Ld. CIT(A) has discussed the merits of the case and has simply dismissed the appeal of the assessee. On perusal of the appellate order, it is noticed that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent by e-mail were not complied with but he has not adjudicated the appeal on merits. As the facts of confirmation of additions are similar to the findings in A.Y. 2011-12, hence the appeal for A.Y. 2012-13 is also remanded to the Ld. CIT(A) to be done afresh as per the findings in para-7 and the appeal is allowed for statistical purposes.

10. In the result, both the appeals filed for AY 2011-12 and AY 2012-13 are allowed for statistical purposes.

**Order pronounced in the open Court on 25<sup>th</sup> July, 2025.**

*Sd/-*

**[Sonjoy Sarma]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 25.07.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

- 1. Nisha Data Com Limited, AM-44 Basanti Colony, Rourkela, Odisha, 769012.**
- 2. Income Tax Officer, Ward-3, Rourkela.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Cuttack Bench, Cuttack.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata