

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 रकेश मिश्रा, लेखा सदस्य
के समक्ष

Before

SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

&

SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 941/KOL/2025

Assessment Year: 2018-19

Tollygunge Estates (P) Ltd.	Vs.	D.C.I.T., Circle-11(1), Kolkata
(Appellant)		(Respondent)
PAN: AABCT1553B		

Appearances:

Assessee represented by : Siddharth Agarwal, AR.

Department represented by : S.B.Chakraborty, Addl. CIT, Sr. DR.

Date of concluding the hearing : 24-June-2025

Date of pronouncing the order : 08-August-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Addl/JCIT(A)-1, Gurugram [hereinafter referred to as Ld. 'Addl/JCIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19 dated 23.04.2025, which has been passed against the intimation u/s 143(1) of the Act, dated 20.03.2020.



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

“1. For that on the facts and in the circumstances of the case, Ld. CIT(A) was not justified in dismissing the appeal of the assessee in limine(sic) by not condoning the delay in filing appeal though there was a reasonable cause for the delay.

2. For that on the facts and circumstances of the case, the Ld. CIT (Appeals) ought to have reversed the action of the A.O.(CPC) in assessing the income of the assessee at Rs.6,15,55,420/- instead of Rs. Nil while processing the return u/s 143(1).

3. For that on the facts and circumstances of the case, the Ld. CIT (Appeals) ought to have reversed the action of the A.O.(CPC) in assessing the business income at Rs.7,47,94,430/- against the returned business income of Rs.4,58,46,953/- while processing the return u/s 143(1).

4. For that on the facts and circumstances of the case, the Ld. CIT (Appeals) ought to have allowed the claim of the assessee for set off of brought forward loss to the extent of Rs.3,26,07,939/- which was denied by the A.O. (CPC) while processing the return u/s 143(1).

5. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

3. Brief facts of the case are that the assessee filed the return of income showing total income of ₹ 'NIL'. The CPC while processing the return assessed the business income at ₹7,47,94,430/- against the business income shown in the return of income at ₹4,58,46,953/- while processing the return u/s 143(1) of the Act and the total income assessed at ₹6,15,55,420/-. Further, the claim of set off of brought forward losses of ₹3,26,07,939/- was disallowed. Aggrieved with the intimation, the assessee filed an appeal before the Ld. Addl/JCIT(A) which was filed with a delay of more than five years. The Ld. Addl/JCIT(A) considered the application seeking condonation of delay filed by the assessee in which it was submitted that the assessee did not receive the physical copy of the intimation and an affidavit was filed



for condoning the delay stating that the intimation was uploaded on the income tax e-filing portal and no direct communication was received that would have enabled the assessee to take timely action. Further, it was submitted that the issuance of the order on 20.03.2020 coincided with the initial outbreak of the COVID-19 pandemic which led to the nationwide lockdown starting from March, 2020 and during this period the key personnel were not attending the office and the email intimation escaped attention due to the disruption of normal office functioning. In the last week of March, 2025, the accountant accessed the income tax portal and it transpired that huge demand of ₹1,68,90,642/- was raised which arose out of the wrongful adjustments made in the intimation u/s 143(1) of the Act which was issued on March 20, 2020. The assessee then approached the Advocate for proper advice and on the legal advice, the appeal was prepared and uploaded on the portal from the office of the Advocate with a delay of approximately 1822 days. The Ld. Addl/JCIT(A) examined the reason for the delay and though he was of the view that there was no reason to believe that physical copy of the order was not served upon the assessee however, considering the fact that lockdown was declared during that period only and it might have affected the timely delivery of the order but at the same time he mentioned that the CBDT had progressively implemented electronic communication mechanism to enhance transparency and efficiency in tax administration and the e-assessment scheme 2019 notified through Notification No. 61/2019, the electronic communication sent to the taxpayer's registered email address is considered a valid service u/s 282 of the Act now and thus, rejected the application for condonation of delay. He further noted that the assessee had admitted that the order/intimation was posted on the e-filing portal and thus the assessee

was very much aware of the intimation/order and had access to the intimation/order passed by the CPC. Therefore, the contention regarding non-receipt of physical order was found to have no merit and was liable to be rejected. The assessee further remained silent after the period of COVID which was more than three years and therefore, the Ld. Addl/JCIT(A) dismissed the appeal of the assessee. Aggrieved with the order of the Ld. Addl./JCIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival contentions were heard and the submissions made have been examined. The Ld. AR submitted before us that the assessee is an AOP and on account of COVID-19 the portal could not be accessed. It was submitted that only in the year 2025 the portal could be accessed; thus, the assessee was not aware of the intimation issued in this case. A copy of the affidavit filed before the Ld. CIT(A) was filed before us and the content is reproduced as under:

"I, Mr. AKASH NARAYAN SAHGAL, son of Mr. CHAND NARAYAN SAHGAL, aged 57 years, by religion Hindu, resident of 59, BALLYGUNE CIRCULAR ROAD, TRIPURA ENCLAVE, TOWER-II, KOLKATA-700 019, WEST BENGAL, do hereby solemnly affirm and state as follows-

1. That I am one of the director of M/s Tollygunge Estates Private Limited, (hereinafter referred to as the "assessee") and, as such, I am competent to swear this affidavit on behalf of the said company.

2. The intimation under Section 143(1) of the Income-Tax Act was issued on March 20, 2020 for A.Y. 2018-19.13. The last date for filing the appeal against the assessment order before Ld. CIT(A) was on or around April 19, 2020.

4. That there is a delay of around 1822 days approx in filing the appeal before the Ld. CIT(A) against the intimation issued u/s 143(1). The intimation under Section 143(1) was issued on March 20, 2020. That the assessee did not receive any physical copy of the intimation. The said intimation was uploaded on the Income Tax e-filing portal, and no direct communication was received that would have enabled the assessee to take



timely action. Furthermore, the issuance of the order on 20.03.2020 coincided with the initial outbreak of the COVID-19 pandemic, which led to a nationwide lockdown starting from March 2020. During this period, key personnel were not attending office, and the email intimation escaped attention due to the disruption of normal office functioning.

5. In last week of March, 2025, the accountant accessed the income tax portal and thereupon it transpired that huge demand of Rs. 1,68,90,642/- was raised, which arose out of wrongful adjustments made in the intimation under Section 143(1) of the Act which was issued on March 20, 2020 for A.Y. 2018-19.

6. The assessee then approached M/s Subash Agarwal and Associates, Advocates, in Kolkata on or around 07.04.2025 through an acquaintance for proper advice. Subsequently on the legal advice, the appeal was prepared and uploaded on the portal from their office with a delay of approximately 1822 days.

7. That the facts stated in para 1 to 6 are true to the best of my knowledge and belief.”

5. The Ld. AR was asked to assure that due compliance would be made if another opportunity of being heard as sought by him is granted. In this respect, an affidavit has been filed which is reproduced as under:

“I, Mr. Akash Narayan Sahgal, son of Mr. Chand Narayan Sahgal, aged 57 years, by religion Hindu, resident of 59, Ballygunge Circular Road, Tripura Enclave, Towe-II, Kolkata -7000019 do hereby solemnly affirm and state as follows-

1. That I am the Director of M/s. Tollygunge Estates Private Limited, (hereinafter referred to as the "assessee") and, as such, I am competent to swear this affidavit on behalf of the said Company.

2. That the assessee had filed an appeal for A.Y. 2018-2019 before the Hon'ble Tribunal against the appellate order passed by the Ld. CIT(A) relating to intimation issued U/s 143(1) of the Income Tax Act, 1961.

3. That the said appeal was dismissed by the Ld. CIT(A) on ground of delay in filing appeal vide an order dated 23.04.2025.

4. That I give an undertaking that proper compliance would be made in case the matter is sent back to the file of lower authorities by the Hon'ble ITAT.

5. That the facts stated in para 1 to 3 are true to the best of my knowledge and belief and the averment in para 4 is an undertaking given by me.”



6. We have considered the submissions made and are of the view that since the appeal was against the intimation u/s 143(1) of the Act in which the carry forward loss was not allowed and the business income was also enhanced and apparently no proper opportunity of responding was availed by the assessee either before the Ld. AO as well as before the Ld. CIT(A), therefore, the Bench was of the view that the assessee AOP had a reasonable cause for the delay which ought to have been condoned and the merits of the case should have been examined. We, therefore, set aside the order of the Ld. CIT(A) and remit the appeal to him to be decided afresh. The assessee is directed to file a proper application justifying the delay of about three years for which no justification was filed earlier and thereafter, the Ld. CIT(A) may decide the appeal on merit after condoning the delay if adequate justification has been given and shall also allow an opportunity of being heard to the assessee and also grant an opportunity of representing the case and be heard to the Ld. AO as per rule 46A of the Income Tax Rules, 1962, if required, and thereby pass an order in accordance with law. For statistical purposes, the appeal of the assessee is allowed.

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

Order pronounced in the open Court on 8th August, 2025.

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 08.08.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Tollygunge Estates (P) Ltd., C/o. Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata, West Bengal, 700069.**
2. **D.C.I.T., Circle-11(1), Kolkata.**
3. Addl/JCIT(A)-1, Gurugram.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata