

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA Nos. 519 & 520/KOL/2024  
(Assessment Years: 2015-16 & 2017-18)**

**Usha Devi Mittal Agarwal**  
H.No. S VII/84 Society Hardware  
Store, Palzor Stadium Road,  
Gangtok, East Sikkim-737201

**(Appellant)**

**Vs.**

**Income Tax Officer,  
Ward 3(1), Gangtok, Sikkim  
Gangtok, Sikkim-737202**

**(Respondent)**

**PAN No. ATEPA8462F**

**Assessee by** : Shri Miraj D. Shah, AR  
**Revenue by** : Shri Mangtinlen Haokip, DR

**Date of hearing:** 28.07.2025  
**Date of pronouncement:** 08.08.2025

**ORDER**

**Per Pradip Kumar Choubey, JM:**

These are appeals preferred by the assessee against the orders of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 09.01.2024 for A.Ys. 2015-16 & 2017-18.

02. As the facts and circumstances are similar in both the appeals in ITA Nos. 519 & 520/KOL/2024 for A.Ys. 2015-16 & 2017-18, Hence, we will take ITA No. 519/KOL/2024 as lead case and decide the issue.

**519/KOL/2024 for A.Y. 2015-16**

03. The brief fact of the case is that the assessee did not file any return of income for the A.Y. 2015-16 as she is a Sikkim original settler and residing in Sikkim, hence, according to her she is entitled to the exemption u/s 10(26AAA) of the Income-tax Act, 1961 (the Act). The case of the assessee was selected for reassessment u/s 147 of the Act and in response to the notice, assessee filed the return. However, the

Id. AO held the return to be invalid.as it has been filed after due date. The Id. AO passed an ex-parte order u/s 147 of the Act and assessed the income of the assessee at ₹23,23,611/- by rejecting the exemption u/s 10(26AAA) of the Act.

04. Aggrieved by the said order, assessee preferred the appeal before the Id. CIT (A), wherein the appeal of the assessee has been dismissed because of reason that the assessee did not file any details or documentary evidences in support of the statement of facts and grounds of appeal.
05. Being aggrieved and dissatisfied, the assessee preferred appeal before us
06. The Id. AR instead of arguing into the merit of the case have only prayed that the appeal be remitted back to the file of the Id. AO for fresh consideration with a liberty to the assessee to file documentary evidences. The Id. AR submits that the Id. AO as well as the Id. CIT (A) has passed an ex-parte order ignoring the fact that the assessee is Sikkim original settler and entitled for the exemption. The Id. AR further submits that Hon'ble Apex Corut has also decided this issue in the favour of the assessee that has been ignored by the Id. CIT (A). The Id. AR has also taken the legal ground regarding the reasons recorded and approval/ sanctioned of the competent authority. His prayer is that the appeal of the assessee be remitted back to the file of the Id. AO for fresh consideration after hearing the assessee.
07. Contrary to that, the Id. DR though supports the impugned order but did not raise any objection in remitting the appeal of the assessee to the file of the Id. AO.

08. Upon hearing the submissions of the Counsel of the respected parties, we have perused the order of the Id. lower authorities and find that the Id. AO in its order has held that in the instant case the assessee has failed to file the return of income within stipulated time in response to notice u/s 148 of the Act hence, the return filed by the assessee is declared to be invalid return. The Id. AO has rejected the contention of the assessee that Hon'ble Apex Court has only stayed the coercive action by passing the interim order and there was no stay on the assessment proceedings, hence, the assessment was done. The Id. CIT (A) has passed the order when there was no proper compliance made by the assessee before him. It is pertinent to mention here that Hon'ble Apex Court in this issue has already passed a final order. It is further important to mention here that before the Id. CIT (A) the assessee could not be able to file any details or documentary evidences in support of the statement of facts. The Id. CIT (A) has clearly held in the order that assessee has not file any details/ documentary evidences, even final opportunities has been provided to him.

Since, the orders passed by the lower authorities are an ex-parte order and there was no proper compliance, hence, for the interest of justice, we are inclined to remit the appeal to the file of the Id. AO with a direction to pass a fresh order after affording a reasonable opportunity to the assessee to place all the documentary evidences and law to this effect. The Id. AO directed to pass a fresh order after hearing the assessee on factual basis as well as on legal basis. The appeal of the assessee is allowed for statistical purposes.

**520/KOL/2024 for A.Y. 2017-18**

09. The issue raised in this appeal is similar to one as decided by us in ITA No. 519/KOL/2024. Accordingly, our decision would, mutatis mutandis,

apply to this appeal of assessee in ITA No. 520/KOL/2024 for A.Y. 2017-18 also. Hence, the appeal of assessee in ITA no. 520/KOL/2024 is allowed for statistical purposes.

010. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 08.08.2025.

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Sd/-  
(PRADIP KUMAR CHOUBEY)  
(JUDICIAL MEMBER)

Kolkata, Dated 08.08.2025

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata