

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

Before

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

**I.T.A. No.: 1169/KOL/2025
Assessment Year: 2017-18**

Samiruddin Khan <i>(Appellant)</i>	Vs.	ITO, Ward-1(2), Burdwan <i>(Respondent)</i>
PAN: AHZPK2409B		

Appearances:

Assessee represented by : Palas Chattopadhyay, CA.
Department represented by : Ranu Biswas, Addl. CIT, Sr. DR.
Date of concluding the hearing : 30-July-2025
Date of pronouncing the order : 10-September-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals) [hereinafter referred to as Ld. 'CIT(A)']-NFAC, Delhi passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2017-18 dated 19.10.2023, which has been passed against the assessment order u/s 143(3) of the Act, dated 16.12.2019.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 515 days. A true copy of an affidavit seeking condonation of delay has been filed by the assessee stating as under:

"I, Sri SAMIRUDDIN KHAN, s/o of Abdul Jabbar Khan residing at J B Hazra Road, Jailkhana More, and Burdwan-713101 do hereby solemnly affirm and declare as follows:



1. That I am an Assessee of Income Tax, identified by PAN AHZPK2409B and have filed revised return of income electronically on 01.11.2017 declaring total income at ₹ 2,93,420. The case was subsequently selected for limited scrutiny under CASS for the reason being SBN Deposited into Bank during the demonetization period.
2. That the Ld. ITO WARD 1(2), Burdwan assessed my Income for an amount of 17,80,010 u/s 143 (3) of the Acts on 16/12/2019.
3. That I have engaged CA Palas Chattopadhyay, Chartered Accountant of Kolkata to file an Appeal against the impugned Assessment order passed by the Ld. ITO, Ward 1(2), Burdwan on 16/12/2019 in Form 35 before the CIT (A), Burdwan. In the Form 35 the email address was mentioned as palas1966@gmail.com and requested to send the notice in the email id of my consultants as palas1966@gmail.com.
4. That the Ld. CIT (A) issued notice u/s 250 of the Acts on different dates and sent me to the email address of biplabmalik93@gmail.com, and sanjitghosh103@gmail.com, which belongs to my earlier Tax Consultants cum Accountant.
5. That neither I nor my consultants was aware of the facts that the Ld. CIT (A) had issued multiple notice u/s 250 of the Acts. Finally the Ld. CIT (A) passed an ex-party order u/s 250 of the Acts on 19/10/2023.
6. That I have come to know the facts in the month of January 2025 when my son in law opened the Income Tax portal that the Ld. CIT(A) passed an ex-party order u/s 250 of the Acts on 19/10/2023 and dismissed the appeal on the ground of no reply/submission having been uploaded in his office and passed an order on that date without giving further opportunity of being heard and also served me perhaps through the email id of either biplabmalik93@gmail.com, and/or sanjitghosh103@gmail.com.
7. That due to my ill health I could not contact my consultant CA Palas Cjhattopadhyay in Kolkata for a pretty long period and my Local Accountant cum Tax Consultants was also not available for a pretty long period.
8. That the due date of filing a 2nd Appeal before the Hon'ble ITAT, Kolkata Bench was due on 18/12/2023 has been elapsed before I have come to know the facts.
9. That my Son in Law was contacted a local Advocate for filing an appeal before 2d Appeal before the ITAT, Kolkata, with condonation of delay in filing an appeal against the order passed by the Ld. CIT (A)/NFAC. But the said Advocate has failed to file an appeal.



10. That I contacted a few days back CA Palas Chattopadhyay of Kolkata with the help of my earlier tax Consultants and requested to file an Appeal before ITAT, Kolkata.

11. That I have arranged the documents and handed over to him for preparation and file an appeal before and he has taken some time for preparation and filing of the grounds of appeal against the Ex-Party order passed by Ld CIT(A) dated 19/10/2023 and thus is filing same with a delay of about 528 days beyond the prescribed due date before this Hon'ble Tribunal.

12. That this delay having taken place unintentionally and I having been prevented by sufficient and reasonable cause in filing this appeal within time, a condonation petition has been filed before the Hon'ble ITAT for admission of the appeals and adjudication thereof. On the above facts, there was no mala fide intention behind not filing the ground of appeal within the prescribed time.

13. That the above statement is true to the best of my knowledge and belief.”

1.2. Considering the application for condonation of delay and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

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

“1. That having regard to the facts and circumstances of the case, the action of Ld. AO in passing the impugned assessment order u/s 143(3) dated 16.12.2019 is illegal, bad in law, inter alia for the reason that the said assessment order has been passed without reasonable opportunity to submit reply against show cause notice issued on 10/12/2019 and fixed hearing 13/12/2019 and also denied adjourn request for 17/12/2019. on

2.1 That the Ld. CIT(A), NFAC has erred in upholding the addition made by Ld. AO as undisclosed money credited in undisclosed Banking Account which was maintained by the wife of the Appellant.

2.2 That the Ld. CIT(A), NFAC has erred in upholding the addition made by Ld. AO as un-explained Money u/s 69A of the Acts in respect of SBN



deposited during the demonization period in SB account in the name of the wife of the Appellant

3. That the Ld. CIT(A), NFAC has erred in upholding the addition made by Ld. AO as un-explained Money u/s 69A of the Acts in respect of SBN deposited during the demonization period according to the instruction of RBI out of the Cash in Hand as on 08/11/2016 of Business Cash Books amounting to ₹12,02,348/- out of which SBN was ₹11,11,500/- into the business Bank account.

4. That the Ld. CIT(A), NFAC has erred in upholding the addition made by Ld. AO as fictitious liabilities on the basis of reply received from the Bhavani Egg Traders, a sundry creditor showed his balance NIL against the Balance of Appellant Books of Accounts ₹1,00,000

5. Whether the CIT(A) was justified in upholding the disallowance, when the genuineness of the cash payments have not been doubted by the authorities and further considering the business expediency and in the light of the Supreme Court decision in 191 ITR 667, there was no scope for disallowance under Section 40A(3) of the Acts.

5.1 Whether the CIT(A) was justified in upholding the disallowance, when the payment has been made to the Agent of the Sundry Creditors part by part to their agent which was not exceeding Rs. 20,000/- and hence the provision of section 40A(3) would not be applicable to the appellant

6. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

3. Brief facts of the case are that the assessee is an individual and had e-filed the return of income u/s 139(1) of the Act showing total income of ₹2,93,420/-. The case was selected for scrutiny through Computer Assisted Scrutiny Selection (in short 'CASS'). Notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee but the assessee did not comply to the same. The Assessing Officer (hereinafter referred to as Ld. 'AO') added the unexplained money credited in the undisclosed bank account to the tune of ₹14,853/-, unexplained money deposited in SBNs during the demonetization period to the tune of ₹11,60,500/-, bogus sundry creditors claimed to the tune of ₹1,00,000/- and disallowed expenses u/s 40A(3) of the Act



to the tune of ₹2,11,244/- and assessed the total income at ₹17,80,010/- u/s 143(3) of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who, vide order dated 19.10.2023, partly allowed the appeal of the assessee dismissing the grounds of appeal relating to the additions made by the Ld. AO.

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. The Ld. DR drew our attention to the fact that the assessment order is dated 16/12/2019 while the appeal order had been passed on 19/10/2023. It was stated that both before the Ld. AO as well as before the Ld. CIT(A), the assessee did not avail the opportunities of being heard which were provided. The Ld. CIT(A) has relied upon the decision in the case of Smt. S. Rajalakshmi [2018] 100 taxmann.com 68 (Bombay) to hold that since the assessee is the 1st account holder and no evidence was brought on record to prove that the deposits were made by his wife out of her savings, therefore, the addition of ₹14,853/- was confirmed. Further, the addition of ₹11,11,500/-, made on account of SBNs deposited during the demonetisation period, was reduced to ₹8,11,500/- (incorrectly mentioned as ₹8,11,5000/- by the Ld. CIT(A)) and a sum of ₹ 3,00,000/- was allowed as a relief on account of the cash in hand available on 08/11/2016. The Ld. AO was also directed to reduce the amount of ₹ 8,11,500/- from the total receipts of business as the business income would have to be recomputed after reducing the additions appellant. The other additions on account of unreconciled sundry creditor at ₹ 1,00,000/- and under section 40A(3) at ₹ 2,11,244/- were also confirmed. The Bench was of the view that in the interest of justice and fair play, the request of the assessee to set aside



the case before the Ld. AO may be allowed so that a proper opportunity of being heard may be provided. At the outset, the Ld. AR submitted that the order passed by the Ld. CIT(A) is an ex parte order. Hence, the Ld. AR prayed before the Bench to set aside the order of the Ld. CIT(A) and restore the issue to the file of the Ld. AO for adjudication afresh. We find that the assessee, despite being provided sufficient opportunities of hearing before the Ld. CIT(A), did not present himself in the appellate proceedings and therefore, cannot agitate for violation of the principles of natural justice.

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). Hence, after examining the facts of the case, in the interest of justice and so as to grant the assessee adequate opportunity to substantiate his case we deem it appropriate to set aside the order of the Ld. CIT(A) as well as the order of the Ld. AO and remit the matter back to the Ld. AO for making the reassessment de novo subject to the cost of Rs. 5,000/- (Rupees five thousand) only payable to West Bengal State Legal Services Authority, City Civil Court Building 1st Floor 2 & 3, Kiron Sankar Roy Road, Kolkata - 700001 within sixty days from the date of this order and the receipt of the same would be produced before the Ld. AO at the first hearing. Should the assessee not pay the abovementioned cost within the prescribed period of sixty days from the date of this order, the order of the Ld. CIT(A) shall stand confirmed. Accordingly, the grounds taken by the assessee in his appeal are partly allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.



Order pronounced in the open Court on 10th September, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 10.09.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Samiruddin Khan, 47, B.B. Ghosh Road, Burdwan Mukherjee Super Market, Burdwan, West Bengal, 713101.**
2. **ITO, Ward-1(2), Burdwan.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata