

आयकर अपीलीय अधिकरण
कोलकाता 'डी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

श्री जॉर्ज माथान, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 1235 & 1236/KOL/2025
Assessment Years: 2018-19 & 2019-20**

| | | |
|------------------------|-----|------------------------------------|
| Sujoy Krishna Jana | Vs. | DCIT/ACIT, Circle 27(1), Haldia |
| (Appellant) | | (Respondent) |
| PAN: ACIPJ7166J | | |

Appearances:

Assessee represented by : Sujay Sen, AR

Department represented by : Smt. Madhumita Das, Addl. CIT,
Sr. DR.

Date of concluding the hearing : 07-August-2025

Date of pronouncing the order : 12-September-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 2018-19 and 2019-20 dated 14.02.2025, which have been passed against the intimation



u/s 143(1) of the Act dated 13.12.2019 & 14.05.2020 respectively. Since the issues in both the appeals are for the same assessee, they 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. ITA No.: 1235/KOL/2025:

“1. That on the facts and on the circumstances of the case the order dated 14th February, 2025, passed by the ADDL/JCIT(A)-4, Mumbai is illegal, abinitio void and bad in law and the same is liable to be cancelled/set aside/quashed.

2. That on the facts and on the circumstances of the case, the ADDL/JCIT(A)-4, Mumbai had grossly erred in not condoning the delay in filing of the Appeal without appreciating that the Appellant had "sufficient cause" for such delay and also not deciding the Appeal on merits.

3. That on the facts and on the circumstances of the case, the ADDL/JCIT(A)-4, Mumbai, had failed to appreciate/understand that the amendment to sub clause (iv) of clause (a) to section 143(1) was brought into the statute with effect from Assessment Year 2021-22 and the same could not have been invoked for the Assessment Year under Appeal that is Assessment year 2018-19

4. That on the facts and on the circumstances of the case, the ADDL/JCIT(A)-4, Mumbai had failed to understand/appreciate that no adjustments in an intimation passed under section 143(1)(a) is permissible when such adjustments involve a debatable issue on which more than one views are possible.

5. That on the facts and on the circumstances of the case, the ADDL/JCIT(A)-4, Mumbai had failed to understand/appreciate that a wrong qualification in the Tax Audit Report, through inadvertence by the Tax Auditor could be a ground for addition when there is no such expenses claimed in the audited Profit & Loss Account.

6. Without prejudice to the aforesaid grounds and that on the facts and on the circumstances of the case, the ADDL/JCIT(A)-4, Mumbai had failed to



appreciate that the Qualification in the Tax Audit Report was in respect of the then provisions of VAT. where there was no requirement to charge VAT separately as the same was included in the invoices of the contractors and hence the question of VAT not paid does not arise for the Assessment Year 2018-19.

7. That the Appellant craves leave to alter/amend/rescind/ the aforesaid grounds or prefer addition grounds during the course of the Appeal or before.”

II. ITA No.: 1236/KOL/2025:

“1. That on the facts and on the circumstances of the case the order dated 14 February, 2025, passed by the ADDL/JCIT(A)-4, Mumbai is illegal, abinitio void and bad in law and the same is liable to be cancelled/set aside/quashed.

2. That on the facts and on the circumstances of the case, the ADDL/ICIT(A)-4, Mumbai had grossly erred in not condoning the delay in filing of the Appeal without appreciating that the Appellant had "sufficient cause" for such delay and also not deciding the Appeal on merits.

3. That on the facts and on the circumstances of the case, the ADDL/JCIT(A)-4, Mumbai. had failed to appreciate/understand that the amendment to sub clause (iv) of clause (a) to section 143(1) was brought into the statute with effect from Assessment Year 2021-22 and the same could not have been invoked for the Assessment Year under Appeal that is Assessment year 2019-20

4. That on the facts and on the circumstances of the case, the ADDL/ICIT(A)-4, Mumbai had failed to understand/appreciate that no adjustments in an intimation passed under section 143(1)(a) is permissible when such adjustments involve a debatable issue on which more than one views are possible.

5. That on the facts and on the circumstances of the case, the ADDL/ICIT(A)-4, Mumbai had failed to understand/appreciate that a wrong qualification in the Tax Audit Report, through inadvertence by the Tax Auditor could be a ground for addition when there is no such expenses claimed in the audited Profit & Loss Account.

6. Without prejudice to the aforesaid grounds and that on the facts and on the circumstances of the case, the ADDL/ICIT(A)-4, Mumbai had failed to appreciate that the Qualification in the Tax Audit Report was in respect of the then provisions of VAT. where there was no requirement to charge VAT



separately as the same was included in the invoices of the contractors and hence the question of VAT not paid does not arise for the Assessment Year 2019-20

7. That the Appellant craves leave to alter/amend/rescind/ the aforesaid grounds or prefer addition grounds during the course of the Appeal or before.”

3. We shall 1st take up the appeal for the assessment year 2018-19. Brief facts of the case are that the assessee had filed the return of income for the assessment year 2018-19 on 30/10/2018 declaring total income of ₹ 99,44,310/- which was processed under section 143(3) of the Act and an intimation with total income of ₹ 1,66,78,010/- was issued on 13/12/2019, wherein adjustment of ₹ 67,33,700 has been made. Aggrieved with this intimation, the assessee filed an appeal before the Ld. CIT(A) who dismissed the appeal on account of delay without discussing the merits of the case. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. We have heard the rival contentions and perused the material available on record. It was submitted by the Ld. AR that the assessee is 73 years old and was suffering from COVID-19 pandemic and his wife had also expired. An affidavit justifying the delay before the Ld. CIT(A) has also been filed in both the years, which is as under:

“I SUJOY KRISHNA JANA son of Amulya Ratan Jana residing at Jasora, P.O- Jasora, P.S- Panskura Dist- Purba Medinipur, Pin-721641 (hereinafter referred to as "the Appellant"), do hereby solemnly affirm that-

- 1. That, the Appellant had preferred an Appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata in ITA No. 1235/Kol/2025;*
- 2. That the Appeal is for Assessment Year 2018-19 and the Appeal is against an order passed under section 250 of the Act, by the Addl/JCIT (A) -4, Mumbai, dated 14th February, 2025.*
- 3. That, there was a delay of 972 days in filing of the Appeal before the Addl/JCIT (A) 4. Mumbai, which had not been condoned and the Appeal has*



been dismissed by the Addl/JCIT (A) -4, Mumbai, without deciding the Appeal on merits.

4. The reasons for delay in filing of the Appeal before the CIT(A) are mentioned below-

a) During the passing of intimation dated 14.5.2020 there was the pandemic which was prevailing in India

b) The Appellant is not tech friendly and stays in a remote place and he forgot the password of his mail

c) The Appellant only came to know about the passing of the intimation around November-December, 2024 on receipt of communication for the JAO.

d) The Appellant immediately approached its tax consultant and the Appeal was filed with the Learned CTT(A), along with a petition to condone the delay

e) The Learned Addl/JCIT (A) -4, Mumbai, had not condoned the delay hence this prayer is made before the Learned Tribunal, requesting to provide a further opportunity of hearing before the Addl/JCIT (A) -4, Mumbai,

It is humbly submitted that this Hon'ble Income Tax Appellate Tribunal, at Kolkata, on scrutinising the facts and circumstances in the accompanying application, may please construe facts and circumstances as "sufficient cause" for condoning the delay in filing of Appeal before the CIT(A). The facts and circumstances elucidated in the accompanying application involves the question of "substantial justice", where the delay, deserves to be condoned in the overall interest of justice. On the other hand if condoning the non-compliance is being denied it would seriously undermine the cause of justice, resulting into miscarriage of justice for the appellant"

4. The Ld. AR requested that the matter may be remanded to the Ld. CIT(A) as the assessee had sufficient cause for the delay which ought to have been condoned. The Ld. DR relied upon the order of the appellate authority and requested that the same may be confirmed.

5. We have considered the rival submissions and have also gone through the facts of the case, the submission made and the documents filed. Considering the facts of the case, we are of the view that the assessee had sufficient cause for the delay which ought to have been condoned by the Ld. CIT(A) and the appeal ought to have been decided on merits. This is so because no opportunity was allowed to the assessee by the CPC before making the adjustment as is stated in the Grounds of appeal. Further, as is evident from the grounds of appeal,



there were certain qualifications in the audit report on the basis of which adjustment was made. Since the merits of the case were not argued before us, and the same have not been decided by the Ld. CIT(A), hence, we condone the delay in filing the appeal before the Ld. CIT(A) and restore the appeal before him for hearing the appeal on merits and adjudicating the same. The assessee shall be at liberty to raise all legal contentions before the Ld. CIT(A). The appeal is thus partly allowed for statistical purposes.

6. Since the facts in A.Y. 2019-20 are similar, the order of the Ld. CIT(A) for A.Y. 2019-20 is also set aside and the appeal is restored to his file for deciding afresh after providing an adequate opportunity of being heard to the assessee. This appeal is thus also partly allowed for statistical purposes.

7. In the result, both the appeals are partly allowed for statistical purposes.

Order pronounced in the open Court on 12th September, 2025.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 12.09.2025



Copy of the order forwarded to:

1. **Sujoy Krishna Jana, C/o. M/s. Salarpuria Jajodia & Co., 7, C.R. Avenue, 3rd Floor,, Kolkata, West Bengal, 700072.**
2. **DCIT/ACIT, Circle 27(1), Basudevpur, Talpukur, Haldia, West Bengal, 721602.**
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