

**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.: 1135/KOL/2025  
Assessment Year: 2018-19**

Dipak Kumar Hazra <i>(Appellant)</i>	Vs.	ITO, Ward-47(2), Kolkata <i>(Respondent)</i>
<b>PAN: ABFPH5605J</b>		

**Appearances:**

**Assessee represented by** : Miraz D. Shah, AR.

**Department represented by** : Kallol Mistry, JCIT, Sr. DR.

Date of concluding the hearing : 29-July-2025

Date of pronouncing the order : 21-October-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order 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 AY 2018-19 dated 30.09.2021, which has been passed against the intimation order u/s 143(1) of the Act, dated 16.10.2019.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 26 days. An affidavit seeking condonation of delay has been filed by the assessee stating as under:

*"I, Dipak Kumar Hazra son of Khagendra Chandra Hazra at Viveknagar, "C" Road, Bamargachi, Salkia, Howrah-711 106 do hereby solemnly affirm and declare as under:-*



- 1) That I am assessed to tax under PAN ABFPH5605J with Income Tax Officer, Ward 47(2), Kolkata.
- 2) That I have filled my return of income for Asst. year 2018-19 on 31/03/2019 declaring total income of Rs. 7,72,820/-.
- 3) That Assessing Officer, at CPC has passed Intimation Order on 16/10/2019 determining total income at Rs. 32,60,310/- making addition of Rs. 24,87,487/- as and by way of adjustment U/s 143(1)(a) of the Act.
- 4) That I filled appeal against such adjustment and appeal order was passed on 30/09/2021.
- 5) That I confirm and affirm that said appeal order dated 30/09/2021 was not delivered in my mail Id given.
- 6) That Jurisdictional Assessing Officer, Ward 47(2), Kolkata issued a letter on dated 10/02/2025 for verification in order to give effect the order of CIT (Appeal) by which I came to know that Ld. CIT (Appeals) has passed the appeal order on 30/09/2021.
- 7) That I came to know about the appeal order only on 10/02/2025 when JAO issued notice for verification of payment of ESI/PF to give effect the appeal order.
- 8) I hereby affirm and confirm that I first time seen the appeal order dated 30/09/2021 on 10/02/2025 only.
- 9) That I replied to JAO on 18/02/2025 and requested to given appeal effect.
- 10) That on that occasion I found that appeal filled was partly allowed by CIT (Appeals).
- 11) That I had consulted by tax practitioner, who could not guide me properly for further steps to be taken.
- 12) That later with the help of mutual friend, I came in contact with senior consultant at Kolkata on or about 22/05/2025.
- 13) That said senior consultant immediately took the steps for filing the appeal before Tribunal.
- 14) That because of non delivery of appeal order in mail and later due to not getting proper advice there became delay in filing the appeal before Tribunal.
- 15) That I first time came to know of the appeal order only by the letter dated 10/02/2025 from the JAO and therefore date of receipt of appeal order be taken as 10/02/2025.



16) That from the said date the due date for filing the appeal was 11/04/2025 and appeal is being filled with delay of 46 days which I pray to condone the same.

17) That above statement are true to best of my knowledge and belief.”

1.2. Considering the affidavit 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 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) For that on the facts and circumstances of the case, Ld. CIT(Appeals) was grossly erred in confirming the addition made by A.O. CPC of Rs. 22,84,687/- U/s 43B for unpaid GST when such GST was not routed through the Profit & Loss Account.

2) For that on the facts and circumstances of the case, Ld. CIT (Appeals) was grossly erred in confirming the addition made by A.O. CPC for Rs. 22,84,687/- U/s 43B for unpaid GST when such GST was not collected/ came in the hands of appellant.

3) For that on the facts and circumstances of the case, action of Ld. CIT (Appeals) in confirming the addition of Rs. 22,84,687/- made by A.O. CPC for unpaid GST is highly arbitrary, unjustified, unwarranted to the facts of the case and untenable in law.

4) For that on the facts and circumstances of the case, the addition of Rs. 22,82,687/- U/s 43B made by A.O. CPC is liable to be deleted.

5) I may add, alter, amend, modify or withdraw any grounds of appeal on or before the date of hearing.”

3. Brief facts of the case are that the assessee is an individual and had filed his return of income showing total income of ₹7,72,820/- which was processed at the total income of ₹32,60,310/- after making disallowances/additions for GST payable of ₹22,84,687/- u/s 43B of the Act and ₹2,02,799/- for EPF being the employees' contribution not



deposited on or before the due date as per the provisions of section 36(1)(va) of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who examined the facts of the case, the factual matrix of the case, the legal position and carried out analysis thereof. The assessee had contended that the amount was not debited in the profit and loss account as an expenditure nor the assessee had claimed any deduction in respect of the amount and since the quantum of GST was in dispute and had not been collected by the assessee, the invocation of section 43B of the Act did not arise. The assessee relied upon the decision of Hon'ble Delhi High Court in the case of **CIT vs. Nobel & Hewitt 305 ITR 324**. However, since the assessee did not make any compliance in the course of the proceeding u/s 143(1) r.w.s. 154 of the Act before the CPC on two occasions for filing the profit and loss account, the copy of ITR-3 filed for the year, the copy of tax audit report in Form-3CD, particulars of auditor's comment on GST payable; therefore non-compliance on the part of the assessee was presumed that the assessee did not have anything further to add in this regard and in the absence of details/accounts called for, the issue pertaining to "GST payable" remained unverified and not fully explained by the assessee and no further relief was allowed to the assessee. As regards the other ground of appeal regarding EPF and ESI payment, the assessee relied upon the decision of Hon'ble Calcutta High Court in the case of **CIT vs. Vijay Shree Ltd. GA No. 2607 of 2011** order dated 06.09.2011 read with the verdict of the Hon'ble Apex Court in the case of **Alom Extrusions 319 ITR 306**. The Ld. CIT(A) examined the orders of the Hon'ble Supreme Court and also went through the decision of the cases relied upon by the assessee and issued directions to the assessee for getting physical verification of challans done for the



amount deposited/paid before due date of filing of return u/s 139 of the Act. The Ld. CIT(A) partly allowed the appeal of the assessee subject to the direction.

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. Ground nos. 1,2,3,4 relate to the addition of ₹24,87,487/- u/s 43B of the Act for unpaid GST when such GST was not collected by the assessee. During the course of the appeal before us, the Ld. AR submitted that the outstanding GST was mentioned in the Tax Audit Report but the same was not debited in the profit and loss account and no deduction on the same was claimed, therefore, the question of disallowance u/s 43B of the Act does not arise. He requested that the matter may be remanded to the Ld. AO for verification and also relied upon the decision of the Hon'ble Bombay High Court, reported in 156 ITR 55 in support of the claim that debatable issue could not have been disallowed under section 143(1)(a) of the Act.

6. We have heard the submissions made. Similar issue came up before the Bench in the case of **DCIT vs. Seven Hills Project Private Limited ITA No. 1454/KOL/2023** order dated 02.09.2025 in which the decision of Hon'ble Bombay High Court in the case of **Principal Commissioner of Income-Tax 11 Vs. Tops Security Ltd (2018) 97 taxmann.com 525 (Bombay)** has been considered, the relevant extract from which is as under:

*“6. We have heard the rival submissions. The Ld. AO had added the difference between the service tax outstanding and the service tax added in the earlier A.Y. vide order dated 31.03.2014. The assessee had submitted before the Ld. CIT(A) that the service tax liability was actually*

₹2,00,03,409/- instead of ₹3,62,47,086/- however, the working for the same discrepancy is not mentioned in the order of the Ld. CIT(A). Further, the assessee is also submitted that the service tax had been paid by the assessee through CENVAT/cash before the due date for furnishing the return under section 139(1) of the Act. That being so, it was incumbent upon the Ld. CIT(A) to ascertain as to how much amount was routed through the profit and loss account, which exercise does not appear to have been done by him. Since the Ld. CIT(A) has not examined whether the service tax was routed through the profit and loss account or not, nor has given any detail of how much amount was received and how much was receivable, nor any remand report was called for from the Ld. AO, therefore, in view of the decision of Hon'ble Supreme Court upholding the order in the case of *Principal Commissioner of Income-Tax 11 Vs. Tops Security Ltd (2018) 97 taxmann.com 525 (Bombay)* in which it has been held that "section 43B does not contemplate liability to pay service tax before actual receipt of the funds in the account of the assessee. Hence the liability to pay service tax into the Treasury will arise only upon the assessee receiving the funds and not otherwise. Thus the consideration has to be actually received and thereupon the liability will arise" and as this aspect does not appear to have been examined by the Ld. CIT(A) and his order is silent on this issue, the order of the Ld. CIT(A) is held to be not justified.

7. The order of the Ld. CIT(A) is not a speaking order nor does it mention whether the necessary verification was done, therefore, we deem it appropriate in the interest of justice and fair play that another opportunity needs to be provided to the Revenue before the Ld. CIT(A). We, therefore, set aside the order of the Ld. CIT(A) and remit the appeal to him to be decided afresh, who shall allow an opportunity of being heard to both the Ld. AO as well as the assessee and also grant an opportunity of representing the case to the Ld. AO as per rule 46A of the Income Tax Rules, 1962, and thereafter pass an order in accordance with law after examining the facts of the case. For statistical purposes, the appeal of the Revenue is partly allowed."

7. Since the facts of the case are identical and the Ld. CIT(A) has not mentioned whether the necessary verification of the amount being received was carried out, therefore, following the decision in the case of **Seven Hills Project Private Limited** (supra) and also relying upon the decision of **Tops Security Ltd.** (supra) and **Nobel & Hewitt** (supra), in the interest of justice and fair play, we deem it appropriate to hereby set aside the order of the Ld. CIT(A) and as requested by the Ld. AR, remand



the matter to the Ld. AO for verification as to whether the amount of GST outstanding was received by the assessee and whether the same was debited in the profit and loss account and thereafter considering the decision of Hon'ble Bombay High Court in the case of **Tops Security Ltd.** (supra) as well as of Hon'ble Delhi High Court in the case of **Nobel & Hewitt** (supra) and, thereafter, make the addition as per law, if required. The assessee shall furnish the required evidence in support of the relief claimed before the Ld. AO and shall not seek unnecessary adjournments. Accordingly, Ground nos. 1, 2, 3, 4 are allowed for statistical purposes.

8. Ground no. 5 being general in nature do not require any separate adjudication.

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

**Order pronounced in the open Court on 21<sup>st</sup> October, 2025.**

*Sd/-*

**[Sonjoy Sarma]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 21.10.2025

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **Dipak Kumar Hazra, 110, Viveknagar, C Road, Bamungachi, Salkia, Howrah, West Bengal, 711106.**
2. **ITO, Ward-47(2), Kolkata.**
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