

ITA No. 1924/KOL/2025 (A.Y. 2011-2012)
ITA No. 1925/KOL/2025 (A.Y. 2012-2013)
ITA No. 1926/KOL/2025 (A.Y. 2014-2015)
ITA No. 1927/KOL/2025 (A.Y. 2015-2016)

Binod Kumar Agarwal

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

**Before Shri George Mathan, Judicial Member
&
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No. 1924/KOL/2025 (A.Y. 2011-12)
I.T.A. No. 1925/KOL/2025 (A.Y. 2012-13)
I.T.A. No. 1926/KOL/2025 (A.Y. 2014-15)
I.T.A. No. 1927/KOL/2025 (A.Y. 2015-16)**

***Binod Kumar Agarwal,.....,Appellant
C/o. Subash Agarwal, & Associates, Advocates,
Siddha Gibson,
1, Gibson Lane, Suite-213, 2nd Floor,
Kolkata-700069
[PAN:ANXPA0213H]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Central Circle-3(2), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, E.M. By Pass,
Kolkata-700107***

Appearances by:

*Shri Subash Agarwal, A.R., appeared on behalf of the
assessee*

*Shri Santanu Ghosh, Sr. D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing: October 28, 2025

Date of pronouncing the order: October 28, 2025

O R D E R

Per George Mathan, Judicial Member:-

These are the appeals bearing ITA Nos. 1924 to
1927/KOL/2025 filed by the assessee against the orders of Id.

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Commissioner of Income Tax (Appeals), Siliguri in Appeal Nos. 79(CIT(A)/SLG/2018-19 dated 05.11.2019, 79(CIT(A)/SLG/2018-19 dated 05.11.2019, 76(CIT(A)/SLG/2018-19 dated 05.11.2019 & 75(CIT(A)/SLG/2018-19 dated 29.05.2019 for the assessment years 2011-12, 2012-13, 2014-15 & 2015-16 respectively.

2. Shri Subash Agarwal, ld. A.R. represented on behalf of the assessee and Shri Santanu Ghosh, ld. Sr. D.R., represented on behalf of the Revenue.

3. It was submitted by the ld. A.R. that the appeals of the assessee are delayed by 2033 days. The assessee has filed an affidavit for condonation of delay, which reads as follow:

AFFIDAVIT

I, Binod Kumar Agarwal, son of Late Khachanchi Ram Agarwal, aged 50 years, by religion Hindu, residing at Singtam Bazar, Singtam — 737134, Sikkim, do hereby solemnly affirm and state as follows-

1. That an appeal relating to A.Y. 2011-12 was filed before the Ld. CIT(A), NF AC on 04.01.2019 against order dated 28.11.2018 u/s 144/147.

2. That the said appeal was dismissed by the Ld. CIT(A) by passing an order on 05.11.2019.

3. That I contacted Late V.N. Purohit, FCA having his office at chambers, 4, Chowringhee Lane, Kolkata-700016 through my CA, Yash Arya who had represented me before the lower authorities on or around 04.12.2019. The said CA Yash Arya delivered the relevant documents to him for filing appeal before the Hon'ble ITAT.

4. That I was of the bonafide belief that my appeal has been duly filed before the Hon'ble ITAT and the notice of hearing shall be received in due time.

5. That after a considerable period of time, when no notice of hearing was forthcoming, I requested Mr. Yash Arya, FCA on or around 15.06.2025 to enquire into the reasons for unreasonable delay in receipt of notice of hearing.

6. That after due enquiry, it transpired that no appeal was filed in ITAT and unfortunately CA V.N. Purohit had expired in the month of May, 2021.

7. That then I contacted Advocate Siddharth Agarwal of 1, Gibson Lane, Kolkata 700069 on or around 16.07.2025 through CA Yash Arya for filing appeal before the Hon'ble Tribunal and sent him all the relevant documents.

8. That the office of the said counsel prepared the appeal and finally filed the same on 25.08.2025 with a delay of around 2033 days.

9. That the facts stated in para 1 to 8 are true to the best of my knowledge and belief.

4. It was the submission of the ld. A.R. that the issue in appeals is with regard to whether the assessee is an Old Settler of Sikkim. It was submitted that in view of the Writ Petition filed by the assessee as a Member of the Association of Old Settlers of Sikkim in Writ Petition No. 59 of 2013 before the Hon'ble Supreme Court, the Hon'ble Supreme Court has given directions in its order dated 11.02.2013 and the Act has also been amended with

retrospective effect from 1990-91. It was the submission that the assessment order has been passed in November, 2018 and the order of the ld. CIT(Appeals) is of 2019 and it is after the order of the Hon'ble Supreme Court that the decision of the Hon'ble Supreme Court has come. It was the prayer that the delay may be condoned and the issue be restored to the file of the ld. Assessing Officer for re-adjudication after considering the decision of the Hon'ble Supreme Court in the case of the Old Settlers of Sikkim.

5. In reply, the ld. Departmental Representative vehemently opposed the condonation of delay. It was the submission that the order of the ld. CIT(Appeals) being 2019, the substantial delay should not be condoned.

6. We have heard the rival contentions and gone through the records. A perusal of the facts of the case clearly shows that the issue in the present case is with regard to whether the assessee is an Old Settlers of Sikkim. The Hon'ble Supreme Court has decided the issue in 11.02.2013. This being so, perusal of the affidavit filed by the assessee shows that the delay was on account of the demise of the auditor of the assessee. When technicality is fitted against substantial justice, obviously technicality should step back. The delay is only a technical issue and substantial justice should be rejected if the issue of the Old Settlers of Sikkim in respect of the assessee is decided by applying

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the ratios laid down by the Hon'ble Supreme Court. This being so, and also on account of the fact that the affidavit filed by the assessee has not been done to be false. We condone the delay in filing of the appeal as the issue is to be now adjudicated by considering the decision of the Hon'ble Supreme Court in the case of Old Settlers of Sikkim. The issues in these appeals are restored to the file of the ld. Assessing Officer for re-adjudication after considering the principles laid down by the Hon'ble Supreme Court in the case of Old Settlers of Sikkim.

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

Order pronounced in the open Court on 28/10/2025.

Sd/-
(Rakesh Mishra)
Accountant Member

Sd/-
(George Mathan)
Judicial Member

Kolkata, the 28th day of October, 2025

*Copies to :(1) Binod Kumar Agarwal,
C/o. Subash Agarwal, & Associates,
Advocates,
Siddha Gibson,
1, Gibson Lane, Suite-213, 2nd Floor,
Kolkata-700069*

*(2) Deputy Commissioner of Income Tax,
Central Circle-3(2), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, E.M. By Pass,
Kolkata-700107*

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- (3) *CIT(Appeals), Siliguri;*
- (4) *CIT - ;*
- (5) *The Departmental Representative;*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.