

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**GUWAHATI BENCH, GUWAHATI**  
**(VIRTUAL HEARING AT KOLKATA)**

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**  
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 170/GTY/2025**  
**Assessment Year: 2021-22**

**Income Tax Officer,**

Borah Complex, D K Road,

North Lakhimpur, Assam – 787001 .....**Appellant**

**vs.**

**Biri Kakum,**

Near Hill Top,

Itanagar,

Arunachal Pradesh - 791111

[PAN: ERSPK1232B]

..... **Respondent**

**Appearances by:**

Assessee represented by

: Sidhant Sharma, FCA

Department represented by

: Kausik Ray, JCIT

Date of concluding the hearing : 09.10.2025

Date of pronouncing the order : 16.10.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. The present appeal arises from the order under Section 250 of Income Tax Act, 1961 (hereafter “the Act”) passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”], dated 16.04.2025.

2 In this case, the Ld. AO found that the assessee had made substantial purchase from suppliers, who are either non-filers or have filed non-business ITRs, or even reflected a substantially lower turnover in ITR. The Ld. AO acted on the presumption that such suppliers could

represent bogus purchases on the part of the assessee and hence proceeded to verify the same. It is a matter of record that the assessee produced the books of accounts and other documents before the Ld. AO. The Ld. AO was not satisfied with the response given by the assessee and made the impugned addition with the following finding:

*“3.8 Considering all the facts as mentioned above the assessee completely work order received from the parties/companies for executing contractual work, nature of work, the reason for non-deduction of TDS on the contractual payment received by the assessee, whether the work was executed in the areas which are specified for claiming exemption u/s 10(26) of the I.T. Act, 1961. In absence of details/documentary evidence as mentioned above, the issue of receipt on account of contractual work amounting to Rs.35,35,06,582/- remained completely unverified and unexplained. Accordingly, the exempt income claimed by the assessee amounting to Rs.8,65,22,919/- is hereby restricted to Rs.5,09,65,106/-, the details of which are given below and balance amount of Rs. 3,55,57,813/-is added to the total income for the purpose of taxation at normal rates.”*

2.1 Aggrieved with this action, the assessee approached the Ld. CIT(A), where he could succeed on the basis of the following finding:

*“7. Ground No. 3 is against estimating profit @ 10.0586% on sales of Rs.35,35,06,582/- by the AO. The AO adopted the profit rate declared by the appellant (10.0586%) on the unverified turnover and taxed the same, citing lack of corroborative evidence for such receipts. The appellant submitted that the turnover was supported by books of account, bank statements, tax audit report, and other documentary evidence, and merely because the receipts were not traceable in Form 26AS or supported by TDS certificates, the same could not be denied. In CIT v. Manish Buildwell (P) Ltd. [(2011) 245 CTR 397 (Del)], the Hon'ble Delhi High Court held that non-appearance in 26AS or lack of TDS cannot be the sole basis for denial of income or exemption where books of accounts and books are not reliable or rejected u/s 145(3), such an addition based only on 26AS mismatch is not sustainable. In view of the above discussion, Ground No. 3 is allowed.*

*8. In Ground No. 4, the appellant has contended that the AO erred in concluding that the appellant failed to furnish details for sale value of Rs.35,35,06,582/-. The appellant's submissions, financials, tax audit report, and bank statements were acknowledged by the AO himself in para 3.2 and 3.4 of the assessment order. The AO's inference that the income is unverifiable solely due to its non-appearance in Form 26AS is not justified. The law does not mandate that only TDS-supported income shall be considered genuine. Reliance is placed on CIT v. Om Sons International [(2011) 334 ITR 0061 (P&H)], wherein it was held that income not covered under TDS provisions does not ipso facto become unverifiable if supported by books of accounts and confirmations. In view of the above discussion, Ground No. 4 is allowed.*

*9. Ground Nos. 5 and 6 are against in restricting the exemption u/s 10(26) from*

*Rs.8,65,22,919/- to Rs.5,09,65,106/- by the AO. Section 10(26) provides exemption to Scheduled Tribe individuals residing in specified states (including Arunachal Pradesh), in respect of any income arising from any source in such areas. The AO allowed exemption only for receipts supported by TDS certificates/Form 26AS, which is legally flawed. The Hon'ble Gauhati High Court in Tomo Riba v. CIT [1976] 103 ITR 0001 held that income of STs from contracts in Scheduled Areas is exempt even if such income is not subject to TDS or not shown in Form 26AS. provided the area and status conditions are satisfied.*

*The appellant has furnished*

*Scheduled Tribe Certificate*

*Proof of residence in Arunachal Pradesh*

*Business income generated from Arunachal Pradesh*

*Audited financials and bank statements*

*These substantiate that the entire income accrued from the state of Arunachal Pradesh, satisfying all conditions of section 10(26). The AO has not demonstrated that any portion of the contract income was earned outside the state or from ineligible sources. Hence, the restriction of exemption under section 10(26) is unjustified. In view of the above discussion, Ground Nos. 5 and 6 are allowed.”*

3. Aggrieved with this action of the Ld. CIT(A), the Revenue has approached the ITAT with the following grounds:

*“1. On facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) erred in deleting the estimate of profit of Rs. 3,55,57,813/- @10.0586% on receipt of Rs. 35,35,06,582/- holding that such receipts were supported by books of account, bank statements, Tax Audit Report and other documents, whereas the assessee could not produce /adduce any documents and also not subjected to TDS as not reflected in Form 26AS and as such remained unexplained/unverified.*

*2. On facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) erred in holding that the assessee was entitled to claim exemption u/s 10(26) of the IT Act, 1961 on profit income earned from the entire amount of Rs. 86,01,83,172/-whereas out of the above, the amount of Rs. 35,35,06,582/- which remained unverified/unexplained and the assessee failed to establish that such receipts were earned within the State of Arunachal Pradesh to be qualified for exemption u/s 10(26) of the Income Tax Act, 1961.*

*3. The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts in passing the impugned order, which is bad in law and against the facts and circumstances of the case.*

*4. The appellant craves leaves to add, alter and amend any of the grounds of appeal at the time of hearing/ pendency.”*

3.1 Before us, the Ld. DR pointed out the relevant portions from the Ld. CIT(A) order (supra) to demonstrate that the findings of the Ld. AO (supra), where conclusive and in the absence of necessary details being submitted before him, the Ld. AO's order deserved to be restored and the Ld. CIT(A)'s order deserved to be set aside.

3.2 The Ld. AR, on the other hand, relied exclusively on the finding of Ld. CIT(A) on pages 22 to 24 (supra) and stated that the Ld. AO was holding the assessee responsible for disclosing a substantially higher turnover than what was visible in Form 26AS. It was also averred that the books of accounts were duly produced and the Ld. AO has not pointed out any defect thereon. In this manner, the Ld. AR supported the findings of Ld. CIT(A).

4. We have carefully considered the rival submissions and have gone through the records before us. We find that the Ld. AO has formed a presumption of fact merely on the basis that there was a mis-match between the turnover shown in the Form 26AS and whatever has been shown by the assessee. We find no comment whatsoever on the fact that the turnover shown by the assessee was on the higher side as compared to the figures shown in Form 26AS. We also find that the assessee has diligently produced the necessary records before the Ld. AO, which he has chosen to ignore. In light of this discussion, we find no fault with the finding of Ld. CIT(A) (supra) and affirm his action. Consequently, the appeal filed by the Revenue is dismissed.

5. In result, this appeal is dismissed.

Order pronounced on 16.10.2025

Sd/-  
**[Manomohan Das]**  
**Judicial Member**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 16.10.2025  
*AK, Sr. PS*

*Copy of the order forwarded to:*

1. The Appellant
2. The Respondent
3. CIT(A)-
4. CIT-
5. CIT(DR)

*//True copy//*

By order

Assistant Registrar, Kolkata Benches