

आयकर अपीलीय अधिकरण, 'एसएमसी' न्यायपीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL 'SMC' BENCH, KOLKATA

BEFORE SHRI DUVVURU RL REDDY, VICE PRESIDENT

आयकर अपील सं/ITA No.1545/KOL/2025

(निर्धारण वर्ष / Assessment Year : 2018-2019)

Manish Ray & Co., Room No.13, Himalaya Shopping Complex, Neli Sengupta, Sarani, Babupara, Siliguri-734004	Vs	ITO Ward-1(1), Siliguri
PAN No. : AALFM 1779 M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri Sujit Basu & Ms. Paramita Basu, ARs
राजस्व की ओर से / Revenue by	:	Shri Sima Das Biswas, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	16/10/2025
घोषणा की तारीख/Date of Pronouncement	:	21/11/2025

आदेश / ORDER

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 10.12.2024 passed for Assessment Year 2018-2019, on the following grounds of appeal :-

1. *For that on the facts and circumstances and legal position of the case, the order u/s 250 passed by the Ld. CIT (A), NFAC, Delhi is against the principle of natural justice.*
2. *For that on the facts and circumstances and legal position of the case, the Ld. AO ought not to have disallowed the remuneration paid to partners for Rs.5,43,556/- and the Ld. CIT (A) ought to have allowed the remuneration paid to partners and ought not to have confirmed the addition made by the Ld. AO.*
3. *For that on the facts and circumstances and legal position of the case, the Ld. AO ought not to have disallowed a sum of Rs.11,15,380/- being 20% of purchases made by the appellant. The Ld. CIT(A) ought to have deleted the addition made by the Ld. AO and ought not to have confirmed the addition made by the Ld. AO.*
4. *For that on the facts and circumstances and legal position of the case, the Ld. AO ought not to have disallowed a sum of*

Rs.28,75,472/ being 30% of labour payments made by the appellant. The Ld. CIT(A) ought to have deleted the addition made by the Ld. AO and ought not to have confirmed the addition made by the Ld. AO.

5. That the appellant craves permission to add, amend, alter or vary all or any of the ground of appeal on or before the date of hearing of the appeal.

2. The appeal of the assessee is filed belated by 139 days. In this regard, the assessee has filed application for condonation of delay supported with an affidavit stating sufficient reasons for delay. The contents of the affidavit are as under :-



BEFORE THE NOTARY PUBLIC, SILIGURI

AFFIDAVIT

I, Sri Santanu Kar, S/o Late Ramani Mohon Kar, aged about 57 years, Hindu by Religion, Business by occupation, resident of GITA, 12, KNC Sarani, Babupara (South), Siliguri Town, District – Darjeeling, West Bengal, Pin - 734004, do hereby solemnly affirm and declare as follows :-

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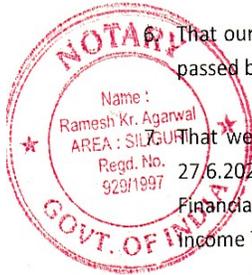
SOLEMNLY AFFIRMED & DECLARED
BEFORE ME ON IDENTIFICATION

Ramesh Kr. Agarwal
NOTARY
SILIGURI

15 JUL 2025

(2)

1. That I am one the partners of "MANISH RAY & CO" of Room No.13, Himalaya Shopping Complex, Neli Sengupta Sarani, Babupara, P.O. Siliguri Town, P.S. Siliguri, District – Darjeeling having PAN: AALFM1779M.
2. That we have preferred an appeal before the Ld. CIT(A), NFAC, Delhi against the assessment order of the Ld. AO passed in our case for Assessment Year 2018-19 on 31.3.2021.
3. That the Ld. CIT(A) has passed the appellate order u/s 250 of the Income Tax Act, 1961 on 10.12.2024 and place the same at Income Tax Portal against our PAN for which we had no knowledge. No physical copy of appellate order has been received by us.
4. That 60 (sixty) days thereafter was 08.02.2025, by which we were required to file appeal before the Ld. CIT(A), NFAC electronically.
5. That our PAN is registered against the e-mail ID of our part time staff Sri Parimal Shil – parimalitax@gmail.com.
6. That our said part time staff has not also told anything to us about the appellate order passed by the Ld. CIT(A), NFAC, Delhi on 10.12.2024.
7. That we became aware about the online appellate order passed by the Ld. CIT(A) on 27.6.2025 when our Accountant had login our PAN at IT site to get Form 26AS for Financial Year 2024-25 to finalize our accounts and to get the same audited u/s 44AB of Income Tax Act, 1961.
8. That we had immediately contacted with our Advocate Ms. Paromita Guha of Siliguri who had advised us to file appeal before the Honorable ITAT, Kolkata with due prayer for condonation of delay in filing the same before the Honorable ITAT, Kolkata.
9. That on the advice of our said Advocate, we had deposited appeal fees of Rs.10,000/- on 04.07.2025.
10. That our said Advocate was not keeping her health well and could not attend her chamber from 5.7.2025 to 14.7.2025 and could not ready our appeal for filing before the Honorable ITAT, Kolkata.
11. That on 15.7.2025, our said Advocate has prepared the appeal and this affidavit at her Chamber at Siliguri for filing before the Honorable ITAT, Kolkata.
12. That due to non availability of train ticket, I would not be able to go to Kolkata today and I shall go to Kolkata on 17.3.2025 for filing of our appeal with a delay of 158 days.



SOLEMNLY AFFIRMED & DECLARED
BEFORE ME ON IDENTIFICATION

Ramesh Kr. Agarwal
NOTARY
SILIGURI

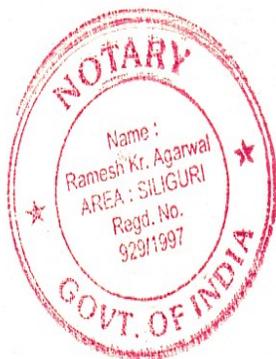
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Santanu Kar

(3)

13. That the delay in filing of appeal before the Honorable ITAT, Kolkata is beyond our control as we had no knowledge about passing of online appellate order by the Ld. CIT(A). We do carry on a works contract business and we have no knowledge about the e-filing portal of Income Tax and for that purpose we depend on our part time staff Sri Parimal Shil, who has not also told us anything about the passing of online appellate order by the Ld. CIT(A) on 10.12.2024.

14. That I am swearing this affidavit to submit the same before the Hon'ble ITAT, Kolkata to explain the reason for delay in filing appeal before the Honorable ITAT, Kolkata and to seek due condonation of the Honorable ITAT for delay of 158 days in filing the appeal.



That the statements made above are true to my knowledge and belief and I sign this affidavit on this 15th day of July, 2025 at Siliguri.

Ramesh Kr. Agarwal
Deponent

Deponent is identify by me

[Signature]
Advocate/ Siliguri
15/7/25

SOLEMNLY AFFIRMED & DECLARED
BEFORE ME ON IDENTIFICATION
[Signature]
15.7.25
Ramesh Kr. Agarwal
NOTARY
SILIGURI

15 JUL 2025

3. On careful consideration of the above affidavit of the assessee, it is found that the delay is in account of lack of knowledge about passing of the appellate order. It has also been submitted that due to ill-health of the counsel of the assessee, the assessee could not file appeal before the

Tribunal within the time. The moment the assessee came to know about passing of the appellate order, the assessee filed the present appeal before the Tribunal with a delay of 139 days, which is not found to be false. Accordingly, I condone the delay of 139 days in filing of the appeal and the appeal of the assessee is admitted for hearing.

4. Brief facts of the case are that the assessee is a Firm and had filed its return of income for A.Y.2018-19 on 29.10.2018 declaring business income at Rs.3,52,372/-. The case of the assessee was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 for the following reason -

“Excess Contribution of Provident Fund, Superannuation Fund or Gratuity Fund.”

5. Accordingly, the Assessing Officer completed the assessment and passed order u/s.143(3) of the Act determining total income at Rs.48,86,770/- after making following additions.

- i. Addition of Rs.5,43,556/- on account of disallowance u/s 40(b).*
- ii. Addition of Rs. 11,15,370/- on account of disallowance of purchases.*
- iii. Addition of Rs.28,75,472/- on account of disallowance of labour payment.*

6. Aggrieved with the above additions, the assessee preferred appeal before the Id. CIT(A) and the Id.CIT(A) dismissed the appeal of the assessee. Now, the assessee is in further appeal before the Tribunal.

7. Ld. AR submitted that in the assessment order the Assessing Officer has disallowed 30% of the labour payments. It was also submitted that the payments have been made to labour contractors and TDS has

also been deducted. Ld. AR further submitted that the assessment of the assessee had been taken up for limited scrutiny purpose regarding excess contribution to PF, superannuation fund and gratuity fund. The Assessing Officer disallowed the remuneration to the partners as also disallowed 30% of the total payments. Therefore, the Id. AR submitted that the additions as made by the Id. Assessing Officer and confirmed by the Id. CIT(A) deserve to be deleted.

8. On the other hand, Id. Sr. DR supported the orders of the authorities below and submitted that during the course of assessment the assessee could not produce any details. It was submitted that he has no objection if the issue is restored to the file of Id. Assessing Officer for readjudication afresh.

9. I have considered the rival submissions and perused the material available on record. A careful perusal of the facts of the present case clearly show that the details called for have not been submitted by the assessee before the Assessing Officer. This being so, in the interest of justice I am of the view that the issues in this appeal are required to be restored to the file of the Id.AO to dispose off the case of the assessee on merits after providing sufficient opportunity of being heard to the assessee and I do so. At the same breath, I also hereby caution the assessee to promptly co-operate with the proceedings before the Id. AO, failing which the Id. AO shall be at liberty to pass appropriate order in accordance with law and merits based on the materials available on record. Thus, the grounds raised by the assessee are allowed for statistical purposes.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21/11/2025.

Sd/-
(DUVVURU RL REDDY)
उपाध्यक्ष / VICE PRESIDENT

दिनांक Dated 21/11/2025
Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कोलकाता /ITAT, Kolkata

		Date	Initial	
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the OS			
9.	Date on which file goes to the AR			
10.	Date of dispatch of Order.			