

**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI 'DB' BENCH AT KOLKATA**

[Virtual Court]

Before

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA Nos.: 274 & 275/GTY/2025
Assessment Years: 2016-17 & 2022-23**

Mitchell Wankhar (Appellant)	Vs.	ITO, Ward-2, Shillong (Respondent)
PAN: AAJPW5125H		

Appearances:

Assessee represented by : None (Adj. petition filed)
Department represented by : Santosh Kumar Karnani, Addl. CIT.
Date of concluding the hearing : 25-November-2025
Date of pronouncing the order : 11-December-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 2016-17 & 2022-23 dated 14.07.2025. None appeared on behalf of the assessee but an adjournment application was filed for both the appeals; however, the adjournment was not granted and the appeal was heard with the assistance of the Ld. DR. Since the issues in both the appeals are common, 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. 274/GTY/2025; AY 2016-17:



“1. That the Ld. CIT (A) was not justified in dismissing the appeal filed by your appellant as in Limine without giving any opportunity of hearing. The principle of natural justice was not followed and without going into the merits of the case, the appeal was dismissed merely on limitation. Not a single hearing notice was served on the appellant, hence the appellate order is bad in law and should be quashed.

2. That the reassessment proceedings initiated by the department were bad in law as no notice u/s.148A and subsequent order passed u/s148(d) were served on your appellant. Further, copies of satisfaction note and sanction from higher authority was also not provided to your appellant before issuing notice u/s. 148. The notice u/s. 148 was issued by JAO and not by NFAC as required by the CBDT guidelines. These lapses renders entire proceedings bad in law and order passed in consequence to such proceedings as not sustainable.

3. That the Ld. AO was not justified in treating the income of your appellant, which fulfilled all the criteria specified u/s. 10(26), as taxable income by invoking sec.69A and disregarding the supporting evidences. The Ld.AO failed to understand the provisions of sec.4 to treat an income which do not form part of the total income and make it a part of total income to levy tax at special rates. The Ld. CIT(A) also erred in confirming the action of Ld.AO by dismissing the appeal due to delay and without going into the merits.

4. That the Ld. AO merely acted on presumptions and surmises to disbelieve the documents submitted by your appellant and thereby levy tax the deposits made in the bank, The money was proceeds of trade carried out by a person belonging to scheduled tribe in the notified scheduled area. There was no evidence with the department to establish that the alleged deposits made in bank located in scheduled area, were earned outside the scheduled area to be treated as total income.

5. That the Ld. AO misapplied the provisions of sec.44AA and 44AB in the case of your appellant to initiate penalty proceedings u/s 271A and 271B when no income was assessed as Profit from Business or Profession. This indicates non application of mind by Ld. AO as in the same order he has treated the sums as unexplained u/s.69A and also invoked the provisions applicable to Business income.

6. The appellant craves leave to add, alter, amend, or modify any of the grounds of appeal at or before the time of hearing.”

II. ITA No. 275/GTY/2025; AY 2022-23:

“1. That the Ld. CIT (A) was not justified in dismissing the appeal filed by your appellant as in Limine without giving any opportunity of hearing. The

principle of natural justice was not followed and without going into the merits of the case, the appeal was dismissed merely on limitation. Not a single hearing notice was served on the appellant, hence the appellate order is bad in law and should be quashed.

2. That the Ld. AO was not justified in treating the income of your appellant, which fulfilled all the criteria specified u/s.10(26), as taxable income by invoking sec.69A and disregarding the supporting evidences. The Ld.AO failed to understand the provisions of sec.4 to treat an income which does not form part of the total income and make it a part of total income to levy tax at special rates. The Ld. CIT(A) also erred in confirming the action of Ld.AO by dismissing the appeal due to delay and without going into the merits and exceeding its authority to tax an exempt income.

3. That the Ld. AO merely acted on presumptions and surmises to disbelieve the documents submitted by your appellant and thereby levy tax the deposits made in the bank, The money was proceeds of trade carried out by a person belonging to scheduled tribe in the notified scheduled area. There was no evidence with the department to establish that the alleged deposits made in bank located in scheduled area, were earned outside the scheduled area to be treated as total income.

4. That the Ld. AO misapplied the provisions of sec.44AA and 44AB in the case of your appellant to initiate penalty proceedings u/s 271A and 271B when no income was assessed as Profit from Business or Profession. This indicates non application of mind by Ld. AO as in the same order he has treated the sums as unexplained money u/s.69A and also invoked the provisions applicable to Business income.

5. The appellant craves leave to add, alter, amend, or modify any of the grounds of appeal at or before the time of hearing.”

3. We shall first take up the appeal in ITA No. 274/GTY/2025 for the AY 2016-17. Brief facts of the case are that In this case, the assessee did not file his ITR (return of Income Tax) u/s 139 of the I.T. Act, 1961 for the A.Y. 2016-17. However, the department had information that during the year under consideration, the assessee deposited cash of Rs. 13,09,000/- in Saving bank account maintained with UCO Bank, and deposited cash of Rs.57,44,500/- in Saving bank account maintained with State Bank of India during the F.Y. 2015-16. Since no return of income was filed, therefore, the assessment was reopened under section



147 of the Act by issuing notice under section 148 of the Act. The assessee filed the return of income in response to the notice issued and also filed other details. It was stated before the Ld. AO that the income was exempt under section 10(26) of the Act, but the explanation was not accepted by the AO who assessed the total income of the assessee at rupees 14,90,34,020 by treating the deposits in the bank as unexplained money under section 69A, interest received which was asset added under section 56 of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who, vide the impugned order, dismissed the appeal on account of delay without discussing the merits of the case.

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld. It was informed to the Ld. DR that the assessee was claiming exemption under section 10(26) and the assessment was made because the documents filed were not in English translation. Before the Ld. CIT(A), the delay was not condoned as the justification relating to the assessee not being familiar with online tax filing procedure and Form No. 35 not been submitted in time, reliance upon the Chartered Accountant to handle the appeal process were not considered and the appeal was dismissed *in limine* on account of delay.

6. We have heard the Ld. DR, considered the submissions made, gone through the facts of the case and also perused the record and the order of the Ld. CIT(A). The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld and stated that in case the matter is to be remanded, it should be remanded to the the Ld. CIT(A).



However, we note that the additions in the assessment order were made because the documents filed were not translated in English and in the appeal before the Ld. CIT(A), the assessee could not get the required benefit on account of delay in filing the appeal though he claims that her income is exempted under section 10(26) of the Act and the appeal was dismissed *in limine*. Since there was no proper compliance before both the Ld. AO as well as the Ld. CIT(A), in the interest of justice and fair play it was considered that another opportunity may be provided and the case may be remanded before the Ld. CIT(A) so that a proper opportunity of being heard may be provided. Therefore, after examining the facts of the case and the law, we deem it appropriate to set aside the order of the Ld. CIT(A) and restore the appeal to the Ld. CIT(A) for disposal of the grounds of appeal taken by the assessee on merits by passing a speaking order. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission he wants to make in support of the grounds of appeal and shall not seek unnecessary adjournments and rule 46A of the I.T. Rules, 1962 shall also be followed and an opportunity of being heard may be provided to the Ld. AO, if required. Accordingly, the grounds taken by the assessee in his appeal are partly allowed for statistical purposes.

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

7. Since the facts in the appeal in ITA No. **275/GTY/2025 for A.Y. 2022-23** are identical, our findings in A.Y. 2016-17 shall *mutatis mutandis* also apply in the appeal for A.Y. 2022-23. The grounds taken by the assessee in this appeal are also partly allowed for statistical purposes.



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

Order pronounced on 11th December, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 11.12.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Mitchell Wankhar, Lawsohtun Block-II, P.O. Laban, East Khasi Hills, Shillong, Meghalaya, 793004.**
2. **ITO, Ward-2, Meghalaya.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata