IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA

Before

SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

ITA No.: 2166/KOL/2025
Assessment Year: 2018-19

Shree Govind Property & Investments Pvt. Ltd.	Vs.	D.C.I.T., Circle-5(1), Kolkata
(Appellant)		***(Respondent)***
PAN: AADCS8892E		

Appearances:

Assessee represented by : Sanjay Dixit, Adv. and Rajeev Agrawal, Adv.

Department represented by : S.B. Chakraborthy, Addl. CIT, Sr. DR.

Date of concluding the hearing : 27-November-2025
Date of pronouncing the order : 28-January-2026

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 28.07.2025.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

> *"1.0 For that on the facts and circumstances of the case, the order dated 28/07/2025 passed under Section 250 of the Income Tax Act, 1961. by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as the 'Ld. CIT(A) is bad in law and therefore liable to be set aside.*
>
> *2.0 For that on the facts and circumstances of the case, the Ld. CIT(A) failed to appreciate that the appellant had, by mistake, reflected the Exempt Long Term Capital Gains of Rs. 28,80,542/ in its return of income under the head Profits and Gains of Business and Profession instead of the correct business*

income of Rs. 58,525/- and had duly filed a revised computation of income during the assessment proceedings and appellate proceedings which was solely rejected for the reason that allowing such claim at the stage of the assessment proceedings would result in assessed income being lower than the returned income. Such observation of the Ld. CIT(A) is arbitrary and bad in law. That the Ld. CIT(A) further failed to appreciate that the mistake of the appellant was apparent from records as the amount of Rs. 28,80,542 was shown twice, once under exempt income and again inadvertently under business income.

3.0 For that on the facts and circumstances of the case, the Ld. CITIA) erred in law in rejecting the revised computation of income solely on the ground that the appellant has not filed a revised return in accordance with the provisions of Section 139(5) of the Act and therefore permitting such claim beyond the statutory time limit for revising return is not permissible. Such action of the Ld. CIT(A) is bad in law.

4.0 For that on the facts and circumstances of the case the Ld. CIT(A) failed to appreciate that an inadvertent mistake made by the appellant can be corrected in the course of the assessment proceedings by filing a revised computation of income.

5.0 That the Ld. CIT(A) failed to appreciate that no tax can be levied or collected without the authority of law as envisaged in Article 265 of the Constitution of India.

6.0 For that on the facts and circumstances of the case, the Ld. CIT(A) failed to appreciate the settled law that assessing authorities are bound to compute the correct income only and collect only legitimate tax without taking advantage of the mistake of the appellant. assessee.

7.0 The appellant craves leaves to add to, amend, modify, rescind, supplement, or alter any of the grounds stated hereinabove either before or at the time of the hearing of this appeal."

3. Brief facts of the case are that the assessee company had filed its return of income declaring total income of ₹1,60,39,320/- for AY 2018-19. The case was selected for limited scrutiny under Computer Assisted Scrutiny Selection (in short 'CASS') for the reason "Large business loss set off against other heads of income." Accordingly, notices u/s 143(2) and 142(1) of the Act were issued. Later on a fresh notice u/s 142(1) of the Act dated 02.12.2020 was issued to the assessee. In response, thereof, the assessee sought adjournment and subsequently filed

partial submissions including ledger accounts of expenses, TDS details, and donation receipts. On examination of the submissions and facts, the Assessing Officer (hereinafter referred to as Ld. 'AO') noted that during the year under consideration, the assessee had earned income from House property amounting to ₹2,16,03,609/- and Income from other sources of ₹42,94,079/- being gross interest received and had also incurred current year's loss amounting to ₹96,08,371/- under the head Profits and gains of business or profession. The set-off of business loss had been accepted and the assessment order u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act was passed accepting the returned income of the assessee amounting to ₹16,03,99,320/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who vide order dated 28.07.2025 dismissed the appeal of the assessee by holding as under:

> *"7.1 Ground no. 1 to 3: In the present case, the appellant company filed its return of income for the AY 2018-19 on 30.10.2018, declaring a total income of Rs. 1,60,39,320/-, which was accepted as such by the AO in the scrutiny assessment completed u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act. The case was selected for limited scrutiny on the specific issue of set-off of business loss, and after examining the submissions and documents filed, the returned income was accepted without variation. During the course of the present appellate proceedings, the appellant has submitted that there was an inadvertent mistake in the original computation of income wherein an amount of Rs. 28,80,542/-, being exempt long-term capital gain u/s 10(38) of the Act, was wrongly included as part of taxable share trading income. The appellant now seeks claim the exemption u/s. 10(38) of the Act and to substitute the short-term profit of Rs. 58,525/- in its place, thereby increasing the business loss from Rs. 96,08.371/- to Rs. 1,24,30,388/- and correspondingly reducing the total income to Rs. 1,32,17,300/-, which is lower than what was originally returned. The revised computation is furnished during the appellate proceedings, and no revised return has been filed u/s 139(5) of the Act within the prescribed time limit. In this context, reference is made to the judgment of the Hon'ble ITAT Delhi Bench in the case of Sh. Dinesh Sharma vs DCIT New Delhi on 3 March, 2023 wherein the Tribunal noted that permitting such claims beyond the statutory time for*

revising the return can lead to an unintended and legally untenable situation where the assessed income is reduced below the returned income. The Hon'ble Tribunal observed that assessment and appellate proceedings are not intended to place the assessee in a more beneficial position merely because the case was selected for scrutiny, especially when the relevant claim was not made within the framework of the return filing provisions. The relevant portion of the judgment is as under:

> *"(C.2.3). We have already noticed that the aforesaid claim of Rs.79,32,289/-, was made by the assessee after the time limit prescribed u/s 139(5) of the Act for revision of return. We have also noticed that, in any case the assessee was not eligible to revise the return because the return filed by the assessee was not returned filed u/s 139(1) of the Act by prescribed due date but was a belated return under section 139(4) of the Act for which there is no statutory permission u/s 139(5) of the Act to revise the return. We have also noticed that the claim of the assessee for the aforesaid amount of Rs. 79,32,289/- having been favourably considered by the Ld. CIT(A) has resulted in the extra-ordinary situation, not tenable in law on perusal of section 143(2) of the Act, wherein the assessed income of the assessee turns out to be lower than the returned income thereby placing the assessee in a much advantageous situation, contrary to law, as compared to the likely situation if the return filed by the assessee had not been selected for scrutiny by issue of notice u/s 143(2) of the Act. We are aware of certain precedents wherein it has been held that appellate authorities can admit a legal ground taken by appellant at any stage of appellate proceedings provided all relevant facts are on record and fresh investigation of facts is not necessary. However, in the instant case a fresh investigation of facts on merits of the claim made by the assessee was necessary, the opportunity for which was not given by the Ld. CIT(A) to the Ld. AO. In any case, in view of the clear legal position under sections 143(2), 139(1), 139(4) and 139(5) of the Act as discussed earlier in detail, and in view of the facts and circumstances as discussed earlier in detail, and in view of precedents of Hon'ble Supreme Court in the cases of Goetze (India) Pvt. Ltd. (supra] and CIT vs Sun Engineering Works (P) Ltd. (supra], we hold that the Ld. CIT(A) erred in favourably considering the claim of the assessee for the aforesaid amount of Rs 79,32,289/- Accordingly, we set aside the order of the Ld. CIT(A) on this issue and reverse his direction given to the AO to reduce the taxable income by Rs.79,32,289/-. We direct that this amount of Rs. 79,32,289/-will continue to be included as income of the assessee in accordance with return filed by the assessee u/s 139(4) of the IT. Act.*

Thus, second ground of appeal filed by the Revenue is allowed. DEPAR

In view of the above legal position and respectfully following the ratio of the said judgment, the revised claim made by the appellant at this stage cannot be entertained. Accordingly, the ground 1 to 3 are dismissed.

Ground no. 4: In this ground the appellant craves leave to file additional grounds and/or

7.2 amend or alter the grounds already taken either before or at the time of hearing of the appeal. No such option was exercised by the appellant and, as such, this ground is treated as dismissed.

8. In the result, the appellant's appeal is Dismissed."

4. The appeal was accordingly dismissed. 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. It was submitted by the Ld. AR that the submissions were made during the course of the assessment proceedings and also before the Ld. CIT(A) but the revised return was not filed. The Ld. AO did not accept the revised computation. It was submitted that the long-term capital gains was shown twice and in respect of short-term capital gains and the business income, same figure of long-term capital gains was shown. Our attention was drawn to page 151 of the paper book. However, there was no verification in the paper book as is required to be done and so was informed to the Ld. AR.

6. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The assessee filed written statement dated 24/02/2021 before the Ld. AO and requested the Ld. AO to rectify the mistake apparent from record and the same appears at page 151 of the paper book filed. It was stated that the assessee company had done long term trading profit of

₹ 28,80,542/- which is exempt as per section 10(38) of the Act and short-term trading profit of ₹ 58,525/- during the year, which is mentioned in Note 17 of the audited balance sheet for the year. The assessee is in the business of renting property, trading in shares and while computing profit and loss from the business, the long-term trading profit was taken as 'share trading income' instead of ₹ 58,525/- which is the short-term trading profit, in the computation of income for the assessment year 2018–19. Our attention was also drawn to page 23 of the paper book in support of the claim that the long-term capital gains was from the transactions and the securities transaction tax was paid which was mentioned in column 3 in the return of income at ₹ 28,80,542/-. However, it was confronted to the Ld. AR that the same relates to the payment of securities transaction tax. The return of the assessee was taken up under scrutiny on account of business loss on which no addition was made by the Ld. AO and he had accepted the returned income. In case, the assessee wanted to revise the computation, it was required to file the revised return as to what was the business profit and why the long-term capital gains should not be treated as the business profit instead of treating it as capital gains. Since the AR could not rebut the contention of the Ld. CIT(A), there does not appear to be any justification for interfering with the findings of the Ld. CIT(A) whose order is confirmed as no revised return was filed in support of the claim of mistake in filing the return of income. The Ld. AO had rightly not allowed the request for rectification as it was not a *prima facie* mistake. In fact for the same share transactions, the assessee was treating the short term gains as business profit, which is a smaller amount and the long term gains as exempt long term capital gains being the higher amount, which requires long drawn out process

of reasoning and analysis of identifying the stock in trade and investment for computation of income under the two heads with the reasons for the bifurcation and is not a *prima facie* mistake which could be rectified so as to reduce the assessed income below the returned income. Hence, Ground Nos. 1, 2, 3, 4, 5 and 6 are dismissed. Ground No. 7 is general in nature and does not require any separate adjudication.

7. In the result, the appeal filed by the assessee is dismissed

Order pronounced in the open Court on 28th January, 2026.

Sd/-	*Sd/-*
[**Sonjoy Sarma**]	[**Rakesh Mishra**]
Judicial Member	Accountant Member

Dated: 28.01.2026

Bidhan (Sr. P.S.)

Copy of the order forwarded to:

1. ***Shree Govind Property & Investments Pvt. Ltd., Govind Bhawan, 2, Brabourne Road, Lalbazar, Kolkata, West Bengal, 700001.***
2. ***D.C.I.T., Circle-5(1), 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