

आयकर अपीलिय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH KOLKATA

**Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member**

**ITA No.2562/Kol/2025
Assessment Year: 2023-24**

**Rishi Kyal.....Appellant
161/1, M.G. Road, 2nd Floor,
Room No.41, Hazra, Kol-26.
[PAN: AFTPK7464G]**

vs.

ACIT, Central Circle-3(2), Kolkata.....Respondent

**ITA No.2564/Kol/2025
Assessment Year: 2023-24**

**Rahul Kyal.....Appellant
122/1R, Satyendra Nath Majumdar Sarani,
Tollygunge, Kalighat, Kol-700026.
[PAN: AGHPK1359F]**

vs.

ACIT, Central Circle-3(2), Kolkata.....Respondent

Appearances by:

Shri Anil Kochar, Advocate, appeared on behalf of the appellant.

Shri S. B. Chakraborty, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 13, 2026

Date of pronouncing the order : January 29, 2026

ORDER

Per Pradip Kumar Choubey, Judicial Member:

Both the captioned appeals have been preferred by the different assesseees against the separate orders dated 28.10.25 & 29.10.25 of the CIT(Appeals)-21, Kolkata [‘CIT(A)’] passed under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) respectively. Since, the issues involved in both the appeals are common and relate to the same assessee, therefore, these appeals have been heard together and are being disposed of by this consolidated order. ITA No.2562/Kol/2025 is taken as lead case for narration of facts.

2. ITA No.2562/Kol/2025 – Brief facts of the case are that the assessee for the year under consideration filed his return of Income declaring total income of Rs.63,07,060/-. A Search & Seizure operation u/s 132 of the Act was conducted on 18.08.2022 at the residential as well as office premises of the assessee. During the course of Search operation, cash amounting to Rs.83,26,000/- was found out of which cash of Rs. 75,00,000/-was seized. A show-cause notice was issued to the assessee and in response to the same, the assessee produced cash book wherein the cash balance was found and the assessee was unable to provide any explanation of Rs. 11,26,700/-. The Assessing Officer framed the assessment u/s 143(3) of the Act treating Rs. 11,26,700/- u/s 69A of the Act. The assessee to avoid litigation did not prefer an appeal against the Order framed. Subsequently, penalty notice u/s 271AAB of the Act was issued to the assessee and penalty u/s 271AAB of Rs.6,84,360/- has been computed.

3. Aggrieved by the said order, the assessee filed an appeal before the CIT(A) wherein the ld. CIT(A) dismissed the appeal of the assessee.

4. Aggrieved and dissatisfied, the assessee is in appeal before us. The Ld. AR had challenged the impugned order thereby submitting that the levy of penalty by the Assessing Officer confirmed by the ld. CIT(A) is excessive as the ld. CIT(A) have completely ignored the fact that the penalty should be levied at 30% u/s 271AAB(1A)(a) instead of 60% which have been levied by the Assessing Officer. The ld. AR further submits that a plain reading of the provisions of section 271AAB of the Act suggests that the Assessing Officer may direct that in a case where Search has been initiated u/s 132 of the Act the assessee shall pay by way of penalty in addition to tax and the sub-section thereon provides the rate in sub-section (a) at the rate of 30% and in cases not covered in sub-section (a) then under sub-section (b) will come wherein the rate of 60% was come in force. The ld. AR also submits that the statement u/s

132(4) of the Act was recorded by the search party only of Shri Umesh Kyal and Shri Rahul Kyal respectively and none of the other persons whose name appears in the Panchnama have been required to make a Statement u/s 132(4) of the Act. His submission is that from the Statement so recorded u/s 132(4) of the Act, it is clear that the authorized officers have not enquired from the persons whose premises have been searched or examined on oath who were in possession of control of any Books of accounts, documents, money, bullion or other valuable article but nowhere the authorized officer has enquired into or examined the source of the cash found as well as the jewelleryes and ornaments which ought to have been done. The ld. AR further submits that circumstances clearly reveal that there being no fault from the part of the assessee in declaring undisclosed income and payment of taxes voluntarily without there bring any pressure or caution or any question put to him the penalty out to be levied @ 30% and should not be @ 60% as have been done by the Assessing Officer.

5. Contrary to that, the ld. DR supports the impugned order.

6. We have considered the submissions of the counsels of the respective parties and perused the material available on record. We find that the assessee filed return of income declaring total income of Rs.63,07,060/-, a search operation was conducted and a cash of Rs.83,26,000/- was found out of which cash of Rs. 75,00,000/-was seized. We also find that since the assessee did not prefer appeal and a penalty @60% u/s 271AAB(1A)(b) of the Act was levied by the Assessing Officer instead of 30% u/s 271AAB(1A)(a) of the Act. We have gone through the Panchnama which has been filed by the assessee and find that it was drawn in the name of family members of Kyal group and there are nine persons in the Panchnama. We note that the assessee in reply before the Assessing Officer had clearly stated that cash found and seized pertained to income of the family members from commission and

the same have been duly recorded in the books of account and offered for tax. It is pertinent to mention here that the amount has clearly been disclosed in the commission and have been duly recorded in the Books of accounts and offered for tax. We have gone through the statement recorded by the authority during the search and find that no specific question pertaining to cash found asked while recorded statement u/s 132(4) of the Act. It is pertinent to mention that statement was recorded u/s 132(4) of the of Shri Umesh Kyal and Shri Rahul Kyal and none of the other persons whose name appeared in the Panchnama had been required to make a statement u/s 132(4) of the Act. We find that from the statement so recorded u/s 132(4) of the Act, it is clear that the authorized officers have not enquired from the persons whose premises have been searched or examined on oath who were in possession of control of any Books of accounts, documents, money, bullion or other valuable article and have not examined the source of the cash found as well as the jewelleryes and ornaments. The moot question arises for consideration is that whether the failure in not admitting the income u/s 132(4) of the Act by the assessee is his failure or the failure of the authorized officer during search proceedings in not putting the question which he ought to have to the assessee to explain the money and valuables found and whether the authorized officer enquired about the same and there would not have been reply to the same or acceptance of the income undisclosed, then admittedly provisions of section 2771AAB(1A)(b) would have come into play but there was no mention in respect of the questions having been put to the assessee to explain the source of cash and/or the jewelleryes found. We further note that when question has not been put to the assessee then it is the case of the assessee that the conditions as provided in provisions of section 271AAB(1A)(a)(i) &(ii) of the Act could not have been fulfilled because of the lapses on the part of the authorized officer. We further find that a plain reading of the provisions of section 271AAB of the Act suggests

that the Assessing Officer may direct that in a case where Search has been initiated u/s 132 of the Act, the assessee shall pay by way of penalty in addition to tax and the sub-section thereon provides the rate in sub-section (a) at the rate of 30% and in cases not covered in sub-section (a) then under sub-section (b) will come wherein the rate of 60% was come in force and the assessee's case does not come within the purview of sub-section (a). As we have already discussed that nowhere the authorized officer has enquired into and examined the source of the cash found as well as the jewellerys and ornaments which ought to have been done and in fact, the authorized officer on both the occasions have explained the persons whose Statements were recorded about the provisions of section 181, 177, 277A, 278 etc. but had not drawn their attention to the searched parties to the provision of section 132(4) r.w.s 271AAB of the Act in respect of the assets and valuable found. We further find that this being so then the search party would have definitely declared the undisclosed income in the statement u/s 132(4) and the same would have triggered the amount of penalty leviable @ 30% and not 60%. Going over the discussion made above, we find that there had been lack of questioning by the search team which resulted in levying of penalty @ 60%. So, we find substance in the argument of the Id. AR that in the present case, the levy of penalty should be @30% not 60%. The Assessing Officer is directed to compute the same @30%. ITA No.2562/Kol/2025 is allowed.

7. ITA No.2564/Kol/2025 - Since the facts and issues involved in both the appeals are identical, therefore, our findings/directions given above in ITA No.2562/Kol/2025 will mutatis mutandis apply to ITA No.2564 /Kol/2025 also. Hence, ITA No.2564/Kol/2025 is also allowed.

8. In the result, both the captioned appeals filed by the assessee are allowed for statistical purposes.

Kolkata, the 29th January, 2026.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Dated: 29.01.2026.

RS

Copy of the order forwarded to:

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

//True copy//

By order

Assistant Registrar, Kolkata Benches