

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH AT KOLKATA**

Before

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

**ITA No(s): 1749/KOL/2025
Assessment Year(s): 2017-18**

Mihilal Sekh (Appellant)	Vs.	I.T.O., Ward-3(1), Birbhum (Respondent)
PAN: BYDPS2628Q		

Appearances:

Assessee represented by : Promit Majumdar, Adv.
Department represented by : Susanta Saha, Addl. CIT, Sr. DR.
Date of concluding the hearing : 25-March-2026
Date of pronouncing the order : 02-April-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 2017-18 dated 13.12.2024.

1.1 The Registry has informed that the appeal is barred by limitation by 157 days. The assessee has filed a petition along with an affidavit seeking condonation of delay by explaining the reasons that the assessee is not very conversant with the procedures of the law and had duly entrusted a practitioner for the appeal process. The assessee has stated that the practitioner was entrusted to appear before the appellate authority but he failed to do so and the assessee came to know about the order only when he was called in person in respect of the demand. The assessee has requested the Bench to condone the delay of 150 days in filing the appeal. After perusing the same, we are satisfied that the



assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

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

“1. For that the appeal order failed consider the facts and legality of the appeal before passing an order u/s 250, where the entire proceedings were initiated beyond jurisdiction and also the documents and facts relied upon for such initiation was never allowed for a cross verification.

2. For that the adjudication proceedings-initiated u/s 148 by the adjudicating authority is out of jurisdiction as notices u/s 148A(b) and 148 and order u/s 148A(b) was initiated by the Jurisdictional Assessing Officer whereas it is to be initiated and issued by Faceless Assessing Officer u/s 151A.

3. For that adjudication order and subsequent order in appeal u/s 250 was passed on the presumption that the party named M/s Aryan traders was disallowed of ITC on purchases under a different statute of Indirect Tax leads to bogus purchase and which subsequently leads to bogus sales, on which such order of the statute is silent on. And subsequently such hyperbolic assumption led to the fact that the appellant had made a bogus purchase, this entire process of drawing conclusion, which was based on information supplied by an authority of Indirect Tax, disallowing ITC to bogus purchase of the appellant is baseless and illegal and has no merit to it.

4. For that appellate authority also failed to appreciate the fact that the adjudicating authority did not apply its mind before initiating such proceedings u/s 148A and passing such order of disallowing expenses, despite the appellant submitting relevant ledgers and invoices correlating the same.

5. The adjudicating authority and subsequently the appellate failed to appreciate the fact that the appellant had filed the due ITR u/s 44AD and 44AE in the relevant form, which categorically releases the burden of the appellant to maintain books of accounts, but the addition made by them was u/s 69C, which mandatory requires maintaining of books of accounts for explanation of expenses made. This is a gross violation of natural justice and law and such order is liable to be quashed.”

3. Brief facts of the case are that the assessee is an individual and had e-filed his return of income for AY 2017-18 showing total income of



₹2,81,760/-. The return was processed u/s 143(1) of the Act. An information was received from the DDIT(Inv.), Unit-6(1), Kolkata that an investigation was carried out by Bureau of Investigation, Unit-1, Commercial Taxes, Govt. of West Bengal in the case of one Sh. Amit Kumar Agarwal, Proprietor of M/s. Aryan Trading Co. who was carrying on business in a clandestine manner and without entering into the *bona fide* transactions of taxable goods and was claiming Input Tax Credit (ITC), which is inadmissible under the provisions of WBVAT Act, 2003 and gave rise to evasion of tax. The assessment of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act and the assessee was required to file a return of income in response to the same. However, the assessee failed to comply with the notice issued. The dealer M/s. Aryan Trading Co. was also found non-existent at the address given. The Assessing Officer (hereinafter referred to as Ld. 'AO') noted that the assessee had taken accommodation entries through non-genuine bills and had availed input tax credit by way of claiming bogus purchases, purportedly made from Aryan Trading Co. and the amount of ₹13,57,761/- shown as purchases from the said party was treated as bogus and non-genuine transactions and added to the returned income of the assessee u/s 69C of the Act. The Ld. AO assessed the total income of the assessee at ₹16,39,522/- u/s 147 r.w.s. 144 r.w.s. 144B of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who perused the submissions of the assessee, the grounds of appeal and the annexures submitted with Form No. 35 and vide order dated 13.12.2024 dismissed the appeal of the assessee by his findings as under:

“5.3.2 On perusal of the assessment order and the submissions of the appellant, I find that the purchases to tune of Rs. 13,57,761/- made by the



assessee in this case are in question for reason that party from whom these purchases are made i.e. M/s Aryan Trading Co Prop. Shri Amit Kumar Agarwaal, is found to be fraudulent by the Commercial Tax authorities. As per the report of the investigating authority the said entity was found involved in tax evasion practices by using bogus bills of sale/purchase. Under these circumstances the bills/vouchers of purchase issued by the tainted dealer cannot be taken as proof of bona fide transaction. Further, the assessee has made payment for the purchases under question through cash which is again not a verifiable source. Furthermore, the assessee could not furnish any other evidence to establish genuineness of the purchases in term of documents indicating transportation of goods etc before the AO or before me. The appellant has presented his books of account and bill/vouchers issued by the tainted dealer as proof of purchase which cannot be taken as a valid proof for the reason as discussed above. Therefore, disallowance of such purchases by the AO is reasonable and the addition made thereto is held correct. Hence, these grounds of appeal are dismissed.

5.4 Ground no 6 is regarding leave to add or adduce any other grounds in the appeal, therefore needs no adjudication.

6. In result, appeal of the appellant is dismissed.”

4. 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. The Ld. AR submitted that the addition was made on account of bogus purchases u/s 69C of the Act on the basis of information received from GST Department. The payments were made in cash. The assessee could not furnish the details to the Ld. AO as the trucks were arranged by the sellers and the consignment note could not be produced. The Ld. AR requested that final opportunity of being heard may be provided.

6. The Ld. DR relied upon the decision of Hon'ble Bombay High Court in the case of **PCIT vs. M/s. Drisha Impex Pvt. Ltd.** in **ITA No. 1240**



of 2018 with **ITA No. 2087 of 2018** order dated 07.04.2025 and requested that the order of the Ld. CIT(A) may be confirmed.

7. We have considered the facts of the case, the submissions made and the documents filed. Since the assessee has claimed that the evidence for the consignment notes is now available, the Bench was of the view that another opportunity of being heard may be provided to the assessee. Hence, in the interest of justice and fair play, it was considered that the request of the assessee to set aside the case before the Ld. AO may be allowed so that a proper opportunity of being heard may be provided. Therefore, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) and remit the matter back to the Ld. AO for making the reassessment *de novo*. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and he shall not seek unnecessary adjournments. Accordingly, the grounds taken by the assessee in his appeal are partly allowed for statistical purposes.

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

Order pronounced in the open Court on 2nd April, 2026.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 02.04.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Mihilal Sekh, Saluka Puranagram, P.O.-Kablinagar, P.S.-Md. Bazar, Birbhum, West Bengal, 731132.**
2. **I.T.O., Ward-3(1), Birbhum.**
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