

**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). 1696/KOL/2025
Assessment Year(s) 2017-18**

Rakesh Kumar Agarwal (Appellant)	Vs.	I.T.O., Ward-27(1), Haldia (Respondent)
PAN: AEAPA2725C		

Appearances:

Assessee represented by : S. Jhajaria, AR.

Department represented by : Pampa Ray, Sr. DR.

Date of concluding the hearing : 02-April-2026

Date of pronouncing the order : 17-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 25.01.2024.

1.1 The Registry has informed that the appeal is barred by limitation by 485 days. The assessee has filed a petition for condonation of delay explaining the reasons that the assessee never received the appellate order passed u/s 250 of the Act on 25.01.2024. He only came to know about the order on 23.07.2025 when a demand was raised by the Income Tax Department. Thereafter, the matter was forwarded to the tax consultant and after that the appeal could be filed before the Tribunal. The assessee requested the Bench to condone the delay of 550 days in filing the appeal before the Hon'ble ITAT. 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 in view of the facts and in the circumstances, the impugned proceedings vide issue of notice u/s 148 dt. 25.7.2022 (pursuant to the judgment of Hon'ble Supreme Court in U.O.I. v. Ashish Agarwal dt. 4.5.2022) is barred by limitation and consequently the entire proceedings and the consequent order is bad in law and it may be held accordingly.

2. Without prejudice to Ground No. 1 above, Ld. AO was unjustified in making the addition of Rs.7,86,140/- as unexplained money u/s 69A and in view of the facts and in the circumstances Ld. CIT(A) was wholly unjustified in affirming such action of AO in making such addition and in view of the facts and in the circumstances the said addition is liable to be deleted and it may be held accordingly.

3. Without prejudice to Grounds No. 1 & 2 above, the Ld. CIT(A) erred in upholding the validity of the impugned order u/s 147 read with sec. 144 and in view of the facts and in the circumstances such action of Ld. CIT(A) is bad in law and it may be held accordingly.

4. Without prejudice to Grounds No. 1, 2 & 3 above, the impugned transactions for which the addition of Rs. 7,86,140/- was made u/s 69A pertained to securities of "Kushal Limited" which does not fall under the alleged list of shares and as such the ratio of judgment of Hon'ble Calcutta High Court in Swati Bajaj & ors. [2022 139 taxmann.com 352 (Calcutta)] is not applicable and the impugned transactions are genuine and it may be held accordingly.

5. For that in view of the facts and in the circumstances, the impugned notice u/s 148 was issued by J.A.O. whereas in terms of sec. 151A the impugned notice should have been notice of Faceless Assessing Officer and as such the entire proceedings and the consequent order has become void ab-initio and hence it may be held accordingly.

6. For that your petitioner craves the right to put additional grounds and/or to alter/ amend/ modify the present grounds at the time of hearing.”

3. Brief facts of the case are that the assessee is an individual and had filed his return of income for AY 2017-18 showing total income of ₹11,83,110/-. The Assessing Officer (hereinafter referred to as ‘the Ld.



AO') noted that during the FY 2016-17 the assessee was a beneficiary on account of fictitious capital gains through accommodation entry provided by Kushal Limited. The assessee was one of the beneficiaries who made long-term capital gains amounting to ₹2,11,486/- with total sale consideration received during the year of ₹7,86,140/-. The Ld. AO treated the sum of ₹7,86,140/- as unexplained money u/s 69A r.w.s. 115BBE of the Act and added back to the total income of the assessee and assessed the total income at ₹19,69,250/- 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 issued several notices for hearing but the assessee did not respond to any of the notices, therefore, vide order dated 25.01.2024, the Ld. CIT(A) dismissed the appeal of the assessee and accordingly confirmed the assessment order.

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.

6. The Ld. AR submitted at the outset that there was no proper compliance before the Ld. CIT(A) and requested that the matter may be sent back for deciding the appeal on merits as the appeal was dismissed on account of non-prosecution as the assessee could not furnish any documents in support of the grounds of appeal nor could he rebut the order of the Ld. AO. It was stated that the assessee has sufficient evidence for the relief claimed and even before the Ld. AO the assessment was *ex parte*. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld. 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). 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 the request of the assessee to set aside the case before the Ld. CIT(A) may be allowed so that a proper opportunity of being heard may be provided.

7. 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 before him for disposal of the grounds of appeal taken by the assessee on merit 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 his 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 the appeal are partly allowed for statistical purposes.

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

Order pronounced in the open Court on 17th April, 2026.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 17.04.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Rakesh Kumar Agarwal, C/o. M/s. Salarpuria Jajodia & Co., 7, C.R. Avenue, 3rd Floor, Kolkata, West Bengal, 700072.**
2. **I.T.O., Ward-27(1), Haldia.**
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