

**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). 1695/KOL/2025  
Assessment Year(s) 2018-19**

Nitesh Nathany <b>(Appellant)</b>	Vs.	I.T.O., Ward-40(1), Kolkata <b>(Respondent)</b>
<b>PAN: ADFPN6972Q</b>		

**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 2018-19 dated 28.11.2023.

1.1 The Registry has informed that the appeal is barred by limitation by 545 days. The assessee has filed a petition for condonation of delay explaining the reasons that the appellate order passed on 28.11.2023 was never served to the assessee and the assessee came to know about the order only on 13.07.2025 when a follow-up demand was raised by the Income Tax Department. Thereafter, the matter was forwarded to the tax consultant. The assessee requested the Bench to condone the delay of 608 days in filing the appeal before the Hon'ble Tribunal. 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 Ld. CIT(A) was wholly unjustified in passing the impugned order ex-parte and in view of the facts and in the circumstances and in the fairness of the justice the impugned order of Ld. CIT(A) may kindly be set aside to CIT(A) for re-adjudication of the grounds so raised and it may be held accordingly.*

*2. For that in view of the facts and in the circumstances, the Ld. CIT(A) was wholly unjustified in affirming the order of AO in making addition of Rs. 15,00,000/- u/s 68 and in view of the facts and in the circumstances the impugned addition is liable to be deleted and it may be held accordingly.*

*3. For that in view of the facts and in the circumstances, the Ld. CIT(A) was wholly unjustified in affirming the action of AO and not appreciating the issue on which notice u/s 148 was issued, no addition has been made and the AO has travelled to issues which were not subject matter of notice u/s 148 and as such the entire proceedings is in violation of provisions in such respect and hence the impugned order u/s 147 r.w.s. 144B is bad in law and it may be held accordingly.*

*4. 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. 144B 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.*

*5. Without prejudice to Grounds No. 1 to 4 above, the impugned transactions for which the addition of Rs.15,00,000/- u/s 68 pertained to loan taken from Devangi Vinimay Pvt. Ltd. is wholly unjustified and addition is liable to be deleted and it may be held accordingly.*

*6. 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.*

*7. 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 the return of income for the AY 2018-19 declaring total income



from salary, short-term capital gain and other sources at ₹33,52,956/- . A search and survey operation was conducted in Kushal Group of Ahmedabad. From the seized material, the Assessing Officer (hereinafter referred to as Ld. 'AO') noted that Kushal Limited, one of the entities of Kushal Group was engaged in giving accommodation entries in the BSE in the form of long-term capital gain/loss and short-term capital gain/loss. The assessee was given accommodation entries through Kushal Limited in the BSE and had claimed bogus long-term capital gain of ₹37,62,797/-. Another credible information had been received from the DDIT (Inv.), Ahmedabad that M/s. Devangi Pvt. Ltd., a listed company, which was allegedly listed only on papers and was incorporated with the help of the entry provider to provide accommodation entries to some beneficiaries, had given accommodation entry of ₹15,00,000/- which remained undisclosed as well as unexplained. Therefore, the Ld. AO added a sum of ₹15 Lakh u/s 68 of the Act to the returned income of the assessee and assessed the total income of the assessee at ₹46,30,300/- u/s 147 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 to the assessee but the assessee neither made any compliance to the notices issued nor did he submit any documentary evidence/information to substantiate his claim. Therefore, the Ld. CIT(A), vide order dated 28.11.2023, dismissed the appeal of the assessee on the ground of non-compliance and non-prosecution.

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 back to 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 his 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 17<sup>th</sup> 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. **Nitesh Nathany, C/o. M/s. Salarpuria Jajodia & Co., 7, C.R. Avenue, 3<sup>rd</sup> Floor, Kolkata, West Bengal, 700072.**
2. **I.T.O., Ward-40(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