

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA****Before Shri Rajpal Yadav, Vice-President
&
Shri Rajesh Kumar, Accountant Member****I.T.A. No. 516/KOL/2022
Assessment Year: 2017-2018****Anjali Roy,.....Appellant
C/o. Tarak Chand Roy, Rautari,
Chakdaha, Nadia-741248, West Bengal
[PAN: BKCPR5405B]****-Vs.-****Income Tax Officer,.....Respondent
Ward-41(3), Nadia,
Anantahari Mitra Road, Nediarpura,
Krishnanagar, Nadia-741101****Appearances by:***Shri Dilip Chatterjee and Sourdeep Majumdar, A.Rs.,
appeared on behalf of the assessee**Shri P.P. Barman, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : May 04, 2023

Date of pronouncing the order : May 25, 2023

ORDER**Per Shri Rajpal Yadav, Vice-President (KZ):-**

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 24th March, 2022 passed for assessment year 2017-18.

2. The Registry has pointed out that appeal is time-barred by 108 days because it was presented on 12.09.2022. A perusal of the record would indicate that Registry has observed that order was served upon the assessee on 28.03.2022. The Registry has counted 168 days from 29.03.2022 to 12.09.2022. It was pertinent to observe that upto the month of May, 2022, Hon'ble Supreme Court has condoned the delay on account of COVID period therefore limitation ought to have been counted by the Registry from May, 2022 to 12.09.2022. If this exercise is being taken out, then almost 60 days would be excluded. The assessee has filed an application for condonation of delay alongwith an affidavit. In the application, the assessee has pleaded that she took a number of round to contact her erstwhile Advocate Bablu Kundu at CTBA, 14, Beliaghata Road, Kolkata, but he has not prepared the appeal and thereafter she approached Shri Gour Chandra Chandra, Advocate on subsequent date, who prepared the appeal and filed. On account of taking the papers from her earlier Advocate and engaging the new one, a lot of time has elapsed. It is pertinent to observe that the assessee is staying at Vill. & Post Rautari, Chakdaha, Nadia, which is roughly five hours journey from Kolkata. According to the assessee, on account of all these procedural aspect, she could not file the appeal within time.

3. We have gone through this application. As far as computation of delay to the extent of May, 2022 is concerned, it is to be excluded as per the judgment of the Hon'ble Supreme Court being a COVID period. Thus the only delay for filing this appeal is of few days i.e. after 30th of May. Number of days consumed by the assessee till filing of the appeal is to be considered for the purpose of treating the appeal as time-barred. After going through the application of the assessee, we are satisfied that the assessee was prevented by sufficient reason and, therefore, we condone the delay in filing the appeal. We proceed to decide the appeal on merit.

4. In the light of above, if we examine the facts, then it would reveal that the assessee is not assessed to tax either in her earlier life or subsequent to this assessment year. She is staying in small village, which is five hours journey from Kolkata. She has been assessed to tax only on the ground that during demonetisation, a credit of roughly Rs.10 lakhs reflected in her account. She did not file the return but computer generated notice under section 142(1) called her return and an *ex-parte* assessment order was made. Considering the above circumstances, we are of the view that it might be very difficult for a lady belonging to a rural rustic background to comprehend all these intricacies of income-tax and then to engage Advocate. Therefore, there might have

some delay in this consultation process. Accordingly we condone the delay and proceed to decide the appeal on merit.

5. Brief facts of the case are that a notice under section 142(1) generated by the Computer System was issued on 15.03.2018. According to the ld. Assessing Officer, it was duly served upon the assessee. The ld. Assessing Officer has further observed that return of income in the prescribed form was called upon from the assessee but his notices remained un-complied with. Subsequently assessee has filed a reply through e-mail, wherein she has enclosed the bank statement of her husband and submitted that cash was deposited by her husband and not by her. The complete bank details were given to the ld. Assessing Officer, who did not analyse all these details in an analytical manner, but passed an ex-assessment order under section 144 of the Income Tax Act on 26.12.2019 (i.e. best judgment assessment order). He made an addition of Rs.10,07,000/- with the aid of section 69 of the Income Tax Act by holding that it is an unexplained investment of the assessee in the Bank account.

6. Dissatisfied with this assessment order, the assessee carried the matter in appeal before the ld. CIT(Appeals), but the ld. CIT(Appeals) observed that he

has issued three notices, which were remained un-complied with, therefore, he assumed that the assessee has nothing to say in support of the appeal, without adjudicating the issues on merit, he dismissed the appeal.

7. We have duly considered the rival contentions and gone through the record carefully. Let us first appreciate the order of the ld. CIT(Appeals). Sub-section (6) of section 250 contemplates that ld. CIT(Appeals) would state the points in dispute and thereafter record reasons in support of her conclusion on those points. A perusal of this sub-section would reveal that ld. Commissioner has to frame the points in dispute and thereafter record reasons in support of her conclusion on those points. The ld. CIT(Appeals) neither took cognizance of the grounds of appeal nor considered the material submitted to the ld. Assessing Officer through e-mail. He has not perused the assessment record and re-appreciated it. The section contemplates that ld. 1st Appellate Authority has to re-appreciate all these materials.

8. The assessee filed a paper book containing 69 pages. In the certificate appended to this paper book exhibiting the fact about submission of these papers, it has been shown by the assessee that most of the pages are bank statements along with the

deposit slips. Copies of the letters written to the Assessing Officer and copy of the notice vide which penalty initiated against the assessee was dropped. The assessee has further annexed Aadhaar Cards of her family members, namely her husband Shri Tarak Chand Roy, Smt. Bornali Dey, Babita Sarangi, Dilip Kumar Sarangi, etc. The husband of the assessee has filed an affidavit, which is available on pages 1 & 2 of the paper book. This affidavit has been deposed in March, 2023, i.e. filed before us. This affidavit reads as under:-

SL NO 82 22 MAR 2023 A

भारतीय गैर न्यायिक

दस रुपये TEN RUPEES

रु.10 Rs.10

INDIA NON JUDICIAL

Before the Notary Public at Kalyani Court, Nadia.

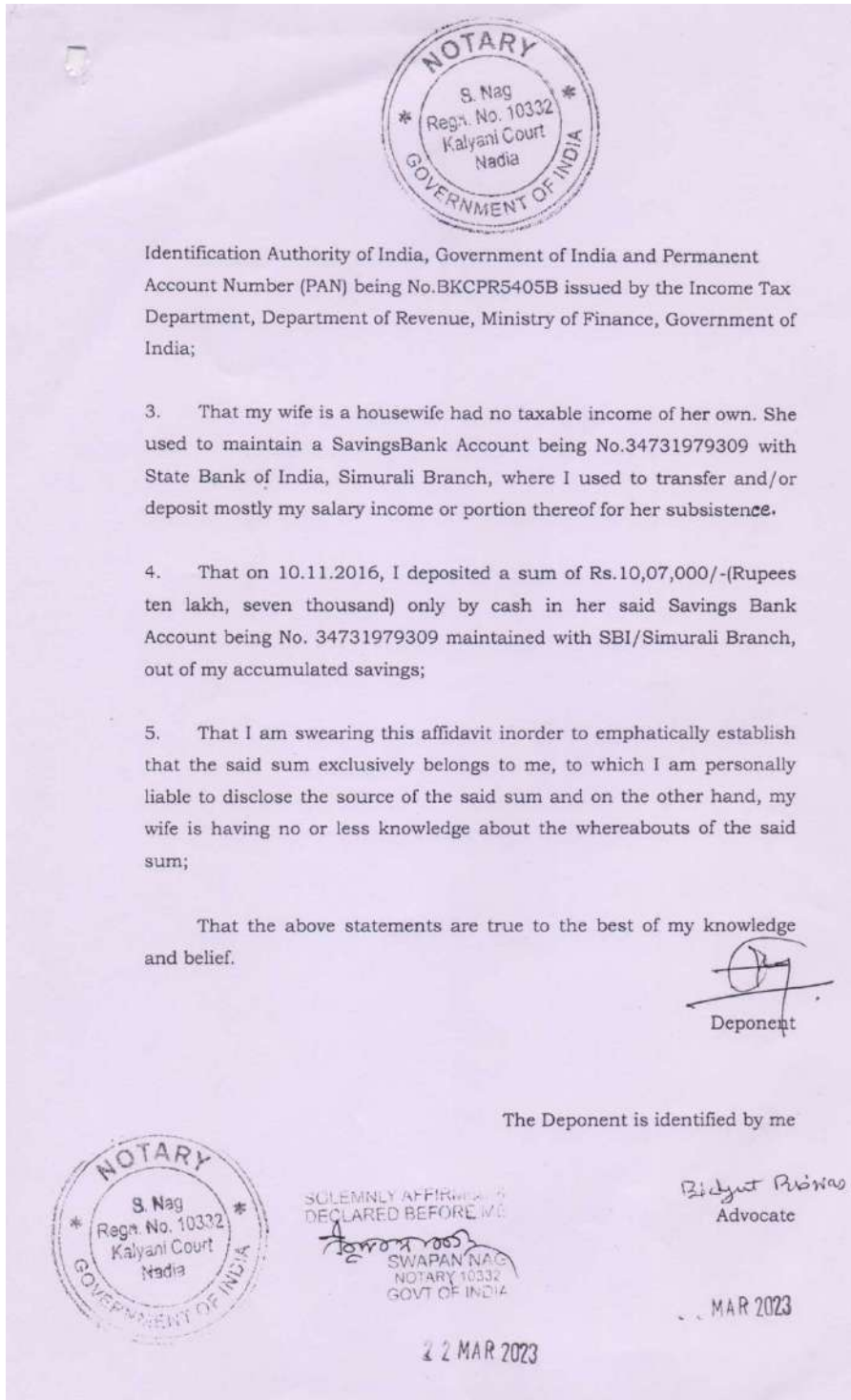
बंगाल WEST BENGAL GOVERNMENT OF INDIA 94AA 516234

I, Tarak Chand Roy, son of Late Lankeshwar Roy, aged about 54 years, by faith Hindu, by occupation service (retired), at present residing at Village and Post Office Rautari, Chakdaha, Nadia-741 248 do hereby solemnly affirm and declare as follows:

1. That I am having Aadhar No. 6015 1850 9225 issued by the Unique Identification Authority of India, Government of India and Permanent Account Number (PAN) being No. AINPR9333G issued by the Income Tax Department, Department of Revenue, Ministry of Finance, Government of India;
2. That during my service tenure, as a combatant member of the Indian Army, I mostly had to stay away from my home place and my family used to run by my wife Smt. Anjali Roy, daughter of Juramoni Biswas, having Aadhar No. 3335 0120 6334 issued by the Unique

NOTARY
S. Nag
Regn. No. 10332
Kalyani Court
Nadia
GOVERNMENT OF INDIA

SWAPAN NAG
NOTARY 10332
GOVT OF INDIA
22 MAR 2023



9. This affidavit, to our mind, does not require any cross verification because it does not disclose any specific thing, which

is to be referred herein. We are using this affidavit only for two reasons-

- (a) That husband of the assessee was a combatant member of the Indian Army in the category of JCO i.e. either Sepoy, Howildar or Naik Subedar.
- (b) He deposed that I always remained out of station and, therefore, always sent money to my wife, who has been managing the affairs of my family members. He took the responsibility that whatever was deposited in the account that is by him only.

10. A perusal of the complete record including the Bank statements and the finding of the Id. Assessing Officer, it revealed that in the past, the assessee took personal loan as well as withdrawal from Provident Fund. This total withdrawal of Rs.9,00,000/- has been negated by the Id. Assessing Officer on the ground that these withdrawals were made at the fag end of 2014 and it is to be construed as used by the assessee. In other words, in the opinion of the Id. Assessing Officer, this amount cannot be stated as available with the assessee for re-deposit during demonetisation period. We have perused all these details and we are of the view that facts and circumstances of assessee like in the present case, cannot be compared to the Business Houses, whose affairs are managed by Organized Staff. The assessee

belongs to a rural life, never had taxable income in her life, her affairs cannot be expected as organized as of other assesses in the urban area. The fact that she had never been in a tax-payer category in itself is sufficient that she has no unexplained money, rather whatever may be the saved from agricultural activity, husband's salary throughout the life might have been deposited. Therefore, on the basis of material placed before us, we are satisfied that she has not made any unexplained investment, whatever deposits were made are either out of the past savings or from the loans taken from relatives. Therefore, we allow this appeal and delete the addition.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on May 25, 2023.

**Sd/-
(Rajesh Kumar)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President(KZ)**

Kolkata, the 25th day of May, 2023

*Copies to : (1) Anjali Roy,
C/o. Tarak Chand Roy, Rautari,
Chakdaha, Nadia-741248, West Bengal*

*(2) Income Tax Officer,
Ward-41(3), Nadia,
Anantahari Mitra Road, Nediarpura,
Krishnanagar, Nadia-741101*

- (3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*
- (4) *Commissioner of Income Tax ,*
- (5) *The Departmental Representative*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.