

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**KOLKATA**

**Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member**

**I.T.A. No.120/Kol/2024**  
Assessment Year: 2012-13

**Anup Nayak.....Appellant**

161, P N Malia Road, Raniganj,  
West Bengal – 713325.

**[PAN: ADFPN8917M]**

**vs.**

**CIT(A), Delhi..... Respondent**

**Appearances by:**

None appeared on behalf of the appellant.

Shri Bonnie Debbarma, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 22, 2025

Date of pronouncing the order : July 23, 2025

**आदेश / ORDER**

**Per Sonjoy Sarma, Judicial Member:**

This appeal by the assessee is directed against the order dated 25.07.2023 passed by the Ld. Commissioner of Income-tax (Appeals). Kolkata [in short CIT(A)] under section 250 of the Income-tax Act, 1961 for the assessment year 2012-13, confirming the demand raised under section 201(1) read with section 201(1A) of the Act

2. Brief Facts of the Case the assessee is engaged in the contractual business of mining work and trading. During the relevant financial year 2011-12, the assessee failed to deduct tax at source (TDS) as required under Chapter XVII-B of the Income-tax Act and also failed to file TDS returns, On scrutiny, it was found that the assessee had debited the following expenditures in its Profit & Loss account without deduction of tax at source:

Dumper hire charges: Rs.8,42,365

Lease Rent: Rs.23,27,000

Interest on loan: Rs.5,88,884

Since no tax was deducted and deposited on the aforesaid expenses, the Assessing Officer disallowed the expenditure under section 40(a)(ia) and also initiated proceedings under section 201(1) read with section 201(1A) treating the assessee as an assessee-in-default. Consequently, a demand of Rs.5,50,980 was raised vide order dated 29.03.2019.

3. Aggrieved, the assessee filed an appeal before the Ld. CIT(A). However, the assessee failed to appear or file any submissions in support of its contentions despite repeated opportunities. The Ld. CIT(A) passed an ex parte order, upholding the disallowance and demand raised under section 201(1)/201(1A) and dismissed the appeal.

4. Dissatisfied with the above order assessee is appeal before this tribunal, raising several grounds challenging the validity of the ex parte order and additions made. However, when the appeal was listed for hearing, there was no appearance on behalf of the assessee despite issuance of notice from the Registry. The matter is, therefore, heard with the assistance of the Ld. DR.

5. The Ld. DR submitted that the CIT(A) was justified in passing an ex parte order since the assessee did not appear or furnish any evidence in support of its case.

6. We have heard the Ld. DR and perused the material available on record, we observe that the order passed by the Ld. CIT(A) is an ex parte order, as the assessee failed to appear before the appellate authority despite issuance of notices and opportunities granted. We are of the view that substantial justice should prevail over procedural lapses. A litigant should not suffer merely due to non-appearance on procedural dates if the case otherwise merits consideration. In the interest of justice and fair play, we are inclined to provide one more opportunity to

the assessee to represent its case before the CIT(A). Accordingly, we set aside the order of the CIT(A) dated 25.07.23 and restore the matter to the file of the CIT(A) for fresh adjudication after affording reasonable opportunity of being heard to the assessee. The assessee is also directed to promptly respond to the notices issued by the CITA) and cooperate in the proceedings. Failure to do so may result in adjudication of the matter ex parte once again.

7. In view of the above, the appeal of the assessee is allowed for statistical purposes.

***Kolkata, the 23<sup>rd</sup> July, 2025.***

Sd/-

**[Rakesh Mishra]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sonjoy Sarma]**

न्यायिक सदस्य/Judicial Member

Dated: 23.07.2025.

*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