

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A", KOLKATA**

**BEFORE SH. S.S.GODARA, JUDICIAL MEMBER AND
DR. A.L. SAINI, ACCOUNTANT MEMBER**

ITA No. 1895/KOL/2018

&

Cross Objection CO No. 16/KOL/2019

[Assessment Year: 2007-08]

Deeplok Builders Pvt. Ltd., C/o. Sri S.L. Kochar, Advocate, 5, Ashutosh Chowdhury Avenue, Kolkata- 700 019. PAN- AAACD 9407 D	vs	DCIT, Circle-12, Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata- 700 069.
(Appellant)		(Respondent/Cross Objector)

Appellant by	Sh. Amit Kochar, Adv.
Respondent by	Sh. Dhruvajyoti Ray, JCIT.
Date of Hearing	15.01.2020
Date of Pronouncement	10.06.2020

ORDER

PER SH. S.S.GODARA, JUDICIAL MEMBER

This assessee's appeal for AY 2012-13 arises against the order dated 02.08.2018 passed by the Commissioner of Income Tax (Appeals)-4, Kolkata [in short "CIT(A)"] in Appeal No.675/CIT(A)-4/14-15 in proceedings u/s 143(3) of the Income tax Act, 1961 (in short the "Act").

Heard both the parties. Case file(s) perused.

2. It transpires at the outset that the CIT(A) has refused to condone around five years delay in filing of assessee's appeal in lower appellate proceedings. He has thus affirmed the AO's action making long term capital gains addition on sale of agricultural land of ₹1,84,80,232/-. The Revenue's Cross Objection No. 16/Kol/2019 has supported the impugned addition before us.

3. After giving our thoughtful consideration to the foregoing rival proceedings, we find that the instant raise is a pure legal question of assessment framed in a non-existence entity's case. Case file suggests that the original assessee herein M/s. JMB Properties Pvt. Ltd. had filed its return on 31.10.2007. This followed its amalgamation with the appellant herein i.e. *M/s. Deeplok Builders Pvt. Ltd.* vide scheme approved by hon'ble Calcutta high court in Company Petition No. 14 of 2008 connected with Company Application No. 807 of 2007. The said amalgamation scheme stood approved on 17.03.2008 having transfer date as 01.04.2007 with all rights and liabilities. That being the case, the AO's regular assessment dated 03.12.2009 appears to have been framed on a non-existence entity only. The appellant herein i.e. successor of the original assessee *M/s. JMB Properties Pvt. Ltd.* then filed its lower appeal after a period of almost 5 years. It submitted before the CIT(A) that there was a rectification petition filed on 25.07.2013 before the AO as well.

4. It is in this backdrop of facts that the CIT(A) has not only declined condonation of delay of around five years in filing of lower appeal but he has also confirmed the impugned addition of long term capital gains. We are of the opinion in these facts and circumstances that once the assessment itself has been framed in case of non-existent entity, hon'ble apex court's latest decision in *PCIT vs. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC)* holds that such an assessment is invalid and not sustainable in the eyes of law. We quote their lordship's yet another decision in *Collector Land Acquisition vs. Mst. Katiji & Ors. (1987) 167 ITR 471 (SC)* that the cause of substantive justice must prevail overall technical aspects and condone the

assessee's delay of almost five years in filing of the lower appeal since it is an instance of amalgamation of entities. We keep in mind our foregoing discussion and quash the impugned assessment itself. The assessee's appeal ITA No. 1895/KOL/2018 succeeds and Revenue's Cross Objection No. 16/kol/2019 fails.

5. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dated 14th May, 2020.*

6. This assessee's appeal ITA No. 1895/KOL/2018 is allowed and Revenue's Cross Objection No. 16/Kol/2019 is dismissed. Ordered accordingly.

Order pronounced in the open court on 10.06.2020.

**Sd/-
(A.L. SAINI)
ACCOUNTANT MEMBER**

**Sd/-
(S.S.GODARA)
JUDICIAL MEMBER**

Date: 10.06.2020
Bidhan

Copy forwarded to:

1. **Appellant**- Deeplok Builders Pvt. Ltd., C/o. Sri S.L. Kochar, Advocate, 5, Ashutosh Chowdhury Avenue, Kolkata- 700 019.
2. **Respondent**- DCIT, Circle-12, Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata- 700 069.
3. CIT(A)-4, Kolkata. (Sent through e-mail).
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (Sent through e-mail).

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches