

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C(SMC)' AT KOLKATA
[BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER &
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER]**

I.T.A. No. 63/Kol/2022
Assessment Year: 2011-12

Subrata Dutta Gupta.....Appellant
*Flat-6K, Tower-4, South City,
375, Prince Anwar Shah Road,
Kolkata - 700 068.
[PAN: AACPD 9081 E]*

Vs

ITO, Ward-25(4), KolkataRespondent

Appearances by:

*Shri Surajit Ghosh, FCA appearing on behalf of the Assessee
Shri B.S. Anand, JCIT, Sr. DR appearing on behalf of the Revenue:*

Date of concluding the hearing : April 26, 2022

Date of pronouncing the order : April 28, 2022

ORDER

PER SONJOY SARMA, JM:

This is an appeal filed by the assessee pertaining to the assessment year (in short 'A.Y.') 2011-12 is directed against the order of Ld. CIT(A)-7, Kolkata dated 12.09.2019 which is arising out of the assessment order passed u/s 144/147/143(3) of the Income Tax Act, 1961(in short 'the Act') dated 26.12.2018.

2. The registry has informed that the present appeal is time barred by 67 days. The ld. counsel for the assessee prayed for condonation of the delay stating the reasons which is placed on the record. He further submits that due to worse covid situation, the assessee also feel asymptomatic and unable to submit appeal within stipulated period as prescribed by law.

3. Per contra, the ld. DR opposed the request for condonation of delay. We after perusing the reasons as well as the material available on record and keeping in view the larger interest of justice, we condone the delay and admit the appeal for adjudication.

4. The assessee is in appeal before the Tribunal raising the following grounds:

“i. That the order of the Ld. CIT(A) confirming the erroneous order of the AO is bad in law and against the facts of the case.

ii. The impugned addition made in the order u/s 144/147/143(3) of the Income Tax Act, 1961 is bad in law and on facts of the case for want of jurisdiction and various other reasons.

iii. That the order of the Ld. CIT(A) in dismissing the appeal and thus confirming the action of the Ld. AO in making the addition of Rs. 13,58,290/- is against the provisions of law, facts & circumstances of the case and deserves to be quashed.

iv. That the appellant craves leave to add and/or modify and ground(s) of this appeal at the time or before hearing.”

5. The brief facts of the case is that an information received from ITO, Ward-70(1), New Delhi that the assessee has made payment from credit card to the tune of Rs. 13,58,290/- which is generated NMS/AIR module in ITBA. But the assessee did not show the said amount of credit card payment in his return of income. The case was reopened u/s 148 of the Income Tax Act and the notice was issued and served on the assessee on 30.03.2018. In compliance to the said notice dated 26.03.2018, the assessee did not file any

return of income. Further, notice u/s 142(1) of the Income Tax Act dated 13.12.2018 was issued and served on the assessee through system. However, in response to the said notices, the assessee neither appears before the AO nor furnished any reply against the notices. Further, the AO issued a show cause notice to the assessee dated 19.12.2018 stating that why the assessment of the assessee should not be completed to the best of judgement u/s 144 of the I.T. Act on the basis of material evidence on record and the payment of Rs. 13,58,290/- towards credit card purchase would not be treated as assessee's undisclosed income for the year. But the assessee was remained silent and did not give any reply to such show cause notice and the AO passed best judgement u/s 144 of the I.T. Act on the material available on record and the credit card payment to the tune of Rs. 13,58,290/- treated as undisclosed income for the assessment year in question and income of the assessee is assessed at Rs. 13,58,290/- and charge interest u/s 234A, 234B & 234C of the Act. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) - 7, Kolkata and at the time of hearing, the Ld. CIT(A) dismissed the appeal on the ground that the case was posted for hearing on 20.05.2019, 21.08.2019 & 05.09.2019 but none appeared on the behalf of the assessee nor file any written submission on the grounds of appeal and accordingly, the appeal of the assessee was dismissed for non-prosecution.

6. At the outset, the ld. counsel for the assessee submitted that since the assessee did not get any opportunity to appear

before the Ld. CIT(A) and to file relevant documents and submission before the Ld. CIT(A), one more opportunity should be given and the issue raised in the instant appeal may be set aside to the file of the Ld. CIT(A). The ld. DR was fair enough not to oppose his request. We, therefore, under the given facts and circumstances are of the considered view that since the order of the Ld. CIT(A) is ex-parte and no discussion has been made on the merits of the case. We in the interest of justice set aside the impugned order and remitted back to the file of the Ld. CIT(A) for deciding the issue raised before us by way of a speaking order. We also direct the assessee to remain vigilant in receiving the notices of hearing of the Ld. CIT(A) and should not request for any adjournment unless otherwise required for reasonable cause and should file all necessary documents so as to facilitate the Ld. CIT(A) for passing the speaking order. Needless to mention that the assessee should be given proper opportunity of being heard.

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

Order Pronounced in the Open Court on 28th April, 2022.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Dated: 28/04/2022
Biswajit, Sr. PS

Copy of order forwarded to:

1. Appellant: Subrata Dutta Gupta.
2. Respondent: ITO, Ward-25(4), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT Kolkata Benches, Kolkata