

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 121/KOL/2022  
Assessment Year: 2015-2016**

***Umesh Kankani,.....Appellant  
5, Kiran Shankar Roy Road,  
Kolkata-700001  
[PAN: AKMPK8942R]***

***-Vs.-***

***Principal Commissioner of Income Tax-2,..Respondent  
Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*N o n e, appeared on behalf of the assessee*

*Shri Sudipta Guha, CIT (DR), appeared on behalf of the  
Revenue*

**Date of concluding the hearing : February 07, 2023**

**Date of pronouncing the order : 9<sup>th</sup> February, 2023**

**O R D E R**

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

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax dated 23.03.2020, which has wrongly been mentioned as 11.05.2020 in the Title of the impugned order.

2. The Registry has pointed out that appeal is time-barred by 598 days. However, we find that all these days are of COVID period and in view of the

Hon'ble Supreme Court's direction, it is not to be counted. The appeal has been presented in the Tribunal on 28.02.2022.

3. In response to the notice of hearing, no one has come present on behalf of the assessee. With the assistance of ld. CIT(DR), we have gone through the record carefully. It emerges out from the record that assessee has filed his return of income on 05.11.2015 declaring total income of Rs.2,58,190/-. The ld. Assessing Officer has passed an assessment order under section 143(3) on 16.08.2017. He accepted the returned income.

4. The ld. Commissioner took cognizance under section 263 of the Income Tax Act on the ground that assessee had made a claim of long-term capital gain amounting to Rs.23.25 lacs and claimed it as exempt. According to the ld. CIT, it was a claim based on Penny Stock and ought to have been examined by the ld. Assessing Officer. Similarly the assessee has shown a liability of Rs.1.05 crore from the ICICI Bank. This aspect was also not enquired. Accordingly he set aside the assessment order dated 16.08.2017 and directed the ld. Assessing Officer to pass a *denovo* assessment.

5. The assessee was aggrieved with this 263 order dated 23.03.2020 passed in A.Y. 2015-16. One of the grievances of the assessee is that such an order has been passed without providing due opportunity of hearing to the assessee. It has also been pleaded that this order was passed during the COVID period and which is an *ex-parte* order.

6. While going through the record, we find order giving effect passed by the ld. Assessing Officer on 26.02.2021. This order reads as under:-

GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 4(4), KOLKATA			
To, UMESH KANKANI 5, KIRAN SHANKAR ROY ROAD KOLKATA KOLKATA 700001, West Bengal India			
PAN: AKMPK8942R	Assessment Year: 2015-16	Dated: 26/02/2021	DIN & Letter No : ITBA/COM/F/17/2020-21/1031050773(1)
Sir/ Madam/ M/s, <b>Subject: Online service of Orders - Letter</b>			
			
<b>EFFECT ORDER U/S. 263 rws 143(3) of the I.T. Act, 1961</b>			
The assessee filed its return of income declaring total income of Rs.2,58,190/-.			
The case was selected for Scrutiny and assessed u/s. 143(3) of the I.T. Act, 1961(hereinafter referred as the Act) vide order dated:- 16/08/2017 at an income of Rs.2,58,190/-.			
Learned Pr.CIT-2, Kolkata vide order dated:- 23/03/2020 passed u/s. 263 of the Act, hold the assessment order dated:- 16/08/2017 passed by the A.O. erroneous and prejudicial to the interest of revenue and the said order is restored back to the A.O. for making a fresh order adjudicating and directed the AO to re-assess the income of the assessee for the relevant AY. – 2015-16.			
In pursuance of the above mentioned order of the Pr.CIT-2, Kolkata, the income and tax liability of the assessee is recomputed as under :-			
Return income of the assessee	:	Rs.2,58,190/-.	
Total income as per order u/s. 143(3) dt- 16.08.2017	:	Rs.2,58,190/-.	
Less:- Addition made in order u/s. 143(3) dt- 16.08.2017			
<small>Note: If digitally signed, the date of digital signature may be taken as date of document. .AAYAKAR BHAWAN, P-7, CHOWRINGHEE SQUARE, KOLKATA, West Bengal, 700069 Email: KOLKATA.ITO4.4@INCOMETAX.GOV.IN, Office Phone:332/213-6194</small>			
* DIN- Document identification No.			
			

AKMPK8942R- UMESH KANKANI  
A.Y. 2015-16  
ITBA/COM/F/17/2020-21/1031050773(1)

(The case has been set aside for fresh adjudication) : Nil

Total Income Rs.2,58,190/-

Umesh Kankani

RAKESH KUMAR SINGH  
WARD 4(4), KOLKATA

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

INCOME TAX DEPARTMENT

7. No doubt we are not required to take cognizance of this order because we are supposed to examine the impugned order dated 23.03.2020 passed under section 263. The scope of enquiry would be whether this order is sustainable or not, but after perusing the consequential order, we are of the view that our enquiry would be an academic only, because in the ultimate result, there is no variation in the income of the assessee. While giving effect to this order, ld. Assessing Officer has not made any addition. He again accepted the returned income. In this development, we do not deem it necessary to devote energy on an academic exercise whether 263 order was passed rightly or not.

**8. In the result, the appeal of the assessee is dismissed for statistical purposes.**

Order pronounced in the open Court on 9<sup>th</sup> February, 2023.

Sd/-

Sd/-

**(Manish Borad)**  
**Accountant Member**

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

**Kolkata, the 9<sup>th</sup> day of February, 2023**

*Copies to :* (1) **Umesh Kankani,**  
**5, Kiran Shankar Roy Road,**  
**Kolkata-700001**

(2) **Principal Commissioner of Income Tax-2,**  
**Kolkata,**  
**Aayakar Bhawan,**  
**P-7, Chowringhee Square,**  
**Kolkata-700069**

(3) *Commissioner of Income Tax- ;*

(4) *The Departmental Representative*

(5) *Guard File*

*TRUE COPY*

*By order*

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

**Laha/Sr. P.S.**