

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.221/Kol/2020
Assessment year: 2004-05

Smt. Sarojani Keshri.....Appellant
W/o Shri Ranjit Keshri,
86, R.R. Road,
P.O Raniganj-713347.
[PAN: AEWPK1311C]

vs.

ITO, Ward-3(1), Asansol.....Respondent

Appearances by:

Shri Somnath Ghosh, Advocate, appeared on behalf of the appellant.
Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 03, 2023

Date of pronouncing the order : June 27, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 09.12.2019 of the Commissioner of Income Tax (Appeals), Asansol (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the outset, the ld. Counsel for the assessee has submitted that the assessment order passed in this appeal is time barred, hence, the same is to be treated as non-est and that therefore, the consequential additions made are liable to be deleted. The ld. Counsel for the assessee has submitted that this is the second round of appeal before this Tribunal. Earlier, the ITAT in assessee's appeal in ITA

No.2113/Kol/2008 vide order dated 19.01.2009 has restored the matter to the file of the Assessing Officer with a direction to first indicate reasons for issuance of notice u/s 148 and afford reasonable opportunity to the assessee for making submission against the such reasons. The ld. Counsel has submitted that as per the provisions of section 153(2)(A) 2nd Proviso, the Assessing Officer was supposed to pass the order by 31.12.2009, whereas, the impugned assessment order was passed by him on 31.03.2010.

3. It is noted from the impugned order of the CIT(A) that after the restoration of matter by the Tribunal to the file of the Assessing Officer, the Assessing Officer did not take any action on the said order of the Tribunal till the last date of limitation to pass afresh assessment order i.e. on 31.12.2009. The Assessing Officer for the first time supplied the reasons to the assessee on 17.02.2010 which date was after the date of limitation prescribed for passing the fresh assessment order. Therefore, the assessment order passed by the Assessing Officer is barred by limitation and the same is to be treated as non-est. The consequential additions, if any, made by the Assessing Officer thus have no legs to stand and the same are accordingly ordered to be deleted.

4. In the result, the appeal of the assessee stands allowed.

Kolkata, the 27th June, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 27.06.2023.

RS

Copy of the order forwarded to:

1. Smt. Sarojani Keshri
2. ITO, Ward-3(1), Asansol
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches