

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1862/Kol/2019
Assessment Year: 2015-16

Smt. Mamta Bhagat (PAN: AEBPB 6791 C)	Vs.	ITO, Ward-7(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	20.07.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	18.08.2023
For the Appellant/ निर्धारिती की ओर से	Shri Ravi Tulsian, A.R
For the Respondent/ राजस्व की ओर से	Shri D. Chakraborty, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 08.07.2019 for the AY 2015-16.

2. At the outset, the Ld. Counsel for the assessee Mr. Ravi Tulsian submitted before the Bench that the this Kolkata Bench has no jurisdiction to hear this appeal as the jurisdiction lies with the Varanasi Bench of the Tribunal. The Ld. A.R submitted that the assessment in this case has been framed u/s 143(3) of the Act vide order dated 28.12.2017 by ITO, Ward-3(2), Varanasi and therefore the special appellate jurisdiction of the tribunal will be of that geographical area of the Varanasi. The Ld. Counsel prayed before the Bench that the present appeal may kindly be dismissed with a liberty to the assessee to file fresh appeal at Varanasi Bench and the period taken in

filing the appeal before the Kolkata Benches till two months after receipt of the order may kindly be excluded for the period of limitation. The Ld. A.R referred and relied on the decision of the Co-ordinate Bench in ITA Nos. 1384 & 1348/Kol/2017 for AY 2008-09 & 2010-11 dated 13.07.2023 wherein the similar issue has been decided. The Ld AR stated that the assessee was given two months time for filing the appeal before the Indore Bench of the tribunal as it is a jurisdictional bench. The Ld. A.R therefore prayed that the same may be followed in the assessee case also.

3. The Ld. D.R on the other hand left the issue to the wisdom of the bench.

4. After hearing the rival contentions and perusing the material on record, we find that the assessment in the instant case was framed by ITO, Ward-3(2), Varanasi. And accordingly the appellate jurisdiction of the assessee undisputedly lies in the territorial jurisdiction of ITO, Ward-3(2), Varanasi. The present appeal is not maintainable and is dismissed with a liberty to the assessee to file fresh appeal at Varanasi Bench. Further the period from filing to the appeal before Kolkata benches till 60 days after the service of this order is excluded from the period of limitation for filing the appeal before the jurisdictional bench. The case of the assessee is squarely covered by the decision of the coordinate bench in ITA Nos. 1384 & 1348/Kol/2017 for AY 2008-09 & 2010-11 dated 13.07.2023 . The operative part is reproduced as under:

"2. With the assistance of the learned representatives, we have gone through the record carefully. It emerges out from the record that the assessment order was passed by the Assistant Commissioner of Income Tax, Circle-5(1), Indore. Thus, jurisdiction over the assessee is in Indore. In Assessment Year 2009-10, the revenue has challenged the order of the ld. CIT(A) vide ITA No. 988/Ind/2019 before the ITAT Indore Bench whereas, the cross appeal has been preferred by the assessee before the ITAT Kolkata Bench.

3. During the course of hearing, we have confronted the ld. Counsel for the assessee with the judgment of the Hon'ble Supreme Court rendered in the case of Principal Commissioner of Income-tax vs. ABC Papers Ltd. reported in [2022] 141 taxmann.com 332 (SC) and pointed out that the appellate jurisdiction of the Tribunal will be the geographical area where the Assessing Officer is situated, namely, in this case the Assessing Officer is situated at Indore, therefore, appellate jurisdiction of ITAT as well as of the Hon'ble High Court will rest at Indore. In response to these queries, he submitted that these appeals be transferred to Indore Bench for adjudication. However, we have confronted him with the judgment of the Hon'ble Bombay high Court rendered in the case of MSPL Limited vs. PCIT in Writ Petition (L) No. 3865 of 2020, judgment dt. 21/05/2021. Vide this judgment, Hon'ble Bombay High Court has held that President, ITAT, has no power to transfer appeal/s between

one headquarters to other. The power of transfer available with the President is only qua a particular headquarters where large number of Benches are involved. For example in Kolkata there are three functioning Benches, then an appeal from Bench 1 to Bench 3 can be transferred by the President but it cannot be transferred from Kolkata to any other place in the country. The discussion made by the Hon'ble Bombay High Court, reads as follows:-

"35. That brings us to [section 255](#) of the Act which deals with procedure of Appellate Tribunal. Since Bangalore Bench of the Tribunal in its impugned order dated 19.03.2020 has taken the view that power to transfer appeals from one Bench of the Tribunal to another Bench of the Tribunal including the power to transfer from one Bench to another Bench not within the same headquarters is traceable to [section 255](#) of the Act, the same is extracted hereunder :-

"Procedure of Appellate Tribunal.

255. (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed fifty lakh rupees, and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities referred to in [section 131](#), and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of [sections 193](#) and [228](#) and for the purpose of [section 196](#) of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of [section 195](#) and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898)."

36. Sub section (1) of [section 255](#) says that the powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof. As per sub section (5), subject to the provisions of the Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches in all matters arising out of the powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings. To complete the narrative, we may also refer to sub section (6) of [section 255](#) which clearly says that a proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of [sections 193 and 228](#) and for the purpose of [section 196](#) of the Indian Penal Code. It also says that the Appellate Tribunal shall be deemed to be a civil court for all the purposes of [section 195](#) and Chapter XXXV of the Code of Criminal Procedure, 1898.

37. From a careful analysis of [section 255](#), more particularly sub section (5) thereof, it is not discernible as to how power of the President to transfer a pending appeal from one Bench to another Bench outside the headquarters in a different State can be said to be traceable to this provision. What sub section (5) says is that the Tribunal shall have power to regular its own procedure and that of its various Benches while exercising its powers or in the discharge of its functions. This includes notifying the places at which the Benches shall hold their sittings e.g., a particular Bench at Mumbai may hold its sittings at, say, Thane for a particular period for administrative reasons. This provision cannot be interpreted in such a broad manner to clothe the President of the Tribunal the jurisdiction to transfer a pending appeal from one Bench to another Bench outside the headquarters in another State.

38. We have also noticed from sub section (6) that a proceeding before the Tribunal shall be deemed to a judicial proceeding within the meaning of [sections 193, 196 and 228](#) of the Indian Penal Code and it shall also be deemed to be a civil court for the purpose of [section 195](#) and Chapter XXXV of the Code of Criminal Procedure, 1898. Therefore, there is no manner of doubt that a proceeding before the Tribunal is a judicial proceeding and for certain limited purpose it is deemed to be a civil court. Question for consideration is when an appeal or a bunch of appeals are being heard by a Bench of the Tribunal in one State, can an order on the administrative side be passed by the President transferring a live appeal from one Bench to another Bench that too in a different State outside the headquarters ? In our opinion, no such power is discernible in [section 255](#) of the Act. Reading or conferring such a power would amount to interference in a judicial proceeding of the Tribunal.

39. In so far the order dated 20.08.2020 passed by the President of the Tribunal is concerned, the same has been passed in exercise of the powers conferred by rule 4 of the Tribunal Rules. Relevant portion of the order dated 20.08.2020 reads as under :-

"In pursuance of Rule 4 of the Income Tax Appellate Tribunal Rules 1963, I hereby direct that the appeals mentioned below pertaining to Income Tax Appellate Tribunal, Bangalore Benches, Bangalore shall be heard and determined by Income Tax Appellate Tribunal, Mumbai Benches, Mumbai.

Sr. No.	Appeal No. & A.Ys.	Appellant	Respondent	State

1	ITA 371 to 374/Bang/2011 A.Y. 2005-06 to 2008-09	M/s. MSPL Limited, Mumbai	Assitant Commissioner of Income Tax, Central Circle 2(1), Bangalore	Karnataka
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40. The Tribunal Rules have been framed in exercise of the powers conferred by sub section (5) of [section 255](#) of the Act to regulate the procedure of the Appellate Tribunal and the procedure of the Benches of the Tribunal. Since the order dated 20.08.2020 has been passed under rule 4 of the Tribunal Rules, the same is extracted hereunder :-

"Power of Bench.

4. (1) A Bench shall hear and determine such appeals and applications made under the Act as the President may by general or special order direct.

(2) Where there are two or more Benches of the Tribunal working at any headquarters, the President or, in his absence, the Senior Vice-President/Vice-President of the concerned zone or, in his absence, the seniormost member of the station present at the headquarters may transfer an appeal or an application from any one of such Benches to any other."

41. From an analysis of rule 4 as extracted above, we find that as per sub rule (1), a Bench shall hear and determine such appeals and applications made under the Act as the President may by general or special order direct. Sub rule (2) says that where there are two or more Benches of the Tribunal working at any headquarters, the President or, in his absence, the senior Vice President or Vice President of the concerned zone or in his absence the seniormost member of the station present at the headquarters may transfer an appeal or an application from any one of such Benches to any other. While sub rule (1) empowers the President to direct hearing of appeals by a Bench by a general or special order, sub rule (2) is more specific. It deals with a situation where there are more than two Benches of the Tribunal at any headquarter; when there are multiple Benches in a headquarter, the President or, in his absence the senior Vice President etc. may transfer an appeal or an application from one of such Benches to any other. Meaning thereby that it is a transfer of an appeal or an application from one Bench to another Bench within the same headquarters. For example, in Mumbai the number of Benches is twelve and in Bangalore, the number of Benches is three. Thus, this provision can be invoked to transfer an appeal from one Bench in Mumbai to another Bench in Mumbai or from one Bench in Bangalore to another Bench in Bangalore. But this provision cannot be invoked to transfer a pending appeal from one Bench under one headquarter to another Bench in a different headquarter.

42. While on the Tribunal Rules, we may also refer to rules 13 and 28. Who may be joined as respondent in an appeal by the assessee is dealt with in rule 13. In an appeal by an assessee under sub-section (1) of [section 253](#), the concerned Assessing Officer shall be made a respondent to the appeal. Concerned Assessing Officer would mean the Assessing Officer who had passed the assessment order from which the appeal to the Tribunal arises. As per rule 28, Tribunal has the power to remand an appeal to the authority from whose order the appeal has been preferred or to the concerned Assessing Officer with such directions as the Tribunal may think fit.

43. Standing Order has been made in pursuance of sub rule (1) of rule 4 of the Tribunal Rules. Standing Order provides for hearing of appeals and applications by different Benches of the Tribunal. In other words, it provides for the territorial jurisdiction of the different Benches. It is seen therefrom that the three Benches of the Tribunal at Bangalore have

jurisdiction over the entire State of Karnataka, excluding the districts of Belgaum, Mangalore, Karwar and North Kanara over which the Panaji Bench has jurisdiction. In so far the Benches at Mumbai are concerned, those have jurisdiction over Mumbai City, Mumbai Suburban and Thane Districts of Maharashtra. Clause 4 is interesting and it says that the ordinary jurisdiction of the Bench will be determined not by the place of business or residence of the assessee but by the location of the office of the Assessing Officer.

44. *In the present case, the Assessing Officer is Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore and the first appellate authority is Commissioner of Income Tax (Appeals)-VI, Bangalore. In terms of rule 13 of the Tribunal Rules, in the four subject appeals filed by the petitioner, Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore is the respondent which is also reflected in the impugned order dated 20.08.2020. Further, in the event of remand in terms of rule 28, the matter would go back to the Commissioner of Income Tax (Appeals)-VI, Bangalore against whose orders the appeals were filed before the Tribunal or to the Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore, the Assessing Officer.*

45. *Because of search and seizure action under [section 132](#) of the Act against the petitioner in connection with the mining operations at Hospet in the State of Karnataka consequential assessment proceedings were initiated for the assessment years 2005-06, 2006-07, 2007-08 and 2008-09. In so far the first three assessment years are concerned, the assessment orders were passed under [section 153A](#) of the Act read with 143(3) thereof. For the last assessment year i.e. 2008-09, the assessment order was made under [section 143\(3\)](#). Following centralization of the cases at Bangalore, the assessments were carried out at Bangalore and in all the assessment orders the Assessing Officer was Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore. As we have already seen, the first appeals against the assessment orders were preferred before CIT-A at Bangalore whereafter the appeals were filed before the Tribunal at Bangalore and rightly so because the Assessing Officer i.e., the respondent was from Bangalore.*

46. *Though provisions of the Civil Procedure Code, 1908 may not be applicable to the Act as well as to proceedings before the Tribunal, nonetheless as a matter of principle, we can advert to [section 20](#) thereof, which says that every suit shall be instituted in a court within the local limits of whose jurisdiction the defendant or in the case of multiple defendants, each of the defendants resides or carries on business or personally works for gain. This principle finds manifestation in clause 4 of the Standing Order. Whether it be a suit or an appellate proceeding before the Tribunal the place of institution of the suit would be where the defendants reside or works for gain and in case of appeal under the Tribunal Rules where the Assessing Officer is located.*

47. *It is needless to say that under the Income Tax law assessment proceeding for each assessment year is a separate proceeding. Merely because for assessment years prior to assessment year 2005-06, the Assessing Officer was at Mumbai or for the subsequent assessment years i.e. subsequent to assessment year 2008-09 the Assessing Officer is at Mumbai would be no ground to transfer a pending appeal or appeals pertaining to assessment years 2005-06 to 2008-09 from one Bench of the Tribunal in a different State / Zone to another Bench of the Tribunal in another State / Zone. Petitioner has explained and it has not been denied that post search and seizure assessments for the four assessment years under consideration were carried out in Bangalore along with other cases following centralization of assessment. Now for assessment years subsequent to assessment year 2008-09 the assessment*

jurisdiction of the petitioner has been reverted back to Mumbai and conferred upon DCIT-1(2)(2), Mumbai. This would not mean DCIT-1(2)(2) Mumbai to be the Assessing Officer for the four assessment years i.e. assessment years 2005-06, 2006-07, 2007-08 and 2008-09 in respect of which Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore continues to be the Assessing Officer and as a consequence the respondent in the subject appeals; DCIT-1(2)(2), Mumbai is not and cannot be the respondent in the said appeals.

48. Petitioner is the appellant in all the four subject appeals before the Bangalore Bench of the Tribunal. In other words it is the petitioner who had filed the appeals. Petitioner does not want the appeals to be transferred from Bangalore to Mumbai and wants to prosecute the appeals at Bangalore where we have seen the appeals were rightly filed. Ordinarily if a court has jurisdiction to hear a case, the case ought to proceed in that court only. This principle can certainly be extended to appeals before the Tribunal. In such circumstances transfer cannot be forced upon the appellant i.e. the petitioner against its express objection.

49. It is also a settled proposition that convenience of a party in a case can hardly be a criteria for transferring a case out of a State. [Please see judgment and order dated 07.05.2021 passed by the Supreme Court in Transfer Petition (Criminal) No.17 of 2021, Rajkumar Sabu -Vs- M/s. Sabu Trade Pvt. Ltd.]. Plea that records were transferred from Bangalore to Mumbai and that it would be convenient for the revenue if the appeals are heard at Mumbai cannot be a valid ground for transfer. Cases are transferred to serve the ends of justice and justice must not only be done but must be seen to have been done, that too, from the perspective of the litigant.

50. In the order dated 19.03.2020 Bangalore Bench of the Tribunal noted in paragraph 11 that the power to transfer of the appeal can be exercised by the Tribunal at the request of either party to the proceedings before it, be it the appellant or the respondent and that the primary consideration while considering such a request is the balance of convenience of the parties. In so far convenience of a party is concerned we have already dealt with it in the preceding paragraph. What is of significance is that even according to the Tribunal the power to transfer can be exercised at the request of either party to the proceedings before the Tribunal, be it the appellant or the respondent. Appellant in the subject appeals is the petitioner and the respondent is Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore. While petitioner has objected to the transfer, there is nothing on record to show that the respondent i.e. Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore had filed any application before the Bangalore Bench of the Tribunal or even before the President for transfer of the appeals from Bangalore to Mumbai. As we have seen the application for transfer was filed by the Commissioner of Income Tax-1, Mumbai before the Vice President of the Tribunal on 12.08.2013; subsequently, Chief Commissioner of Income Tax (OSD), Mumbai addressed a letter dated 11.04.2019 to the President of the Tribunal requesting transfer of the appeals from Bangalore Bench to Mumbai Benches. Neither the Commissioner of Income Tax-1, Mumbai nor the Chief Commissioner of Income Tax (OSD), Mumbai who had filed the applications for transfer are respondent in the subject appeals. Therefore not being parties to the appeals, they were not competent to make the applications for transfer. In such circumstances the applications for transfer of appeals were invalid and on such invalid applications no order for transfer of appeals could have been passed.

51. In so far the contention of the respondents that it is not open to the petitioner to object to transfer of the appeals because it did not object to transfer of jurisdiction under [section 127](#), in our view the said contention has got no substance at all. [Section 127](#) of the Act deals with

transfer of any case from one Assessing Officer to another Assessing Officer. In other words, it deals with transfer of assessment jurisdiction from one Assessing Officer to another Assessing Officer. While certainly the appropriate authority under [section 127](#) has the power and jurisdiction to transfer a case from one Assessing Officer to another Assessing Officer subject to compliance of the conditions mentioned therein, principles governing the same cannot be read into transfer of appeals from one Bench of the Tribunal to another Bench that too in a different State / Zone, for the simple reason that it is not a case before any Assessing Officer. Petitioner may have expressed no objection to transfer of assessment jurisdiction from the Assessing Officer at Bangalore to the Assessing Officer at Mumbai after assessment for the assessment years covered by the search period, but that cannot be used to non-suit the petitioner in his challenge to transfer of appeals from one Bench of the Tribunal to another Bench in a different State and in a different Zone. The two are altogether different and have no nexus with each other. So, the preliminary objection raised on behalf of the respondents on this count has to fail.

52. The other preliminary objection raised by the respondents, more particularly by Mr. Desai, learned senior counsel for respondent No.2 that firstly, the writ petition should have been filed before the Karnataka High Court and secondly an appeal under [section 260A](#) of the Act ought to have been filed instead of a writ petition, we find both the objections to be without any merit. The opinion rendered by the Bangalore Bench of the Tribunal vide order dated 19.03.2020 attained finality when the President of the Tribunal passed the impugned order dated 20.08.2020 which order was passed at Mumbai. That apart, clause (2) of [Article 226](#) makes it clear that the power to issue directions, orders or writs by any High Court within its territorial jurisdiction would also extend to a cause of action or even a part thereof which arises within the territorial limits of the High Court notwithstanding the fact that the seat of the authority is not within the territorial limits of the High Court. Therefore, in the light of the above and having regard to the mandate of clause (2) of [Article 226](#) of the Constitution of India, this Court certainly has the jurisdiction to entertain the writ petition. In so far filing of appeal instead of writ petition is concerned, a careful reading of [section 260A\(1\)](#) would go to show that an appeal shall lie to the High Court from "every order" passed in appeal by the Tribunal if the High Court is satisfied that the case involves a substantial question of law. Mr. Desai has laid great emphasis on the expression "every order" to contend that an appeal shall lie from the order dated 19.03.2020 passed by the Tribunal as well. We are afraid we cannot accept such a submission. "Every order" in the context of [section 260A](#) would mean an order passed by the Tribunal in the appeal. In other words, the order must arise out of the appeal; it must relate to the subject matter of the appeal. The order with which we are concerned is order dated 19.03.2020. It is not an order on the merit of the appeal. In other words, it is not an order passed in the appeal. It is an order related to transfer of the appeal. Such an order would be beyond the scope and ambit of sub section (1) of [section 260A](#) of the Act.

53. Thus, having regard to the discussions made above and upon thorough consideration of the matter, we are of the view that both the orders dated 19.03.2020 and 20.08.2020 are wholly unsustainable in law and are accordingly set aside and quashed."

4. In view of the above, we find that these appeals are not maintainable in the present form before the ITAT Kolkata. The assessee as well as the revenue are at liberty to approach the competent authority, namely, Indore, if so advised. In case appeals are being filed before the Indore Bench of the ITAT, then the period consumed in litigating at Kolkata benches be excluded from the period of limitation. The simple reason for this observation is that prior to

the decision of the Hon'ble Bombay High Court, the Hon'ble President used to transfer appeals across Benches on the request of parties. The position of law by interpreting the ITAT Rules, has been laid out recently. Therefore, there should not be any miscarriage of justice qua the assessee by approaching the wrong appellate jurisdiction. These appeals were presented before the Tribunal well in time. Considering the above aspect, we give two months time to the parties for approaching ITAT, Indore bench after receipt of this order.

5. With the above observations, all these appeals are dismissed for statistical purposes as not maintainable."

Accordingly the appeal of the assessee is dismissed with above observations.

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

Order is pronounced in the open court on 18th August, 2023

Sd/-

(Sonjoy Sarma /संजय शर्मा)

Judicial Member/न्यायिक सदस्य

Sd/-

(Rajesh Kumar/राजेश कुमार)

Accountant Member/लेखा सदस्य

Dated: 18th August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Mamta Bhagat, Tower-5, Flat-9B, South City Residence, 375, Prince Anwar Shah Road, Kolkata-700068.
2. Respondent – ITO, Ward-7(3), Kolkata
3. Ld. CIT(A)- 3, Kolkata
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata