

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 1029 to 1035/Kol/2023**  
**Assessment Year: 2011-12 to 2017-18**

<b>BASUDEV BANIK</b> 2, Ghosh Para Road, Palta P.O.: BENGAL ENAMEL 24 PARGANA (N) PIN:- 743122 <b>[PAN: AAKPY3403B]</b>	Vs	<b>PCIT -5, KOLKATA</b>
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Miraj D. Shah, A/R
Revenue by :	Shri S. Datta, CIT, D/R

सुनवाई की तारीख /Date of Hearing : 14/12/2023  
घोषणा की तारीख /Date of Pronouncement: 19/12/2023

**आदेश/ORDER**

**PER BENCH :**

The above captioned appeals are directed at the instance of the assessee against the separate but identical orders of the Principal Commissioner of Income Tax, Kolkata-5, (hereinafter the "Id. Pr. CIT"), passed u/s 263 of the Income Tax Act, 1961 ("the Act") for the Assessment Years 2011-12 to 2017-18.

2. The Registry has pointed out that there is a delay of 493 days in filing the present appeals by the assessee. The assessee has filed a petition for condonation of delay which is placed on record explaining the reasons. The same is extracted for ready reference:-

*"I BASUDEV BANIK, son of KARTICK CHANDRA BANIK of 2. Ghosh Para Road, Palta, PO: Bengal Enamel. Dist. 24. Parganas (N). Pin: 743122, by occupation Business, having PAN no.AHIPB4753G , do hereby solemnly declare and affirm as follows:*

- 1. That I am carrying on trading business of Two wheeler motor vehicle under the name and style M/s. Banik Motors.*

2. *A search and seizure operation was conducted on me on 06/03/2017. Thereafter, search assessments were completed u/s 144 r.w.s 153A of the Income Tax Act, 1961 on 13/12/2019. Notice u/s 153A of the Income Tax Act, 1961 was issued and served on me. As I am actively engaged in looking after the day to day business. From the point of view of education I read up-to 4th Standard and not at all conversant with the niceties and complexity of income tax and accounts. The income tax and accounts of the business was maintained by a consultant. I being not conversant with the accounts and income tax and has dependent solely on such consultant. Even in the income tax portal the E-mail ID of the consultant was given. The login ID and password of the E-filing portal was also kept by the said consultant and had never shared with me. The said consultant has never informed me about the notices and orders issued on me by the Income Tax Authorities. Therefore, I have failed to comply with the notices and also failed to file the appeals within f time limit.*
3. *That as a result of above. I could not file the appeal for AY 2011-2012 in time before the Hon'ble ITAT, Kolkata and thus there was delay of 493 days in filing of this appeal.*
4. *That the delay in filing of appeal was not due to any malafide reasons but due to the above stated reason.*
5. *That whatever is declared herein above is true to the best of my knowledge and belief. Solemnly declared and affirmed by the declarant Sri. Basudev Banik on this 27<sup>th</sup> day of September 2023 at Barrackpore."*

2.1. After perusing the condonation petition, we are convinced that the assessee was prevented by sufficient cause from filing this appeal in time. Accordingly, we condone the delay in the interest of justice and proceed to admit the appeals for hearing.

3. The common issue involved in all these appeals before us is wrong assumption of jurisdiction u/s 263 of the Act by the Id. Pr. CIT.

4. At the outset, the Id. Counsel for the assessee submitted that the since the assessment orders which are the subject matter of alleged revisionary proceedings u/s 263 of the Act are barred by limitation, therefore, the impugned proceedings carried out against such invalid assessment orders, are *void ab initio*, bad in law and deserve to be quashed. In support of its contentions, reference made to the provisions of Section 153B of the Act, which provides for the time limit for completion of assessment u/s 153A of the Act and as per sub-clause (a)

to Section 153(1) of the Act, the Id. Assessing Officer was required to frame the assessment within 21 months from the end of the financial year in which the last of the authorisation for search u/s 132 of the Act or for requisition u/s 132A of the Act was excluded. He further submitted that the date of search is 06/03/2017 and there being no other evidence of issuing of warrant at any other date, considering the date of search is 06/03/2017, the assessment ought to have been completed by 31/12/2018. However, the assessment order have been framed on 13/12/2019, which are beyond the permissible time limit and are, therefore, *non-est* and bad in law.

4.1. On the other hand, the Id. D/R though controverted the contentions made by the Id. Counsel for the assessee, but could not place any contrary material on record to rebut this contention that the date of search is 06/03/2017 and time limit for completing the assessment has to be calculated from the end of the Financial Year 2016-17.

5. We have heard rival contentions and perused the material placed before us. The sole issue that goes to the root of these appeals, raised by the assessee is with respect to the assessment orders being barred by limitation and the 263 proceedings emanating from such time barred assessments are *non-est* and bad in law. It is an undisputed fact that date of search in all these appeals was 06/03/2017 and the assessments u/s 144 r.w.s. 153A of the Act were framed on 13/12/2019. Now, section 153B(1)(a) of the Act stipulates the time limit for completion of an assessment u/s 153A of the Act which reads as follows:-

*“153B. Time limit for completion of assessment under section 153A. – (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment, –*

*(a) in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;”*

6. From the perusal of the above, it is clear that the assessments u/s 144 r.w.s. 153A of the Act in all these Assessment Years are barred by limitation as the same were framed after the stipulated time period of 21 months after the search, as mandated by the Act. Further, the Id. CIT D/R, failed to place any material or information as to whether there was any reference to Section 92CA(1) of the Act or any situation referred in explanation to Section 153B of the Act which provides for excluding certain period for the purpose of computing the period of limitation. Thus, the assessment orders are bad in law and *void ab initio*. Consequently, the assumption of jurisdiction u/s 263 of the Act which was based on these time barred assessment orders have no legs to stand and thus deserve to be quashed. Accordingly, common ground no. 4 raised by the assessee are allowed. Remaining ground have become academic in nature which needs no adjudication.

7. In the result, appeals of the assessee are allowed.

**Order pronounced in the Court on 19<sup>th</sup> December, 2023 at Kolkata.**

*Sd/-*  
**(SONJOY SARMA)**  
**JUDICIAL MEMBER**

*Sd/-*  
**(DR. MANISH BORAD)**  
**ACCOUNTANT MEMBER**

Kolkata, Dated 19/12/2023

*\*SC S.P.*



आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata