

आयकर अपीलीय अधिकरण  
कोलकाता 'एसएमसी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)  
के समक्ष  
Before  
**SRI RAJPAL YADAV, VICE PRESIDENT**

**I.T.A. No.: 1329/KOL/2023  
Assessment Year: 2011-12**

**Pradeep Kumar Agarwal.....Appellant  
[PAN: ACVPA 7297 C]**

**Vs.**

**ITO, Ward-4(3), Kolkata.....Respondent**

**Appearances:**

**Assessee represented by:** Sh. S.K. Pransukhka, FCA.

**Department represented by:** Sh. B.K. Singh, JCIT, Sr. D/R.

Date of concluding the hearing : February 5<sup>th</sup>, 2024

Date of pronouncing the order : February 8<sup>th</sup>, 2024

**ORDER**

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

The present appeal is directed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals), NFAC, Delhi [in short ld. 'CIT(A)'] dated 12.09.2023 passed for AY 2011-12.

2. The Registry has pointed out that the appeal of the assessee is time barred by 55 days. In order to explain the delay, assessee has filed an affidavit wherein it has been contended that actual delay is of only 25 days. The ld. CIT(A) has decided the appeal *ex-parte* for want of prosecution. Therefore, this order is in contravention to the mandate given under sub-Section 6 of Section 250 of the Income Tax Act, 1961 (in short the 'Act'). The assessee has been calculating the delay from the knowledge of this order whereas Registry has been calculating the delay from the date of passing of the order till the filing of the appeal before the Tribunal. The assessee has contended that service of

notice was not effected upon the assessee, therefore, he could not appear before Id. CIT(A). On account of his non-appearance, the appeal has been dismissed for want of prosecution and assessee could not lay his hand on the impugned order.

3. On the other hand, Id. D/R submitted that assessee did not participate in the assessment proceeding and therefore, his conduct does not deserve any sympathy.

4. We have duly considered the rival contentions and gone through the record carefully. After commencement of faceless disposal of appeals, notices were being communicated to the assessee on e-mail and on certain time some of the assessee failed to keep a track on the e-mail. A perusal of the impugned order would reveal that first notice was given on 26.04.2019. Thereafter, after a gap of one and a half year, next notice was issued on 04.02.2021. Then again there is a gap of more than two years and notice was issued on 25.07.2021. There might be some communication gap on this electronic platform. Therefore, we deem it appropriate to condone the delay and decide the appeal on merit. There is one more reason for condoning the delay is that no assessee will gain by making the appeal time barred. Therefore it is to construed that making the appeal time barred has not been adopted as a strategy by the assessee to litigate with the Department. Thus, there was no mala fide intention at the end of the assessee in making his appeal time barred. Accordingly, we condone the delay and proceed to decide the appeal on merit.

5. On merit, in the first ground of appeal, assessee has pleaded that re-opening notice u/s 148 of the Act was issued by ITO, Ward-4(2), Jaipur and this notice is without jurisdiction. The assessment has been framed on the strength of re-opening and assessment order is not sustainable.

6. With the assistance of Id. representatives, we have gone through the record carefully. It emerges out that assessee has sold a piece of land situated at Jaipur. He has disclosed his PAN No. as 'ACVPA7297C' in the sale deed. The ITO, Ward-4(2), Jaipur received some information from the Registering

Authority that total sale consideration has been disclosed at Rs. 17,50,000/- whereas stamp duty valuation of the property was determined at Rs. 20,63,204/-. Since there was a difference in the sale consideration disclosed by the assessee *vis-à-vis* adopted by the Stamp Duty Valuation Authority, therefore, the AO formed an opinion that addition u/s 50C of the Act is required to be made. Accordingly, he recorded the reasons and issued a notice upon the assessee. When it came to the knowledge of the AO at Jaipur that he does not have jurisdiction then he transmitted the record at his own and ultimately assessment order has been framed by ITO, Ward-4(3), Kolkata. There is no dispute with regard to the fact that in the PAN data assessee is having address of Kolkata only. The ITO, Ward-4(2), Jaipur had issued notice u/s 148 of the Act on 26.03.2018. This must have been with an idea that if record is being transmitted to the ITO having jurisdiction over the assessee then time limit will expire because on 31.03.2018, six year would come to an end. This notice has been issued by an ITO who does not have territorial jurisdiction over the assessee. Therefore, whole proceeding has been vitiated. An assessee can have property in various parts of the country but that would not mean wherever he has undertaken a transaction, the AOs of all those areas will assume jurisdiction over the assessee. It is an incorrect assumption of jurisdiction by ITO, Ward-4(2), Jaipur. The assessment order on the basis of an incorrect re-opening cannot be sustained. Therefore, we allow this appeal and quash the assessment order.

7. In the result, appeal of the assessee is allowed.

**Kolkata, the 8<sup>th</sup> February, 2024.**

Sd/-

**[Rajpal Yadav]**  
Vice-President

Dated: 08.02.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Pradeep Kumar Agarwal, 245A, Block J, Ramtanu Lahiri Sarani, Kolkata-700 053.**
2. **ITO, Ward-4(3), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata