

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

डॉ. मनीष बोराड, लेखा सदस्य  
के समक्ष

Before  
**DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 353/KOL/2024  
Assessment Year: 2011-12**

***Ballabh Das Mall.....Appellant  
[PAN: AEOPM 4657 F]***

**Vs.**

***ITO, Ward-58(2), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by: Anil Kochar, Adv.***

***Department represented by: L.N. Dash, Sr. DR.***

Date of concluding the hearing : May 6<sup>th</sup>, 2024

Date of pronouncing the order : May 22<sup>nd</sup>, 2024

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2011-12 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi, [in short Id. 'CIT(A)'] dated 27.07.2023 arising out of the Assessment Order framed u/s 144/147 of the Act dated 19.12.2018.

2. Registry has informed that the appeal is time barred by 149 days. To explain the delay, the assessee filed an affidavit and the

contents of the same states that the assessee has never filed any return of income in the past and not for the year under appeal. However, he has taken the PAN and the e-mail address has also been mentioned along with the PAN. However, since the assessee did not file the regular return of income, he did not log into the e-mail for a long time during which notice u/s 148 of the Act was issued for the reason of unexplained credits in the bank account held in the name of the assessee with ICICI Bank. It was only upon receipt of the order of the ld. CIT(A) that the assessee approached to the Counsel for filing the appeal.

2.1. We have gone through the reasons and further, on considering the fact that both the orders of the Assessing Officer (in short ld. 'AO') as well as ld. CIT(A) are *ex-parte* and therefore, in the larger interest of justice and also in order to assess the correct income of the assessee, we deem it proper to condone the delay and admit the appeal for adjudication on merits.

3. Though the assessee has raised various grounds, but the same can be divided into two parts; first, the legal ground and the other on merits.

4. As far as legal grounds are concerned, ld. Counsel for the assessee has claimed that the assessment proceedings are bad in law because no valid notice u/s 142(1) of the Act was issued prior to carrying out the re-assessment proceedings.

5. Ld. D/R opposed the contentions of ld. Counsel for the assessee.

6. We have heard rival contentions and perused the records placed before us. We fail to find any substance in the legal grounds raised by the assessee for the reason that assessee is not filing any return of income. The assessee is not logging to his e-mail ID even though the assessee has carried out various transactions through his ICICI bank account, but he failed to furnish any return. Valid notices u/s 148 & 143(2) of the Act have been issued and served upon the assessee. Under these given facts, there remains no force in the legal grounds raised by the assessee and the same is hereby dismissed.

7. As far as merits of the case are concerned, we note that the ld. AO had made an addition of Rs. 17,32,090/- for the unexplained credits in the bank account held by the assessee with ICICI Bank Ltd., Bandra Kurla Complex Branch, Mumbai. With the assistance of ld. Counsel for the assessee we have taken note of the bank account of which quarterly statements have been placed before us. It is stated that the assessee while staying with his son at Mumbai for some period, carried out certain transactions of purchase-sale of shares and ultimately incurred losses and source of the funds utilised for such transactions were from loans taken from relatives. Taking into consideration these contentions, also going through the bank statements where regular transactions have been made on almost day to day basis through BSE/NSE, cash deposits and cash withdrawals and also taking note of the fact that the AO has made the addition of Rs. 17,32,090/- but there is not detail available in the assessment order as to how this amount has been arrived and whether the

alleged amount is the income or only the total of transaction. Even the notice u/s 133(6) of the Act to ICICI Bank Ltd. was not replied. Under these given facts and circumstances of the case the only remedy left before us is to restore all the issues raised on merits to the file of the ld. AO for *de-novo* adjudication considering the bank statement and other details to filed by the assessee in support of the correct income/loss, if any, earned during the year and also to examine the source of funds utilised for carrying out such transactions by the assessee. Needless to mention that proper opportunity of being heard should be provided to the assessee. The assessee is also directed to remain vigilant and file necessary documents, if considered necessary, in support of its grounds of appeal and should not take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance by the assessee, then ld. AO can decide in accordance with law.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

***Order pronounced in the open Court on 22<sup>nd</sup> May, 2024.***

*Sd/-*

**[Manish Borad]**  
Accountant Member

Dated: 22.05.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Ballabh Das Mall, BG, 123 Sector II, Salt Lake, Kolkata, West Bengal, 700 091.**
- 2. ITO, Ward-58(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata