

आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 2170/Kol/2024
Assessment Year: 2012-13

Lalit Kumar Poddar (PAN: AJSPP 2970 R)	Vs.	ACIT, Circle-33, Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	01.01.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	23.01.2025
For the assessee / निर्धारिती की ओर से	Shri Rajeeva Kumar, Advocate
For the revenue / राजस्व की ओर से	Shri Gautam Patra, Addl. CIT DR

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the assessee against order of Commissioner of Income Tax (Appeal)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 20.09.2024 for AY 2012-13.

2. Brief facts of the case of the assessee are that the assessee filed its return of income declaring total income of Rs. 1,17,23,340/-. The case was reopened, notice u/s 148 was issued and in response to the said notice return was filed declaring total income at Rs. 1,17,23,310/-. During the course of assessment proceedings for AY 2016-17, it has been found that the assessee has sold a shop measuring 225 Sq. ft., the agreement of sale was made on 24.07.2015 and the same was produced for registration on 25.07.2015, the amount of sale consideration as per sale deed is Rs. 12,00,000/- and gross sale consideration claimed by the assessee is Rs. 14,00,000/-. The market value of the said shop was Rs. 3,15,78,875/-, the said property was purchased on 27.03.2012 by the assessee. The AO after considering the entire facts held that the assessee suppressed income to the tune of Rs. 9,75,784/- and he held that it is reason to believe that income to the extent of Rs. 9,75,784/- is an escaped assessment.

3. It appears from the record that the assessee aggrieved by the said order filed a request online to rectify the mistake apparent but no action was taken. Thereafter, the assessee filed a petition u/s 154 of the Act on 12.02.2021 but no action was taken, again assessee has filed grievance application on 23.12.2022 for rectification of mistake but the AO passed the order stating that the said application is the subject matter of appeal and no rectification u/s 154 of the act against the said order, assessee preferred an appeal before the Ld. CIT(A) stating all the grounds but the Ld. CIT(A) dismissed the application given its finding that there is a delay of 1239 days as the order passed by the AO on 15.12.2019.

Being aggrieved and dissatisfied the present appeal has been preferred.

4. The Ld. Counsel for the assessee challenges the very impugned order, thereby submitting that the assessee filed request on 22.01.2020 to rectify the mistake apparent from the record but no action was taken. The ld. Counsel further submits that the petition filed by the assessee u/s 154 of the act has also not been considered rather no action was taken. The Ld. Counsel further submits that when he filed grievance application the order was passed then he filed an appeal, so there was no intentional delay rather it was

bonafide. The Ld. Counsel further submits that the assessee sold the property during FY 2015-16 and there was an addition of Rs. 4,54,872/- during scrutiny by invoking Section 50C of the Act and in computing long term capital gain cost has been taken as Rs. 19,62,885/-. It has further been submitted that aforesaid property was purchased during FY 2011-12 and Section 56(2)(vii)(b)(ii) of the act was inserted in the Income Tax Act vide Finance Act, 2013 w.e.f 01.04.2014. The ld. Counsel submits that the case of the assessee be restored in the file of AO to verify the same as petition filed u/s 154 is still pending.

5. Contrary to that the ld. D.R supports the impugned order.

6. Upon hearing the submission of the Ld. Counsel of the respective parties, we have perused the record and find the following facts:

i) The AO in course of assessment proceedings has held that there is a difference of Rs. 9,75,784/- and accordingly he declared that the assessee has escaped income and added u/s 56(2)(vii)(b) of the Act. The assessment was made u/s 143(3) of the Act read with Section 147 of the Act for the difference in the purchase value of the property.

ii) Being aggrieved with this order, the assessee filed request online on 22.01.2022 to rectify the mistake apparent from the record but no action was taken.

iii) a petition dated 12.2.2022 u/s 154 of the Act was filed for rectification of the said mistake but no action was taken.

iv) The assessee filed grievance application on 23.12.2022 for rectification of the mistake. But the ACIT passed the order on 17.05.2023 stating that the application is subject matter of appeal not rectification.

7. The main contention of the assessee is that Section 56(2)(vii)(b) of the Act was inserted in the Act vide Finance Act, 2013, w.e.f 01.04.2014, so the order under consideration section was not applicable. It is a fact that rectification petition has been filed by the assessee has not been disposed of yet. The Ld. CIT(A) has dismissed the

case of the assessee only on the ground of delay. The fact remained unanswered. Hence, we are inclined to restore the case of the assessee to the AO to verify the same and pass fresh order. Accordingly, the order passed by the AO confirmed but the Ld. CIT(A) is hereby set aside. The case is restored in the file of AO to decide the same after hearing the assessee in accordance with law.

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

Order is pronounced in the open court on 23rd January, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 23rd January, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Lalit Kumar Poddar, 4/2, Olympus Court, Sarat Bose Road, Kolkata-700020
2. Respondent – ACIT, Circle-33, Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata