

IN THE INCOME TAX APPELLATE TRIBUNAL

KOLKATA BENCH 'A', KOLKATA

(Before Shri P. M. Jagtap, A.M. & Shri S.S. Viswanethra Ravi, J.M.)

ITA No.07/Kol/2015 : Assessment Year: 2008-09

M/s. Reward Tie Up Pvt. Ltd. PAN: AADCR2573D	Vs	D.C.I.T., CC - X Kolkata
(APPELLANT)		(RESPONDENT)

Appellant by : Shri Sujoy Sen, Advocate

Respondent by : Shri Goulen Hangshing, CIT

Date of Hearing : 25.05.2017	Date of Pronouncement : 07.06.2017
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ORDER

Shri P.M.Jagtap, A.M.

This appeal filed by the assessee is directed against the order of Id. CIT(A), Central Circle Kolkata, dated 07.11.2014 for the assessment year 2008-09 whereby he dismissed the appeal of the assessee ex-parte for the non-compliance on the part of the assessee.

2. The assessee in the present case is a company which is engaged by in the business of cloth trading. The return of income for the year under consideration was filed by it on 31.03.2009 declaring total income at nil. Although, the said return was initially processed by the A.O. under section 143(1) of the Act, he reopened the assessment subsequently and issued a notice under section 148 on 30.07.2010 after recording the reasons. In pursuance of the said notice, the assessment under section 143(3) / 147 of the Act was

completed by the A.O. vide an order dated 21.12.2010. The said order however, was set aside by the Id. CIT vide order dated 22.03.2013 passed under section 263 of the Act. In pursuance of the order passed by the Id. CIT under section 263, fresh assessment proceedings were initiated by the A.O. and since there was no satisfactory compliance on the part of the assessee to the notice issued by him during the course of the said proceeding, assessment was completed by the A.O. to the best of his judgement on the basis of material available on record under section 143(3) / 147 / 263 / 144 of the Act. In the assessment so completed, total income of the assessee was determined by the A.O. at Rs. 9,62,02,600/- after making an addition of Rs. 9.62 crore on account of share capital and premium by treating the same as unexplained.

3. Against the order passed by the A.O. under section 143(3) / 147 / 263 / 144, the appeal was preferred by the assessee before the Id. CIT(A) and since there was no satisfactory compliance on the part of the assessee for the various notices issued by him fixing the said appeal for hearing from time to time, the Id. CIT(A) dismissed the said appeal filed by the assessee vide appellate order dated 07.11.2014 passed ex-parte. Aggrieved by the said order, the assessee has preferred an appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. In ground No. 1, the assessee has raised a preliminary issue challenging the impugned order passed by the Id. CIT(A), ex-parte on the ground that proper and sufficient opportunity of being heard has not been given by the Id. CIT(A). In order to support and substantiate the case of the assessee on this issue, an affidavit made by the Director of the assessee-company is filed before us wherein the non-compliance during the course of appellate proceedings before the Id. CIT(A) is explained as under:

- i. That the Company had filed an appeal before the Learned Commissioner of Income of Income Tax (Appeal) Central – II Kolkata, against an order passed by the DCIT, CC-X, Kolkata under section, 143(3)/147/267/144 on 28.03.2014, for the assessment year 2008-09.
- ii. That, the said appeal, in Appeal No. 203/CC/CIT(A) C-II/Kol/14-15 was fixed for hearing on 2nd September, 2014, when our Authorised Representative had caused appearance before the Learned CIT(A) and sought an adjournment as they were busy with the filing of the Income Tax returns of various clients and the Ld. CIT(A) pleased to adjourn and refix the hearing of 15th October, 2014.
- iii. That, however, the date of 15th October, 2014 was covered by the festive session of Durga Puja and the office was closed so again an adjournment was sought by us and the Ld. CIT(A) was pleased to adjourn and refix the hearing of the appeal on 5th November, 2014.
- iv. That, one of our staff, who was aware of the date of hearing and was to provide necessary details/particulars to our Authorised Representative to represent the case was sick and was on leave and joined only on 7th November, 2014 and informed s as well as our AR about the date of such hearing.
- v. That, however, the written submission as not accepted and was not allowed to be filled by the office of the Ld.CIT(A) as the appellate order was already passed ex-parte, on 7th November, 2014.

5. Keeping in view the aforesaid averments made on behalf of the assessee, we are satisfied that there was a sufficient cause for the non-compliance of the assessee when its appeal was fixed for hearing before the Id. CIT(A). We are, therefore, of the view that while dismissing the appeal of the assessee vide his impugned order passed ex-parte, proper and sufficient opportunity cannot be said to have been given by the Id. CIT(A) to the assessee of being heard and there is a violation of principle of natural justice. In that view of the matter, we set aside the said order

passed by the Id. CIT(A) and remit the matter back to him for disposing off the appeal of the assessee afresh on merit after giving proper and sufficient opportunity of being heard.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order Pronounced in the Open Court on 7th June, 2017

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-
(P.M.Jagtap)
ACCOUNTANT MEMBER

Dated: 07/06/2017
Biswajit

Copy of order forwarded to:

- 1 M/s. Reward Tie Up Pvt. Ltd., 4, Synagouge Street, 8th Floor, R.No. 814, Kolkata - 700001
- 2 D.C.I.T., CC-X, Kolkata
- 3 The CIT(A),
- 4 The CIT
- 5 DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata