

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Dr.Arjun Lal Saini, AM]

I.T.A No. 448/Kol/2017

Assessment Year : 2012-13

M/s. Viewmore Highrise Pvt. Ltd. -vs.-  
Kolkata  
[PAN : AADCV 9644 B]  
(Appellant)

I.T.O., Ward-5(3)  
Kolkata

(Respondent)

For the Appellant : Shri S.M.Surana, Advocate  
For the Respondent : Shri S.Dasgupta, Addl. CIT(DR)

Date of Hearing : 20.12.2017.

Date of Pronouncement : 03.01.2018.

**ORDER**

**Per N.V.Vasudevan, JM**

This is an appeal by the Assessee against the order dated 21.12.2016 of C.I.T.(A)-2, Kolkata relating to A.Y.2012-13.

2. The Assessee is a company engaged in the business of trading in securities and investments. The assessee filed return of income for A.Y.2012-13 declaring a total income of Nil. An order of assessment u/s 143(3) of the Income Tax Act, 1961 (Act) dated 16.03.2015 was passed by the assessee determining the total income of the assessee at Rs.4,56,26,550/-. Against the additions made in the order of assessment the assessee preferred appeal before the CIT(A). The CIT(A) issued two notices on 29.08.2016 and 17.10.2016 fixing the appeals of the case for hearing on 21.09.2016 and 23.11.2016 respectively. The order is silent as to whether the said notice was served on the assessee. A third notice dated 02.12.2016 fixing the hearing of the case on 19.12.2016 was sent to the assessee for service through the AO. The AO deputed an Inspector to serve the notice on the assessee. The Inspector in his report dated 07.12.2016 reported that the notice could not be served as the party was not available at the address

and therefore sent the notice through affixure. The CIT(A) taking cognizance of the inspector's report as above decided the appeal ex parte holding that none appeared on behalf of the assessee and there was no infirmity in the order of the AO. Aggrieved by the order of CIT(A) the assessee has preferred the present appeal before the Tribunal.

3. In ground nos. 1 and 2 the assessee has challenged the order of CIT(A) on the ground that no notice of hearing was ever served on the assessee. Ground nos. 1 and 2 read as follows :-

*“1. For that the Ld. CIT(A) erred in deciding the appeal ex parte without allowing the assessee any proper or reasonable opportunity of being heard particularly when no notice fixing the hearing of the appeal was served on the appellant.*

*2. For that the Ld. CIT(A) erred in passing the order ex parte in a summary manner without adjudicating on the grounds taken in the Memo of Appeal or by passing a speaking order and even without taking into account the material available in the assessment records.”*

4. We have heard the rival submissions. It is seen from the record that the address of the assessee as found in the assessment order is 59, N.S.Road, 3<sup>rd</sup> Floor, R.No.17A, Kolkata-700001. In form -35 which is the form for appeal to be filed before CIT(A) the address of the assessee has been given as 11/2, Mohanlal Bahalwala Road, Ground Floor, Bally, Howrah-711 201. Even in Form No.36 which is the form for appeal to be filed before ITAT the same address has been given. The order of CIT(A) is silent as to which address the notices were sent. Nevertheless the fact remains that the assessee was not served with any notice of hearing of appeal. We are of the view that it would be in the interest of justice to set aside the order of CIT(A) and remand for adjudication by the CIT(A) of the various grounds of appeal raised by the assessee before CIT(A). The CIT(A) shall afford opportunity of being heard to the assessee before deciding the appeal. For statistical purposes the appeal of the assessee is treated as allowed. In view of the above conclusion the other grounds of appeal on merits of the addition challenged are not taken for consideration.

5. In the result the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the Court on 03.01.2018.**

Sd/-  
[Dr.A.L.Saini]  
Accountant Member

Sd/-  
[ N.V.Vasudevan ]  
Judicial Member

Dated : 03.01.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1. M/s. Viewmore Highrise Pvt.Ltd., 11/2, Mohanlal Bahalwala Road, Ground Floor, Bally, Howrah-711201.
2. .I.T.O., Ward-5(3), Kolkata.
3. CIT(A)-2, Kolkata
4. C.I.T.-2, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head Of Office/ D.D.O., ITAT Kolkata Benches