

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA**

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.83/Kol/2017
Assessment Year :2012-13

M/s Lata Realtors Pvt. Ltd., 26, Ramlal Mukherjee Lane, 2 nd Floor, Golabari, Salkia, Howrah-711106 [PAN No.AABCL 6683 J]	V/s.	Income Tax Officer, Ward-13(2), 110, Shantipally, E.M. Bye Pass-107
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Parnashree Banerjee, Advocate
प्रत्यर्थी की ओर से/By Respondent	Arindam Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	27-02-2018
घोषणा की तारीख/Date of Pronouncement	28-02-2018

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-5, Kolkata dated 26.10.2016. Assessment was framed by ITO Ward-13(2), Kolkata u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.03.2015 for assessment year 2012-13. Grounds raised by assessee are reproduced below:-

- “1. That, On fact and under the circumstances of the case, the Commissioner of Income Tax (Appeal) is unjustified and unlawful in confirming the order of the Ld. Assessing Officer vide ex parties order.*
- 2. The Order has been passed by Ld. CIT(A) without affording any opportunity as no notice of hearing was ever served on assesses.*
- 3. The Ld. A.O. was also casual while passing the assessment order u/s 144 despite the fact that the AO has himself admitted the compliances by the assessee on the diffident dates of hearing, the same is also evident from the perusal of order sheet. In these circumstances the order completed by the AO u/s 144, is highly unethical and as such liable to be set aside.*
- 4. That the Ld. Assessing Officer was not justified in considering the share capital including premium from share holders of Rs 1,64,00,000/- and unsecured loan of Rs*

20,00,0001- as unexplained cash credit in the books of the assessee and thereafter making addition to the returned income.

5. That the entire addition on account of cash credit by the AO is based on mere suspicious and without any material evidence on record and hence liable to be deleted.

6. That the addition made by AO is based on a pre determined and biased mindset, change of opinion and based on pure guess, surprises and conjecture which does not hold good in law.

7. That the asst has been made without appreciating the documents and explanation produced before the AO and without any concrete basis.

8. That the Ld. Assessing Officer was not justified in making addition on account of share capital as same was verified & certified by him in earlier years in detailed assessment.

9. That the addition made by Ld. Assessing Officer and upheld by Ld. the Commissioner of Income Tax (Appeal) are liable to be set aside.

10. That the appellant may add, alter, delete, withdraw or modify any of the ground at the time of hearing of the matter with the leave of the Hon'ble ITAT.”

Parnashree Banerjee, Ld. Advocate appeared on behalf of assessee and Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue.

2. At the outset it was observed that the Id. CIT-A has passed the ex parte order confirming the order of the AO without deciding the issue on merit. The Id. CIT-A confirmed the order of the AO ex parte due to fact that the assessee failed to advance any arguments on merits and failed to attend the dates of hearings fixed by the Id. CIT-A during the proceedings. Therefore the ex parte order was passed by the Id. CIT-A vide order dated 26.10.2016.

3. The Id. AR also drew our attention that the assessment order was also passed ex parte u/s 144 of the Act despite the fact that the assessee has appeared several times before the AO. The Id. AR in support of his claim filed the certified copies of the order sheet entries depicting the attendance of the assessee before the AO. As such, it was pleaded before us by the Id. AR to provide one more opportunity and accordingly the matter should be set aside to the AO.

Per contra, it is the argument of Ld. DR for the Revenue that opportunities were given to assessee but it did not avail the same. Therefore the Ld. CIT(A) had no option but to dispose of the matter *ex parte*. However the Id. DR submitted that in case the matter needs to be restored back then it should go to the file of Id. CIT(A) for fresh adjudication in accordance with the provisions of law.

4. Be that as it may, it is clear from the record and looking at the absence of the assessee, Ld. CIT(A) concluded that the assessee has no interest to pursue the matter and to get it disposed of on merits. On perusal of the matter, it occurs to our mind that Ld. CIT(A) is motivated to dispose of the matter *ex parte* only because of his observation that the assessee failed to appear on the dates of hearings. In our considered opinion, it cannot be a ground to deny justice without giving reasonable opportunity to the party affected. It is because in the instant case the assessee was not served the notice for the dates of hearing before the Ld. CIT(A). The assessee has also filed the affidavit stating that notices for hearing issued by the Ld. CIT(A) were not served upon the assessee. The contents of the affidavits are as under:-

AFFIDAVIT

"I, Mrs. Ritu Goyal Director of M/s. Lata Realtors Pvt. Ltd., 26, Ramlal Mukherjee Lane, Salkia, Howrah - 711106, do hereby solemnly affirm and declare as follows:

1. That M/s. Lata Realtors Pvt. Ltd. has been assessed to Income-tax by the Income Tax Officer, Ward-13(2), Kolkata under PAN No. AABCL6683J.
2. That against the said assessment order, M/s. Lata Realtors Pvt. Ltd. filed an appeal before the Ld. Commissioner of Income Tax (Appeals)-5, Kolkata, on the grounds mentioned in the Memorandum of Appeal.
3. That the Ld. Commissioner of Income Tax (Appeals)-5, Kolkata fixed our appeal for hearing on 08.08.2016 and 26.10.2016 vide issue of notices dated 14.07.2016 and 29.08.2016 as stated by the Ld. CIT(A) in his order passed u/s. 250 of the Act on 26.10.2016.
4. That none of the notices dated 14.07.2016 and 29.08.2016 were served to us at our address, in record with the Ld. CIT(A)-5, Kolkata and as also mentioned by the Ld. CIT(A)-5, Kolkata in his Order dated 26.10.2016 .
5. That our case for the A.Y. 2012-13 in 282/CIT(A)-S/Wd-13(2)11S-16 was fixed for hearing before the Ld. CIT(A)-S, Kolkata on 08.08.2016 and 26.10.2016 came to our knowledge only on receipt of the Ld. CIT(A)-S, Kolkata's Order dated 26.10.2016.
6. That the Ld. CIT(A)-S, Kolkata in his order dated 26.10.2016 stated that notices dated 14.07.2016 and 29.08.2016 issued by him was returned back by Postal Authority with the comment 'Not found and not known', however the impugned order dated 26.10.2016 was served by the Postal Authority in the same address.
7. That I intend to pray before the Hon'ble Income Tax Appellate Tribunal, Kolkata for setting aside our case to the Ld. CIT(A)-S, Kolkata for hearing it, since no effective hearing of our case could take place in the absence of the notices for hearing getting served.
8. That the statements made in paragraphs 1 to 7 above are true to the best of my knowledge and belief.

It is also observed that the assessee has appeared several times before the AO on the dates of hearing till 24.3.2015 but the AO has passed the order u/s 144 of the Act. From the order sheet entry, it was also observed that no notice was issued for making the best judgment assessment as mandated u/s 144 of the Act. In view of above and in the interest of natural justice and fair play we are of the opinion that the

AO should have given another opportunity to the assessee to appear before him to explain his points of contentions before resorting to the provisions of section 144 of the Act. Therefore, to meet end of justice we set aside the matter to the file of AO for fresh adjudication and according to the provisions of law and after giving reasonable opportunity of being heard to assessee. Therefore, we direct the assessee to cooperate including the appearance and production of books of account as and when the matter is taken up by AO. We order accordingly.

5. In the result, for statistical purpose, appeal of assessee is treated as allowed.

Order pronounced in the open court 28/02/2018

Sd/-

(न्यायिक सदस्य)

(N.V.Vasudevan)

(Judicial Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 28/02/2018 कोलकाता ।

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

(Accountant Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Lata Realtors Pvt. Ltd. 26, Ramlal Mukherjee Lane, 2nd Floor, Golabari, Salkia, Howrah-711106
2. प्रत्यर्थी/Respondent-ITO, Ward-13(2), 110, Shantdipally, E.M. Bye Pass, Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।