

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA
[Before Shri P.M. Jagtap, AM]**

I.T.A. No. 2478/Kol/2017
Assessment Year: 2010-11

M/s. Revive Traders Pvt. Ltd.Appellant
15, Sir Hariram Goyanka Street,
Kolkata - 700 007
[PAN: AADCR 6363 F]

I.T.O. Ward 12(2) Kolkata,.....Respondent
Aayakar Bhawan, 7th Floor,
P-7, Chowringhee Square,
Kolkata - 700 069

Appearances by:

None appearing on behalf of the Assessee.

Shri Imlimeren Jamir, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : March 05, 2018

Date of pronouncing the order : March 07, 2018

ORDER

PER P.M. JAGTAP, AM

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) - 16, Kolkata dated 30.10.2017 passed ex-parte dismissing the appeal filed by the assessee before him.

2. The assessee in the present is a company which filed its return of income for the year under consideration originally on 26.03.2011 declaring a total income of Rs. 11,007/-. The said return was initially processed by the A.O. under section 143(1)(a) of the Act on 04.06.2011. The assessment however was subsequently reopened by him on the basis of certain information gathered during the course of search and seizure action conducted in the Badalia Group of cases and after recording the reasons, a notice under section 148 was issued by him on 11.09.2012. Although there was no response initially by the assessee to the said notice issued by a fixture, the authorised

representative of the assessee, who subsequently appeared before the A.O., made a request to treat the return originally filed by the assessee on 26.03.2011 as the return filed in compliance to the notice under section 148. Thereafter the assessment was completed by the A.O. under section 147/143(3) of the Act vide an order dated 27.03.2014 wherein he made two additions of Rs. 2,73,643/- and Rs. 20,38,615/- to the total income of the assessee on account of commission income and peak credit balance in the undisclosed bank account respectively.

3. Against the order passed by the A.O. under section 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) on the following grounds:

"1. Because the learned A.O. has erred in considering the rate of commission for accommodation entries at the rate of Rs. 250 per lakh of cheques issued instead of Rs. 100 per lakh.

2. Because the learned A.O. has erred in considering peak credit balance of Rs. 20,38,615/- standing in the bank accounts as investment from undisclosed sources, but the funds were used to be cleared within 2 to 3 days and there was hardly any closing balance remained thereafter. Also there has been no cash withdrawals and A.O. had duly accepted the modus operandi in the accounts and commission earned. So both the view cannot be taken.

3. Because that Shri M.M. Daga has already accepted that the Bank Account with DCB was used and maintained by him peak credit on that account cannot be added in the hand of the appellant."

4. During the course of appellate proceedings before the Ld. CIT(A), there was no compliance on the part of the assessee to the notice/s issued by the Ld. CIT(A) and keeping in view the same, the Ld. CIT(A) proceeded to dismiss the appeal of the assessee vide his

appellate order dated 30.10.2017 passed ex-parte after recording the following observations in paragraph no 3:

"In this case, the addition has been done worth Rs. 20,38,615/- as income from undisclosed sources.

None has attended despite notices. Hence, the order is passed ex-parte.

Addition of the A.O. is confirmed and the appeal of the assessee is dismissed."

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. At the time of hearing of this appeal fixed today i.e. on 05.03.2018, none has appeared on behalf of the assessee. This appeal of the assessee is, therefore, being disposed of ex-parte after hearing the arguments of learned DR and perusing the relevant material available on record. It is observed that the Ld. CIT(A) in his impugned order passed ex-parte has not given the details of notices served on the assessee in order to highlight the non-compliance on the part of the assessee before dismissing the appeal of the assessee ex-parte. In the absence of the said details, it is difficult to ascertain as to whether proper and sufficient opportunity was given by the Ld. CIT(A) to the assessee before dismissing the appeal of the assessee ex-parte and this position is not disputed even by the learned DR. Moreover, as per this specific provision contained in sub-section (6) of section 250, the Ld. CIT(A) was required to dispose of the appeal of the assessee by an order in writing stating therein the points for determination, the decision thereon and the reason for the decision. A perusal of the cryptic and non-speaking order passed by the Ld. CIT(A) shows that it does not comply with the requirement of section 250(6). I, therefore,

set aside the impugned order passed by the Ld. CIT(A) ex-parte and remit the matter back to him for disposal of the appeal of the assessee afresh on merit after giving proper and sufficient opportunity of being heard to the assessee and by passing a speaking and well reasoned order.

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

Order Pronounced in the Open Court on 7th March, 2018.

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

Dated: 07/03/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Revive Traders Pvt. Ltd., 15, Sir Hariram Goyanka Street, Kolkata – 700 007.
2. ITO Ward 12(2), P-7, Chowringhee Square, 7th Floor, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

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