

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

[Before Shri N. V. Vasudevan, Hon'ble Judicial Member & Shri Waseem Ahmed, Hon'ble Accountant Member]

I.T.A. No. 558/Kol/2017
Assessment Year: 2012-13

Moon Raker Construction Pvt. Ltd.....Appellant
11, Crooked Lane
Kolkata - 700 069
[PAN : AABCM 9001 H]

Income Tax Officer, Ward-3(1), Kolkata.....Respondent
P-7, Chowringhee Square
Kolkata - 700 09

Appearances by:

Shri Prasad Nath Kesaria, FCA, appeared on behalf of the assessee.

Shri S. Dasgupta, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : February 20th, 2018

Date of pronouncing the order : 1st March, 2018

O R D E R

Per N.V. Vasudevan :-

This is an appeal filed by the assessee against the order dt. 16/01/2017, of the Id. Commissioner of Income Tax (Appeals)-1, Kolkata (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), relating to the Assessment Year 2012-13.

2. The assessee is a company engaged in the business of trading and making investment. For the Assessment Year 2012-13, the assessee filed its return of income disclosing total income Rs. 21,130/-. An order of assessment dt. 21/03/2015, was passed by the Assessing Officer u/s 144 of the Act (best judgement assessment). The Assessing Officer determined the total income of the assessee at a sum of Rs.2,34,60,719/-, in the following manner:-

Total income as per return :Rs. 21,130/-

Add: as per discussion above : Disallowance :1 : Rs.2,33,89,643/-

Disallowance : 2 : Rs.49,946/-: Rs.2,34,59,589/-

Assessed income : Rs. 2,34,60,719/-

3. Aggrieved by the additions made by the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A). The case before the Id. CIT(A) was fixed on 27/12/2016. Since none appeared on behalf of the assessee the case was again fixed on 09/01/2017. On that day the Authorised Representative of the assessee filed a letter requesting for adjournment. The case was adjourned to 13/01/2017. It appears that on 13/01/2017, none appeared for the assessee nor any adjournment letter was filed. Under these circumstances, the Id. CIT(A), proceeded to decide the appeal of the assessee *ex-parte*. He formed to grounds to interfere with the order of the Assessing Officer and accordingly dismissed the appeal of the assessee.

3.1. Aggrieved by the order of the Id. CIT(A), the assessee has preferred the present appeal before the Tribunal.

4. At the time of hearing, the Id. Counsel for the assessee pointed out that on 09/01/2017, the request was made for adjourning the case to first week of March, 2017, as the assessee's accountant would be out of station. It appears that this request was not considered and the case was refixed for hearing on 13/01/2017. Since Shri Sanjay Jain, CA, A/R, of the assessee was out of station on 13/01/2017, a request was made to adjourn the hearing and it was informed that he could come at a later date. It appears that Shri Sanjay Jain, CA, attended on 16/01/2017. But by that time the order was already passed by the Id. CIT(A).

4.1. After considering the circumstances, under which the appeal was decided by the Id. CIT(A), we are of the view that the assessee has not been afforded proper opportunity of being heard by the Id. CIT(A). There has been a violation of principles of natural justice. We, therefore, set aside the order of the Id. CIT(A) and remand the matter back to the Id. CIT(A), for fresh consideration of the various grounds of appeal raised by the assessee on merits after affording the assessee proper opportunity of being heard. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Kolkata, the 1st day of March, 2018.

Sd/-
[Waseem Ahmed]
Accountant Member

Dated :01.03.2018
{SC SPS}

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

Copy of the order forwarded to:

1. Moon Raker Construction Pvt. Ltd
11, Crooked Lane
Kolkata - 700 069

2. Income Tax Officer, Ward-3(1), Kolkata
P-7, Chowringhee Square
Kolkata - 700 09

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

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