

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

I.T.A. No. 22/Kol/2018
Assessment Year: 2009-10

RSA Fintrade.....Appellant
Suite No. 37, 5th Floor,
Martin Burn Building,
1, R.N. Mukherjee Road,
Kolkata - 700 001
[PAN: AAJFR 1515 R]

I.T.O. Ward 36(1) Kolkata.....Respondent
Aayakar Bhawan Poorva,
8th Floor, Room No. 810,
810, Shantipally, E.M. By Pass,
Kolkata - 700 107

Appearances by:

Shri Ansul Agarwal, AR appearing on behalf of the Assessee.

Md. Ghyas Uddin, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : March 22, 2018

Date of pronouncing the order : March 22, 2018

ORDER

Per P.M. Jagtap, AM

This appeal is preferred by the revenue against the order of Ld. CIT(Appeals) - 10, Kolkata dated 31.10.2017 passed ex-parte dismissing the appeal of the assessee.

2. The assessee in the present case is partnership firm which is engaged in the business of dealing in shares. The return of income for the year under consideration was filed by the assessee on 07.09.2009 declaring a loss of Rs. 15,670/-. Although the said return was initially processed by the A.O. under section 143(1), the assessment was subsequently reopened by him and in the assessment completed under section 147/143(3) vide an order dated 30.12.2016, he

determined the total income of the assessee at Rs. 29,66,830/- after making an addition of Rs. 29,82,495/- on account of shifting of profits.

3. Against the order passed by the A.O. under section 143(3)/147, an appeal was filed by the assessee before the Ld. CIT(A) and since there was no satisfactory compliance on the part of the assessee to the notices of hearing issued by him, the Ld. CIT(A) dismissed the appeal of the assessee vide his appellate order dated 31.10.2017 passed ex-parte. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the learned counsel for the assessee, the appeal filed by the assessee before the Ld. CIT(A) was initially fixed for hearing on 12.10.2017. He has submitted that the assessee however sought adjournment on the said date and accordingly the hearing was adjourned to 31.10.2017. He has submitted that the assessee however could not remain present before the Ld. CIT(A) on 31.10.2017 due to some unavoidable reasons and without giving any further opportunity, the Ld. CIT(A) proceeded to dismiss the appeal of the assessee by his impugned order passed ex-parte. He has contended that Ld. CIT(A) thus has not given proper and sufficient opportunity of being heard to the assessee and there is a violation of principle of natural justice. I find merit in the contention of the learned counsel for the assessee. A perusal of the impugned order of the Ld. CIT(A) shows that the assessee had duly sought adjournment on the first hearing fixed on 12.10.2017 and although none appeared on behalf of the assessee on the next hearing fixed on

31.10.2017 due to some unavoidable reasons as stated by the learned counsel for the assessee, no further opportunity was given by the Ld. CIT(A) to the assessee of being heard. It is thus clear that the appeal of the assessee has been dismissed by the Ld. CIT(A) vide his impugned order passed ex-parte without giving proper and sufficient opportunity of being heard to the assessee and even the learned DR has not been able to rebut or controvert this position clearly evident from the impugned order of the Ld. CIT(A). I, therefore, set aside the impugned order of the Ld. CIT(A) passed ex-parte and remit the matter back to him for disposing of the appeal of the assessee afresh after giving the assessee proper and sufficient opportunity of being heard.

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

Order Pronounced in the Open Court on 22nd March, 2018.

Sd/-

(P.M. Jagtap)

ACCOUNTANT MEMBER

Dated: 22/03/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. RSA Fintrade, Suite No. 37, 5th Floor, Martin Burn Building, 1, R.N. Mukherjee Road, Kolkata – 700 001.
2. ITO Ward 36(1), Aayakar Bhawan Poorva, 8th Floor, Room No. 810, 110, Shantipally, E.M. By Pass, Kolkata – 700 107.
3. The CIT(A)

4. The CIT

5. DR

True Copy,

By order,

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