

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

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.1177/Kol/2016
Assessment Year:2012-13

KKS Share Brokers Ltd. C/p D. J. Shah & Co. Kalyan Bhavan, 2 Elgin Road, Kolkata-20 [PAN No.AABCK 1398 R]	बनाम / V/s.	Income Tax Officer, Ward-4(4), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri M.D. Shah, AR
प्रत्यर्थी की ओर से/By Respondent	Shri A. Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	03-04-2018
घोषणा की तारीख/Date of Pronouncement	25-04-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Kolkata dated 10.02.2016. Assessment was framed by ITO Ward-4(4), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 18.03.2015 for assessment year 2012-13. The grounds raised by the assessee per its appeal are as under:-

“For that in the facts and circumstances of the case the appellate order passed was in violation of principals of natural justice hence is bad in law and be quashed.

2. For that in the facts and circumstances the Ld. Commissioner of Income Tax Appeals erred in upholding the addition of Rs.1,46,50,000/- on account of unexplained income u/s. 68 of the IT Act 1961. The addition is not called for and hence the same be deleted.

3. For that in the facts and circumstances the Ld. Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.1,79,955/- on account of expenses u/s. 14A of the IT Act, 1961. The disallowance is not called for and hence the same be reversed.
4. The appellant craves leave to produce additional evidence in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963.
5. For that the Ld. Commissioner of Income Tax Appeals did not permit the assessee to produce relevant documents / evidences in the course of the hearing. Hence the appellate order as bad in law for want of opportunity and proper hearing and thus be quashed.
6. For that the interest computed u/s. 234A/B/C/D of the IT Act 1961 is over charged and wrongly calculated and or is not applicable to the assessee case it be directed to re-compute the interest as per law.
7. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.”

Shri M.D. Shah, Ld. Authorized Representative appeared on behalf of assessee and Shri A. Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue.

2. At the time of hearing, Ld DR has filed adjournment petition on the ground that it requires more time for the preparation of the case. On the contrary, Ld. AR for the assessee submitted that the Ld CIT(A) has passed *ex parte* order. It was also brought to our noticed that proper submissions were also not made even during the assessment proceedings before the AO. Accordingly it was prayed to restore the matter to the file of AO for fresh adjudication.

3. After considering the submissions of both the parties we decided to hear the appeal and therefore adjournment petition filed by the learned DR was rejected.

4. At the outset, it was seen that order of Ld. CIT(A) is *ex parte* without hearing the assessee. The issue arises whether Ld. CIT(A) can pass *ex parte* order. We are of the view that Section 250(2) of the Income Tax Act, 1961 grants the assessee as well as the Assessing Officer concerned a right of being heard by the First Appellate Authority. The Appellate Authority has legal duty to dispose of the appeal after hearing. Even no dismissal of appeal for default of assessee can be made. Thus, the appeal is to be decided on merits. Where an appeal is disposed of, even though on merits after taking relevant facts into consideration but without giving sufficient

opportunity of being heard to the assessee, an application of setting aside of ex parte order is maintainable.

4.1 It was also observed that the Id. CIT(A) has passed the order at the address given below :

71, canning street 5th floor, Kolkata-700001

As per the assessment order, the AO has recorded the following address :

“71, canning street 5th floor, Room No. 510, Block-B Kolkata-700001

In view of the above, we are of the view that the notices sent by the Id. CIT(A) were not served upon the assessee. Therefore the assessee failed to appear before the Id. CIT(A).

4.2 We also note that the assessee has also not filed any documentary evidences in support of the share premium raised by it during the year. It was brought to our notice by the Id. AR that the assessee is not a paper company but actually holding the share broker license.

In view of above, we are of the considered view that this order needs to be set aside and remanded back to the file of AO for fresh adjudication after providing reasonable opportunity of being heard to the assessee. On specific query from the Bench for restoring the matter to the file AO for fresh adjudication as per the provisions of the law, the Id. DR raised No objection. Nevertheless, it is necessary to mention that the assessee will cooperate in the assessment proceedings. The assessee will file necessary evidences on which he wants to rely upon. In view of above, we are inclined to restore the issue to the file of AO for fresh adjudication as per the provisions of law. Hence, this ground of assessee's appeal stands allowed for statistical purpose.

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

Order pronounced in open court on 25/04/2018

Sd/-

(न्यायिक सदस्य)

(S.S.Viswanethra Ravi)

Judicial Member

*Dkp, Sr.P.S

दिनांक:- 25/04/2018

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

Accountant Member

कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-KKS Share Brokers Ltd. C/o D.J. Shah & Co. Kalyan Bhawan
2 Elgin Road, Kolkata-20
2. प्रत्यर्थी/Respondent-ITO, Ward-4(4), Aayakar Bhawan, P-7, Chowirnghee Sq.Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
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