

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

**Before Shri P.M. Jagtap, Accountant Member
and Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 1119/KOL/2017
Assessment Year: 2012-2013**

Avighna Realcon Pvt. Limited,.....Appellant
CA Ankit Jain,
S.A. Legal Advisory & Solutions LLP,
Temple Chambers, Room No. 68/1,
6, Old Post Office Street, Kolkata-700 001
[PAN: AAJCA 8091 R]

-Vs.-

Income Tax Officer,.....Respondent
Ward-4(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069

Appearances by:

Shri Brijesh Kumar Singh, Advocate, for the Appellant
Shri Imlimeren Jamir, Addl. CIT, D.R., for the Respondent

Date of concluding the hearing : May 28, 2018
Date of pronouncing the order : May 28, 2018

O R D E R

Per Shri P.M. Jagtap, A.M. :-

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals)-23, Kolkata dated 03.02.2017 passed *ex-parte* dismissing the appeal of the assessee.

2. The assessee in the present case is a Company, which filed its return of income for the year under consideration declaring a loss of Rs.39,425/-. During the year under consideration, the assessee-company had received share capital and share premium amounts aggregating to Rs.1,23,00,000/- and since the said amounts representing cash credits could not be satisfactorily explained by the assessee in terms of section 68 inspite of giving sufficient opportunity during the course of

assessment proceedings, the Assessing Officer added the same to the total income of the assessee in the assessment completed under section 144 vide an order dated 13.03.2015.

3. Against the order passed by the Assessing Officer under section 144, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the addition made by the Assessing Officer under section 68 on account of share capital and share premium by treating the same as unexplained cash credits. There was, however, no compliance on the part of the assessee to the notices issued by the Id. CIT(Appeals) fixing the said appeal for hearing on 05.01.2017 and 23.01.2017. The Id. CIT(Appeals), therefore, proceeded to dismiss the appeal of the assessee vide his appellate order dated 03.02.2017 passed *ex-parte*. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. The Id. Counsel for the assessee has submitted that both the notices issued by the Id. CIT(Appeals) on 05.12.2016 and 09.01.2017 fixing the appeal of the assessee for hearing on 05.01.2017 and 23.01.2017 were never received by the assessee and this position is clearly evident from the relevant portion of the impugned order, where the Id. CIT(Appeals) himself has stated that the said notices could not be served upon the assessee due to insufficient address. As submitted by the Id. Counsel for the assessee in this regard, the notices of today's hearing fixed before the Tribunal was also sent to the same address as was furnished before the Id. CIT(Appeals), but the same has been duly received by the assessee well in time. Keeping in view all these facts of the case, we are of the view that there was a sufficient cause for the non-appearance of the assessee before the Id. CIT(Appeals) when its appeal was fixed for hearing by him and even the Id. D.R. has not raised any contention to dispute this position. We, therefore, set aside the impugned order passed by the Id. CIT(Appeals) *ex-parte* and remit the

matter back to him for disposing of the appeal of the assessee afresh on merit after giving proper and sufficient opportunity of being heard to the assessee.

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

Order pronounced in the open Court on May 28, 2018.

**Sd/-
(A.T. Varkey)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 28th day of May, 2018

- Copies to :*
- (1) Avighna Realcon Pvt. Limited.,
CA Ankit Jain,
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Temple Chambers, Room No. 68/1,
6, Old Post Office Street, Kolkata-700 001*
 - (2) Income Tax Officer,
Ward-4(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069*
 - (3) Commissioner of Income Tax (Appeals)-23,*
 - (4) Commissioner of Income Tax- ,*
 - (5) The Departmental Representative*
 - (6) Guard File*

By order

*Senior Private Secretary,
Head of Office/D.D.O.
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.