

**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. 1164/KOL/2017
Assessment Year: 2012-2013**

Bhiksu Barter Pvt. Limited,.....Appellant
32, Ezra Street, 4th Floor, Room No. 403
Kolkata-700 001
[PAN: AABCB 1315 M]

-Vs.-

Income Tax Officer,.....Respondent
Ward-5(3), Kolkata,
Aayakar Bhawan, 7th Floor,
P-7, Chowringhee Square,
Kolkata-700 069

Appearances by:

Shri S.M. Surana, Advocate, for the Appellant
Shri Provash Roy, Addl. CIT, D.R., for the Respondent

Date of concluding the hearing : May 29, 2018
Date of pronouncing the order : May 29, 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 Id. Commissioner of Income Tax (Appeals)-23, Kolkata dated 15.02.2017 passed *ex-parte* dismissing the appeal of the assessee.

2. The assessee in the present case is a Company, which is engaged in the business of investment in shares and money lending. The return of income for the year under consideration was filed by it on 11.01.2013 declaring total income of Rs.60,800/-. During the course of assessment proceedings, the claim of the assessee of having received share capital and share premium amounts aggregating to Rs.3,50,85,000/- was examined by the Assessing Officer. In this regard, he issued notices under section 131 to the Directors of the shareholder companies, but the same

remained un-complied with. He also gave an opportunity to the assessee to explain the share capital and share premium amount representing cash credit in terms of section 68. The assessee, however, failed to comply with the same. The Assessing Officer, therefore, treated the share capital and share premium amounts aggregating to Rs.3,50,85,000/- as unexplained cash credit and added the same to the total income of the assessee under section 68 in the assessment completed under section 143(3) vide an order dated 02.03.2015.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and since there was no compliance on the part of the assessee to the notices issued by the Id. CIT(Appeals) fixing the said appeal for hearing from time to time, the Id. CIT(Appeals) dismissed the appeal of the assessee vide his appellate order dated 15.02.2017 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. Besides raising the preliminary issue regarding the failure of the authorities below to afford proper and sufficient opportunity to the assessee to explain the amount of share capital and share premium in question in terms of section 68, the Id. Counsel for the assessee has also raised a material contention that the said amount of share capital and share premium was received by the assessee in the earlier years and not in the year under consideration. He has contended that the said amount to the extent received in the earlier years cannot be added to the total income of the assessee under section 68 in the year under consideration. The Id. D.R., on the other hand, has contended that this claim made by the Id. Counsel for the assessee for the first time before the Tribunal requires verification. He has contended that the Assessing Officer, therefore, should be given an opportunity to verify the same. We find merit in the contention of the Id. D.R. The impugned

order of the Id. CIT(Appeals) passed *ex-parte* is accordingly set aside and the matter is restored to the file of the Assessing Officer for deciding the issue relating to the addition made under section 68 on account of share capital and share premium afresh on merit after giving the assessee one more opportunity of being heard. As undertaken by the Id. Counsel for the assessee, the assessee shall make due compliance before the Assessing Officer and shall extend all the possible cooperation in order to enable the Assessing Officer to decide the issue on merit expeditiously.

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

Order pronounced in the open Court on May 29, 2018.

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

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

Kolkata, the 29th day of May, 2018

- Copies to :
- (1) ***Bhiksu Barter Pvt. Limited,
32, Ezra Street, 4th Floor, Room No. 403
Kolkata-700 001***
 - (2) ***Income Tax Officer,
Ward-5(3), Kolkata,
Aayakar Bhawan, 7th Floor,
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.