

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'D', KOLKATA
(Before Shri Aby. T. Varkey, J.M. & Dr.A.L.Saini, A.M.)**

ITA No. 284/Kol/2017 : A.Y : 2012-13

M/s. Prudent Vanijya Pvt. Ltd PAN: AAFCP0301B	Vs	I.T.O., Ward 13(3), Kolkata
(APPELLANT)		(RESPONDENT)

Assessee: Shri Manish Tiwari, FCA, Id.AR
Department by: Shri: Arindam Bhattacharjee, Addl. CIT, Id.DR

Date of Hearing : 23-05-2018	Date of Pronouncement :- 06/06/2018
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ORDER

Per Dr. A.L.Saini, A.M.:

The captioned appeal filed by the Assessee, pertaining to assessment year 2012-13, is directed against the ex parte order passed by the Commissioner of Income-tax (Appeals)-5, Kolkata in Appeal No. 212/CIT(A)-5/Wd-13(3)/15-16, dated 20.10.2016, which in turn arises out of an order passed by the Assessing Officer u/s. 143(3) of the Income-Tax Act, 1961 (in short, 'the Act'), dated 27.03.2015.

2. The grievances raised by the assessee are as follows:-

1. (a) That the hearing of the appeal fixed on 20.07.2016 & 10.08.2016 were duly attended by the authorized representative personally and as such cannot call for any adverse inference.

(b) That the appellant should not suffer on the ground that notice dated 23.09.2016 fixing the hearing on 06.10.2016 was returned back unserved because of insufficient address for which the Department is responsible.

(c) That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong in passing order on *ex parte* view without allowing adequate and effective opportunity of hearing.

2. That on the facts and in the circumstances of the case, Ld. CIT. (A) is wrong and unjustified in confirming the action of Assessing officer who considered Share Application Money of Rs. 1,62,00,000/- as unexplained cash credit U/s 68 of Income Tax Act, 1961.

3. That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong and unjustified in confirming the disallowance of Rs. 50,425/- U/s 14A read with Rule 8D of Income Tax Rules 1962.

4. That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in confirming the disallowance of Rs. 6,060/- as Capital expenditure by referring to Section 37 of Income Tax Act, 1961.

5. That the appellant craves leave to add, alter, adduce or amend any ground on or at the time of hearing of the appeal.

3. At the outset, itself the Ld.AR pointed out that the impugned order is an *ex parte* order and therefore, the assessee could not plead his case before the Ld. CIT(A). The Id counsel also submitted that at assessment stage also the assessee could not submit certain documents and evidences, as these were not available at that point of time and now he wish to submit these documents and evidences before the assessing officer. Therefore, the Id counsel prayed the Bench that the matter may be remanded back to the file of the AO for fresh adjudication. The Ld. DR did not have any objection if the matter is remitted before the Ld. AO.

4. We are of the view that the assessee did not have proper opportunity of being heard before CIT(A) and *ex parte* order of CIT(A) dismissing the appeal of the assessee has to be set aside. It has been submitted that at the assessment stage the assessee could not produce some documents and evidences. The Id. Counsel for the assessee also pointed out that order of CIT(A) may be set aside and the issues raised before CIT(A) be remanded to the AO for fresh consideration. Therefore, we

are of the view that it would be in the interest of justice that the matter should be remanded to the AO. The Id. DR did not object to the prayer made by the Id. Counsel for the assessee. Therefore, we are of the view that one more opportunity should be given to the assessee to submit proper documents and evidences before the AO. Hence, considering the principle of natural justice, we set aside the order of Id CIT(A) and remand the matter back to the file of the Id.AO. The assessee shall be at liberty to file requisite evidences and documents to substantiate its claim. The grounds raised by assessee are allowed for statistical purposes.

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

Order Pronounced in the Open Court on 06/06/2018.

Sd/-
(Aby. T. Varkey)
Judicial Member

Sd/-
(Dr. A. L. Saini)
Accountant Member

Dated: 06/06/2018

**PRADIP (Sr.PS)

Copy of the order forwarded to:

1. Assessee: M/s. Prudent Vanijya Pvt. Ltd
131/1 Tripura Ray Lane, Salkia, Near: Alapani Math, Howrah-711
106.
2. Department : The ITO., Ward 13(3), Aaykar Bhawan Poorva, 110
Shanti Pally, Kolkata-700 107.
3. The CIT-
4. The CIT(A)-
5. DR, Kolkata Benches, Kolkata

True Copy,

By order,

Sr.PS, H.O.O, ITAT, Kolkata