

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

[Before Shri P.M. Jagtap, AM and Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 996/Kol/2017
Assessment Year: 2012-13

M/s. AIC Metaliks Pvt. Ltd......*Appellant*
17, Ganesh Chandra Avenue, 1st Floor,
Kolkata – 700 013.
[PAN : AAFCA 6302 B]

ITO Ward 3(3) Kolkata.....*Respondent*
P-7, Chowringhee Square,
Kolkata – 700 069.

Appearances by:

Shri Sunil Surana, FCA appearing on behalf of the Assessee.

Shri A. Bhattacharjee, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : May 09, 2018

Date of pronouncing the order : June 15, 2018

ORDER

Per P.M. Jagtap, AM

This appeal filed by the assessee is directed against the order of Ld. CIT(A) – 9, Kolkata dated 28.02.2017 whereby he dismissed the appeal of the assessee ex-parte.

2. The assessee in the present case is a company which filed its return of income for the year under consideration declaring a total income at nil. During the course of assessment proceedings, the claim of the assessee of having received to share capital and share premium amount aggregating to Rs. 1,60,00,000/- was examined by the A.O. In this regard, he issued a notice under section 131 to the assessee requiring it to appear personally along with all the principal officers/directors of the investor companies and/or individual investors as the case may be for the purpose of verifying the identity

and creditworthiness of the share-holders as well as the genuineness of the transactions. The assessee was also required by the AO to justify and explain the basis of share premium amount. The assessee however failed to comply with these requirements in spite of sufficient opportunity afforded by the AO. The AO, therefore, treated the entire amount of share capital and share premium as explained cash credit and made an addition of Rs. 1,60,00,000/- to the total income of the assessee under section 68. He also made a further addition of Rs. 87,272/- on account of disallowance under section 14A and determined the total income of the assessee at Rs. 1,60,87,270/- in the assessment completed under section 143(3) vide an order dated 21.03.2015.

3. Against the order passed by the AO u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and since there was no compliance on the part of the assessee to the notices issued by the Ld. CIT(A) fixing the said appeal for hearing from time to time, the later dismissed the same vide his appellate order dated 28.02.2017 passed ex-parte. Aggrieved by the order of the Ld. CIT(A), 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. In support of the preliminary issue raised by the assessee in this appeal challenging the impugned order passed by the Ld. CIT(A) ex-parte, the learned counsel for the assessee has submitted that the appeal of the assessee was fixed for hearing by the Ld. CIT(A) on three dates i.e. 09.11.2016, 14.12.2016 and 02.02.2017. He has submitted that the assessee on all

these three occasions sought adjournments in writing by filing the applications which were duly received by the office of the Ld. CIT(A) well before the corresponding dates of hearing. He has also filed the copies of the said applications duly received by the office of the Ld. CIT(A) and contended that the Ld. CIT(A) failed to take cognizance of the said applications and proceeded to dispose of the appeal of the assessee vide impugned order passed ex-parte on the ground that there was no compliance on the part of the assessee to the notices of hearings issued by him. He has contended that the Ld. CIT(A) thus has dismissed the appeal of the assessee without giving proper and sufficient opportunity of being heard and there is a clear violation of principle of natural justice. The learned DR has not disputed this position which is clearly evident from the material placed on record. He however has contended that there was no compliance on the part of the assessee even during the course of assessment proceedings before the AO and the matter therefore may be sent back to the AO in order to give him an opportunity to examine the claim of the assessee of having received share capital and share premium amount of Rs. 1,60,00,000/- We find merit in this contention of the learned DR. The impugned order of the Ld. CIT(A) passed ex-parte is accordingly set aside and the matter is restored to the file of the AO for deciding the same afresh on merit in accordance with law after giving one more opportunity of being heard to the assessee. As undertaken by the learned counsel for the assessee, the assessee shall make due compliance before the AO and shall extend all the possible cooperation in order to enable the AO to complete the assessment afresh expeditiously.

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

Order Pronounced in the Open Court on 15th June, 2018.

Sd/-

(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated:15/06/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. AIC Metaliks Pvt. Ltd., 17, Ganesh Chandra Avenue, 1st Floor, Kolkata – 700 013.
2. ITO Ward 3(3), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

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