

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 50/KOL/2018
Assessment Year: 2004-2005**

**Ruby (Park) Properties Pvt. Limited,.....Appellant
75C, Park Street, Kolkata-700 016
[PAN: AABCR 6300 G]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-8(3), Kolkata,
P-7, Chowringhee Square,
Aayakar Bhawan, 8th Floor,
Kolkata-700 069**

Appearances by:

*Shri Sripal Kumar, FCA, for the Appellant
Shri Alok Nag, Addl. CIT, D.R., for the Respondent*

Date of concluding the hearing : June 13, 2018

Date of pronouncing the order : June 20, 2018

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-3, Kolkata dated 17.10.2017 passed *ex-parte*, whereby he dismissed 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 on 28.12.2004 declaring total income of Rs.21,430/-. The said return was initially processed by the Assessing Officer under section 143(1) of the Act on 05.04.2005. The assessment, however, was subsequently reopened by the Assessing Officer and a notice under section 148 was issued by him to the assessee on 26.03.2009 after recording the reasons. In reply, a letter was filed by the assessee stating that the return originally filed by it on 28.12.2004 be treated as return filed in compliance to the notice under section 148. The assessee also obtained the copy of reasons recorded by

the Assessing Officer and raised its objection challenging the validity of reopening of assessment. The Assessing Officer did not find the said objection sustainable and overruled the same for the reasons given in the assessment order. During the year under consideration, the assessee-company had received rental income of Rs.5,21,507/- and after claiming the same as business income, deduction on account of various expenses was claimed by it. In the re-assessment completed by the Assessing Officer under section 147/143(3) vide an order dated 31.12.2009, the entire rental income earned by the assessee was brought to tax by the Assessing Officer under the head "income from other sources" and all the expenses claimed by the assessee were disallowed by him.

3. Against the order passed by the Assessing Officer under section 147/143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the validity of the said assessment as well as disputing the head of income in respect of rental income, which was changed by the Assessing Officer to income from other sources resulting into disallowance of expenses. During the course of appellate proceedings before the Id. CIT(Appeals), 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 from time to time. The Id. CIT(Appeals), therefore, dismissed the appeal of the assessee vide his appellate order dated 17.10.2017 passed *ex-parte*. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the Id. Counsel for the assessee, the appeal of the assessee was fixed for hearing by the Id. CIT(Appeals) on three different dates spanning over a period of only one and half months and since none of the notices of the said hearings was received by the assessee, the assessee could not comply with the same. Keeping in view this submission made by the Id. Counsel for the assessee, I am satisfied that there was a sufficient cause for non-compliance on

behalf of the assessee before the Id. CIT(Appeals) when its appeal was fixed for hearing on three occasions. I, 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.

As undertaken by the Id. Counsel for the assessee, the assessee shall make due compliance before the Id. CIT(Appeals) and shall extend all the possible cooperation in order to enable the Id. CIT(Appeals) to dispose of the appeal 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 June 20, 2018.

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

Kolkata, the 20th day of June, 2018

- Copies to :
- (1) **Ruby (Park) Properties Pvt. Limited,
75C, Park Street, Kolkata-700 016**
 - (2) **Income Tax Officer,
Ward-8(3), Kolkata,
P-7, Chowringhee Square,
Aayakar Bhawan, 8th Floor,
Kolkata-700 069**
 - (3) **Commissioner of Income Tax (Appeals)-3, Kolkata,**
 - (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.