

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

**BEFORE SH. P.M.JAGTAP, ACCOUNTANT MEMBER AND
SH. S.S.GODARA, JUDICIAL MEMBER**

ITA No.1740/KOL/2017
[Assessment Year: 2008-09]

Artline Dealers Pvt.Ltd., 24/2C, Girish Mukherjee Road, Kolkata-700025. PAN-AAGCA8500J	vs	ITO, Ward-4(1), Aayakar Bhawan, Kolkata-700069.
(Appellant)		(Respondent)
Appellant by	Sh.D.S.Damle, FCA	
Respondent by	Sh. A.K.Tiwari, CIT DR	
Date of Hearing	26.07.2018	
Date of Pronouncement	26.07.2018	

ORDER

PER P.M.JAGTAP, ACCOUNTANT MEMBER

This appeal filed by the assessee is directed against the order of Ld. CIT(A)-17, Kolkata dated 13.04.2017 passed ex-parte whereby he dismissed the appeal of the assessee.

2. The assessee in the present case is a company which is engaged in the business of granting of loans and advances. The return of income for the year under consideration was originally filed by it on 29.09.2008 declaring a total income of Rs. 550/-. The said return was initially processed by the AO u/s 143(1). Subsequently, the assessment was re-opened by him by issuing notice u/s 148 and in the assessment completed u/s 147/143(3) vide an order dated 15.09.2010, the addition of Rs.53,500/- was made by him to the total income of the assessee on account of commission income. In the said assessment, the claim of the assessee of having received share application money of Rs.3,99,00,000/- was accepted by the AO. On examination of the relevant assessment record, Ld.CIT(A) found that the claim of the assessee of receipt of share application money was accepted by the

AO without making the requisite and proper inquiry and there was thus an error in the order of the AO which was pre-judicial to the interest of the Revenue. The assessment order passed by the AO u/s 147/143(3) accordingly was set aside by Ld.CIT(A) vide an order dated 26.03.2013 passed u/s 263 with a direction to the AO to make an assessment afresh after examining the genuineness and source of share application money received from each and every shareholder. The AO was also directed by Ld. CIT(A) to examine the Directors on oath to verify their credentials and examine the source of realization from the liquidation of assets shown in the balance sheet after change of Directors.

3. As per the direction given by Ld.CIT(A) in the order passed u/s 263, notices were issued by the AO to the assessee u/s 142(1) requiring it to produce documents, accounts or any other evidence in support of the share capital increase during the year under consideration. The said notices issued by the AO u/s 142(1) were returned back by the postal authority unserved. Similarly, the summons issued u/s 131 to the Directors of the assessee company in order to verify the genuineness and creditworthiness of the shareholders either returned unserved or remained uncomplied with. Even notices issued u/s 133(6) to all the shareholders received the same fate. Keeping in view this non-compliance on the part of the assessee company, the AO could not explore the direction of Ld.CIT(A) to examine the share application money received by the assessee company during the year under consideration in terms of section 68 and by treating the same as unexplained cash credits, addition of Rs.3,99,00,000/- was made by him to the total income of the assessee in the assessment completed u/s 144/263/143(3)/147 of the Act vide an order dated 28.03.2014.

4. Against the order passed by the AO u/s 144/263/143(3)/147 of the Act, 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 him fixing the said

appeal for hearing from time to time, Ld.CIT(A) dismissed the appeal of the assessee vide an appellate order dated 13.04.2017 passed ex-parte confirming the addition made by the AO u/s 68 by relying on the decision of Hon'ble Kolkata High Court in the case of *Rajmandir Estate Pvt.Ltd. vs PCIT in GA No.509 of 2016*. Aggrieved by the order of Ld.CIT(A), the assessee has preferred this appeal before the Tribunal.

5. We have heard the rival arguments and perused the relevant material available on record. In support of the preliminary issue raised by the assessee in Ground No.1 challenging the impugned order passed by Ld.CIT(A) ex-parte, Ld. Counsel for the assessee has submitted that there was a change in the address of the assessee company and it had shifted to the new address at 24/2C, Girish Mukherjee road, Kolkata-700025. He has submitted that AO as well as Ld.CIT(A) however issued notices to old address i.e. D-46, Rabindra Nagar, Burtolla, Kolkata-700018. He has submitted that notices sent by the AO as well as Ld.CIT(A) to the old address were not received by the assessee and consequently the same could not be complied with. As rightly contended by him, there was thus a sufficient cause for the non-compliance on the part of the assessee to the notices issued by the AO as well as Ld.CIT(A) and this position is not disputed even by Ld. DR. He however has contended that the matter should be sent back to the AO in order to give the AO an opportunity to examine afresh the issue relating to the share application money in terms of section 68 as per the specific directions given by Ld.CIT(A) in the order u/s 263 dated 26.03.2013. We find merit in the contention of the Ld.DR. Accordingly, the impugned order of Ld. CIT(A) passed ex-parte is set aside and the issue relating to share application money is restored to the file of the AO for deciding the same afresh as per the specific directions given by Ld.CIT(A) in the order dated 26.03.2013 passed u/s 263 of the Act.

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

Order pronounced in the open court on 26.07.2018.

**Sd/-
(S.S.GODARA)
JUDICIAL MEMBER**

**Sd/-
(P.M.JAGTAP)
ACCOUNTANT MEMBER**

*Date:- 26.07.2018
*Amit Kumar**

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1. Appellant- Artline Dealers Pvt.Ltd., 24/2C, Girish Mukherjee Road, Kolkata-700025.
2. Respondent-ITO, Ward-4(1), Aayakar Bhawan, Kolkata-700069.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata Bench
5. DR: ITAT-Kolkata

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