

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

Before **Shri P.M.Jagtap, Accountant Member** and  
**Shri S.S.Godara, Judicial Member**

**ITA No.1235/Kol/2017**  
Assessment Year:2012-13

Bhimani Jewels Pvt. Ltd., C/o D.J. Shah & Co, Kalyan Bhavan, 2 Elgin Road, Kolkata-20 [PAN No.AACCB 7630G]	बनाम/ V/s.	Income Tax Officer, Ward-9(2), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri M.D. Shah, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri A. Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	26-07-2018
घोषणा की तारीख/Date of Pronouncement	29-08-2018

**आदेश /O R D E R**

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2012-13 calls into question correctness of Commissioner of Income Tax (Appeals)-16, Kolkata's order dated 23.03.2017, passed in case No.731/CIT(A)-16/Kol/215-16/W-9(2) upholding Assessing Officer's action in treating its share capital / premium of ₹1,50,00,000/- to be unexplained cash credit u/s. 68 in assessment order dated 30.07.2015, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. Both the Learned Representatives are *ad idem* at the outset in informing us that CIT(A) has passed his lower appellate order *ex parte* after noting that the assessee did not appear for hearing fixed on 30.11.2016 during the course of lower appellate proceedings. Learned counsel submits that the taxpayer has filed its authorized

representative's affidavit in lower appellate proceedings solemnly averring therein that he had fell ill because of high fever on the said date. Learned Departmental Representative is very fair in not contesting correctness thereof. We therefore observe that assessee's absence on the above sole opportunity of hearing granted in lower appellate proceedings was neither any intentional nor deliberate but on account of its counsel's illness. The fact also remains that CIT(A) has nowhere dealt with merits of the issue whilst upholding the Assessing Officer's action treating the share capital / premium (supra) as not satisfying the three folded parameters of identity, genuineness and creditworthiness. We therefore deem it appropriate to restore the instant issue back to the CIT(A) for afresh detailed adjudication on merits after affording adequate opportunities of hearing to the taxpayer.

3. This assessee's appeal is accepted for statistical purposes.

Order pronounced in open court on 29/08/2018

Sd/-  
(लेखा सदस्य)  
(P.M.Jagtap)  
Accountant Member

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
Judicial Member

\*Dkp-Sr.PS

दिनांक:- 29/08/2018 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Bhimani Jewels Pvt. Ltd. C/o D.J. Shah & Co. Kalyan Bhavan, 2 Elgin Road, Kolakta-20
2. प्रत्यर्थी/Respondent-ITO Ward-9(2), Aayakar Bhawan, P-7, Chowringhee Sq.Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary,  
Head of Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता