

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

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member)**

**ITA No. 2399/Kol/2017  
Assessment Year: 2008-09**

**Mani Marketing & Holdings Pvt. Ltd.....Appellant**  
**C/o V.N. Purohit & Co.**  
**Diamond Chambers**  
**Unit-III, 4<sup>th</sup> Floor**  
**Suit No. 4G**  
**4, Chowringhee Lane**  
**Kolkata - 700 016**  
**[PAN : AABCM 7440 C]**

**Vs.**

**Income Tax Officer, Ward-4(2), Kolkata.....Respondent**

**Appearances by:**

*Shri Miraj D. Shah, A/R & H.V Bharadwaj, A/R, appeared on behalf of the assessee.*  
*Shri A.K. Tiwari, D/R. appearing on behalf of the Revenue.*

Date of concluding the hearing : September 4<sup>th</sup> , 2018

Date of pronouncing the order : November 9<sup>th</sup> , 2018

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals)-8, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 07/11/2017, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2008-09, on the following grounds of appeal:-

*"1. That the Commissioner of Income Tax (Appeal)-8 (CIT(A)) has erred in not adjudicating the appeal allegedly being filed beyond 30 days from receipt of CIT(A)'s order and further erred in stating that he is passing order u/s. 249(2)(b) dismissing the appeal.*

*2. That the CIT(A) has further erred in law and facts in not deciding the appeal on merits.*

*3. That the assessee craves leave to add, to or amend above grounds or take additional ground on or before the hearing."*

2. The ld. CIT(A), in the case, has dismissed the appeal of the assessee as not admitted by holding as follows:-

*"17. Order u/s 249(2)(b) - appeal filed beyond the statutory period. And, considering the facts and circumstances of the case. Appeal is Not admitted for adjudication.*

*Foremost, the purported appellant company is a fictitious/bogus company being used by the perpetrators for purpose of fraud/money-laundering. This case was flagged for suspicious transaction by the IFU-IND.*

*The return of income is a fraud. A pittance of a fraud Profit & Loss A/ c of a few Rupees; yet astronomical Balance Sheet of hundreds of purported Crores of Rupees, which, vanishes- having been 'invested' in such other fictitious/bogus companies in the clandestine networks.*

*There are numerous such companies in the maze of networks. These companies have common address. The address are just address, mostly no when is there; and addresses keep changing.*

*As regards this case, the ploy was simply to not acknowledge service of the notices/orders.*

*The notice u/s 148 dated 30.03.2015 must have been served. It was not returned back by the postal authorities. By virtue of section 282 of the Income Tax Act, and reinforced by section 27 of The General Clauses Act, the notice sent by Post, is served. Furthermore, that the appellant surreptitiously immediately changed its PAN address on 06.04.2015.*

*The reminder letter and notice u/s 142(1) dated 19.01.2016 sent at the changed address -like- wise must have been served.*

*The appellant never complied to the notices, never attended to the assessment proceedings was deliberate sinister ploy - so that the deeming provisions of section 292BB would not be attracted [that the notices had been served].*

*The impugned assessment order dated 19.02.2016 and notice of demand was, like all earlier notices, sent by Speed Post on 20.02.2016. The postal authorities repeatedly made several attempts to serve. The address being but just a general address and common address for numerous fictitious/bogus/money-laundering companies - it was just an address; mostly no one there. On 25.02.2016 and 26.02.2016 the premises was closed, as it would obviously would have always been. The postal authorities tried again, and on 07.03.2016 - whosoever was at the address - simply did "Not Claim". But the 'not claimed' means that it had been tendered to be served, but was 'not claimed'. Not claimed' cannot be tantamount as being 'not served'. When the addressee itself is bogus, it dodges, and then simply does not accept/claim - such sinister tricks should be stomped, else the tricks would make mere mockery of the laws. As regards the AR's pretensions - they are factual bluff.*

***Thus, as per section 282 of the Income Tax Act, reinforced with section 27 of The General Clauses Act - 'service' had been effected on 07.03.2016.***

*The instant appeal application was filed much later on 15.06.2016. The appellant's/ AR's claim that the impugned assessment order was served until 07.06.2016 - is factual bluff. As usual, it was a sinister ploy - since they had decided to prefer appeal- to keep the litigation going and going, and just to claim that they never received assessment notices, even the assessment order.*

*The appeal applicant vehemently tries to stick to its bluff of the impugned order having been 'served' on 07.06.2016. So, there is no question of con donation of delay u/s 249(3).*

***In any case, the appellant company is entirely deceit, bluff, and fraud only.***

***Thus, I hold that the appeal had been rued much beyond the statutory time period of 30 days mandated in section 249(2)(b). Thus, the appeal cannot be admitted for adjudication, and thus it is hereby Not Admitted for adjudication.***

***This is a formal order/action u/s 249(2)(b) - though per se there is no need for a formal order for applying the provisions of section 249(2)(b), as the provision itself is statutory.***

***This is also for clarification that being order/action u/s 249(2)(b), there is no provision to appeal to the next appellate forum, i.e., the Appellate Tribunal- as this is not an appeal order u/s 250. In section 253 [Appeals to the Appellate Tribunal] there is no provision to appeal against order/action u/s 249 - as the provisions in the section 249 are statutory and mandatory.***

***Order u/s 249(2)(b) of the Income Tax Act, 1961.***

***Appeal Not Admitted for adjudication."***

3. After hearing rival contentions, we find that the Id. CIT(A) is empowered to pass orders u/s 250 of the Act, whereas in the case on hand the Id. CIT(A) has passed an order u/s 249(1)(b) of the Act. In our view, such an order cannot be sustained. Thus, without going into the merits of the case, we set aside the matter to the file of the Id. First Appellate Authority for passing fresh orders, in accordance with law.

4. In the result, appeal of the assessee is allowed for statistical purposes.

***Kolkata, the 9<sup>th</sup> day of November, 2018.***

Sd/-

**[S.S. Viswanethra Ravi]**

Judicial Member

Dated : 09.11.2018

{SC SPS}

Sd/-

**[J. Sudhakar Reddy]**

Accountant Member

*Copy of the order forwarded to:*

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2. **Income Tax Officer, Ward-4(2), Kolkata**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches