

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (SMC), KOLKATA
[Before Shri P.M. Jagtap, Hon'ble Vice - President]**

**I.T.A. No. 1668/Kol/2018
Assessment Year : 2009-10**

Venkatesh Vyapaar Pvt. Ltd.....Appellant
22, Sarat Bose Road,
Kolkata -700 020.
[PAN : AACCV 0457 F]

ITO Ward 1(1) Kolkata.....Respondent
P-7, Chowringhee Square,
Kolkata - 700 069.

Appearances by:

Shri Manish Tiwari, FCA appearing on behalf of the Assessee.
Shri Satyajit Mondal, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : November 22, 2018
Date of pronouncing the order : November 28, 2018

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) – 1, Kolkata dated 29.06.2018 passed ex-parte dismissing the appeal of the assessee.

2. The assessee in the present case is an investment company which filed its return of income for the year under consideration on 28.07.2009 declaring a loss of Rs. 82,451/-. In the assessment completed u/s 147/143(3) vide an order dated 30.12.2016, the total income of the assessee was determined by the AO at Rs. 10,61,179/- after making an addition of Rs. 11,43,630/- u/s 68 of the Act by treating the loss claimed by the assessee from F&O transaction as bogus.

3. Against the order passed by the AO u/s 143(3), an appeal was filed 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, the Ld. CIT(A) dismissed the appeal of the assessee vide his appellate order dated 29.06.2018 passed ex-parte. Aggrieved by the order of the Ld. CIT(A), 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. 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 on the ground that proper and sufficient opportunity of being heard was not given by the Ld. CIT(A), the learned counsel for the assessee has submitted that the appeal of the assessee was fixed for hearing by the Ld. CIT(A) on 3 dates i.e. 08.06.2018, 14.06.2018 and 20.06.2018. He has submitted that the assessee on all these 3 dates given within a period 15 days sought adjournments by filing the applications in writing. He has also placed on record the copies of the said applications and contended that in spite of the adjournment sought by the assessee, the Ld. CIT(A) proceeded to dispose of the appeal of the assessee vide his impugned order passed ex-parte without giving any more opportunity of being heard to the assessee. Keeping in view these submissions made by the learned counsel for the assessee, I find that the Ld. CIT(A) has not given proper and sufficient opportunity of being heard to the assessee while disposing of the appeal of the assessee vide his impugned order passed ex-parte and there a clear violation of principle of natural justice. Even the learned DR has not been able to dispute this position. I therefore set aside the impugned order of the Ld. CIT(A) passes ex-parte and remit the matter back to him for disposing of the appeal of

the assessee afresh on merit after giving the assessee a proper and sufficient opportunity of being heard.

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

Order Pronounced in the Open Court on 28th November, 2018.

Sd/-

(P.M. Jagtap)
Vice - President

Dated: 28/11/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Venkatesh Vyapaar Pvt. Ltd., 22, Sarat Bose Road, Kolkata – 700 020.
2. ITO Ward 1(1), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT, Kolkata Benches
Kolkata