

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH (A), KOLKATA  
[Before Shri P.M. Jagtap, Vice President & Shri S.S. Viswanethra Ravi, JM]**

**I.T.A. No. 2239/Kol/2018  
Assessment Year: 2012-13**

***Diagold Jewels Pvt. Ltd.*.....**Appellant**  
***4, Lee Road, 1<sup>st</sup> Floor,  
Sumangal Apartment,  
Kolkata – 700 020.  
[PAN: AABCD 3414 B]*****

***DCIT, Circle 7(1) Kolkata*.....**Respondent**  
***P-7, Chowringhee Square,  
Kolkata – 700 064.*****

**Appearances by:**

*Shri D.S. Damle, FCA appearing on behalf of the Assessee.*

*Shri Devi Sharan Singh, CIT (DR) appearing on behalf of the Revenue.*

Date of concluding the hearing : November 26, 2018

Date of pronouncing the order : November 30, 2018

**ORDER**

**Per P.M. Jagtap, Vice President**

This appeal filed by the assessee is directed against the order of Ld. CIT(A) –16, Kolkata dated 29.03.2017 passed ex-parte dismissing the appeal of the assessee.

2. The assessee in the present is a company which is engaged in the business of jewellery. The return of income for the year under consideration was filed by it on 28.09.2012 declaring a total income of Rs. 53,78,430/-. During the year under consideration, the assessee for a premium of Rs. 690/- to three companies. In order to verify the claim of the assessee of having received share capital and share premium amount from the said shareholder companies aggregating to Rs. 9,20,50,000/-, summons u/s 131 were issued by the A.O. The said summons however were returned back unserved. There was also no compliance on the part

of the assessee to the notices issued by the A.O. requiring it to establish the identity and capacity of the concerned shareholders and the genuineness of the relevant transactions. The A.O., therefore, treated the share capital and share premium amount claimed to be received by the assessee aggregating to Rs. 9,20,50,000/- as unexplained cash credits and added the same to the total income of the assessee u/s 68 in the assessment completed u/s 143(3) vide an order dated 31.03.2015.

3. Against the order passed by the A.O. u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and keeping in view the non-compliance on the part of the assessee during the course of appellate proceedings before him, the Ld. CIT(A) dismissed the appeal of the assessee vide his appellate order dated 29.03.2017 passed ex-parte thereby confirming the addition made by the A.O. u/s 68. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has submitted that the appeal of the assessee was fixed for hearing before the Ld.CIT(A) only once and since the notice of the said hearing was not received by the assessee, the same could not be complied with. He has contended that the assessee did not get proper and sufficient opportunity even during the course of assessment proceedings and the summons issued u/s 131 by the A.O. could not be complied with by the shareholder companies as the same were sent to the wrong address. He has contended that all the shareholder companies are regularly assessed to income tax and the assessee has now gathered

all the necessary documentary evidence to establish their identity as well as capacity and the genuineness of the relevant transactions. He has urged that this matter may therefore be sent back to A.O. for giving the assessee one more opportunity to explain the relevant cash credits representing share capital and share premium receipts in terms of section 68. Keeping in view all the facts and circumstances of the case, we are inclined to accept this contention of the learned counsel for the assessee and since the learned DR has also not raised any objection in this regard, we set aside the impugned order of the Ld. CIT(A) passed ex-parte and restore the matter to the file of the A.O. for deciding the same afresh after giving proper and sufficient opportunity of being heard to the assessee.

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

Order Pronounced in the Open Court on 30<sup>th</sup> November, 2018.

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

Sd/-  
(P.M. Jagtap)  
VICE PRESIDENT

**Dated: 30/11/2018**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Diagold Jewels Pvt. Ltd., 4, Lee Road, Sumangal Apartment, 1<sup>st</sup> Floor, Kolkata – 700 020.
2. DCIT Circle 7(1), P-7, Chowringhee Square, Kolkata – 700 064.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,  
Assistant Registrar / H.O.O.  
ITAT, Kolkata