

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

**Before Shri P.M. Jagtap, Vice-President (KZ)
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 289/KOL/2018
Assessment Year: 2009-2010**

M/s. Aristro Fincorp Pvt. Limited,.....Appellant
209, A.J.C. Bose Road,
Karnani Estate, 1st Floor,
Kolkata-700 017
[PAN: AA ECS 0680 H]

-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Circle-7(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069

Appearances by:

Shri S.K. Tulsyan, Advocate, for the Appellant
Shri P.K. Srihari, CIT, D.R., for the Respondent

Date of concluding the hearing : December 11, 2018

Date of pronouncing the order : December 19, 2018

O R D E R

Per Shri P.M. Jagtap, Vice-President (KZ):-

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals)-3, Kolkata dated 01.12.2017 passed ex-parte dismissing the appeal of the assessee.

2. The assessee in the present case is a Non-Banking Finance Company, which filed its return of income for the year under consideration on 30.09.2009 declaring total income of Rs.1,30,274/-. In

the assessment originally completed under section 147/143(3) vide an order dated 29.04.2011, the total income of the assessee was determined by the Assessing Officer at Rs.1,85,270/-. The said assessment was subsequently set aside by the concerned Id. CIT vide his order passed under section 263 with a direction to the Assessing Officer to make the assessment afresh after conducting a detailed and adequate enquiry on the issue of share capital and share premium of Rs.97,38,000/- and Rs.47,71,62,000/- respectively received during the year under consideration. In pursuance of the order of Id. CIT passed under section 263, a notice under section 142(1) was issued by the Assessing Officer, in response to which the relevant details and documents required by the Assessing Officer were furnished by the assessee. One Departmental Inspector was also deputed by the Assessing Officer to make verification at the address of 29 shareholders available on ROC site. The Inspector, however, reported that neither the said shareholder Companies nor their Directors were traceable at the address available on record. The Assessing Officer, therefore, issued a summons under section 131 to the Principal Officer of the assessee-company asking him to produce all the share allottees for verification. The said summons, however, was only partially complied with by the assessee. The Assessing Officer, therefore, held that the onus that lay on the assessee to explain relevant cash credits representing share capital and share premium received during the year under consideration was not satisfactorily discharged by the assessee. Keeping in view the same as well as by relying on the various judicial pronouncements including the decision of the Hon'ble Supreme Court in the case of Sumati Dayal -vs.- CIT [214 ITR 801 (SC)] and CIT -vs.- Durga Prasad More [82 ITR 540 (SC)], the Assessing Officer treated the entire amount of share capital and share premium aggregating to Rs.48.69 crores as unexplained cash credit and made addition to that extent to the total income of the assessee under section 68 in the assessment completed under section 147/143(3)/263 of the Act vide an order dated 31.03.2015.

3. Against the order passed by the Assessing Officer under section 143(3)/147/263 of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) and since there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the Id. CIT(Appeals) dismissed the appeal of the assessee vide his appellate order dated 01.12.2017 passed ex-parte thereby confirming the addition of Rs.48.69 crores made by the Assessing Officer under section 68 of the Act. Aggrieved by the order of the Id. CIT(Appeals), 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 Id. Counsel for the assessee has raised a preliminary issue that the Id. CIT(Appeals) has not given proper and sufficient opportunity of being heard to the assessee before disposing of the appeal of the assessee vide his impugned order passed ex-parte. As pointed out by him from the relevant portion of the impugned order, the first notice of hearing sent by the Id. CIT(Appeals) to the assessee was returned by the Postal Authorities un-served with the remark that the assessee-company had left that address. He has contended that the Id. CIT(Appeals), however, served the notice of the subsequent hearing at the same old address by affixture and since the said notices were never received by the assessee, none appeared before the Id. CIT(Appeals) on behalf of the assessee. He has also contended that even the assessment order under section 143(3)/147/263 was passed by the Assessing Officer without complying with the directions specifically given by the Id. CIT in the order dated 26.03.2014 passed under section 263. He has also placed on record a copy of the said order passed by the Id. CIT under section 263 and perusal of the same shows that the Id. CIT had set aside the assessment originally passed by the Assessing Officer

under section 143(3)/147 of the Act and directed the Assessing Officer to make the assessment afresh as per the following directions:-

(i) The Assessing Officer should pass the assessment order after conducting independent detailed and complete enquiries into the subscription to the share capital and share premium introduced in the assessee's case.

(ii) The Assessing Officer should trace the source of share capital by enquiring into the various layers through which the money was introduced in the Company as share capital and also examine the Directors of the subscriber companies by issuing summons under section 131 of the Act.

(iii) The Assessing Officer should send information to the Assessing Officers having jurisdiction over the subscriber company to the share capital regarding its investment into share capital and share premium.

(iv) The Assessing Officer should conduct independent enquiries to verify the documents filed before him in respect of proof of subscription to share capital.

(v) The Assessing Officer should not confine himself to conduct enquiries into the subscribers to the share capital only on selective basis.

(vi) The Assessing Officer should also call upon the assessee to identify the persons who were shown as Directors of the assessee-company and examine them on oath to verify their credential as Directors.

(vii) The Assessing Officer should pass speaking order after providing reasonable opportunity to the assessee and verifying the source of share capital including the share premium of all the subscribers and rotation of money through various hands so as to ascertain the true nature of transaction, which will bring to the fore, the reality of the transactions.

5. As submitted by the Id. Counsel for the assessee, all these directions given by the Id. CIT specifically in his order passed under section 263, however, were not complied by the Assessing Officer while making the assessment afresh and this position clearly evident from the record including the assessment order passed by the Assessing Officer is not disputed even by the Id. D.R. As further submitted by the Id. Counsel for the assessee, even the copy of the Inspector's report submitted to the Assessing Officer on the basis of enquiry conducted by him was not made available by the Assessing Officer to the assessee. He has contended that this matter, therefore, should go back to the Assessing Officer for deciding the same afresh by following the specific directions given by the Id. CIT in his order passed under section 263. The Id. CIT (D.R.) has not raised any material objection for sending the matter back to the Assessing Officer. He, however, has submitted that the assessee should be directed to cooperate with the Assessing Officer and comply with all the requirements of the Assessing Officer so as to enable him to complete the assessment afresh by following the directions given by the Id. CIT under section 263. Keeping in view all these submissions made by the Id. Representatives of both the sides, we set aside the impugned order passed by the Id. CIT(appeals) ex-parte and restore the matter to the file of the Assessing Officer for deciding the same afresh as per the specific directions given by the Id. CIT in his order dated 26.03.2014 passed under section 263. As undertaken by the Id. Counsel for the assessee at the time of hearing, the assessee shall extend full cooperation to the

Assessing Officer so as to enable him decide the issue as per the specific directions given by the ld. CIT.

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

Order pronounced in the open Court on December 19, 2018.

Sd/-
(S.S. Viswanethra Ravi)
Judicial Member

Sd/-
(P.M. Jagtap)
Vice-President (KZ)

Kolkata, the 19th day of December, 2018

Copies to : (1) ***M/s. Aristro Fincorp Pvt. Limited,***
209, A.J.C. Bose Road,
Karnani Estate, 1st Floor,
Kolkata-700 017

(2) ***Deputy Commissioner of Income Tax,***
Circle-7(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700 069

(3) ***Commissioner of Income Tax (Appeals)-3, Kolkata,***

(4) ***Commissioner of Income Tax- ,***
(5) ***The Departmental Representative***
(6) ***Guard File***

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.