

**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. 1407/Kol/2017
Assessment Year: 2012-13**

Cellour Marketing Pvt. Ltd.....Appellant
C/o. D.J. Shah & Co., Kalyan Bhawan,
2, Elgin Road,
Kolkata - 700 020.
[PAN: AABCC 0603 M]

Tax Recovery Officer - 2, Kolkata.....Respondent
(Now ITO, Ward - 6(1), Kolkata,
P-7, Chowringhee Square,
Kolkata - 700 069.

Appearances by:

Shri Miraj D. Shah, FCA appearing on behalf of the Assessee.

Shri A.K. Nayak, CIT (DR) appearing on behalf of the Revenue.

Date of concluding the hearing : December 18, 2018

Date of pronouncing the order : December 18, 2018

ORDER

Per P.M. Jagtap, Vice President

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 23, Kolkata dated 24.03.2017 passed ex-parte whereby he dismissed the appeal of the assessee.

2. The assessee in the present is a company which is engaged in the business of dealing in shares and financing. The return of income for the year under consideration was filed by it on 20.09.2012 declaring a total income of Rs. 21,130/-. During the course of assessment proceedings, the assessee could not satisfactorily explain the cash credits representing share capital and share premium amounting to Rs. 6.35 crores in terms of section 68 in spite of sufficient and specific opportunity given by the AO. The AO, therefore, proceeded to complete the assessment to the best of his judgement

u/s 144 of the Act vide an order dated 25.03.2015 on the basis of the material available on record. In the assessment so completed, the AO added the entire amount of share capital and share premium aggregating to Rs. 6.35 crores by treating the same as unexplained cash credits u/s 68.

3. Aggrieved by the order of AO passed u/s 144, an appeal was preferred by the assessee before the Ld. CIT(A) and since there was no satisfactory compliance 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 25.03.2015 passed ex-parte thereby confirming the addition made by the AO on account of share capital and share premium 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. In support of the preliminary issue raised in Ground No. 1 of this appeal challenging the impugned order passed by the Ld. CIT(A) ex-parte, the learned counsel for the assessee has contended that the authorised representative of the assessee could not appear before the Ld. CIT(A) on 15.03.2017 when the appeal was finally fixed for hearing due to illness and the Ld. CIT(A) proceeded to dismiss the appeal of the assessee vide his impugned order passed ex-parte without giving any further opportunity of being heard to the assessee which has clearly resulted in violation of principle of natural justice. He has also filed an affidavit of Advocate Shri Shravan Kumar Drolia who was authorised to appear before the Ld. CIT(A) on behalf of the assessee affirming the relevant facts on oath and keeping in view the same, we are of the view that the assessee deserves to be given

one more opportunity of being heard by the Ld. CIT(A). Even the learned DR has not raised any objection in this regard. We, therefore, set aside the impugned order passed by the Ld. CIT(A) ex-parte and remit the matter back to him for disposing of the appeal of the assessee 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 18th December, 2018.

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

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

Dated: 18/12/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. Cellour Marketing Pvt. Ltd., C/o. D.J. Shah & Co., Kalyan Bhawan, 2, Elgin Road, Kolkata – 700 020.
2. TRO – 2, (Now ITO Ward – 6(1), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

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