

**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. 430/KOL/2018
Assessment Year: 2012-2013**

Span Commercial Pvt. Limited,.....Appellant
5 & 6, Fancy Lane, 6th Floor,
Kolkata-700 001
[PAN: AAECs 1229 G]

-Vs.-

Income Tax Officer,.....Respondent
Ward-5(1), Kolkata,
Aayakar Bhawan, 8th Floor,
P-7, Chowringhee Square,
Kolkata-700 069

Appearances by:

Shri M.D. Shah, A.R., for the Appellant
Shri R. Shyam, CIT, D.R., for the Respondent

Date of concluding the hearing : December 20, 2018

Date of pronouncing the order : December 20, 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 Id. Commissioner of Income Tax (Appeals)-2, Kolkata dated 13.05.2016 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 07.12.2012 declaring total income of Rs.1,88,365/-. In the assessment completed under section 143(3) vide an order dated 27.03.2015, the total income of the assessee was determined by the Assessing Officer at Rs.6,54,19,080/- after making addition of Rs.6,52,00,000/- on account of share capital and

share premium by treating the same as unexplained cash credit under section 68 and disallowance of Rs.3,07,125/- under section 14A.

3. Against the order passed by the Assessing Officer under section 143(3)/144, an appeal was preferred by the assessee before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), a letter was filed by the assessee seeking withdrawal of its appeal. The Id. CIT(Appeals), however, did not accept the request of the assessee on the ground that there was no provision in the Income Tax Act by which the assessee could seek withdrawal of his appeal. He then proceeded to dispose of the appeal of the assessee on merit vide his appellate order dated 13.05.2016 passed ex-parte whereby he upheld the assessment order passed by the Assessing Officer. 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. As rightly submitted by the Id. Counsel for the assessee, when the request of the assessee for withdrawal of his appeal was not found acceptable by the Id. CIT(Appeals) and the appeal of the assessee was to be disposed of by him on merit, he should have given an opportunity of being heard to the assessee. A perusal of the impugned order passed by the Id. CIT(Appeals), however, shows that no such opportunity of being heard was given by him to the assessee and the order of the Assessing Officer was upheld by him by passing a very cryptic order without stating the points for determination, the decision thereon and the reasons for the decision as required by the provisions of sub-section (6) of section 250. We, therefore, set aside the impugned order passed by the Id. CIT(Appeals) and remit the matter back to him for disposing of the appeal of the assessee afresh by passing a speaking order as required by section 250(6) after giving the assessee proper and sufficient opportunity of being heard.

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

Order pronounced in the open Court on December 20, 2018.

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

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

Kolkata, the 20th day of December, 2018

- Copies to :*
- (1) **Span Commercial Pvt. Limited,**
5 & 6, Fancy Lane, 6th Floor,
Kolkata-700 001
 - (2) **Income Tax Officer,**
Ward-5(1), Kolkata,
Aayakar Bhawan, 8th Floor, P-7, Chowringhee Square,
Kolkata-700 069
 - (3) *Commissioner of Income Tax (Appeals)-2, 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.