

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

(Before Sri S.S. Godara, Judicial Member & Sri M. Balaganesh, Accountant Member)

ITA No. 537/Kol/2018
Assessment Year: 2012-13

Bhubaneshwari Developers Pvt. Ltd.....Appellant
10, Dr. Abani Dutta Road
Ground Floor
Salkia
Howrah - 711 106
[PAN : AADCB 8032 F]

Vs.

Deputy Commissioner of Income Tax, Circle-13(1), Kolkata.....Respondent

Appearances by:

Shri Miraj D. Shah, A/R, appeared on behalf of the assessee.

Shri Sankar Halder, Addl. CIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : December 27th, 2018

Date of pronouncing the order : January 1st, 2019

ORDER

Per Bench :-

This is an appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeals) -5, Kolkata, (hereinafter referred to as the "Ld. CIT(A)"), dated 25/10/2016, arising out the assessment order of the Assessing Officer (hereinafter referred to as the "Ld. AO"), passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), relating to Assessment Year 2012-13.

2. The prime ground raised by the assessee apart from contesting the addition made u/s 68 of the Act, is that the ld. CIT(A) erred in passing *ex-parte* order against the assessee.

3. The ld. CIT(A), issued notices to the assessee on two occasions and since the same were returned back with postal remark "no such company in this address", proceeded to dispose off this appeal without affording further opportunity of being heard to the assessee. Under these circumstances, the ld. CIT(A) ought to have adjudicated the issue on merits of the addition which, in the instant case, was not done by the ld. CIT(A). We find that the ld. CIT(A) has only made a general remark that the assessee has not furnished any supporting evidence despite being afforded with

adequate opportunity. Accordingly he upheld the action of the Id. Assessing Officer in making the addition of Rs.3,30,00,000/-, towards share capital and share premium in the case of the assessee.

4. Aggrieved the assessee is in appeal before us.

5. We have heard rival submissions. It is not in dispute that the Id. CIT(A) had passed an *ex-parte* order. Both the parties mutually agreed that this issue requires to be sent back to the file of the Id. CIT(A) for *de novo* adjudication.

5.1. In the peculiar facts and circumstances of the case, we deem it fit and proper in the interest of justice and fairplay to remand this appeal to the file of the Id. CIT(A) for *de novo* adjudication on merits and the Id. CIT(A) is directed to take a decision uninfluenced by his earlier decision taken in this regard. The assessee is directed to appear before the Id. CIT(A) on 02/04/2019, and not to take adjournment except due to exceptional or *bonafide* circumstances. Accordingly, the grounds raised by the assessee are allowed for statistical purposes

4. In the result appeal of the assessee is allowed for statistical purposes.

Kolkata, the 1st day of January, 2019.

Sd/-
[S.S. Godara]
Judicial Member
Dated : 01.01.2019
{SC SPS}

Sd/-
[M. Balaganesh]
Accountant Member

Copy of the order forwarded to:

1. *Bhubaneshwari Developers Pvt. Ltd*

10, Dr. Abani Dutta Road
Ground Floor
Salkia
Howrah – 711 106

2. *Deputy Commissioner of Income Tax, Circle-13(1), Kolkata*

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True Copy
By Order

Assistant Registrar
ITAT, Kolkata Benches