

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri S.S.Godara, JM & Hon’ble Shri M.Balaganesh, AM]

I.T.A No. 511/Kol/2018

Assessment Year : 2008-09

Daanvir Commodities Pvt. Ltd.  
[PAN: AACCD 5354 M]  
(Appellant)

-vs-

ITO, Ward-1(1), Kolkata  
  
(Respondent)

For the Appellant : Shri Subash Agarwal, Advocate

For the Respondent : Shri Sankar Halder, Addl. CIT Sr. DR

Date of Hearing : 26.12.2018

Date of Pronouncement : 01.01.2019

**ORDER**

**Per M.Balaganesh, AM**

1. This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-9, Kolkata [in short the ld CIT(A)] in Appeal No.269/CIT(A)-9/Wd-1(1)/2015-16/Kol dated 28.02.2017 against the order passed by ITO, Ward-1(1), Kolkata[ in short the ld AO] under section 263 / 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 28.03.2014 for the Assessment Year 2008-09.

2. At the outset, there is a delay of 98 days in filing of appeal by the assessee before us. The assessee has adduced the reasons that the whole time director who was in-charge of accounts and taxation matter of the assessee company was suffering from bilateral pleural effusion from 03.10.2017 to 04.04.2018 and was advised six months bed rest. The medical certificate in this regard was also enclosed along with Affidavit for delay

condonation. We have gone through the same and in these facts and circumstances we find that the assessee had duly explained the reasons for the delay in filing of appeal and we are accordingly inclined to condone the delay and admit the appeal of the assessee for adjudication.

3. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition towards share capital and share premium u/s 68 of the Act, in the facts and circumstances of the case.

4. At the outset, we find that the Id. CIT(A) had passed an order ex parte without adjudicating the issue on merits. Both the parties mutually agreed that this issue requires to be set aside to the file of Id. CIT(A) for de novo adjudication. In the peculiar facts and circumstances of the case in the interest of justice and fair play, we deem it fit and appropriate to remand this appeal to the file of the Ld. CIT(A) for de novo adjudication on merits. The Ld. CIT(A) is directed to adjudicate the issue on merits uninfluenced by earlier decision taken by him in this regard. The assessee is directed to appear before the Ld. CIT(A) on 20.03.2019 and not to take any adjournment except due to exceptional or unavoidable circumstances. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

**Order pronounced in the Court on 01.01.2019**

Sd/-

[S.S. Godara]  
Judicial Member

Sd/-

[ M.Balaganesh ]  
Accountant Member

Dated : 01.01.2019  
SB, Sr. PS

Copy of the order forwarded to:

1. Daanvir Commodities Pvt. Ltd., C/o, Subash Agarwal & Associates, Sidha Gibson, 1, Gibson lane, Suite-213, 2<sup>nd</sup> Floor, Kolkata-700069.
2. ITO, Ward-1(1), Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.
- 3..C.I.T.(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches