

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

**Before Shri P.M. Jagtap, Vice-President (KZ)
and Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 1137/KOL/2017
Assessment Year: 2012-2013**

M/s. Tabassum Dealers Pvt. Limited,.....Appellant
26/1/1A, Strand Road, 2nd Floor, Room No. 2A,
Kolkata-700 001
[PAN: AABCT 7258 F]
-Vs.-

Income Tax Officer,.....Respondent
Ward-13(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069

Appearances by:

Shri S.M. Surana, Advocate, for the Appellant
Shri Radhey Shyam, CIT, D.R, for the Respondent

Date of concluding the hearing : January 14, 2019
Date of pronouncing the order : January 14, 2019

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)-2, Kolkata dated 04.01.2017 passed ex-parte, whereby he dismissed the appeal of the assessee.

2. The assessee in the present case is a Company, which filed its return of income for the year under consideration on 24.09.2012 declaring its total income at NIL. In the assessment completed under section 143(3) vide an order dated 12.03.2015, the total income of the assessee was determined by the Assessing Officer at Rs.45,00,00,000/- after making an addition under section 68 amounting to Rs.45,00,00,000/- by treating the share capital and share premium received by the assessee-company during the year under consideration as unexplained cash credit.

3. Against the order passed by the Assessing Officer under section 143(3), 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 04.01.2017 passed ex-parte. 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 submitted that proper and sufficient opportunity was not given by the Id. CIT(Appeals) to the assessee before dismissing its appeal by his impugned order passed ex-parte. He has submitted that full details of shareholders alongwith their Permanent Account Numbers, copies of application forms and other relevant evidences were filed by the assessee before the Assessing Officer during the course of assessment proceedings. He has also submitted that even the notices issued by the Assessing Officer under section 133(6) of the Act were duly responded by all the share subscribers by filing the relevant documents required by the Assessing Officer. He has contended that the Assessing Officer, however, still treated the share capital and share premium amount received from the said share subscribers as unexplained cash credit under section 68 for the failure of the assessee to produce the concerned share subscribers for his examination/verification during the course of assessment proceedings. He has contended that the assessee is now in a position to produce the said share subscribers for examination/verification before the Assessing Officer and urged that one more opportunity may be given to the assessee by sending the matter back to the Assessing Officer. Although the Id. D.R. has contended that the matter should be sent back to the Id. CIT(Appeals) keeping in view non-compliance on the part of the

assessee during the course of appellate proceedings before the Id. CIT(Appeals) resulting into ex-parte order and not to the Assessing Officer as sought by the Id. Counsel for the assessee, we find that the voluminous documentary evidence filed by the assessee in response to notices issued by the Assessing Officer during the course of assessment proceedings under section 131 as well as by the concerned shareholders in response to notices issued under section 133(6) was not considered and dealt with by the Assessing Officer in the assessment order. Even the justification offered by the assessee for the share premium charged by it was also not considered and appreciated by the Assessing Officer while treating the entire amount of share capital and share premium as unexplained cash credit by passing a very cryptic and non-speaking order. Keeping in view all the facts and circumstances of the case, we are of the view that the Assessing Officer ought to have considered the relevant documentary evidence placed on record before him and should have given proper and sufficient opportunity to the assessee to produce these shareholders for examination. We accordingly 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 after giving the assessee one more opportunity to produce the concerned shareholders for examination/verification and by passing a well reasoned and well discussed order after considering the entire documentary evidence available on record.

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

Order pronounced in the open Court on January 14, 2019.

**Sd/-
(A.T. Varkey)
Judicial Member**

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

Kolkata, the 14th day of January, 2019

Copies to : (1) M/s. Tabassum Dealers Pvt. Limited,

**26/1/1A, Strand Road, 2nd Floor, Room No. 2A,
Kolkata-700 001**

- (2) **Income Tax Officer,
Ward-13(2), Kolkata,
Aayakar Bhawan, 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.