

**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. 511/Kol/2019
Assessment Year: 2008-09**

***M/s. Srishti Tie Up Pvt. Ltd.,.....Appellant
26, Chittaranjan Avenue, 2nd Floor,
Kolkata - 700 012.
[PAN: AAKCS 7634 R]***

***ITO, Ward 1(4), Kolkata.....Respondent
P-7, Chowringhee Square,
Kolkata - 700 069.***

Appearances by:

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

Shri Radhey Shyam, CIT (DR) appearing on behalf of the Revenue.

Date of concluding the hearing : March 29, 2019

Date of pronouncing the order : April 05, 2019

ORDER

Per P.M. Jagtap, Vice President

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 1, Kolkata dated 04.02.2019 whereby he dismissed the appeal of the assessee.

2. The assessee in the present case is a company which is engaged in the business of trading in shares & securities. The return of income for the year under consideration was filed by it on 24.09.2008 declaring a loss of Rs. 24,696/-. In the assessment originally completed u/s 143(3)/147 of the Act vide an order dated 17.05.2010, the total income of the assessee was determined by the AO at Rs. 12,200/-. The records of the said assessment came to be examined by the concerned Ld. CIT and on such examination, he found that proper

and sufficient enquiry was not made by the AO before accepting the claim of the assessee of having received share capital and share premium amount aggregating to Rs. 5.99 crores in the assessment completed u/s 143(3)/147. He accordingly treated the order passed by the AO u/s 143(3)/147 to be erroneous as well as prejudicial to the interest of the Revenue and setting aside the same, he directed the AO to make the assessment afresh as per the specific directions given in the order dated 07.03.2013 passed u/s 263 of the Act.

3. In pursuance of the order passed by the Ld. CIT u/s 263, notices u/s 142(1) were issued by the AO to the assessee company requiring it to establish the identity and creditworthiness of the concerned share subscribers as well as genuineness of the relevant transactions by producing the relevant details and documents. The said notices however were returned unserved by the postal authority. The AO, therefore, served the notice on the assessee by affixation at the last address available on record. There was however no response even to the said notice. The AO also issued summons u/s 131 of the Act to the directors of the assessee-company which were returned unserved. Even the summons issued by the AO u/s 131 to the directors of the share subscriber companies did not receive any positive response. The assessee-company also failed to produce them for examination before the AO in spite of the opportunity afforded in this regard. The AO, therefore, treated the entire share capital and share premium aggregating to Rs. 5.99 crores as unexplained cash credit and addition to that extent was made by him to the total income of the assessee u/s

68 in the assessment completed u/s 143(3)/147/263 of the Act vide an order dated 20.03.2014.

4. Against the order passed by the AO u/s 143(3)/147/263, an appeal was preferred by the assessee before the Ld. CIT(A) 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 Ld. CIT(A) dismissed the appeal of the assessee vide his appellate order dated 04.02.2019 passed ex-parte thereby confirming the addition made by the AO u/s 68. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has submitted that the appeal of the assessee filed before him was fixed for hearing by the Ld. CIT(A) initially on 15.01.2019 and since the notice of the said hearing was not received by the assessee, it could not be complied with. He has submitted that the appeal of the assessee thereafter was fixed for hearing by the Ld. CIT(A) on 25.01.2019 and since the required Paper Book to be filed in support of its case by the assessee was not ready, the adjournment was sought by filing an application. He has submitted that the Ld. CIT(A) however did not grant the adjournment and proceeded to dispose of the appeal of the assessee vide his impugned order passed ex-parte without giving any further opportunity to the assessee of being heard. He has contended that there is thus a clear violation of principles of natural justice by the Ld. CIT(A). He also contended that

even the AO had not afforded proper and sufficient opportunity to the assessee to produce the relevant details and documents as well as the directors of the share subscriber companies for verification / examination during the course of assessment proceedings and concluded the proceedings within a short period of two months. He has submitted that the assessee is in a position to furnish the relevant details and documents and also to produce the concerned share subscriber companies for verification / examination of the AO and urged that an opportunity may be given to the assessee by sending the matter back to the Assessing Officer. He has also pointed out that the specific directions were not followed by the AO while completing the assessment afresh in pursuance of the order of the Ld. CIT u/s 263. Keeping in view all the submissions made by the learned counsel for the assessee, we are inclined to accept his request. Even the learned DR has not raised any objection for sending the matter back to the AO for proper verification / examination. We accordingly set aside the impugned order passed by the Ld. CIT(A) ex-parte and restore the matter to the file of the AO for completing the assessment afresh as per the specific directions given by the Ld. CIT in the order u/s 263. As undertaken by the learned counsel for the assessee, the assessee shall make due compliance before the Assessing Officer and extend all the cooperation in order to enable the AO to complete the assessment afresh expeditiously as per the specific directions given by the Ld. CIT in the order u/s 263.

6. In the result, the appeal of the assessee is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 5th April, 2019.

Sd/-

(S. S. Viswanethra Ravi)

JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)

VICE PRESIDENT

Dated: 05/04/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Srishti Tie Up Pvt. Ltd., 26, Chittaranjan Avenue, 2nd Floor, Kolkata – 700 012.
2. ITO, Ward 1(4), 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