

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (A), KOLKATA**
[Before Shri P.M. Jagtap, Vice President (KZ) & Shri S. S. Viswanethra Ravi, JM]

I.T.A. No. 1078/Kol/2018
Assessment Year: 2012-13

M/s. Aryadeep Infradevelopers Pvt. Ltd.,.....Appellant
7A, Bentinck Street,
Old Wing, 2nd Floor,
Kolkata - 700 001.
[PAN: AAKCA 3430 D]

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

Appearances by:

Shri Soumitra Choudhury, Advocate appearing on behalf of the Assessee.
Shri Shankar Halder, Sr. DR, JCIT appearing on behalf of the Revenue.

Date of concluding the hearing : April 12, 2019

Date of pronouncing the order : May 03, 2019

ORDER

Per P.M. Jagtap, Vice President (KZ)

This appeal filed by the assessee is directed against the order of the Id. CIT(A)-3, Kolkata dated 15.03.2018, passed ex-parte dismissing the appeal of the assessee.

2. The assessee in the present case is a company which is engaged in investment business. During the year under consideration, it had received share capital and share premium aggregating to Rs.3,30,00,000/-. In order to examine the amount of share capital and share premium representing cash credit in terms of Section 68 of the Act, summons were issued by the Assessing Officer to the share subscriber companies. The same, however, remained uncomplied with. Even the summons issued to the Director of the assessee

company did not invoke any positive response. The Assessing Officer, therefore, treated the share capital and share premium aggregating to Rs. 3,30,00,000/- 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 144 vide an order dated 09.03.2015.

3. Against the order passed by the Assessing Officer u/s 144, 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 15.03.2018, passed *ex-parte* and confirmed the addition of Rs. 3,30,00,000/- made by the Assessing Officer u/s 68 of the Act. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the argument of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has submitted that even though there was no compliance on the part of the assessee during the course of assessment proceedings before the Assessing Officer resulting into assessment u/s 144, a detailed written submission was filed by the assessee before the Ld. CIT(A) in support of its case that the addition made by the AO u/s 68 was not sustainable. He has submitted that the Ld. CIT(A), however, did not call for any remand report from the Assessing Officer on the said submission nor he himself considered the same on merit before dismissing the appeal of the assessee by a cryptic order passed *ex-parte*. He has urged that this matter may, therefore, be sent back to

the Assessing Officer for consideration of the assessee's case on the issue in dispute on merits. The learned DR, on the other hand, has submitted that sufficient opportunity was afforded by the AO during the course of assessment proceedings to the assessee to explain the amount of share capital and share premium in terms of section 68 and there is no reason given by the assessee for not availing the said opportunity.

5. Keeping in view the submissions made by both the sides and having regard to all the facts of the case, we consider it fair and proper and in the interest of justice to give one more opportunity to the assessee to explain the relevant cash credit representing share capital and share premium in terms of Section 68, subject, however, to the payment of cost for the non-compliant attitude shown by the assessee before the authorities below. We accordingly, impose a cost of Rs. 5,000/- on the assessee and subject to the payment of the said cost by the assessee to the department, we set aside the impugned order passed by the Ld. CIT(A) ex-parte and restore the matter to the file of the AO for deciding the same afresh after giving the assessee one more opportunity to explain the relevant cash credit representing share capital and share premium in terms of section 68. As undertaken by the learned counsel for the assessee, the assessee shall make due compliance before the AO and shall extend all the co-operation in order to enable the AO to complete the assessment expeditiously.

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

Order Pronounced in the Open Court on 3rd May, 2019.

Sd/-
(S. S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 03/05/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Highview Management Pvt. Ltd., 2nd Floor, Kolkata – 700 001.
2. ITO, Ward 5(4), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata