

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(B)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ) & Shri S.S. Godara, JM]

I.T.A. No. 2048/Kol/2019

Assessment Year: 2012-13

M/s. Viewmore Constructions Pvt. Ltd......*Appellant*
1st Floor, Room No. A-5,
3A, Bentick Street,
Kolkata – 700 001.
[PAN: AADCV 9149 H]

ITO, Ward 5(4), Kolkata.....*Respondent*
P-7, Chowringhee Square,
Kolkata – 700 069.

Appearances by:

Shri Soumitra Choudhury & Shri Jaydeep Chakraborty, Advocate appearing on behalf of the Assessee.

Shri Jayant Khanra, Sr. DR, JCIT appearing on behalf of the Revenue.

Date of concluding the hearing : September 13, 2019

Date of pronouncing the order : September 13, 2019

ORDER

PER P.M. JAGTAP, VICE-PRESIDENT (KZ)

This appeal filed by the assessee is directed against the order of Ld. CIT(A) – 7, Kolkata dated 26.07.2019 passed ex-parte whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is a trading and investment company. The return of income for the year under consideration was filed by it on 29.09.2012 declaring a total income at Nil. During the course of assessment proceedings, the claim of the assessee of having received share capital and share premium amount aggregating to Rs. 4.12 crores was examined by the AO. During the course of the said examination, he issued notices u/s 131 to the directors of the shareholder companies. None of them however appeared before the

AO in response to the said notices. When this non-compliance was communicated by the AO to the assessee company requiring it to explain as to why the entire amount of share capital and share premium should not be treated as unexplained cash credits u/s 68, the assessee failed to offer any explanation. The AO, therefore, treated the entire amount of share capital and share premium as unexplained cash credits and addition of Rs. 4.12 crores was made by him to the total income of the assessee in the assessment completed u/s 143(3) vide an order dated 23.03.2015.

3. Against the order passed by the AO u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and since there was no 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 for non-prosecution vide his appellate order dated 26.07.2019 passed ex-parte. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both sides on this issue and also perused the relevant material available on record. In support of the preliminary issue raised by the assessee in this appeal challenging the impugned order passed by the Ld. CIT(A) ex-parte, the learned counsel for the assessee has submitted that none of the notices issued by the Ld. CIT(A) fixing the appeal of the assessee on three different dates was ever received by the assessee. He has also submitted that all these three hearings were fixed by the Ld. CIT(A) in a short span of less than one

month and without giving proper and sufficient opportunity of being heard to the assessee, the appeal of the assessee was dismissed by him for non-prosecution vide his impugned order passed ex-parte. He has contended that even the Assessing Officer during the course of assessment proceedings did not give proper and sufficient opportunity to the assessee to produce the directors of the concerned shareholder companies for examination along with the relevant documentary evidence. He has submitted that the assessee is in a position to produce them along with necessary documentary evidence for verification / examination before the AO and urged that one more opportunity may be given to the assessee to do so by sending the matter back to the AO. Keeping in view all the facts and circumstances of the case, we consider it fair and proper and in the interest of justice to accede to the request made by the learned counsel for the assessee. Even the learned DR has also not raised any material objection for sending the matter back to the AO. The impugned order of the Ld. CIT(A) passed ex-parte dismissing the appeal of the assessee for non-prosecution is accordingly set aside and the matter is restored to the file of the AO for making the assessment afresh on merit after giving proper and sufficient opportunity to the assessee to produce the directors of the concerned shareholder companies along with the necessary supporting evidence. As undertaken by the learned counsel for the assessee, the assessee shall make due compliance before the Assessing Officer and extend all the possible cooperation in order to enable the AO to complete the assessment afresh expeditiously in accordance with law.

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

Order Pronounced in the Open Court on 13th September, 2019.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

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

Dated: 13/09/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Viewmore Constructions Pvt. Ltd., 1st Floor, Room No. A-5, 3A Bentick Street, 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