

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'B(SMC)' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President**

**I.T.A. No. 848/KOL/2019  
Assessment Year: 2012-2013**

**Aditya Saraf,.....Appellant**  
**9/1, Sovaram Bysack Street, Kolkata-700007**  
**[PAN: AKUPS1171N]**

**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-44(3), Kolkata,**  
**3, Government Place (West),**  
**Kolkata-700 001**

**Appearances by:**

*Shri M.D. Shah, Advocate, for the Appellant*  
*Shri Jayanta Khanra, JCIT, Sr. D.R, for the Respondent*

Date of concluding the hearing : September 18, 2019  
Date of pronouncing the order : November 08, 2019

**O R D E R**

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals)-13, Kolkata dated 17.01.2019 passed ex-parte, whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is an individual, who filed his return of income for the year under consideration on 25.09.2012 declaring total income of Rs.13,49,500/-. In the said return, long-term capital gain arising from the sale of his share of 11.12% of the land situated at 2/3, Judges Court Road, Kolkata was declared by the assessee at Rs.3,33,522/-. While working out the said capital gain, cost of acquisition of the property was taken on the basis of valuation of the property done by a Registered Valuer as on 01.04.1981 and by applying the Index. On the basis of the valuation report of the District Valuation Officer estimating the value of the property as on 01.04.1981 on a lower

wide than what was determined by the Registered Valuer, the indexed cost of acquisition of the assessee's share in the property was determined by the Assessing Officer at Rs.7,82,535/-. He also adopted the sale consideration of the assessee's share in the property on the basis of stamp duty valuation at Rs.14,94,656/- and after deducting the index cost of acquisition of Rs.7,82,535/-, long-term capital gain chargeable to tax in the hands of the assessee was worked out at Rs.7,12,121/-. Accordingly an addition of Rs.3,78,599/- was made by the Assessing Officer to the total income of the assessee under the head "long-term capital gain". He also made an addition of Rs.1,20,000/- to the total income of the assessee on account of deemed dividend under section 2(22)(e) and Rs.1,67,745/- on account of profit from commodity. Accordingly after making the said addition as well as some other additions, total income of the assessee was determined by the Assessing Officer at Rs.25,56,610/- in the assessment completed under section 143(3) vide an order dated 26.03.2015.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was filed 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 for non-prosecution vide his appellate order dated 17.01.2019 passed ex-parte. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. Besides explaining the non-compliance on the part of the assessee during the course of appellate proceedings before the Id. CIT(Appeals), the Id. Counsel for the assessee has submitted that the stamp duty valuation was adopted by the Assessing Officer as sale consideration for determining the long-term capital gain chargeable to tax in the hands of the assessee without making

any reference to the DVO. He has also submitted that the amount of Rs.1,20,000/- treated as deemed dividend by the Assessing Officer under section 2(22)(e) of the Act was not received by the assessee during the year under consideration and the same, therefore, cannot be added as deemed dividend under section 2(22)(e) during the year under consideration. He has further submitted that the amount of Rs.1,67,745/- added by the Assessing Officer to the total income of the assessee as commodity profit was already included by the assessee in the computation of his income. He has contended that all these three issues, therefore, may be sent back to the Assessing Officer for deciding the same afresh after necessary verification and making a reference to the DVO. The ld. D.R., on the other hand, has not raised any objection for sending atleast the first two issues for necessary verification and making a reference to the Assessing Officer. He, however, has pointed out that the commodity profit of Rs.1,67,745/- as shown by the assessee in the computation of income was included by the Assessing Officer in the computation of income made by him independently and there is no addition separately made on this issue calling for any further verification or consideration. I find merit in this contention of the ld. D.R. The impugned order of the ld. CIT(Appeals) on the issues relating to addition made on account of long-term capital gain and deemed dividend under section 2(22)(e) is accordingly set aside and the matter is restored to the file of the Assessing Officer for deciding the same afresh after making a reference to the DVO and after verifying the stand of the assessee that the amount treated as deemed dividend was not received in the year under consideration.

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

Order pronounced in the open Court on November 08, 2019.

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

***Kolkata, the 8<sup>th</sup> day of November, 2019***

- Copies to :
- (1) **Shri Aditya Saraf,**  
**9/1, Sovaram Bysack Street, Kolkata-700007**
  - (2) **Income Tax Officer,**  
**Ward-44(3), Kolkata,**  
**3, Government Place (West), Kolkata-700 001**
  - (3) *Commissioner of Income Tax (Appeals)-13, Kolkata,*
  - (4) *Commissioner of Income Tax, Kolkata- , Kolkata;*
  - (5) *The Departmental Representative*
  - (6) *Guard File*

*By order*

*Assistant Registrar,*  
*Income Tax Appellate Tribunal,*  
*Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**