

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT  
AND  
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

**ITA.No.2694/Del/2019  
Assessment Year: 2012-13**

<b>M/s. Bhandari Fibretech Pvt. Ltd.</b>	<b>vs</b>	<b>ITO,</b>
<b>S-20, Okhla Industrial Area,</b>		<b>Ward-4(4),</b>
<b>Phase-2,</b>		<b>New Delhi</b>
<b>New Delhi-110020.</b>		
<b>PAN-AACCB6563A</b>		
<b>(Applicant)</b>		<b>(Respondent)</b>

Appellant by: Shri Ram Gupta, C.A.  
Respondent by: Ms. Shalini Verma, CIT-DR

Date of hearing: 10/10/2019  
Date of order : 18 /11/2019

**ORDER**

**PER K. NARSIMHA CHARY, J.M.**

Felt aggrieved by the Order dated 31/01/2017 in Appeal No.262/2015-16, passed by the Commissioner of Income Tax (Appeals)-2, New Delhi, M/s Bhandari Fibretech Pvt. Ltd. ("Assessee") filed this appeal.

2. Brief facts of the case are that the assessee is a company and filed its return of income for the Assessment Year 2012-13 on 30/09/2012, declaring an income of Rs.10,66,490/-. During the

assessment proceedings, Ld. Assessing Officer issued several notices to the assessee but in vain and therefore, while recording that he was left with no option but to finalise the assessment as best judgment assessment in the manner provided u/s 144 of the Income Tax Act, 1961 ("the Act") Ld. Assessing Officer proceeded with the work of assessment. After considering the balance sheet of the company as on 31/03/2012 found share application money to the tune of Rs.2.956 crores against unallotted shares. Ld. Assessing Officer further found that there is paucity of information to reach any conclusion as to the financial status of the company, sufficiency of authorised capital to cover the share capital amount resulting from the allotment of the shares, etc. held that the said amount has to be added to the income of the assessee u/s 68 of the Act in absence of the material establishing the identity, creditworthiness and genuineness of the transactions of the share applicants. Ld. Assessing Officer accordingly added such amount of Rs.2.956 cores to the income of the assessee.

3. Assessee preferred appeal to the Ld. CIT(A). The impugned order reveals that several opportunities were granted to the assessee by way of issuing several notices to cooperate with the disposal of the appeal on merits. On some dates, there was no representation and on some dates the adjournment was sought. The Ld. CIT(A) recorded that the assessee company was submitting one single letter of adjournment by three different modes i.e. via

speed post, registry post and courier but did not enter appearance with complete details, despite the fact that the appeal was pending from 2015. In these circumstances, Ld. CIT(A) proceeded to decide the matter ex-parte basing on the material on record. After advertng to the facts and the case laws on the aspect, Ld. CIT(A) dismissed the appeal

4. Challenging such dismissal of appeal, assessee preferred this appeal before us stating that the authorities below are not justified in concluding that the assessee did not want to produce the evidences as it would expose the transaction of Rs.2.956 crores as not genuine and fraudulent. According to the Ld. AR, the transactions were genuine one. Further submission of the Ld. AR is that the impugned order dated 31/01/2017 was not served upon the assessee but it was only at the request of the assessee, the certified copy was issued on 20/03/2019. It is further pleaded that the assessee was not given adequate opportunity before confirming the addition.

5. It is further submitted that whether or not the assessee attended before the CIT(A) and whether or not the assessee complied with the notice issued by the Ld. CIT(A) and whether or not the assessee participated the appellate proceedings before the Ld. CIT(A) and whether or not the assessee complied with the direction of the Ld. CIT(A), the provisions u/s 250(6) and 251 of the Act continue to have application and the Ld. CIT(A) again disregard

her statutory role under this provision. According to the assessee, the Ld. CIT(A) has no power to permit the assessee to withdraw the appeal and on the same analogy, Ld. CIT(A) has no power to dismiss the appeal for non-prosecution which in effect leads to the same result as withdrawal of the appeal by the assessee, and the First Appellate Authority is duty bound not to allow a situation to arise through dismissal of appeal in a summary manner.

6. Per contra, it is the submission of the Ld. DR that a reading of the impugned order clearly shows that the appeal was not dealt with in a summary manner and on the other hand, Ld. CIT(A) adverted to the facts of the case and also to the case laws and reached a conclusion on merits, therefore, it cannot be said that there is violation of the mandate u/s 250(6) and section 251 of the Act. She further submitted that the law does not contemplate that appellate authorities shall keep the appeals pending for an indefinite period of time merely because of appellant chooses not to appearing in the proceedings. She submitted that the ex-parte proceedings are the result of the conduct of the assessee and the assessee cannot take advantage of their own behaviour.

7. We have gone through the record. It is an undisputed fact that the assessment order was passed u/s 144 of the Act and the First Appellate Authority has enumerated the dates of hearing in the appeal. It clearly establishes that the assessee is at fault without cooperating with the First Appellate Authority to dispose of appeal

on merits. Further, instead of explaining the reasons for the conduct of the assessee in non-cooperative the First Appellate Authority, the assessee is questioning the public authorities by stating that whether or not the assessee attended the appellate proceedings or whether or not whether or not the assessee participated the appellate proceedings and whether or not the assessee complied with the directions of adjudicating authority, the provisions u/s 250(6) and 251 of the Act continue to apply to them. On perusal of the impugned order, we find that the Ld. CIT(A) did not dismissed the appeal *in limine* merely because the assessee did not cooperate with the proceedings, the Ld CIT(A) adverted to the fact of the case and also to the decision in CIT vs Empire Builtech Pvt. Ltd. [2014] 366 ITR 110 (Del.) to support her conclusion that the burden is on the assessee to show the genuineness, identity and creditworthiness of the shareholders in respect of transactions and since the assessee failed to establish the same, the appeal had to be dismissed.

8. Be that as it may, now the assessee comes forward with a request that given an opportunity, the assessee is ready to conduct its case diligently before the CIT(A). Having regard to the spirit of the assessment proceedings i.e., to determine the just tax liability of the assessee instead of dismissing the request of the assessee at the threshold, we are of the considered opinion that by putting the assessee on condition an opportunity would be granted to them.

With this view of the matter, we direct the assessee to deposit a sum of Rs.10,000/- towards cost in the Prime Minister Relief Fund on or before 16/12/2019 and produce the receipt before the CIT(A) and which the CIT(A) will restore the appeal and dispose of it on merit after affording all the opportunity to the assessee to put-forth their case. We order so.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18/11/2019.

Sd/-  
**(G.S. PANNU)**  
**VICE PRESIDENT**

Dated: 18/11/2019

*Shekhar, Sr. P.S*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

**ASSISTANT REGISTRAR**  
**ITAT NEW DELHI**