

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA**

**BEFORE SHRI S.S.GODARA, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.1649/Kol/2017**

**(निर्धारणवर्ष / Assessment Year:2012-13)**

<b>BBC Project Services Pvt. Ltd.</b>	<b>Vs.</b>	<b>ITO, Ward-14(2), Kolkata</b>
<b>205, Rabindra Sarani, 3<sup>rd</sup> Floor, Kolkata-700007</b>		
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCB 3671 R</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri K.M. Roy, FCA

Respondent by :Smt. Ranu Biswas, Addl. CIT

सुनवाईकीतारीख/ Date of Hearing : 18/12/2019

घोषणाकीतारीख/Date of Pronouncement : 23/01/2020

**आदेश / O R D E R**

**Per Dr.A.L. Saini, AM:**

The captioned appeal filed by the assessee , pertaining to assessment year 2012-13, is directed against the order passed by the Commissioner of Income Tax (Appeal)-16, Kolkata in appeal no. 721/CIT(A)-16/Kol/2015-16/W-14(2), which in turn arises out of an assessment order passed by the Assessing Officer u/s 144 of the Income Tax Act, 1961 (in short the "Act") dated 20.03.2015.

2. At the outset itself, the Id. Counsel for the assessee submitted that the Id. CIT(A) did not consider additional ground raised by the assessee during the appellate proceedings. The Id. Counsel also submitted that the Id. CIT(A) has not considered the issue of profit rate in respect of estimated addition @ 10% on sundry creditors. In this respect, Id Counsel took us through the relevant para of Assessment order, which is reproduced below:

*“The case was selected for scrutiny with reason of High ratio of refund to TDS. However, as the case was a complete scrutiny case and for this several letters were issued to the given address of the assessee and as no compliance is received till date the case is decided on ex-parte basis based on available data of the record. On examination of account, it is found that assessee shown sundry creditor of Rs. 11,74,51,856/-. On scrutiny assessment the amounts needed to be verified but in absence of co-operation from the assessee the sundry creditors amount has been verified. The onus to establish the veracity of such sundry creditors lies on the assessee but as the assessee failed to discharge its onus in the instant case the case is adjudged on the basis of data available. As the sundry creditors amount is quite large and it is very much needed to make enquiry but in absence of any co-operation from assessee on estimate basis 10% of the sundry credit amount of Rs. 11,74,51,856/- i.e. Rs. 1,17,45,186/- is disallowed considering either bogus or liability was ceased. Hence, the amount of Rs. 1,17,45,186/- (10% of 11,74,51,856) is disallowed and added to the total income of the assessee.”*

The Id Counsel submitted that Id. CIT(A) passed the *ex-parte* order which stood vitiated on account of violation of principle of natural justice. The Id. Counsel further contended that in the interest of justice, another opportunity to contest the appeal before the Ld. first appellate authority may be granted to the assessee. On the other hand, Id. D.R. did not have any objection if the issue is remitted back to the file of Id. CIT(A).

3. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other material available on record. We note that the Id. CIT(A) has not considered the assessment records and as well as assessment order to adjudicate the issue. The Id. CIT(A) did not discuss the findings of Id. Assessing Officer in respect of addition made by Assessing Officer on estimation @ 10% of sundry creditors. We also note that the Id. CIT(A) did not pass order on merits, therefore we are of the view that one more opportunity should be given to the assessee to plead his case before Id CIT(A). We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld.CIT(A) for de novo adjudication and pass a speaking order

after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. We direct the assessee to appear before the Id. CIT(A) on 13.04.2020 to discuss the issue and to file necessary documents as required by Id. CIT(A) to adjudicate the issue involved in the appeal. We therefore restore this lis back to the file of CIT(A) for afresh adjudication on merits after affording three effective opportunities to the assessee for presenting its case as per law and any default on latter's part to this effect in consequential proceedings would be deemed as vacation of our instant remand order.

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

**Order pronounced in the Court on 23.01.2020**

Sd/-

(S.S.GODARA)

न्यायिकसदस्य / JUDICIAL MEMBER

दिनांक/ Date: 23/01/2020

(SB, Sr.PS)

Sd/-

(A.L.SAINI)

लेखासदस्य / ACCOUNTANT MEMBER

Copy of the order forwarded to:

1. BBC Project Services Pvt Ltd.
2. ITO, Ward-14(2), Kolkata
3. C.I.T(A)-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

4. C.I.T.- Kolkata.

True copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches