

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

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

**आयकरअपीलसं./ITA No.998/Kol/2018**

**(निर्धारणवर्ष / Assessment Year: 2013-14)**

<b>ACIT, Circle-25, Kolkata</b>	<b>Vs.</b>	<b>Shri Joydeep Majumdar</b>  <b>42/135, New Ballygunge Road, Kolkata-700039</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AEWPM 7393 E</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by :Smt. Ranu Biswas, Addl. CIT

Respondent by :None

सुनवाईकीतारीख/ Date of Hearing : 11/11/2019

घोषणाकीतारीख/Date of Pronouncement : 05/02/2020

**आदेश / O R D E R**

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

The captioned appeal filed by the Revenue, pertaining to assessment year 2013-14, is directed against the order passed by the Commissioner of Income Tax (Appeal)-7, Kolkata in appeal no. 25/CIT(A)-7/Kol/Cir-25/16-17, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the "Act") dated 28/03/2016.

2. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasion and Ld. Departmental Representative(DR), was present for the appellant Revenue. In the absence of any appearance by the assessee, the appeal is being disposed of *ex parte qua* the

assessee, after hearing Ld. DR for the Revenue on merits in terms of Rule 24 of the Income Tax Appellate, Tribunal, Rules, 1963.

3. At the outset itself, Ld. D.R. for the Revenue pointed out that the Ld. CIT(A) admitted the additional evidences without granting an opportunity to Assessing Officer to examine these additional evidences thus violated the provision of Rule 46A of the I. T. Rules. Therefore, Ld. D.R. prayed the Bench that the matter may be remitted back to the file of Ld. CIT(A) with a direction to obtain proper remand report and adjudicate the issue in accordance to law.

4. We have heard the Ld. D.R. and perused the material available on record. Ground no. 2 raised by the Revenue states that Ld. CIT(A) admitted additional evidences without granting an opportunity to the Assessing Officer. The relevant findings of the Assessing Officer which show that assessee did not file documents and submission before Assessing Officer. These findings of Assessing Officer and CIT(A) are given below to the extent relevant for our discussion:

*“i)Quote from Assessment order*

*6. Hence, in absence of any documentary evidence regarding the transaction with VAIL and failure on the part of assessee to discharge his onus to prove transaction as genuine, entire credit amount of Rs. 3,30,19,701/- is added back to his total income as bogus liability.*

*(Add: Rs. 3,30,19,701/-)*

*Similarly, in the case of VHL (related concern of VAIL), assessee has produced an agreement signed on 16.11.2012 between the assessee and VHL regarding sale of 18 units of flats by the assessee through his concern Joydeep Majumdar & Co. (JMC) to VHL for consideration of Rs. 3 crores. For remaining amount of Rs. 3,22,00,000/- (6,22,00,000 – 3,00,00,000), assessee has not provided any documents like ledger, agreement bills etc. In spite of getting an opportunity vide file noting dated 18.03.2016, assessee preferred to remain silent and made no submission. Hence, in absence of any documentary evidence and lack of verification, same is added back to his total income as bogus liability.*

***7. Addition on account of disallowance of subscription & donation:***

*Assessee has debited Rs. 1,76,416/- against subscription and donation in this A.Y. He failed to produce any documentary evidence as to what business need it served and how it is wholly and exclusively related to business. Also no receipt was produced by the assessee for the same. Hence aggregate figure of Rs. 1,50,000/- is disallowed and added back to his total income.*

ii) *Quote from ld. CIT(A)'s order:*

*I have carefully gone through the order of the A.O. as well as the details submitted by the A/R and after going through the same, I am in considered opinion that these are not bogus liabilities as has been treated by the A.O. The A.O. during the assessment stage, had issued summons u/s 131 to both Vibgyor Housing Ltd. (VHL) and Vibgyor Allied Infrastructure Ltd. However there was no compliance and therefore, the A.O. had proceeded to treat the said claim of liability as bogus. It is a well known fact that both the above mentioned entities had been running ponzi scheme in West Bengal and after collapse of the Sarada Ponzi Scheme, all other such companies had downed their shutter and had gone underground and their offices have been sealed by various Government Agencies. However, as can be seen from the books of accounts furnished before me, all these liabilities have been properly entered in the books of accounts of the assessee, supported by the relevant copies of agreement entered into by the assessee with both Vibgyor Housing Ltd. (VHL) and Vibgyor Allied Infrastructure Ltd. All these entries were subsequently either converted into sales or have been refunded back by the assessee. Therefore, the addition made by the A.O. of Rs. 6,52,19,701/- is hereby deleted. ”*

From the order of ld CIT(A), we note that during the appellate proceedings the assessee submitted books of accounts and agreements etc, these were not sent to AO for his examination. The ld CIT(A) admitted them stating: “*However, as can be seen from the books of accounts furnished before me, all these liabilities have been properly entered in the books of accounts of the assessee, supported by the relevant copies of agreement entered into by the assessee with both Vibgyor Housing Ltd. (VHL) and Vibgyor Allied Infrastructure Ltd.*”

During the assessment stage the assessee did not produce ledger copy, agreements and other evidences, therefore ld CIT(A) ought to have called a remand report from AO, which he has failed to do so.

As we noticed from the above findings of ld. CIT(A) that while adjudicating the issue of bogus liability of Rs. 3,30,19,701/- and bogus liability Rs. 3,22,00,000/-, both aggregating to Rs. 6,52,19,701/- (3,30,19,701 + 3,22,00,000), the ld CIT(A), has not sent the relevant documents to Assessing Officer for examination of these bogus liabilities. Hence it is violation of principles of natural justice. 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 Assessing Officer and assessee. Therefore, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Id. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the revenue is allowed.

5. In the result, the appeal of the revenue is allowed for statistical purposes.

**Order pronounced in the Court on 05.02.2020**

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

**Sd/-**  
**(A.L.SAINI)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

दिनांक/ Date: 05/02/2020  
(SB, Sr.PS)

Copy of the order forwarded to:

1. ACIT, Circle-25, Kolkata
2. Shri Joydeep Majumdar
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches