

**IN THE INCOME TAX APPELLATE TRIBUNAL "D"**

**(Virtual Court Hearing), BENCH KOLKATA**

**BEFORE SHRI J. SUDHAKAR REDDY, AM & SHRI S. S. GODARA, JM**

**आयकर अपीलसं./I.T.A No.1304/Kol/2018**

**(निर्धारण वर्ष / Assessment Year: 2012-13)**

<b>Positive Tradecomm Pvt. Ltd.</b> C/o Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2 <sup>nd</sup> Floor, Kolkata – 700069.	<b>Vs.</b>	<b>ITO, Ward-9(3), Kolkata</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAGCP1158H</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri Subash Agarwal, Advocate

Respondent by : Shri Jayanta Khanra, Sr. DR, JCIT

सुनवाईकीतारीख/ Date of Hearing : 17/06/2020

घोषणाकीतारीख/Date of Pronouncement : 19/06/2020

**आदेश / ORDER**

**Per Shri S. S. Godara:**

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (A) - 18, Kolkata dated 25.01.2018 passed in Case No.1777/2015-16/CIT(A)-18/Wd-9(3)/F.SLNo.2258/17-18/Kol involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. It transpires at the outset that the CIT(A)'s lower appellate order affirming the Assessing Officer's action treating the assessee's share capital/premium of Rs.46,08,56,473/- as Section 68 unexplained cash credits in assessment order dated 23.03.2015; has been passed ex parte without even indicating as to whether the relevant notice(s) of hearing stood served or not. Coupled with this, the assessee's clinching plea that it had filed voluminous documentary evidence before the Assessing Officer for proving identity, genuineness and

creditworthiness of the investor parties which have nowhere been considered has also been remained unrebutted from the Revenue side. Be that as it may, learned counsel submits that the assessee could not appear before the CIT(A) on account of the fact that its concerned director was not available at station in the relevant time span of the lower appellate hearings so as to pursue its grievance. We deem it appropriate in this factual backdrop that larger interest of justice would be met in case the learned CIT(A) decides the matter afresh as per law. More particularly when there is no adjudication on merits in the CIT(A)'s ex parte order under challenge. We order accordingly.

3. This assessee's appeal is allowed for statistical purposes.

Order is pronounced in the open court on 19.06.2020.

Sd/-  
**(J. Sudhakar Reddy)**  
ACCOUNTANT MEMBER

Sd/-  
**(S. S. Godara)**  
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 19/06/2020

RS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. The Appellant- Positive Tradecomm Pvt. Ltd.
2. The Respondent- ITO, Ward-9(3), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.