

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'D' BENCH, KOLKATA
[Virtual Court Hearing]**

**Before Shri P.M. Jagtap, Vice-President
& Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 649/KOL/2018
Assessment Year: 2012-2013**

M/s. Appear Distributors Pvt. Limited,.....Appellant
23A, N.S. Road,
Kolkata-700001
[PAN: AAICA6440K]

-Vs.-

Income Tax Officer,.....Respondent
Tech-2, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

Shri Subash Agarwal, Advocate, for the Appellant
Shri Jayanta Khanra, JCIT, D.R., for the Respondent

Date of concluding the hearing : June 30, 2020
Date of pronouncing the order : July 01, 2020

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals)-23, Kolkata dated 05.12.2016 passed ex-parte, whereby he dismissed the appeal of the assessee.

2. The assessee in the present case is a Company, which filed its return of income for the year under consideration declaring total income of Rs.2,576/-. During the year under consideration, the assessee-company had raised share capital of Rs.1,20,00,000/- including a premium of Rs.90,00,000/-. During the course of assessment proceedings, summons under section 131 were issued by the Assessing Officer to the Directors of the share subscribing companies in order to ascertain the genuineness of

the transactions and the creditworthiness of the share subscribing companies. The said summons, however, remained un-complied with. Even there was no response to the summons issued by the Assessing Officer to the Directors of the assessee-company. It was also noted by the Assessing Officer that the assessee-company had no track record or asset base and it was nearly a zero balance-sheet company with no visible future prospect. Keeping in view all these facts of the case as well as by relying on the decision of the Hon'ble Supreme Court in the case of CIT – vs.- Durga Prasad More (82 ITR 540) as well as in the case of Sumati Dayal –vs.- CIT (214 ITR 801) and the decision of Kolkata Bench of ITAT in the case of M/s. Bisakha Sales Pvt. Limited –vs.- CIT, the Assessing Officer treated the entire amount of share capital and share premium aggregating to Rs.1,20,00,000/- as unexplained cash credit and an addition to that extent was made by him to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 23.03.2015.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred 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, the Id. CIT(Appeals) dismissed the appeal of the assessee vide his appellate order dated 05.12.2016 passed ex-parte. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. In support of the preliminary issued raised by the assessee in this appeal challenging the impugned order passed by the Id. CIT(Appeals) ex-parte, the Id. Counsel for the assessee has submitted that there was no notice of hearing ever served on the assessee by the Id. CIT(Appeals). He has submitted that even though

the Id. CIT(Appeals) in his impugned order has mentioned that the notice was sent through the notice server at the office premises of the assessee-company, which was found locked, there is nothing to show that any notice of hearing was sent by the Id. CIT(Appeals) to the assessee by post or through mail. He has submitted that proper and sufficient opportunity of being heard thus was not effectively given by the Id. CIT(Appeals) before dismissing the appeal of the assessee vide his impugned order passed ex-parte and there is a clear violation of principles of natural justice. Even the Id. D.R. has not been able to dispute this position, which is clearly apparent from the impugned order of the Id. CIT(Appeals). We, therefore, consider it fair and proper and in the interest of justice to set aside the impugned order passed by the Id. CIT(Appeals) dismissing the appeal of the assessee ex-parte and remit the matter back to him for disposing of the appeal of the assessee afresh on merit in accordance with law after giving proper and sufficient opportunity of being heard to the assessee. As undertaken by the Id. Counsel for the assessee, the assessee shall make due compliance before the Id. CIT(Appeals) and shall extend all the possible cooperation in order to enable the Id. CIT(Appeals) to dispose of the appeal afresh expeditiously.

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

Order pronounced in the open Court on July 01, 2020.

**Sd/-
(A.T. Varkey)
Judicial Member**

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

Kolkata, the 1st day of July, 2020

*Copies to : (1) M/s. Appear Distributors Pvt. Limited,
23A, N.S. Road, Kolkata-700001*

*(2) Income Tax Officer,
Tech-2, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

- (3) *Commissioner of Income Tax (Appeals)-23, Kolkata;*
- (4) *Commissioner of Income Tax- , Kolkata*
- (5) *The Departmental Representative*
- (6) *Guard File*

By order

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

Laha/Sr. P.S.