

आयकर अपीलीय अधीकरण, न्यायपीठ –“A(SMC)” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A(SMC)” BENCH: KOLKATA**  
 (समक्ष) श्री ए.टी. वर्की, न्यायिक सदस्य)  
 [Before Shri A. T. Varkey, JM]

**ITA No. 68/Kol/2020**  
 Assessment Year: 2012-13

M/s. Jagannath Cement Works P.Ltd. PAN: AAACJ8328D	Vs.	I.T.O Ward 3(3), Kolkata
Appellant		Respondent

Date of Hearing	02.07.2020
Date of Pronouncement	07.07.2020
For the Appellant	None appeared
For the Respondent	ShriJ ayanta Khanra, JCIT, ld. Sr.DR

**ORDER**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-17, Kolkata dated 03-09-2019 for the assessment year 2012-13.

2. None appeared for the assessee. However, I note that ground no. 6 reads as under:-

*“The learned CIT(A) erred in overlooking that adjournments were sought against fixation letters dated 13-03-19 and 14.08.19 but no official re-fixations letter was received from the ld. CIT(A) against the adjournment petition dated 14.08.19.*

3. From a perusal of the ground no. 6, it is discerned that the assessee is aggrieved by the *ex parte* order passed by the ld. CIT(A). It is noted/ discerned that the assessee sought for adjournment on the date fixed for hearing on 13-03-19 and 14-08-19. However, according to assessee, the next date fixed for hearing the appeal was not intimated to the assessee from the office of the ld.CIT(A). It is noted that the impugned order of the ld. CIT(A) is an *ex parte* passed since none appeared for the assessee on the third date i.e, 22.08.2019 and the ld. CIT(A) has passed the impugned order without considering the grounds of appeal raised before him.

4. It has to be kept in mind that if the assessee is aggrieved by the order of the AO, the assessee has the right to file appeal before the Id. CIT(A), who is the First Appellate Authority. This right of the assessee is a statutory/vested right and the appeal so preferred by the assessee will become meaningless, if the First Appellate Authority i.e. the Id. CIT(A) does not adjudicate the grounds raised by the assessee on merits. Though the Id. CIT(A) has mentioned three dates in his order when the hearing of the appeal were fixed by him and has noted that the assessee has cared not to attend on the date of hearing fixed by the Id. CIT(A), I note from the ground no. 6 (supra) that assessee had applied for adjournment on two occasions i.e on 13.03.2019 & 14.8.2019. However, on 14.8.2019 the Id. CIT(A) fixed the next date of hearing on 22.08. 2019 [on the adjournment application of assessee] and finding that on 22.08.2019, none represented the assessee, had resorted to ex parte dismissal of appeal without discussing the facts and grounds and has observed at page-2 of the impugned order, as under:

*“The only issue in this case is the addition made by the AO on account of unexplained share capital along with the premium received by the assessee during the previous year of Rs. 32,48,000/- I have gone through the findings in assessment order. The issue is covered by the judgement of Hon’ble High Court, Kolkata in the case of Rajmandir Estate Pvt. Ltd v. PCIT in GA No. 509 of 2016.*

5. And has reproduced the order of the Hon’ble High Court in Rajmandir Estate Pvt. Ltd and noting that SLP preferred against the said order has been dismissed and thereafter, citing the case of NRA Iron Pvt. Ltd (SLP-C) No. 29855 of 2018) and reproduced the same has concluded as under:-

*“Accordingly, the adverse view taken by the AO in respect of the share capital along with premium amounting to Rs. 32,48,000/- is justified. In view of the above, addition of Rs.32,48,000/- u/s. 68 is confirmed.”*

6. It is noted that the assessee had preferred the following grounds of appeal before the Id. CIT(A) as under:-

- 1) The order of Assessment is capricious and is devoid of foundation of Law.*
- 2) The Ld. A.O. erred in Law in treating the share subscriptions and share premium received by the Appellant as the income of the appellant itself.*
- 3) The Ld. A.O. erred in Law citing the I.T.A.T. cases of M/s Star Griha Pvt. Ltd. and M/s Bisakha Sales Pvt. Ltd. since the purport of these cases are distinguished from the case of the instant Appellant.*

- 4)The Ld. A.O. erred in disbelieving the share subscriptions even though the subscribers are traceable and existing.*
- 5)The Ld. A.O. erred in adding back the share subscriptions in the hands of the Appellant even though the subscribers have definite sources.*
- 6)The Ld. A.O.erred in law in not looking into various legal pronouncements available in favour of the appellant on the concerned issue.*
- 7)The Appellant craves leaves to adduce any other ground/grounds during the course of tenure of the instant appellate proceedings.”*

7. It is noted the Id. CIT(A) has not adjudicated the grounds of appeal raised by the assessee. Moreover, the main grievance of the assessee is that it was kept in the dark regarding the last date of hearing i.e. 22.8.2019, when the assessee had preferred an adjournment application on 14.8. 2019. Without the assessee knowing the final date of hearing, it cannot be expected that assessee would appear before him. So when the assessee was not aware of the final date of hearing fixed on the adjournment application on the 2<sup>nd</sup> hearing on 14/8/2019, the Id. CIT(A) erred in passing the impugned order without informing the assessee the final date of hearing, the Id. CIT(A) ought not to have pass the impugned order. Even if he wanted to pass the order, he should have called for the assessment records and thereafter, pass the order on merits, after discussing the facts and law in-respect to the grounds raised by the assessee, which the Id. CIT(A) has not done.

8. I am also of the opinion that assessee needs to be vigilant and by merely filing the appeal the assessee cannot expect the First Appellate Authority ( Id. CIT-A) to decide the grounds raised without any supporting materials/documents and written submissions. I note that the Id. CIT(A) has noted that appeal was posted for hearing on thrice i.e13-08-2019, 14-08-2019 and 22-08-2019 and finding that none appeared on behalf of assessee, he dismissed the appeal preferred by the assessee. However, from a perusal the impugned order there is no mention about the service of notice/proof of service. So, I do not countenance the action of the Id. CIT(A) in ex parte dismissing the appeals. Since the Id. CIT(A) was expected to pass/adjudicate the grounds of appeal based on the records available andif necessary call for the assessment records, and then pass the order on merit. In the light of the above, I am of the opinion that since assessee's main grievance is that it was not aware of the final date of hearing fixed on 22.08.2019, I am of the opinion that no proper opportunity has been given by the Id. CIT(A) before passing the impugned order, so there is violation of natural justice. Be that as it may be, however, assessee is also expected

to be vigilant and should pursue its appeal earnestly and diligently. I expect that after getting this order of the Tribunal the assessee would file the correct postal address as well as correct *e-mail id* to the Id. CIT(A) if there is any change ; and, thereafter, pursue the appeal diligently by filing written submissions as well as documents, if so advised, in support of the claim and be present either through its director or through Id.AR and explain the facts and law in support of the grounds raised by it. In the light of above discussion, the impugned orders of the Id. CIT(A) are set aside and the appeals are restored back to him ( Id. CIT-A) with a direction to adjudicate the grounds of appeal on merits after hearing the assessee/going through the submissions/documents and to pass a speaking order both on facts as well as on law and if necessary call for remand report in accordance to law.

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

Order is pronounced in the open court on 07 July 2020.

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 07 July 2020

\*\*PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –M/s. Jagannath Cement Works P.Ltd 70 Amherst Row, Manicktola, Kolkata-700 009.
  2. Respondent –ITO, 3(3), AaykarBhawan, Kolkata-69.
  3. CIT(A)-4, Kolkata (sent through e-mail)
  4. CIT- , Kolkata.
  5. DR, ITAT, Kolkata. (sent through e-mail)
- By order,

/True Copy,

Assistant Registrar