

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA
[Virtual Court Hearing]**

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 196/KOL/2020
Assessment Year: 2010-2011**

Manak Chand Daga,.....Appellant
32, Ezra Street, 5th Floor,
Kolkata-700001
[PAN: AGQPD7082B]

-Vs.-

Income Tax Officer,.....Respondent
Ward-35(4), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, Near Ruby Hospital,
Kolkata-700107

Appearances by:

Shri S.M. Surana, Advocate, for the Appellant
Shri Dhruvajyoti Roy, JCIT, Sr. D.R., for the Respondent

Date of concluding the hearing : July 07, 2020
Date of pronouncing the order : July 07, 2020

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-10, Kolkata dated 29.11.2019 passed ex-parte, whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is an individual, who filed his return of income for the year under consideration on 26.09.2010 declaring total income of Rs.6,02,990/-. In the assessment completed under section 143(3) vide an order dated 15.03.2013, the total income of

the assessee was determined by the Assessing Officer at Rs.15,76,300/- after making, inter alia, the following three additions:-

(i)	Disallowance under section 40A(3) of the Act	Rs.5,41,713/-
(ii)	Bogus payment of commission	Rs. 2,450/-
(iii)	Unexplained cash credit under section 68	Rs.2.15.000/-

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) challenging the aforesaid three additions made by the Assessing Officer to his total income. During the course of appellate proceedings before the Id. CIT(Appeals), a written submission was filed by the assessee along with the relevant documentary evidence. The same was forwarded by the Id. CIT(Appeals) to the Assessing Officer for verification and comments. In the remand report submitted to the Id. CIT(Appeals), the Assessing Officer offered his comments and after taking into consideration the same as well as the material available on record, the Id. CIT(Appeals) proceeded to confirm all the three additions made by the Assessing Officer to the total income of the assessee and dismissed the appeal of the assessee. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. The Id. Counsel for the assessee has submitted that no opportunity of being heard was given by the Assessing Officer to the assessee during the course of remand proceedings and the letters stated to be issued by him to the assessee on 01.04.2019 were never received by the assessee. He has also submitted that even the Id. CIT(Appeals) did not give any specific opportunity to the assessee to rebut the observations/findings of the Assessing Officer in the remand report by filing a rejoinder, inasmuch as, the notice of hearing stated to be fixed by him on 27.11.2019 was never received by the assessee. He has

urged that this matter may, therefore, be sent back to the Assessing Officer for giving an opportunity to the assessee to put forth his case on the issues under consideration. Although the Id. D.R. has submitted in this regard that the Assessing Officer having already submitted a remand report to the Id. CIT(Appeals) giving his observations and findings on the issues under consideration, the matter may be sent back to the Id. CIT(Appeals), it is observed that the said observations/findings were recorded by the Assessing Officer in his remand report without giving proper and sufficient opportunity of being heard to the assessee and interest of justice will be served if the matter is sent back to the Assessing Officer for proper examination/verification after giving the assessee proper and sufficient opportunity of being heard. I accordingly set aside the impugned order passed by the Id. CIT(Appeals) and restore the matter to the file of the Assessing Officer for deciding the same afresh after proper examination/verification and after giving the assessee proper and sufficient opportunity of being heard. As undertaken by the Id. Counsel for the assessee, the assessee shall make due compliance before the Assessing Officer and shall extend all the possible cooperation in order to enable the Assessing Officer to make the assessment 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 07, 2020.

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

Kolkata, the 7th day of July, 2020

Copies to : (1) **Shri Manak Chand Daga,
32, Ezra Street, 5th Floor, Kolkata-700001**

(2) **Income Tax Officer,
Ward-35(4), Kolkata,
Aayakar Bhawan Poorva,**

110, Shanti Pally, Near Ruby Hospital, Kolkata-700107

- (3) *Commissioner of Income Tax (Appeals)-10, 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.