

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

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

**I.T.A. No. 81/KOL/2021
Assessment Year: 2012-2013**

***Ullahas Nandini Udyog Pvt. Limited,..... Appellant
Madhabi Mansion, Flat No. 402,
3/1/2, Hardev Bhattacharya Lane,
Shibpur, Howrah-711102
[PAN:AABCU0748D]***

-Vs.-

***Deputy Commissioner of Income Tax,..... Respondent
Circle-13(2), Kolkata,
Aayakar Bhawan,
110, Shanti Pally, Kolkata-700107***

Appearances by:

*Shri Miraj D Shah, A.R., appeared on behalf of the assessee
Shri Dhrubajyoti Roy, JCIT, appeared on behalf of the Revenue*

Date of concluding the hearing : March 12, 2021

Date of pronouncing the order : March 12, 2021

O R D E R

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

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-5, Kolkata dated 31.03.2017 passed ex-parte, whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is a Company, which is engaged in the business of Promoter & Developers as well as Dealers of Rice on wholesale basis. The return of income for the year under consideration was filed by it on 26.09.2012 declaring total income of Rs.34,24,893/-. During the course of assessment proceedings, the assessee-company was called upon by the Assessing Officer to produce the concerned

shareholders from whom share capital and share premium aggregating to Rs.2,92,25,000/- was received by the assessee-company during the year under consideration. The assessee-company, however, failed to comply with this requirement. Even the Directors of the assessee-company did not appear before the Assessing Officer for their examinations as sought by the Assessing Officer. The Assessing Officer, therefore, treated the entire amount of Rs.2,92,25,000/- claimed to be received by the assessee-company on account of share capital and share premium as unexplained and added the same to the total income of the assessee under section 68 of the Act. He also made further addition of Rs.12,80,655/- on account of various disallowances and computed the total income of the assessee at Rs.3,39,30,550/- in the assessment completed under section 144 vide an order dated 29.03.2015.

3. Against the order passed by the Assessing Officer under section 144, 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 from time to time, the Id. CIT(Appeals) dismissed the appeal of the assessee for non-prosecution vide his appellate order dated 31.03.2017 passed ex-parte thereby confirming all the additions made by the Assessing Officer to the total income of the assessee. 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 issue raised in Ground No. 1 of this appeal challenging the order of the Id. CIT(Appeals) passed ex-parte dismissing the appeal of the assessee for non-prosecution, the Id. Counsel for the assessee has submitted that none of the notices stated to be issued by the Id. CIT(Appeals) fixing the appeal of the assessee for hearing on four different occasions was ever received

by the assessee and this position gets further fortified from the impugned order of the Id. CIT(Appeals) itself where he has clearly mentioned that none of the notices of hearing sent by his office could not be served on the assessee. It is thus clear that non-compliance on the part of the assessee before the Id. CIT(Appeals) was on account of non-service of notice and since the same, in our opinion, constitutes the sufficient cause, we set aside the impugned order passed by the Id. CIT(Appeals) ex-parte dismissing the appeal of the assessee for non-prosecution and remit the matter back to him for disposing of the appeal of the assessee afresh on merit after giving proper and sufficient opportunity of being heard to the assessee.

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

Order pronounced in the open Court on March 12, 2021.

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

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

Kolkata, the 12th day of March, 2021

- Copies to :*
- (1) ***Ullahas Nandini Udyog Pvt. Limited,
Madhabi Mansion, Flat No. 402,
3/1/2, Hardev Bhattacharya Lane,
Shibpur, Howrah-711102***
 - (2) ***Deputy Commissioner of Income Tax,
Circle-13(2), Kolkata,
Aayakar Bhawan, 110, Shanti Pally, Kolkata-700107***
 - (3) *Commissioner of Income Tax (Appeals)-5, Kolkata;*
 - (4) *Commissioner of Income Tax- ,*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

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

Laha/Sr. P.S.