

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

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 98/KOL/2021
Assessment Year: 2009-2010**

Abhiset Basu,.....Appellant
Nilachal Apartment,
2, Indraloke, West Bengal-700110
[PAN:AFVPB3003Q]
-Vs.-

Income Tax Officer,.....Respondent
Ward-7(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

None, appeared on behalf of the assessee

Shri Jayanta Khanra, JCIT, appeared on behalf of the Revenue

Date of concluding the hearing : May 10, 2021

Date of pronouncing the order : May 10, 2021

O R D E R

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-8, Kolkata dated 26.08.2020 passed ex-parte, whereby he dismissed the appeal of the assessee for non-prosecution.

2. At the outset, it is noted that there is a delay of 137 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, the assessee has filed an application seeking condonation of the said delay and keeping in view the reasons given therein, I am satisfied that there was a sufficient cause for the delay of 137 days on the part of the assessee in filing this appeal before the Tribunal. Even the Id. D.R. has not raised any objection in this regard. The delay of 137 days on the part

of the assessee in filing this appeal before the Tribunal is accordingly condoned and the appeal of the assessee is being disposed of on merit.

3. The assessee in the present case is an individual, who filed his return of income for the year under consideration declaring total income of Rs.1,48,424/-. The said return was initially processed by the Assessing Officer under section 143(1) of the Act. He subsequently received information showing that one Shri Ranjit Das, an Entry Operator had given accommodation entries of Rs.16,00,000/- to M/s. Ashiyana Marketing Pvt. Limited, the Company in which the assessee was the Director. He, therefore, reopened the assessment and issued a notice under section 148 to the assessee on 25.07.2013 after recording the reasons. The said notice as well as the subsequent notices issued by the Assessing Officer under section 142(1) of the Act, however, remained un-complied with by the assessee. The Assessing Officer, therefore, was left with no option but to complete the assessment ex-parte with the best of his judgment on the basis of the material available on record. In the assessment so completed under section 144/147 of the Act on 23.01.2015, the Assessing Officer made the addition of Rs.16,00,000/- to the total income of the assessee under section 69 of the Act on account of unexplained investment.

4. Against the order passed by the Assessing Officer under section 144/147 of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the validity of the assessment made by the Assessing Officer under section 144/147 as well as disputing the addition of Rs.16,00,000/- made in the said assessment. There was, however, no compliance on the part of the assessee to the notices issued by the Id. CIT(Appeals) fixing the said appeal for hearing from time to time. The Id. CIT(Appeals), therefore, proceeded to dismiss the appeal of the assessee for non-prosecution vide his appellate order dated 26.08.2020 passed ex-

parte. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

5. At the time of hearing fixed in this case today, none has appeared on behalf of the assessee. This appeal of the assessee is, therefore, being disposed of ex-parte after hearing the arguments of the Id. D.R. and perusing the relevant material available on record. It is observed that one of the main contentions raised by the assessee in the grounds taken in this appeal is that the amount of Rs.16,00,000/- in question was duly recorded in the books of account of the concerned company namely M/s. Ashiyana Marketing Pvt. Limited and, therefore, the addition of the said amount made in the hands of the assessee by taking it as his unexplained investment is unsustainable. As rightly submitted by the Id. D.R., this claim of the assessee, however, requires verification and since there was no compliance on the part of the assessee either during the course of assessment proceedings or during the course of appellate proceedings, necessary verification could not be done either by the Assessing Officer or by the Id. CIT(Appeals). It is also noted that similar is the position as regards the other issue raised by the assessee in this appeal challenging the validity of reopening of assessment as made by the Assessing Officer on the basis of reasons recorded. Moreover, as per the provisions of sub-section (6) of section 250, the Id. CIT(Appeals) was required to dispose of the appeal of the assessee vide an order in writing stating the points for determination, the decision thereon and the reasons for the decision. It is observed that the impugned order passed by the Id. CIT(A) does not comply with these requirements. I, therefore, consider it fair and proper and in the interest of justice to 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 in accordance with law by passing a well discussed and well reasoned order after giving proper and sufficient opportunity of being heard to the assessee. The assessee is

directed to make due compliance before the Id. CIT(A) and extend all the possible cooperation in order to enable the Id. CIT(A) to dispose of the appeal afresh expeditiously.

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

Order pronounced in the open Court on May 10, 2021.

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

Kolkata, the 10th day of May, 2021

- Copies to :*
- (1) ***Abhiset Basu,
Nilachal Apartment, 2, Indraloke, West Bengal-700110***
 - (2) ***Income Tax Officer,
Ward-7(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069***
 - (3) ***Commissioner of Income Tax (Appeals)-8, 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.