

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(C)', KOLKATA

[BEFORE SHRI P.M. JAGTAP, HON'BLE VICE PRESIDENT (KZ) &
SHRI A. T. VARKEY, HON'BLE JUDICIAL MEMBER]

[Through Virtual Court]

I.T.A. No. 97/Kol/2021
Assessment Year: 2009-10

M/s. Shivics Vintrade Pvt. Ltd.....Appellant
41, Sir Hari Ram Goenka Street,
Banstala (Barrabazar,
Kolkata - 700 007.
[PAN: AAMCS 5871 L]

Vs

ITO, Ward - 9(4), Kolkata.....Respondent

Appearances by:

Shri Manoj Kataruka, Advocate appearing on behalf of the Assessee.

Shri Supriyo Pal, ACIT appearing on behalf of the Revenue.

Date of concluding the hearing : June 28, 2021

Date of pronouncing the order : June 28, 2021

ORDER

PER P.M. JAGTAP, VICE-PRESIDENT (KZ)

This appeal filed by the assessee is directed against the order of Ld. CIT(Appeals) - 17, Kolkata dated 06.03.2017 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 on 29.09.2009 declaring a total income at Nil. Although the said return was initially processed by the AO u/s 143(1) of the Act, the assessment was subsequently reopened by him and the notice u/s 148 was issued by him to the assessee on 01.12.2010 after recording the reasons. In pursuance of the said notice, the assessment u/s 143(3) / 147 was

completed by the AO vide an order dated 07.03.2011 determining the total income of the assessee at Rs. 45,640/-. The said assessment order passed by the AO u/s 143(3) / 147 of the Act was subsequently set aside by the concerned Ld. CIT by an order dated 01.02.2013 passed u/s 263 with the direction to the AO to make the assessment afresh after conducting thorough and detailed enquiries on the issue of share capital of Rs. 16.34 crores received by the assessee company during the year under consideration. In pursuance of the direction given by the Ld. CIT in the order u/s 143(3), fresh assessment proceedings were initiated by the AO. Although, none appeared on behalf of the assessee during the course of the said proceedings in compliance to the notices issued by the AO, certain details were furnished on behalf of the assessee company including a list of shareholders. The inspector deputed by the Assessing Officer however, reported that the share subscriber companies were not in existence at the addresses given by the assessee company. There was also no response to the summons issued by the AO to the directors of the assessee company. Keeping in view all these facts of the case and by relying on the various judicial pronouncements referred to in the assessment order, the AO treated the entire share capital of Rs. 16.34 crores received by the assessee company during the year under consideration as unexplained cash credits and addition u/s 68 to that extent was made by him to the total income of the assessee in the assessment completed u/s 143(3) / 263 / 147 of the Act vide an order dated 31.03.2014.

3. Against the order passed by the AO u/s 143(3) / 263 / 147, an appeal was preferred by the assessee before the Ld. CIT(A) 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 Ld. CIT(A) dismissed the appeal of the assessee vide his appellate order dated 06.03.2017 passed ex-parte and confirmed the entire addition of Rs. 16.34 crores made u/s 68 of the Act by treating the share capital as unexplained cash credits. Aggrieved by the order of the Ld. CIT(A), 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. As submitted by the learned counsel for the assessee, there was no compliance on the part of the assessee to the notices issued by the Ld. CIT(A) fixing the appeal of the assessee for hearing from time to time, as none of the notices of the said hearings was ever received by the assessee. He has submitted that there was a change in the address of the assessee and the notices of hearings apparently sent by the Ld. CIT(A) to the old address were never received by the assessee. Even the Id. DR has not been able to dispute or controvert this position clearly evident from the impugned order of the Ld. CIT(A) where he has clearly mentioned that all the notices of hearings sent to the assessee were returned back by the postal authority undelivered with the remark "not known". It is thus clear that proper and effective opportunity of hearing was not given by the Ld. CIT(A) 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. We, therefore, consider it fair and proper and in the interest of justice to set aside the impugned order passed by the Ld. CIT(A) ex-parte dismissing the

appeal of the assessee and remit the matter back to him with the direction to dispose of the appeal of the assessee afresh on merit after giving the assessee proper and sufficient opportunity of being heard. As undertaken by the learned counsel for the assessee, the assessee shall make due compliance before the Ld. CIT(A) and shall extend all the possible cooperation in order to enable the Ld. CIT(A) to dispose of the appeal afresh expeditiously.

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

Order Pronounced in the Open Court on 28th June, 2021.

Sd/-
(A.T. VARKEY)
JUDICIAL MEMBER

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 28/06/2021
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Shivics Vintrade Pvt. Ltd., 41, Sir Hari Ram Goenka Street, Banstala, (Barrabazar), Kolkata – 700 007.
2. ITO, Ward – 9(4), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT, Kolkata