

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

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

**I.T.A. No. 177/KOL/2021  
Assessment Year: 2012-2013**

***Bangbhumi Tradecom Pvt. Limited,.....Appellant  
C/o. Subash Agarwal & Associates, Advocates,  
Siddha Gibson,  
1, Gibson Lane, Suite-213, 2<sup>nd</sup> Floor,  
Kolkata-700069  
[PAN:AAECB8393C]  
-Vs.-***

***Income Tax Officer,.....Respondent  
Ward-9(2), Kolkata,  
54/1, Rafi Ahmed Kidwai Road,  
Kolkata-700016***

**Appearances by:**

*Shri Brijesh Kumar Singh, Advocate, appeared on behalf of the assessee  
Smt. Ranu Biswas, Addl. CIT, appeared on behalf of the Revenue*

Date of concluding the hearing : July 13, 2021

Date of pronouncing the order : July 13, 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 the Id. Commissioner of Income Tax (Appeals)-16, Kolkata dated 06.03.2017 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 filed its return of income for the year under consideration on 20.02.2013 declaring total income of Rs.652/-. The said return was selected for scrutiny by the Assessing Officer in order to verify the substantial

amount of share capital and share premium of Rs.5.01 crores received by the assessee-company during the year under consideration. He accordingly issued a notice under section 142(1) of the Act to the assessee, in response to which copies of returns of income, audited accounts etc. of the shareholders were filed by the assessee. Thereafter the Assessing Officer issued a summons under section 131 of the Act to the Directors of the shareholder companies requiring their personal appearance and production of several documents showing source of investment made in the shares of the assessee-company. Since there was no response to the said summons, the Assessing Officer treated the entire share capital and share premium amount aggregating to Rs.5.01 crores as unexplained cash credit and addition to that extent was made by him to the total income of the assessee-company in the assessment completed under section 143(3) of the Act vide an order dated 20.03.2015.

3. Against the order passed by the Assessing Officer under section 143(3) of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) and since there was no compliance on the part of the assessee to the notice issued by him fixing the said appeal for hearing on 29.11.2016, the Id. CIT(Appeals) dismissed the appeal of the assessee vide his appellate order dated 06.03.2017 passed ex-parte mainly for non-prosecution thereby confirming the entire addition of Rs.5.01 crores made by the Assessing Officer under section 68. 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. As submitted by the Id. Counsel for the assessee, summons under section 131 were issued by the Assessing Officer to the Directors of the shareholder companies on 23.02.2015 and the assessment was made on 20.03.2015 thereby allowing a very short period to the shareholders to comply with these summons. He has also

submitted that the non-compliance on the part of the shareholders to the summons issued under section 131 was not brought to the notice of the assessee by the Assessing Officer and no opportunity was given to the assessee-company to produce the said shareholders for examination before the Assessing Officer along with the necessary documentary evidence. He has further submitted that even the Id. CIT(Appeals) had fixed the appeal of the assessee for hearing only on one occasion and since the notice of the said hearing was not received by the assessee, the same could not be complied with. He has contended that an opportunity of being heard thus was not given by the Id. CIT(Appeals) to the assessee and the appeal of the assessee was dismissed by him for non-prosecution vide his impugned order passed ex-parte. Keeping in view these submissions made by the Id. Counsel for the assessee, we find merit in the contention of the Id. Counsel for the assessee that proper and sufficient opportunity of being heard was not given to the assessee either by the Assessing Officer or by the Id. CIT(Appeals) and the orders passed by them are in violation of the principle of natural justice. Even the Id. D.R. has not been able to rebut or controvert this position, which is clearly evident from the orders of the Assessing Officer and Id. CIT(Appeals). We, therefore, set aside the impugned order passed by the Id. CIT(Appeals) ex-parte and restore the matter back to the file of the Assessing Officer with a direction to frame the assessment afresh on merit in accordance with law 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 July 13, 2021.

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

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

***Kolkata, the 13<sup>th</sup> day of July, 2021***

- Copies to :
- (1) **Bangbhumi Tradecom Pvt. Limited,  
C/o. Subash Agarwal & Associates, Advocates,  
Siddha Gibson,  
1, Gibson Lane, Suite-213, 2<sup>nd</sup> Floor, Kolkata-700069**
  - (2) **Income Tax Officer,  
Ward-9(2), Kolkata,  
54/1, Rafi Ahmed Kidwai Road, Kolkata-700016**
  - (3) *Commissioner of Income Tax (Appeals)-16, Kolkata,*
  - (4) *Commissioner of Income Tax ,*
  - (5) *The Departmental Representative*
  - (6) *Guard File*

*By order*

*Senior Private Secretary/DDO,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**