

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(B)', 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. 374/Kol/2020
Assessment Year: 2013-14

M/s. Flabby Commerce Private Limited.....Appellant
C/o. M.P. Sureka, 11, Brabourne Road,
"Draupadi Mansion", 3rd Floor,
Kolkata - 700 001.
[PAN: AABCF 9406 H]

Vs

ITO, Ward - 2(2), Kolkata.....Respondent
Kolkata - 700 069.

Appearances by:

Shri Brijesh Kumar Singh, AR appearing on behalf of the Assessee.

Smt. Ranu Biswas, ACIT appearing on behalf of the Revenue.

Date of concluding the hearing : July 15, 2021

Date of pronouncing the order July 20, 2021

ORDER

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

This appeal filed by the assessee is directed against the order of Ld. CIT(Appeals) - 6, Kolkata dated 14.01.2020 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 investment in shares. The return of income for the year under consideration was filed by it on 24.09.2013. In the assessment completed u/s 143(3) of the Income Tax Act, 1961 vide an order dated 25.02.2016, the total income of the assessee was

determined by the AO at Rs. 99,93,077/-/- after making the following two additions:

- i. Share application money including premium treated as unexplained cash credit u/s 68 of Rs. 99,49,552/-*
- ii. Disallowance u/s 14A read with Rule 8D of Rs. 43,525/-*

3. Against the order passed by the AO u/s 143(3), 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 14.01.2020 passed ex-parte. 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. In support of the preliminary issue raised in this appeal challenging the impugned order passed by the Ld. CIT(A) ex-parte dismissing the appeal of the assessee for non-prosecution, the ld. Counsel for the assessee has submitted that the assessee had sought adjournment of the hearings initially fixed before the Ld. CIT(A) and after granting the same duly, the appeal of the assessee was fixed before the Ld. CIT(A) for hearing on 11.12.2019. He has submitted that the assessee duly sought adjournment of the hearing fixed on 11.12.2019 vide an application dated December 05, 2019, but without taking the same into consideration, the Ld. CIT(A) fixed the appeal of the assessee for

hearing immediately on 13.12.2019. He has submitted that the assessee however, could not appear before the Ld. CIT(A) on 13.12.2019 as he was not aware of the short time given by the Ld. CIT(A). He has contended that the Ld. CIT(A) however did not give any further opportunity to the assessee and proceeded to dismiss the appeal of the assessee for non-prosecution vide his impugned order passed ex-parte. He has contended that the impugned order thus has been passed by the Ld. CIT(A) ex-parte without giving proper and sufficient opportunity of being heard to the assessee and there is a clear violation of principle of natural justice. Keeping in view the submission made by the ld. Counsel for the assessee which is duly supported inter alia by a copy of application dated December 05, 2019 filed by the assessee before the Ld. CIT(A) seeking adjournment of the hearing fixed on 11.12.2019, we find that the appeal of the assessee was dismissed by the Ld. CIT(A) vide his impugned order passed ex-parte for non-prosecution without giving proper and sufficient opportunity of being heard to the assessee and there is a clear violation of principle of natural justice. Even the ld. DR has not been able to rebut or controvert this position clearly evident from the record. 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 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 after giving proper and sufficient opportunity of being heard to the assessee. As undertaken by the ld. Counsl 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 20th July, 2021.

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

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

Dated: 20/07/2021
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Flabby Commerce Pvt. Ltd., C/o. M.P. Sureka, 11, Brabourne Road, "Draupadi Mansion", 3rd Floor, Kolkata – 700 001.
2. ITO, Ward – 2(2), Kolkata.
3. The CIT(A)
4. The CIT
- 5.
6. DR

True Copy,

By order,

Sr. Private Secretary / DDO
ITAT, Kolkata