

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

**(Before Sri P.M. Jagtap, Vice President & Sri Sanjay Garg, Judicial Member)**

**I.T.A. No. 1893/Kol/2018**

**Assessment Year: 2012-13**

**M/s. Durlabh Projects Pvt. Ltd.....Appellant**  
**[PAN: AADCD 1579 K]**

**Vs.**

**ITO, Ward-7(3), Kolkata.....Respondent**

**Appearances by:**

*Sh. Subash Agarwal, Adv., appeared on behalf of the Assessee.*

*Smt. Ranu Biswas, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.*

Date of concluding the hearing : August 12<sup>th</sup>, 2021

Date of pronouncing the order : September 1<sup>st</sup>, 2021

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 20.07.2018 of the Commissioner of Income Tax (Appeals)-3, Kolkata [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken the following grounds of appeal:

*"1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) grossly erred in confirming the addition of Rs. 2,05,00,000/- made by the A.O. u/s 68, on account of alleged bogus share capital (including share premium) raised by the assessee in the relevant year by wrongly treating the same as undisclosed income.*

*2. For that the Ld. CIT(A) ought to have considered that the addition on account of share capital cannot be made in the hands of the company raising the capital in view of the decision of the Hon'ble Supreme Court in the case of Lovely Exports (P) Ltd. 299 ITR 268 (St.) and other legal precedents.*

*3. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing."*

3. At the outset, the Id. Counsel for the assessee has drawn our attention to the impugned order of the Assessing Officer (in short the 'AO') and submitted that the said order dated 02.03.2015 is an *ex-parte* order passed u/s 144 of the Income Tax Act, 1961

(hereinafter referred to as the 'Act'). The Id. Counsel has further drawn our attention to the address mentioned in the title of the Assessment Order which reads as under:

"43/1B, Sudhir Chatterjee Street, Girish Park, Kolkata-700 006."

3.1. The Id. Counsel has further submitted that the address of the assessee is 34/1B, Sudhir Chatterjee Street, Girish Park, Kolkata-700 006. The Id. Counsel has mentioned that the Id. AO sent the notice of hearing at wrong address i.e. 43/1B, Sudhir Chatterjee Street, Girish Park, Kolkata-700 006 instead of 34/1B, Sudhir Chatterjee Street, Girish Park, Kolkata-700 006. Since the assessee did not receive any notice of hearing from the AO, therefore he could not furnish necessary documents and explanations to satisfy the queries of the AO. The Id. Counsel further submitted that this fact was brought to the knowledge of the Id. CIT(A) during the course of appellate proceedings and additional evidences were also submitted for the perusal of the Id. CIT(A). That however, the Id. CIT(A) neither himself examined the documents furnished by the assessee nor any remand report was called for from the AO.

3.2. The Id. Counsel, therefore has submitted that the assessee has not been given adequate opportunity by the lower authorities to prove the identity and creditworthiness of the subscribers of the shares and about the genuineness of the transaction. The Id. Counsel has submitted that the assessee may be given an opportunity to present his case and furnish necessary documents and evidences before the AO for just and proper adjudication on the issue. The Id. Counsel has stated at Bar that if the an opportunity is given to the assessee, the assessee will cooperate and furnish all the necessary details, evidences etc. as may be called for by the AO.

4. The Id. D/R relied on the order of the Id. CIT(A).

5. Considering the aforesaid submissions of the assessee in our view, the interests of justice will be well served, if the assessee is given an opportunity to present his case and furnish necessary evidences before the AO including any examination of any witnesses/parties. We accordingly restore the matter to the file of the AO for fresh adjudication on the issue in the light of the observations made above.

6. The appeal of the assessee is treated as allowed for statistical purposes.

Order is pronounced in the open court on 01.09.2021.

Sd/-  
[P.M. Jagtap]  
Vice President

Sd/-  
[Sanjay Garg]  
Judicial Member

Dated: 01.09.2021

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. ***M/s. Durlabh Projects Pvt. Ltd., C/o Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata-700 069.***
2. ***ITO, Ward-7(3), Kolkata.***
3. CIT(A)-3, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar/DDO  
ITAT, Kolkata Benches