

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA  
{VIRTUAL COURT HEARING}**

**(Before Shri Aby T. Varkey, Hon'ble Judicial Member & Shri Girish Agrawal, Hon'ble Accountant Member)**

**ITA No. 2610/Kol/2019**  
Assessment Year: 2009-10

**Rawatsons Engineering Pvt. Ltd.....Appellant**  
**7C, Mani Square**  
**164/1, Manicktalla Main Road**  
**Kankurgachi**  
**Kolkata - 700 064**  
**[PAN : AABCR 2957 D]**

**Vs.**

**Asstt. Commissioner of Income Tax, Circle-15(1), Kolkata.....Respondent**

**Appearances by:**

*None, appeared on behalf of the assessee.*

*Shri Biswanath Das, Addl. CIT, Sr. D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : February 2<sup>nd</sup>, 2022

Date of pronouncing the order : February 23<sup>rd</sup>, 2022

**ORDER**

**Per Girish Agrawal, Accountant Member:-**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 5, Kolkata, (hereinafter the 'Id. CIT(A)'), dt. 01/10/2019, passed *ex-parte*, whereby he dismissed the appeal of the assessee for non-prosecution.

2. None appeared before us on behalf of the assessee.

3. We find that the order of the Id. Assessing Officer dated 29/12/2016 is an *ex-parte* order passed u/s 144/147 of the Income-tax Act, 1961 ('the Act'). It is noted that the assessee in the present case is a company which filed its return of income on 29/09/2009 disclosing total income of Rs.1,93,55,905/-. Notice u/s 148 of the Act was issued to the assessee which was served upon the assessee on 30/03/2016. According to the Ld. AO, reasons for reopening was supplied to the assessee on 20/07/2016. However, according to the Ld. AO it did not elicit any response from the assessee. Thereafter, the Id. Assessing Officer gave the assessee last opportunity of hearing seeking explanation of certain bank transactions carried out by the assessee. Since there was no compliance from the assessee, the Id. Assessing Officer proceeded to complete the assessment *ex-parte* u/s 144 of the Act and made an addition of Rs.62,50,000/- (aggregate of Rs.40,00,000/- + Rs.22,50,000/-) relating to the assessee's transactions for payment and deposit of the said sum by treating it as unexplained income found in the books of the assessee during the relevant previous year.

4. Against the order passed by the ld. Assessing Officer u/s 144 of the Act, the assessee preferred an appeal before the ld. CIT(A). According to the Ld. CIT(A), since there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the appeal for hearing from time to time, the ld. CIT(A) passed the impugned *ex-parte* order on the basis of material available on record and confirmed the addition of Rs.62,50,000/- made by the Assessing Officer by treating the same as unexplained income found in the books of accounts of the assessee.

5. Aggrieved by the said order of the ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

6. As noted, none appeared on behalf of the assessee before us. However, on perusal of records before us and the facts discussed (*supra*), according to us, the assessee ought to have been given proper opportunity to explain the facts as held by the Apex Court in the case of *Tin Box Co. v. Commissioner of Income-tax [2001] 249 ITR 216 (SC)* that *order must be made after the assessee has been given a reasonable opportunity of setting out his case*. Accordingly, considering the records before us, facts discussed above and the decision of Apex Court, we find it fair and proper in the interest of justice to set aside the impugned order passed *ex-parte* by the ld. CIT(A) and restore the matter back to the file of the ld. CIT(A) with a direction to decide the same afresh on merits after providing reasonable opportunity of being heard to the assessee. The assessee is also directed to be diligent and make its submissions to enable him to expeditiously adjudicate the appeal.

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

***Kolkata, the 23<sup>rd</sup> day of February, 2022.***

***Sd/-***  
**[Aby T. Varkey]**  
Judicial Member

Dated: 23.02.2022  
{SC SPS}

***Sd/-***  
**[Girish Agrawal]**  
Accountant Member

*Copy of the order forwarded to:*

**1. Rawatsons Engineering Pvt. Ltd**  
**7C, Mani Square**  
**164/1, Manicktalla Main Road**  
**Kankurgachi**  
**Kolkata - 700 064**

**2. Asstt. Commissioner of Income Tax, Circle-15(1), Kolkata**

3. CIT(A)-  
 4. CIT- ,  
 5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
By order

Assistant Registrar/DDO  
ITAT, Kolkata Benches

1. Date of dictation- 02/02/2022
2. Date on which the typed draft is placed before the Dictating Member 04/02/2022  
Other member 04/02/2022
3. Date on which the approved draft comes to the Sr.P.S./P.S. - 23/02/2022
4. Date on which the fair order is placed before the Dictating Member for Pronouncement 23/02/2022
5. Date on which the file goes to the Bench Clerk 25/02/2022
6. Date on which the file goes to the O.S.....
7. The date on which the file goes to the Assistant Registrar for signature on the order.....
8. Date of Despatch of the Order.....