

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA
[Before Shri A. T. Varkey, JM & Shri Manish Borad, AM]**I.T.A. No. 590/Kol/2020**
Assessment Year: 2012-13

Sanwaria Distributors Pvt. Ltd. (PAN: AAQCS8477E)	Vs.	Income-tax Officer, Ward-1(4), Kolkata.
Appellant		Respondent

Date of Hearing	23.02.2022
Date of Pronouncement	04.03.2022
For the Appellant	Shri Miraj D. Shah, AR
For the Respondent	Smt. Sucheta Chattopadhyay Ray, CIT, DR

ORDER**Per Shri A. T. Varkey, JM:**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-17, Kolkata dated 16.09.2019 for AY 2012-13.

2. At the outset, the Ld. AR for the assessee Shri Miraj D. Shah brought to our notice that the impugned order of the Ld. CIT(A) is an ex parte order. According to the Ld. AR, the assessee could not appear before the Ld. CIT(A) because it did not receive any notice fixing the date of hearing. Therefore, according to him, there was reasonable cause for not appearing before the Ld. CIT(A). Further, according to the Ld. AR, the AO has passed the assessment order against the assessee making addition u/s. 68 of the Act in respect of share capital/premium collected by the assessee (assessment year 14-15) only because the assessee failed to produce the directors of the assessee/share applicants before him. It was brought to our notice that the AO had issued notice u/s. 133(6) to all the share subscribers pursuant to which all of them had duly replied to the AO, and all of them had filed documents requisitioned by the AO. Despite complying with the requisitions called for from them (share applicants), the impugned addition was made u/s. 68 of the Act. The Ld. AR undertakes to produce directors of the share applicant/assessee company before the AO

provided an opportunity is given to it. According to Ld. AR, the directors of the assessee company being unwell/out of station could not be produced before the AO. Therefore, given an opportunity the assessee would produce them before the AO. Per contra, the Ld. CIT, DR Smt. Sucheta Chattopadhyay though opposed the plea of the assessee submitted that the assessee ought to have produced the directors at the time of assessment and the assessee should not be given a second innings .

3. Having heard both the parties and after perusal of the records, it is noted that the impugned order of the Ld. CIT(A) is an ex parte order, which event happened according to assessee, due to non-receipt of notice of hearing fixed before the Ld. CIT(A). It was also brought to our notice that AO has made the addition only because the directors of the share applicants/assessee company did not turn up before him for physical verification. It is noted that the AO in the first round had issued notice u/s. 133(6) of the Act to all the share applicants which has been responded to by them and have filed documents requisitioned by him. In the light of the aforesaid facts for the ends of justice and equity, proper opportunity should have been given to the assessee to produce the directors. Be that as it may be, in the light of the facts and circumstances discussed supra we relying on the decision of the Hon'ble Supreme Court in Tin Box Company vs. CIT reported in (2001) 249 ITR 216 (SC) set aside the impugned order of the Ld. CIT(A) and remand the matter back to the file of AO for fresh assessment. The Ld. AR is directed to ensure production of directors before the AO as per his undertaking supra and file all the documents necessary as per law to substantiate its claim/case.

4. In the result, the appeal of the assessee is allowed for statistical purpose

Order is pronounced in the open court on 4th March, 2022.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 4th March, 2022

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Sanwaria Distributors Pvt. Ltd. P-41, Princep Street, Room No. 609, 6th floor, Kolkata-700 072..
- 2 Respondent –ITO, Ward-1(4), Kolkata
3. CIT(A)-17, Kolkata.
4. PCIT , Kolkata
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,

Assistant Registrar

1. Date of dictation- 23/02/2022
2. Date on which the typed draft order is placed before the Dictating Member and Other member
24/02/2022
3. Date on which the approved order comes to the Sr. P.S./P.S. - 04 /03/2022
4. Date on which the file goes to the Bench Clerk
04/03/2022
6. Date on which the file goes to the O.S.
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8. Date of Despatch of the Order.....