

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 2660/Kol/2019
Assessment Year : 2012-13

Arisha Dealers Pvt. Ltd. (PAN: AAICA 4355 P)	Vs.	ITO, Ward-4(3), Kolkata
Appellant		Respondent

Date of Hearing	11.05.2022
Date of Pronouncement	13.05.2022
For the Appellant	Shri Miraj D Shah, A.R
For the Respondent	Shri Surendra Kumar Mishra, Addl. CIT

ORDER

Per Shri Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax(Appeals)-23, Kolkata [hereinafter referred to as ‘CIT(A)’] dated 26.10.2016 for the assessment year 2012-13.

2. The only issue raised by the assessee is against the ex-parte order of Ld. CIT(A) without affording a reasonable opportunity of hearing to the assessee and dismissing the addition in liminie.

3. Facts in brief are that the assessee filed a return of income on 22.09.2012 declaring total income of Rs. 1,09,440/-. The case of the assessee was selected for scrutiny and assessment u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed on 26.03.2015 assessing the income at Rs. 1,38,11,940/-. Thereafter the AO received information that the assessee beneficiary of accommodation entries as it has received Rs. 1,30,00,000/- from various bogus companies. Accordingly the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2019 which was complied with by filing return of income on 15.11.2019. The AO during the course of assesment proceedings called upon the assessee to furnish information /details/evidences to prove the

genuineness of the investors of Rs. 1,30,00,000/- and also issued summons u/s 131 of the Act to all the allottees of shares . The assessee filed all the details in respect of these investors before the AO. The AO on the examination of evidences filed by the assessee came to the conclusion that the allottee companies are not having their own money available for investments and that none appeared before the AO in compliance to the summons issued u/s 131 of the Act. Finally addition was made citing the reason that due to non-appearance of the directors of the allottee companies in compliance to summons issued u/s 131 of the Act the money received by the assessee remained unexplained and was accordingly added to the income as unexplained cash credit.

4. In the appellate proceedings the Ld. CIT(A) decided the issue ex-parte without considering the merit of the case as the assessee did not appear before the Ld. CIT(A) also.

5. After hearing both the parties and perusing the material on record, we find that the addition has been made by the AO on the ground that the summon issued u/s 131 of the act to various allottees of shares were not complied with and thus the investments received remained unexplained. In the appellate proceedings, the Ld. CIT(A) has not discussed anything on merit and dismissed the appeal of the assessee for non-appearance. Under these circumstances we are of the opinion, that the ends of justice would be met if the assessee is given one more opportunity to present his case on merit and produce all the parties to whom the summons u/s 131 were issued. The case of the assessee also finds support from the decision of Co-ordinate Bench of Kolkata in the case of M/s Hanuman Suppliers Ltd. vs. ITO in ITA No. 273/Kol/2020 for AY 2009-10 dated 03.11.2020. The relevant portion is as under:

“5. We have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has submitted that registered office of the assessee-company was shifted to Chandigarh and since the notices sent by the office of the Ld. CIT(A) were not received by the assessee-company, there was no compliance on the part of the assessee-company to the said notices. He has contended that the non-compliance on the part of the assessee during the course of appellate proceedings before the Ld. CIT(A) thus was due to non-receipt of the notices and it constituted a sufficient cause. He has also submitted that the assessee company now is in a position to produce all the share subscriber

companies for verification/examination before the AO along with the relevant documentary evidence to establish their identities as well as creditworthiness and the genuineness of the relevant transactions. He has urged that one opportunity may, therefore, be given to the assessee by sending the matter back to the AO. Keeping in view all the facts of the case, we are inclined to accept this contention of the learned counsel for the assessee and since the Ld. D.R has also not raised any objection for sending the matter back to the AO for proper verification, we set aside the impugned order passed by the Ld. CIT(A) ex-parte and restore the matter to the file of the AO for deciding the same afresh after giving the assessee one more opportunity to produce the concerned share subscriber companies alongwith the relevant documentary evidence to explain the cash credit entries appearing in their name in terms of section 68. As undertaken by the learned counsel for the assessee, the assessee shall make due compliance before the AO and shall extend all the possible cooperation in order to enable the AO to complete the assessment afresh expeditiously.”

We, therefore respectfully following the decision of co-ordinate bench, set aside the issue to the file of the AO with the direction to decide the same afresh. We also direct the assessee to make due compliance before the AO so that the assessment could be completed afresh in accordance with law. Needless to say that the assessee was also produce the parties/allottees who invested money in shares of the assessee company to whom the summons were issued u/s 131 of the Act.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 13th May, 2022

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 13th May, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Arisha Dealers Pvt. Ltd., P-12, New Howrah Bride Approach Rd., Room No. 703, 7th Floor, Opp. Brabourne Road, City Centre, Kolkata-700001.
2. Respondent – ITO, Ward-4(3), Kolkata
3. The CIT(A)- 23, Kolkata (Sent through e-mail)
4. Pr. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata