

आयकर अपीलिय अधिकरण, कोलकाता

पीठ 'B', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA

BENCH 'B', KOLKATA

समक्ष : श्री मनीष बोरड, लेखा सदस्य एवं
श्री संजय शर्मा न्यायिक सदस्य

Before: Shri Manish Borad, Accountant Member, and
Shri Sonjoy Sarma, Judicial Member

आयकर अपील सं.य/
ITA No. 248/Kol/2019
Assessment Year:2012-13

Debenjana Hard Coke P.Ltd, Vill: Hotedoba P.O Ichapur, P.S Laudoha, Burdwan.	<u>बनाम</u> V/s.	I.T.O. Ward 1(3), Durgapur Aaykar Bhawan Annexe 4 th Fl., Aaykar Bithi, City Centre, Durgapur
PAN: AACCD1780F		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri K.M Roy, FCA, Ld.AR
प्रत्यर्थी की ओर से/By Respondent	Shri Sudipta Guha, CIT, Ld.DR
सुनवाई की तारीख/Date of Hearing	11-08-2022
घोषणा की तारीख/Date of Pronouncement	11-08 -2022

आदेश / O R D E R

Per Sonjoy Sarma, JM :

This is an appeal filed by the assessee against the order dated 27-11-2018 passed by the Id. Commissioner of Income-tax (Appeals), [in short, the Id. CIT(A)], Durgapur for the AY 2012-13.

2. The assessee has raised the following grounds:-

1. *No Proper Opportunity was Provided.*
2. *Ld. A.O. erred in adding a sum of Rs.13,00,000 received on account of share application money as unexplained cash credit u/s 68.*
3. *The Ld. A.O. erred in adding a sum of Rs. 6,76,939/- u/s 40(1)(ia) of Income Tax Act, 1961.*
4. *The Ld A.O. erred in adding a sum of Rs. 1,45,98,908/- as bogus creditors.*
5. *The Ld. A.O. erred in making an addition of Rs. 1,24,298/- as undisclosed interest on fixed deposits.*
6. *The appellant craves leave to add, amend or delete any grounds of appeal either before or in course of the hearing.* r'

3. At the time of hearing before us the Ld. Authorised Representative of the assessee submitted that there are almost six grounds of appeal raised by the appellant assessee. Out of which, he does not want to press ground nos. 3,4,5 & 6. It does not require to be adjudicated. Remaining ground nos. 1 & 2, which goes to the route of the matter. The issue raised by the appellant assessee is that while the Id. AO passed the assessment order erred in adding the sum of Rs. 13 lakhs received on share application money as unexplained cash credit u/s. 68 of the Act.

4. Dissatisfied with the above order, the appellant assessee preferred an appeal before the Id. CIT(A), which was decided *ex parte* against the appellant assessee. Since the impugned order passed by the Id. CIT(A) is *ex parte* order, appellant assessee did not get sufficient opportunity to submit/file necessary documents and submissions before the Id. CIT(A) to substantiate the claim of assessee. Therefore, one more opportunity may be given to the appellant assessee and prayed before this Tribunal to remand the matter back to the file of the Id. CIT(A) to decide the particular

issue(ground no.2) afresh after giving reasonable opportunity of being heard in the light of the documents/submissions of the assessee.

5. On the other hand, the Ld. Departmental Representative is fair enough and he did not object to such prayer/submissions of the Ld. Authorised Representative of the assessee in remitting the issue back to the file of the Id. CIT(A)

6. We have heard the rival contentions of both the parties and perused the record placed before us. While going through the records of the case and perusing the impugned order passed by the Id. CIT-A, we find that the order passed by the Id. CIT(A) is an *ex parte* order without considering the submissions of the assessee. The appellant assessee did not get sufficient opportunity to submit/file necessary documents and submissions before the Id. CIT(A). We, therefore, under the given factual circumstances of the case are of the view that since the order of the Id. CIT(A) is an *ex parte* and no fruitful discussion has been made on merits of the case. We, therefore, in the interest of justice remand the matter back to the file of the Id. CIT(A) for deciding the particular issue(ground no.2) raised before us afresh by way a speaking order. We also direct the assessee to remain *vigilant on* receiving and responding the notice(s) of hearing of the Id. CIT(A) and should not request for any adjournment unless otherwise required for reasonable cause and should also file all requisite documents, if any, to the Id. CIT(A) so as to facilitate/adjudicate the issue(s) afresh by a reasoned order. Needless to mention that the assessee should be given proper opportunity of being heard.

7. Ground nos.1 & 2 raised by the assessee is allowed for statistical purpose.

परिणामतः निर्धारिती की अपील सांख्यिकी उद्देश्य से मंजूर की जाती है।

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

आदेश खुले न्यायपीठ में दिनांक 11-08-2022 को उद्घोषित।
The order pronounced in the open Court on 11-08-2022

Sd/-

मनीष बोरड, लेखा सदस्य
(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated :11-08-2022

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

- 1.अपीलार्थी/Appellant/Assessee: Debenjana Hard Coke P.Ltd
Vill: Hotedoba P.O Ichapur, P.S Laudoha, Burdwan.
2. प्रत्यर्थी/Respondent/Revenue: I.T.O. Ward 1(3), Durgapur
Aaykar Bhawan Annexe, 4th Fl., Aaykar Bithi, City Centre,
Durgapur
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy By order/आदेश से,

Assistant Registrar
ITAT, Kolkata