

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

आयकर अपीलीय अधीकरण, न्यायपीठ - “B” कोलकाता,

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1978/Kol/2019
Assessment Year: 2014-15**

Survi Rubber Pvt. Ltd. Block-A/173, Ward-5, P.O. R. Gopalpur, Kalipark, Raharhat Road, North 24 Parganas, Kolkata-700136. (PAN: AAMCS9818D)	Vs.	Income Tax Officer, Ward-1(4), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Manish Tiwari, FCA
Respondent by : Shri Biswanath Das, Add. CIT

Date of Hearing : 27.06.2022

Date of Pronouncement : 06.09.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order of Ld. CIT(A)-10, Kolkata vide Appeal No.152/CIT(A)-10/Wd-1(4)/14-15/2018-19/Kol dated 26.04.2019 for A.Y. 2014-15 arising out of order passed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) by ITO, Ward-1(4), Kolkata dated 22.12.2016.

2. Shri Manish Tiwari, FCA appeared on behalf of the assessee and Shri Biswanath Das, Addl. CIT appeared on behalf of the revenue.

3. The grounds taken by the assessee are reproduced as under:

“1. (a) That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in passing order on ex parte view without allowing adequate and effective opportunity of hearing.

(b) That the hearing of the appeal fixed on two occasions were duly complied by the authorised representative by filing adjournment letters as admitted by Ld. CIT(A) and as such cannot call for any adverse inference.

2. That on the facts and in the circumstances of the case, Ld. C.I.T. (A) has erred in confirming the action of Assessing Officer who considered Share capital of Rs.80,49,900/- as unexplained cash credit u/s 68 of Income Tax Act, 1961 read with section 115BBE.

3. That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in confirming the action of AO who treated the amount of share application money received in earlier years totaling to Rs. 58,50,000/- and brought forward as an opening balance in the relevant assessment year as unexplained cash credit u/s 68 of the Act, 1961.”

4. At the outset, Ld. Counsel Shri Manish Tiwari, FCA before us submitted that Ld. CIT(A) has not adjudicated upon ground no. 3 taken before this Hon'ble Tribunal and has passed the order ex parte without allowing adequate and effective opportunity of hearing to the assessee. He thus prayed for remanding the matter back to the file of Ld. CIT(A) for the due adjudication of ground no. 3 taken in the present appeal which were also before the Ld. CIT(A) vide ground nos. 1 and 2 as reproduced at page 2 of the impugned order.

4.1. Further, Ld. Counsel pointed out the contradictory observations made by Ld. CIT(A) while disposing of the appeal ex parte by referring to para 3 and para 13.1, of the impugned order. In para 13.1 Ld. CIT(A) has noted that *“I also find that all the submissions made by the appellant during the course of the appeal point towards elaborate documentation, meaning thereby that the appellant has produced papers relating to application for the shares the allotment of the shares, the share certificates, payments by cheque and the necessary papers filed before the Registrar of Companies, where the name of the assessee has been reflected as a shareholder.”* Contrary to this, in para 3, Ld. CIT(A) noted that *“In the circumstances, it can be assumed that, for reasons best known to the appellant, there is no serious effort to pursue the appeal from its end. There is no gain-saying that as the appellant has filed the appeal, it is incumbent upon it to pursue the matter, respond the*

notice in time and defend the grounds of appeal taken in the matter. As there has been no response by the appellant, the matter is being decided on the basis of the facts available on record and the law applicable thereof.”

4.2. When these facts and submissions of the Ld. Counsel were confronted to the Ld. Sr. DR, nothing contrary was placed on record.

5. Considering the fact of non-adjudication or specific grounds by the Ld. CIT(A) as referred to by the Ld. Counsel and also the contradictory observations made in the impugned order while dismissing the appeal ex parte by the Ld. CIT(A), we find it proper to remit the matter back to the file of Ld. CIT(A) for meritorious disposal of the grounds raised by the assessee by taking into consideration all the submissions and applicable law and thereupon passing a speaking order. Needless to say that the assessee be given a reasonable opportunity of being heard to make its submissions in support of the claims made. We also direct the assessee to be diligent in attending the hearings as and when fixed by the Ld. CIT(A) and avoid seeking adjournments except in certain unavoidable circumstances. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 06th September, 2022.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Dated: 06.09.2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:.
3. The CIT(A)-10, Kolkata.
4. The CIT _____, Kolkata.
5. The DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata