

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "C" KOLKATA**

**Before: Shri Sanjay Garg, Judicial Member and
Shri Manish Borad, Accountant Member**

ITA No.333/Kol/2022 Assessment Year: 2012-13		
Diksha AD Consultants Pvt.Ltd. 2 B Grant Lane, Kolkata-12	<u>बनाम</u> V/s.	I.T.O. Ward 3(3), Kolkata Aaykar Bhawan, Dakshin, 2 Gariahat Road (S), Kolkata-68
PAN:AADCD 73331D		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/ By Appellant/Assessee		None
प्रत्यर्थी की ओर से/By Respondent/Department		Shri Partha Pratim Barman,Addl.CIT Ld.DR
सुनवाई की तारीख/Date of Hearing		11-10-2022
घोषणा की तारीख/ Date of Pronouncement		31-10 -2022

आदेश /O R D E R

PER MANISH BORAD, AM.

This appeal of the assessee for the assessment years 2012-13 is directed against the order dt. 08-08-2017 passed by the Id. Commissioner of Income-tax (Appeals) [in short, hereafter referred to as the 'CIT-A'], Kolkata-7, which is arising out of the assessment order dt. 10-03-2015 framed u/s. 143(3) of the Income Tax Act, 1961 [in short, hereinafter referred to as 'the Act'] by the ITO, Ward 3(3), Kolkata.

2. Registry has informed that the appeal is time barred by 745 days, for which condonation application has been filed by the assessee by way of an Affidavit stating that the order u/s.250 of the Income Tax Act, 1961, dt.08.08.2017 for the AY 2012-13, passed by the CIT(A)- 2/Kolkata was received by their office assistant on 19.03.2020, however, he didn't bring it to the knowledge of the management and proceeded on leave. The assessee submitted that it was only on 19.03.2020 that the impugned order came to their knowledge. It is stated that the delay was caused due to the change in the working system of the Income Tax Department, from physical to faceless. After the impugned order of the Ld. CIT(Appeal) came to their knowledge, it is found out that the Appeal preferred by them against the Order of the Ld. AO had been upheld by the Ld. CIT, inasmuch as my returned income had been enhanced by Rs. 1,22,00,000/- under Section 143(3) of the Income Tax Act 1961. It is a fact that there is a delay of 803 days, out of which delay due to covid-19 scenario has been for 740 days for which an application under Section 5 of the Limitation Act has been filed along with memorandum of appeal. In such a situation as uncertain as the Covid-19 period, approx 740 days was beyond our control due to panic, unavailability of staff and unnatural pandemic situation. Assessee's prayer is to condone the delay which has arised due to the above stated unavoidable and unforeseeable circumstances. It was further submitted that assessee had no intention to jeopardize the interest of the revenue by delaying the filing of the appeal and always tried to act diligently while looking after the matter and as such the delay has been caused for no intentional fault or latches on my part

and for reasons beyond assessee's control. Assessee earnestly prays that the delay has been caused inadvertently and that an opportunity to be heard is granted to the appellant assessee in as much as to uphold natural justice. Under the given circumstances it is humbly prayed to condone the delay caused.

3. Perusal of the above shows that the delay was on account of COVID-19 restrictions for 740 days and other reasonable cause. We, therefore, in view of the judgment of The Hon 'ble Supreme Court vide Miscellaneous Application No. 21 of 2022 find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period, condone the delay in filing the instant appeal and admit the appeal for adjudication.

4. The assessee has raised the following grounds:-

01) That under the facts & circumstances of the case, the Ld. CIT(A) erred in passing order ex parte without considering the grounds of natural justice under the law.

02) That under the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of a sum of Rs. 1,22,00,000/- under sec. 68 of the Income Tax Act, 1961 for the share capital along with premium raised by the assessee during the year. The addition is whimsical, arbitrary, unjustified and hence need to be deleted.

03) That the appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time hearing.

5. When the case was called for none appeared on behalf of the assessee. Perusal of records shows that notice for hearing was sent by the registry RPAD, which was unserved/returned with the postal department's remark '*Address cannot be located Returned to sender*'. Number of opportunities were granted, but the assessee failed to appear

on the date(s) of hearing. Thus, we decide to dispose off the appeal with the assistance of the Ld. Departmental Representative and record/material placed before us.

6. Brief facts of the case are that the assessee is a private limited company. It filed its return of income for the AY 2012-13 declaring total income at Rs. Nil. The same was selected for scrutiny through CASS by serving of statutory notices u/s. 143(2) & 142(1) of the Act. In response to which, the A/R of the assessee company appeared and submitted the documents. During the course of scrutiny the Id.AO found that the assessee company had raised share capital amounting to Rs. 1,22,00,000/-. Due to lack of satisfactory reply the Id.AO added the same as unexplained cash credits u/s. 68 passed assessment order u/s. 143(3) of the Act on 10-03-2015 assessing total income at Rs. 1,22,00,000/-.

7. Aggrieved, assessee preferred appeal before Id. CIT(A), but failed to appear and thus additions made by Id. AO were confirmed.

8. Aggrieved, now the assessee is in appeal before this Tribunal. Again the assessee failed to appear before us on any of the dates of hearing. Except filing this appeal and an affidavit for condonation of delay no other details are filed. It clearly indicates that the assessee is only trying to prolong the proceeding and has nothing to place on record. On the other hand, the Id. DR vehemently argued supporting the orders of lower authorities and prayed for confirming the order of Id. CIT(A).

9. We have heard the Id. DR and perused the material placed on record before us. The assessee has challenged the finding of the Id. CIT(A) confirming the addition made u/s. 68 of the Act at Rs. 1,22,00,000/- by the Id.AO for unexplained share capital/premium received during the year. We notice that the assessee company had offered Nil income for the AY 2012-13. The assessee company has been able to procure share capital/share premium at Rs. 1,22,00,000/-. Statutory notices u/s. 143(2) & 142(1) of the Act duly served upon the assessee and duly complied. Assessee failed to satisfy the Id.AO about identity & creditworthiness of shareholders and genuineness of the transaction. Even after providing sufficient opportunity none had appeared either before the Id. CIT(A) even before us. The assessee failed to file necessary details to explain the source of alleged cash credit and also unable to prove identity & creditworthiness of the cash creditors as well as genuineness of the transaction as per section 68 of the Act. The assessee company has miserably failed to explain the source of alleged cash credit. If the assessee had sufficient details to explain the alleged sum, it could have certainly filed those details. Consistently escaping from appearing before the appellate authority(Id.CIT-A) indicates that the assessee has no plausible explanation to explain the source of alleged sum of share capital and security premium. If the assessee is unable to explain the alleged cash credit and consistent escaped, the provisions of section 68 of the Act are rightly invoked by Id.AO. Thus, we are of the view that the assessee has routed its unaccounted income in the books of account in the form of share capital by arranging bogus share capital and share premium through accommodation entry provider and shell companies.

10. Therefore, under these facts and circumstances, we find no infirmity in the finding of the Id. CIT(A) confirming the addition of Rs.1,22,00,000/- made u/s. 68 of the Act. Thus, all the grounds of appeal raised by the assessee are dismissed.

परिणामतः निर्धारिती की अपील खारिज की जाती है।

11. In the result, the appeal of the assessee is dismissed.
आदेश खुले न्यायपीठ में दिनांक 31-10--2022 को उद्घोषित।
The order pronounced in the open Court on 31.10.2022

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Dated : 31 -10-2022

**PP/SPS

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

- 1.अपीलार्थी/Appellant/Assessee: Diksha AD Consultants Pvt.Ltd. 2 B Grant Lane, Kolkata-12
2. प्रत्यर्थी/Respondent/Department: I.T.O. Ward 3(3), Kolkata Aaykar Bhawan, Dakshin, 2 Gariahat Road (S), Kolkata-68
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
- 6.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

Assistant Registrar
ITAT, Kolkata