

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

आयकर अपीलिय अधीकरण, न्यायपीठ - "C" कोलकाता,

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

**ITA No.1413/Kol/2018
Assessment Year: 2012-13**

Mogra Dealcom Pvt. Ltd., 54, Munshi Saddaruddin Lane, 2 nd Floor, Kolkata-700 007. (PAN: AAHCM5396D)	Vs	Income Tax Officer, Ward-9(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : None

Respondent by : Smt. Ranu Biswas, Addl. CIT, DR

Date of Hearing : 15.11.2022

Date of Pronouncement : 22.11.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-18, Kolkata vide Appeal No. 1253/2015-16/CIT(A)-18/Wd-9(1)/F.Sl.No.2110/17-18/Kol dated 19.01.2018 passed against the assessment order by the ITO, Ward-9(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 21.03.2015.

2. Grounds raised by the assessee are reproduced as under:

"1. That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong and unjustified in dismissing assessee's appeal on ex parte view for so-called non-compliance of notices u/s 250.

2. That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong and unjustified in passing order u/s 250 of Income Tax Act, 1961 dated 19.01.2018 on ex parte view for non-compliance due to unavoidable circumstances.

3. That the ex parte order passed by Ld. CIT(A) is otherwise not maintainable in law since it fails to speak on the merit of addition made as unexplained cash credit u/s 68 of the Act amounting to Rs. 3,19,50,000/-.

4. That the appellant craves leave to add, alter, adduce or amend any ground on or at the time of hearing of the appeal.”

3. Before us, none appeared on behalf of the assessee and Smt. Ranu Biswas, Additional CIT, DR represented the department.

4. At the outset, from the order sheet of the appeal folder, it is noted that a direction was given by the Bench to the registry to issue notice by RPAD on the last date of hearing on 17.08.2022. As on present date also, none appeared on behalf of the assessee. Ld. Sr. DR was also directed to serve the notice for the next date of hearing fixed on 15.11.2022. In this respect, Ld. Sr. DR has placed on record a report from the Inspector of Income Tax who was entrusted to serve the notice for hearing fixed on 15.11.2022. The said report of the Inspector of Income Tax is reproduced as under:

Inspector's Report


Re: M/s. Mogra Dealcom Pvt Ltd

At, 54, Munshi Saddaruddin Lane, 2nd Floor,
Kolkata – 700007.

As per direction of the ITO WARD 9(1), KOLKATA on 04/011/2022, I went to the premises of the company mentioned as above in order to serve of issued ITAT hearing notice dated 15 Nov 2022(Tue) . The premises are comprising of an old residential building but in the said premises , I did not find any such companies . I also made observation on the letter boxes affixed on the walls of the said building but no names of such company are seen thereon. I also met several persons engaged in working around and enquired them about the said companies but they could not provide any information about the said companies. Hence the notice could not served.

Submitted for your kind information.

Dated : 04/11/2022


(ASIT KUMAR MAHATO) 4/11/22
Inspector
attached to), ITO WARD 9(1)Kol.

4.1. From the perusal of the above report of the Inspector, Ld. Sr. DR pointed out that on the given address of the assessee the premises is comprising of an old residential building and he did not find any such company. Ld. Inspector enquired about the whereabouts of the assessee and met several persons engaged in working around but they could not provide any information about the said company. Hence, he was unable to serve the notice. Ld. Sr. DR pointed out that even before Ld. CIT(A), in the first appeal, no one attended in response to notices issued and, therefore, the appeal was decided on the basis of material available on record. Relevant observations made by the Ld. CIT(A) in this respect are extracted below:

“This appeal is directed against order u/s. 143(3) dated 21.03.2015, passed by ITO, Ward-9(1). Appeal has been filed on 08.05.2015. Notices dated 18.12.2017 & 11.01.2018 were issued. E-mail also generated through ITBA online systems and in registered PAN based E-MAIL ID. However, no one attended in response to these notices. Hence, appeal is decided on the basis of material available on record.

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3. As can be seen from the nature of additions/disallowances in the grounds of appeal, the issues involved are factual in nature and require verification before arriving at the final conclusion. As the assessee has not attended to the appeal proceedings, necessary evidences in support of the assessee’s contentions have not been verified. Under the circumstances I am left with no option but to confirm the additions/disallowances made by the assessing officer.”

4.2. It was also pointed out from the order of assessment that it has been passed u/s. 143(3) of the Act wherein also no compliance was made by the assessee in respect of notices issued u/s. 142(1) of the Act as well as summons issued u/s. 131 to the directors of the assessee, details of which are available at page 2 and 3 of the assessment order.

4.3. From the above factual observations on the conduct and behavioral pattern of the assessee, it is leading us to understand that assessee is not serious about taking up the matters at the appropriate forums and has been casual in pursuing it. Such conduct of the assessee of non-compliance as well as non-appearance on the appeals filed by it reflects that assessee is abusing the process of law time and

again. From the perusal of the assessment order, it is noted that Ld. AO had asked to make personal production of the directors of the assessee and the shareholders or directors of the subscribing companies for recording their statement and to ascertain reason for the amount of investment at such huge premium when the assessee generated almost no revenue and does not have a value in the market. Ld. AO noted in his order that assessee could not produce the directors personally even though opportunity of being heard was given.

4.4. In this respect, Ld. AO noted that the burden of proof was on the assessee to substantiate the cash credit found in its books in respect of share capital including premium of Rs.3,19,50,000/- raised by the assessee during the year under consideration. Ld. AO noted that assessee did not furnish any details and documents nor fulfilled the conditions relating to identity, creditworthiness and genuineness of the transaction. Since the assessee failed to discharge its onus in respect of introduction of share capital despite several opportunities given to it, Ld. AO held that the purported fresh capital along with premium aggregating to Rs.3,19,50,000/- was nothing but assessee's own money and thus, treated it as unexplained cash credit which was added to the total income of the assessee. Ld. CIT(A) sustained the additions made by the Ld. AO, in the light of non-appearance of the assessee and failure on the part of the assessee to file necessary evidence in support of the grounds raised by it.

5. Before us also, despite all the efforts made for serving notice on the assessee, none has appeared to make representation in respect of the claim made in the instant appeal. Considering the observations of the Ld. AO and the Ld. CIT(A), we are not inclined to keep the matter pending for further dates based on the conduct of the assessee which demonstrates nothing but abuse of process of law. Accordingly, we

have no hesitation in sustaining the addition so made and dismiss the grounds taken by the assessee.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the Court on 22nd November, 2022.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Kolkata, Dated 22/11/2022

***JD. Sr. PS**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-18, Kolkata.
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata