

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, KOLKATA
BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 30/Kol/2022
Assessment Year: 2012-13

Aravinda Infrastructure Pvt. Ltd. 56E, Hemant Basu Sarani Kolkata - 700001 [PAN : AAGCA5837L]	Vs	Income Tax Officer, Ward-4(3), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri B.K. Drolia, C.A.
Revenue by :	Shri Vijay Kumar, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 30/11/2022
घोषणा की तारीख/Date of Pronouncement : 02/01/2023

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The present appeal is directed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeals) - 23, Kolkata (hereinafter the “ld. CIT(A)”) dated 05/12/2016, passed u/s 250 of the Income Tax Act, 1961 (“the Act’), for Assessment Year 2012-13.

2. The Registry has pointed out that the appeal is time barred. The assessee has filed an affidavit along with a petition for condonation of delay duly explaining the reasons for delay thereby. The ld. Counsel for the assessee vide the petition has submitted that the order of the ld. CIT(A) was not served upon the assessee as the same was returned back unserved. In view of this, the delay is condoned and the appeal is admitted.

3. The only issue raised in this appeal is relating to disallowance u/s 40(a)(ia) of the Act. However, at the outset the ld. Counsel for the assessee has invited our attention to the order of the ld. CIT(A) to submit that the impugned order of the ld. CIT(A) is an *ex-parte* order. That, even the ld. CIT(A) has discussed and deliberated on the issue of share application

which in fact, was not the issue involved in the appeal before the Id. CIT(A). the Id. CIT(A) has not given any finding on the issue involved in the appeal i.e., regarding the disallowance u/s 40(a)(ia) of the Act.

4. In view of this, the impugned order of the CIT(A) is hereby set aside and the matter is restored to the file of the CIT(A) for deciding the issues afresh on merits in accordance with law. Needless to say that CIT(A) will give adequate opportunity to the assessee to present its case.

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

Order pronounced in the Court on 2nd January, 2023 at Kolkata.

Sd/-

(Manish Borad)
Accountant Member

Kolkata, Dated 02/01/2023

**SC SpA*

Sd/-

(Sanjay Garg)
Judicial Member

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)-
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