

आयकर अपीलीय अधिकरण, पीठ "A" , कोलकाता
**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "A" KOLKATA**

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

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

आयकर अपील सं.य/ ITA No. 746/Kol/2018 A.Y 2012-13		
M/s. Amity Hirise Pvt. Ltd.14C M.D.Road, 4 th Floor, Kolkata-700 007.	<u>बनाम</u> V/s.	I.T.O., Ward 4(3), Kolkata, Aaykar Bhawan, P-7 Chowringhee Square, Kolkata-700 069.
PAN: AAJCA 8675R		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/By Appellant		Shri Manoj Kataruka, CA Ld.AR
प्रत्यर्थी की ओर से/By Respondent		Shri Subhrajyoti Bhattacharjee. Ld.CIT/DR
सुनवाई की तारीख/Date of Hearing		05-01-2023
घोषणा की तारीख/ Date of Pronouncement		10-01-2023

आदेश /O R D E R

Per Shri Manish Borad, AM :

The instant captioned appeal of assessee is filed against the order dt. 24-01-2018 passed by the Id. Commissioner of Income-tax (Appeals), (in short, referred to the Id. CIT (A) , Kolkata-19, Kolkata for the assessment year 2012-13.

2. The assessee has raised the following grounds of appeal :-

1. *That, on the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals)-19, Kolkata, has erred in law and facts in upholding the order passed by the Ld. ITO Ward - 4(3), Kolkata u/s 144 of the I.T. Act, 1961 (in short "Act") in the case of the appellant, without considering that the order of the Ld. Assessing Officer is arbitrary, illegal, unjustified and against the provisions of law.*

2. *That, on the facts and in the circumstances of the case and in law, that the Ld. Commissioner of Income Tax (Appeals) erred in passing an ex parte order against the appellant without providing the appellant sufficient time for representation.*

3. *That, on the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has failed to consider that the Ld. Assessing Officer erred in making addition of as unexplained cash credits u/s 68 of the Income Act, being the Share Capital and Securities Premium.*

4. *That, on the facts and circumstances of the case, the Ld. Commissioner of Income Tax [Appeals] failed. to consider that the Ld. Assessing Officer erred in initiating ; penalty- proceedings u/s 271 (1)(c) of the Income Tax Act, 1961.*

5. *That, on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) failed to consider that the Ld. AO erred in adding interest under section 234A & 234B of the Income Tax Act, 1961.*

6. *The appellant craves leave to add, amend/modify any grounds of appeal at the time of hearing or before the hearing of appeal.*

Prayer; It is prayed that the order passed by the Commissioner of Income Tax (Appeals)-19, Kolkata be set aside and full relief may be granted to the appellant.

3. Brief facts of the case as culled out from records are that the assessee being a private limited company filed its e-return for the assessment year under consideration declaring a total income at Rs. 1210/-. The case was selected for scrutiny through CASS. Thereafter, statutory notices u/s. 143(2)/142(1) of the Act were issued. On scrutiny the Id. AO found that the assessee company received huge amount of share premium of Rs. 45,67,42,800/- at a premium of Rs.999/- against face value of Re.1/- per share. However, in response to the said notices, the A/R of the assessee appeared on 17-09-2014 and submitted a list of shareholders along with their address. The Id. AO issued notices u/s. 131(1) of the Act to them including director of the assessee company for their personal deposition. But none of them attended before the Id.AO. There was complete non-compliance on behalf of the assessee company. Finally relying on the judgment of the Hon'ble Jurisdictional Calcutta High Court in the case of CIT Vs. Ruby Traders & Exporters Ltd 134 Taxman 29(Cal) and since there was no satisfactory explanation/submission with requisite documents as per section 68 of the Act on behalf of the assessee the Id. AO passed his best judgment assessment u/s.144 of the Act assessing the total income at Rs.47,13,01,210/- making addition of Rs. 471300000/- treating the share capital transaction as bogus u/s. 68 of the Act.

4. Aggrieved, the assessee preferred appeal before the Id. CIT(A), who confirmed this action of the Id. AO by an *ex parte order*. Before the Id. CIT(A) no body was present on behalf of assessee. Since there was complete non compliance of the assessee with satisfactory explanation/submission, the Id. CIT(A) relying on the judgment of the

Hon'ble Supreme Court in the case of *CIT Vs. B.N. Bhattacharjee 118 ITR 451(SC) & Ors.* dismissed the appeal of assessee.

5. Aggrieved, now the assessee is in appeal before this Tribunal.

6. At the outset, the Ld. Counsel for the assessee requested for restoring all the issues raised on merits to the file of the Id. CIT(A) for afresh adjudication since fair opportunity was not given by the Id. CIT(A) in the first round of appeal.

7. Per contra, the Ld. Departmental Representative stated that sufficient opportunity has been provided, but the assessee failed to appear/avail the same before the lower authorities. He vehemently argued supporting the findings of the lower authorities.

8. We have heard the rival contentions and perused the record placed before us. We notice that the Id. AO made the addition towards unexplained cash credit u/s. 68 of the Act of Rs.45.67 crores alleging that to be bogus share capital and share premium, which could not be explained by the assessee. When the matter travelled before the Id. CIT(A), the assessee failed to appear on the respective date of hearing due to which the Id. CIT(A) dismissed the assessee's appeal and without going into the facts of the case and passing a speaking order, confirmed the addition made by the Id. AO.

9. Before us the Ld. Counsel for the assessee has filed a voluminous paper book containing 597 pages and has contended that on the date(s) of hearing fixed by the Id. CIT(A) on one occasion adjournment was sought and on another occasion communication was not received.

Thereafter, the Id. CIT(A) passed an *ex parte order*. Prayer has been made by the Id. Counsel for the assessee for providing one more opportunity of being heard requesting that the issue(s) may be restored to the file of the Id. CIT(A) for afresh adjudication. We notice that the order of the Id. CIT(A) is not a speaking order and just mentioned few lines on assessee's failure to appear on the given dates of hearing and dismissed all the grounds raised by the assessee and confirmed the addition. Therefore, under the given facts and circumstances and considering that assessee has sufficient material evidence to be placed before the Id. CIT(A), assessee deserves to be granted one more opportunity of being heard and thus set aside the impugned order and restore all the issues raised in the instant appeal on merits to the file of the Id. CIT(A) for necessary adjudication and for passing a speaking order considering the documents/evidences as filed by the assessee before us and providing reasonable opportunity of being heard. We further direct the assessee to *remain vigilant* and not to seek any adjournment unless otherwise required for reasonable cause.

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

Order pronounced in the open court on 10 -01-2023

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Dated :10-01-2022

**PP/SPS

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

- 1.अपीलार्थी/Appellant/: M/s. Amity Hirise Pvt. Ltd.14C M.D.Road, 4th Floor, Kolkata-700 007.
2. प्रत्यर्थी/Respondent/:I.T.O., Ward 4(3), Kolkata, Aaykar Bhawan, P-7 Chowringhee Square, Kolkata-700 069.
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