

आयकर अपीलिय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 383/Kol/2019

Assessment Year: 2012-13

M/s Swabhiman Commosales Pvt. Ltd. (PAN: AAQCS 2551 M)	Vs.	ITO, Ward-2(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	02.02.2023
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 25.08.2018 for the AY 2012-13.

2. The only issue raised by the assessee is against the confirmation of addition of Rs. 1,46,00,000/- by Ld. CIT(A) as made by the AO on account of unexplained income u/s 68 of the Act.

3. At the outset, the Ld. Counsel for the assessee submitted before the Bench that First appellate authority has decided the appeal ex-parte without considering the merits of the case. The Ld. A.R drew our attention to Para 3 page 2 of the appellate

order wherein it is stated that the hearing of the case was first fixed on 27.07.2018 but none appeared on the appointed date. It is further stated that hearing once again fixed on 14.08.2018 and on 14.08.2018 a letter was received from the assessee requesting for adjournment. The case was accordingly adjourned to 28.08.2018. The Ld. A.R. then drew attention of the Bench to the date of order i.e. 25.08.2018 which is 3 days prior to the date fixed for the hearing. The Ld. A.R. ,therefore, submitted that it is only due to this anomaly on the part of the Ld. CIT(A), the assessee could not be represented before CIT(A) resulting into ex-parte order by the Ld. CIT(A). The Ld. A.R. therefore prayed that the case may kindly be restored to the file of the Ld. CIT(A) so that it could be decided on merit.

4. The Ld. D.R. on the other hand, left the issue on the wisdom of the Bench.

5. After hearing the rival contentions and perusing the material on record, we note that the Ld. CIT(A) has passed the order on 25.08.2018 whereas the case was adjourned to 28.08.2018 meaning thereby the order was passed three days before the appointed date and thus the assessee could not represent its case on merit before the first appellate authority . Under these facts and circumstances, we are of the view that the appeal needs to be restored to the file of the Ld. CIT(A) to be decided on merit so in accordance with principle of equity. Accordingly we restore the issue back to the file of the Ld. CIT(A) with a direction to decide the same after affording a reasonable opportunity of hearing to the assessee.

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

Order is pronounced in the open court on 2nd February, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 2nd February, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Swabhiman Commosales Pvt. Ltd., 27, Weston Street, 5th Floor, Kolkata-700012.
2. Respondent – ITO, Ward-2(1), Kolkata
3. Ld. CIT(A)-1, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata