

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.521/Kol/2020  
Assessment Year: 2012-13**

Landmark Exim Pvt. Ltd. C/o Rajesh Mohan & Associates, Unit No. 18, 5 <sup>th</sup> Floor, Bagati House, 34, Ganesh Chandra Avenue, Kolkata-700013. (PAN: AABCL1397D)	Vs.	Income Tax Officer, Ward- 1(4), Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Abhishek Bansal, AR  
Respondent by : Shri Vineet Kumar, JCIT

Date of Hearing : 18.03.2024  
Date of Pronouncement : 19.03.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A)-17, Kolkata vide Appeal No. 170/CIT(A)-17/Kol/17-18 dated 03.04.2019 passed against the assessment order by ITO, Ward-1(4), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 23.03.2015 for AY 2012-13.

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

*“1. For that the order of the Ld. CIT (A) is arbitrary, illegal and bad in law.*

*2. For that the Ld. CIT(A) erred in deciding the appeal ex parte without allowing the appellant any proper and reasonable opportunity of being heard.*

3. For that the order passed by the Ld. C.I.T (A) is bad in law since the ld. CIT(A) has not decided the issues ground wise in respect of the grounds raised by the appellant in the Memo of Appeal.

4. For that the Ld. CIT(A) is bad in law since the order passed is not any speaking order nor the C.I.T(A) has looked into the assessment records and relevant materials to conclude that the order of the Ld. AO cannot be interfered with.

5. For that the Ld. CIT (A) erred in confirming the order of the AO simply relying on the judgment of Calcutta High Court in Rajmandir Estates Pvt. Ltd. which was rendered in connection with the proceedings u/s 263 by which the assessment order was simply set aside for fresh assessment and was not an authority for the purpose of addition u/s. 68

6. For that the Ld. CIT(A) erred in confirming the action of Assessing Officer in assessing the share capital and premium as unexplained cash credits wherein the assessee filed complete details and documents to establish the identity and creditworthiness of the share applicants and genuineness of the transactions.

7. For that the ld. CIT(A) erred in confirming the order of AO even otherwise the notices issued by the Ld. Assessing Officer to verify the identity and creditworthiness of the share applicants and genuineness of the transactions were duly served upon the share allottees and complied with wherein each of the share allottees confirmed the transactions.

8. For that Ld. CIT(A) erred in confirming the action of Assessing Officer in assessing the share capital and share premium as unexplained cash credit merely for the reason of non-appearance of the share applicants in response to summon u/s 131 of the I T Act, 1961. While they duly complied by filing the required details/ documents.

9. For that the under the facts and circumstances of the case the Ld. CIT(A) erred in considering the share application money of Rs. 3,29,50,000/ - as unexplained cash credit whereas all the information were duly on records.

10. For that the Ld. CIT(A) erred in confirming the disallowance of Rs.2,23,280/ - u/ s 14A read with Rule 8D of the I T Act, 1961.

11. For that on the facts and in the circumstances of the case the order passed by the Ld. C.I.T(A) is not maintainable.

12. For that the order of the AO be modified and the assessee be given relief prayed for.

13. For that the appellant craves leave to add, alter or withdraw any ground/s of appeal on or before hearing of the appeal.”

3. Vide ground nos. 2, 3 and 4 assessee has contended that reasonable opportunity of being heard was not afforded to it to represent its case before the Ld. CIT(A) and that the grounds of appeal have not been disposed of ground wise by the Ld. CIT(A).

4. From the perusal of the order of the Ld. CIT(A), we note that case was listed on four different occasions when none appeared on behalf of the assessee and thus, after referring to certain case laws has confirmed the addition/disallowance made by the Ld. AO.

5. In this respect, we note that Section 250(6) cast a duty on Ld. CIT(A) to pass an order in appeal which should state the points for determination and a decision as well as the reason for arriving at such decision. In the present case before us, even though assessee has made its submissions along with supporting documents before the Ld. AO which are on record, compliance has not been met by the Ld. CIT(A) while disposing of the appeal by not looking into the assessment records. On a specific query by the Bench to the Ld. Counsel as to why the matter be not remitted back to the file of Ld. CIT(A), nothing objectionable was submitted. Even Ld. DR had no objection on the same. Accordingly, we find it proper to remit the matter back to the file of Ld. CIT(A) for meritorious disposal of the grounds taken by the assessee, by passing a speaking order. Needless to say that assessee be given reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 19<sup>th</sup> March, 2024.

Sd/-

(Sonjoy Sarma)  
Judicial Member

Sd/-

(Girish Agrawal)  
Accountant Member

***Dated: 19th March, 2024***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent.
  3. CIT(A)-17, Kolkata
  4. The Pr. CIT, Kolkata.
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata