

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.73/Kol/2019**

**Assessment Year: 2012-13**

**Srilakshmi Finvest Pvt. Ltd.....Appellant**  
**18, R.N. Mukherjee Road,**  
**Kolkata – 700001.**  
**[PAN:AAECS4012R]**

**vs.**

**ITO, Ward-5(1), Kolkata.....Respondent**

**Appearances by:**

Shri Siddharth Agarwal, Advocate, appeared on behalf of the appellant.

Shri Subhendu Datta, CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing :April 29, 2024

Date of pronouncing the order :June 3, 2024

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal filed by the assessee for the assessment year 2012-13 is against the order dated 30.10.2018 of the Commissioner of Income Tax (Appeals)-10, Kolkata [hereinafter referred to as 'CIT(A)'] u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the outset, the ld. Counsel for the assessee submitted that the assessment in this case was framed ex parte by the Assessing Officer when the assessee failed to turn up on various dates/opportunities granted during the assessment proceedings and finally the ex-parte assessment was framed u/s 143(3) r.w.s. 144 of the Act vide order dated 26.03.2015. The ld. Counsel further submitted that before the ld. CIT(A), the case was properly represented by Shri Manoj Budhia, Advocate, the authorised representative of the assessee who presented all the facts and documents before the appellate authority, however, there was a blatant non-application of mind by CIT(A). In order to buttress his arguments,

the ld. AR drew our attention to the 7<sup>th</sup> line of page no.27 of the order of the CIT(A), wherein, the ld. CIT(A) has noted that in his opinion that this is a case of bogus long-term capital gain, whereas, as a matter of fact, the addition has been made by the Assessing Officer on account of share capital and share premium amounting to Rs.8,57,50,000/- u/s 68 of the Act. The ld. AR, therefore, prayed that at both stages below, the issue was not decided on merits and therefore, it would be in the interest of justice and fair play, if the assessee is granted one more opportunity before the AO by setting aside the issue to the file of the Assessing Officer.

3. The ld. DR, on the other hand, did not object to the restoration of the case to the file of the Assessing Officer for de novo adjudication.

4. After hearing the rival contentions and perusing the material on record, we find that the assessment was framed ex parte and there in the appellate proceedings, the AR of the assessee appeared and presented the case on merits, however, the ld. CIT(A) recorded the conclusion on the wrong facts by observing that the case is relating to long-term capital gain on shares, which is not the case at hand as stated at page 27 of the appellate order. Therefore, we are of the view that the ends of justice will be met if the issue is restored to the file of the Assessing Officer for de novo adjudication after taking into account all the facts and evidences which may be filed by the assessee in the assessment proceedings. Accordingly, we restore this issue to the file of the Assessing Officer with a direction to decide the same afresh after affording reasonable opportunity of hearing to the assessee.

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

**Kolkata, the 3<sup>rd</sup> June, 2024.**

Sd/-  
**[Sonjoy Sarma]**  
**Judicial Member**

Sd/-  
**[Rajesh Kumar]**  
**Accountant Member**

Dated: 03.06.2024.

RS

*Copy of the order forwarded to:*

1. Srilakshmi Finvest Pvt. Ltd
2. ITO, Ward-5(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches