

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI PRADIP KUMAR CHOUBEY, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 540/Kol/2024**  
**Assessment Year: 2012-13**

<b>Topmost Dealmark Pvt. Ltd.</b> 5/1, 4 <sup>th</sup> Floor Room No. 125, Clive Row Kolkata - 700001 <b>[PAN : AAECT0270C]</b>	Vs	<b>Income Tax Officer, Ward - 9(1), Kolkata</b>
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Siddarth Agarwal, Advocate
Revenue by :	Shri Abhijit Kundu, Addl. CIT D/R

सुनवाई की तारीख/Date of Hearing : 05/06/2024  
घोषणा की तारीख /Date of Pronouncement: 12/06/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, (hereinafter the "Id. CIT(A)") dt. 20/12/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for Assessment Year 2012-13.

2. The Registry has pointed out that there is a delay of 26 days in filing of this appeal. Affidavit has been filed in support of the prayer for condonation of delay and the delay is mainly on account of the ill health of the accountant of the assessee concern which restrained him to look after the regular office affairs and could not check the income tax portal from time to time. At a later stage when it was found that *ex-parte* order has already been passed by the Id. CIT(A), the assessee preferred appeal before this Tribunal. Under these circumstances,

where the assessee was prevented by sufficient and *bonafide* cause from filing this appeal on time, we deem it fit to condone the delay and admit the captioned appeal for hearing on merits.

3. At the outset, the Id. Counsel for the assessee requested that the assessee did not get fair opportunity to file the details before both the lower authorities. That the assessee possesses all relevant information and documentary evidence to explain the nature and source of the alleged cash credit received during the year in the form of share capital. The assessee also referred to the affidavit as well as the detailed paper book which are placed on record.

On the other hand, the Id. D/R, though supported the orders of the lower authorities but did not oppose if the issues are remitted back to the file of the lower authorities.

4. We have heard rival contention and perused the material placed before us. We notice that the assessee is a private limited company and has furnished the return for Assessment Year 2012-13 declaring loss of Rs.1,35,934/-. Case selected for scrutiny for the reason "to examine large share premium received". After validly serving notice u/s 143(2) of the Act, the Id. Assessing Officer issued a questionnaire u/s 142(1) of the Act to file various details to explain the nature and source of share capital of Rs.6.49 Crores raised during the year. Notice u/s 133(6) of the Act were issued to which certain replies were received. However, various other details called for by the Id. Assessing Officer could not be supplied for want of time since the notices were sent at the end of February, 2015 and assessment was completed March, 2015.

The Id. Assessing Officer completed the assessment after making additions u/s 68 of the Act as well as u/s 35D of the Act and assessed the income of the assessee at Rs.6,48,78,066/-. Assessee carried the matter in appeal before the Id. CIT(A) but there was no response on various dates fixed by the Id. CIT(A) for which notices were sent through ITBA portal. As claimed by the assessee through an affidavit (placed on record) that the accountant of the assessee company looking after the income tax affairs did not check the income tax portal on account of his ill health. However, in the affidavit, the assessee has given undertaking that it shall make due compliance in case an opportunity is granted to appear before the lower authorities. Considering the facts of case, where the Id. CIT(A) has passed a non-speaking order and also the short span of time given by the Id. Assessing Officer to the assessee for furnishing necessary details for completing the assessment proceedings, we in the interest of justice and being fair to both the parties deem it fit and proper to restore the issue raised on merits of the case to the file of the Id. Assessing Officer for *de novo* adjudication for which reasonable opportunity should be provided to the assessee. Further the details filed by the assessee in form of the paper book needs to be placed before the Id. Assessing Officer at the time of hearing who shall then decide the issue in accordance with law. Needless to mention that, the assessee be compliant, shall not take adjournment and should appear on the very first date of hearing unless otherwise for a *bonafide* cause and furnish the details in support of its grounds. Id. Assessing Officer should

ensure that the assessee is provided with reasonable opportunity of being heard.

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

**Order pronounced in the Court on 12<sup>th</sup> June, 2024 at Kolkata.**

*Sd/-*

**(PRADIP KUMAR CHOUBEY)  
JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 12/06/2024

*SC/S/P*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata