

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'D' BENCH, KOLKATA**

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)
&
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No. 2688/KOL/2018
Assessment Year: 2012-2013**

***M/s. Shreedhan Mercantile Private Limited,.Appellant
70, Nalini Seth Road, Kolkata-700007
[PAN:AAQCS0723B]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-1(4), Kolkata,
Aayakar Bhawan, 7th Floor,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Somnath Ghosh, Advocate, appeared on behalf of the
assessee*

*Shri Amuldeep Kaur, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing: February 03, 2025

Date of pronouncing the order: February 26, 2025

O R D E R

Per Duvvuru RL Reddy, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals)-1, Kolkata dated 24th January, 2017 passed for Assessment Year 2012-13.

2. The appeal is time barred by 18 days in filing the appeal by the assessee. However, the Director of the assessee-Company filed a condonation petition saying that the appellant had forwarded the order of Id. CIT(Appeals) to its Chartered Accountant, who was looking after the case and as per the said Chartered Accountant, as the order was an *ex-parte* one, the Id. CIT(Appeals)-1, Kolkata had powers to reinstitute the appeal upon request of the appellant. However, when no such request was filed, even after continuous follow up of the appellant, the appellant- assessee approached the Id. A.R. to prefer an appeal, due to that there was a delay of 18 days in filing the appeal before the Tribunal. Therefore, he pleaded to condone the delay.

3. Considering the facts and circumstances of the case, we are inclined to condone the delay since the delay is not due to negligence on the part of assessee and the assessee has established sufficient cause to condone the delay. Hence the delay is condoned.

4. Brief facts of the case are that the assessee is a Private Limited Company, who filed its return of income on 18.10.2012 showing total income at Rs.3,880/-. The assessee has mainly shown investments in unquoted equity shares. The case was selected for scrutiny through CASS. Accordingly, notices under section 143(2) and 142(1) of the Act were issued and duly served on the assessee within stipulated time limit. In response to the said notices, the assessee produced books of account, copy of audited

accounts and other relevant details and documents. The same were checked and it was observed that the assessee-company has shown receipt of fresh subscription to its share capital including share premium amounting to Rs.2,23,75,000/- during the relevant previous year ended on 31.03.2012. For the purpose of proper verification and examination of the share subscriptions and genuineness of share transaction, summons under section 131 of the Income Tax Act, 1961 was issued and the Directors of the appellant-assessee were duly requested to appear personally alongwith complete set of books of account and all other relevant details/documents for the purpose of examination and verification. In spite of issued summons, notices and final reminder letters, neither the Directors of the assessee-company appeared to substantiate the genuineness of the share subscription and/or share premium transactions nor produced any documents to substantiate their existence, identity and creditworthiness to make payments of the share subscription as claimed by the assessee-company. The assessee company has no plausible explanation in this regard. Due to non-compliance by the assessee, the Id. Assessing Officer has left with no alternative but to assess the income of assessee on the basis of information/data available on the records and the assessment was completed under section 143(3) of the Income Tax Act assessing the total income at Rs.2,24,10,680/- (i.e. Rs.3,880/- plus Rs.2,23,75,000/-). On being aggrieved, the assessee preferred an appeal before the Id. CIT(Appeals).

5. The ld. CIT(Appeals) has given several opportunities to the assessee to substantiate its claim, but the appellant did not file the written submissions and did not represent the case before the ld. CIT(Appeals). Thereafter the ld. CIT(Appeals) dismissed the appeal on 24th January, 2017.

6. On being aggrieved, the assessee preferred an appeal before the ITAT.

7. At the time of hearing, it was the submission of the ld. Counsel for the assessee that ld. CIT(Appeals) did not consider the case on merit, rather he just upheld the order passed by the ld. Assessing Officer. Therefore, he pleaded to delete the addition made by the ld. Assessing Officer as confirmed by the ld. CIT(Appeals).

8. At the outset, ld. D.R. brought to my notice that the assessee did not produce the relevant documents as asked by the ld. Assessing Officer during the assessment proceedings. Therefore, the ld. Assessing Officer passed the assessment order assessing the taxable income at Rs.2,24,10,680/- as unexplained. Thereafter the assessee preferred an appeal before the ld. CIT(Appeals). The ld. CIT(Appeals) has given many opportunities to the assessee and the assessee neither filed written submission nor any evidence before the ld. CIT(Appeals). He further submitted that before the ITAT, the assessee did not substantiate its claim. Therefore, he pleaded to uphold the orders passed by the revenue authorities.

9. We have heard the rival submissions and perused the material available on record. Considering the facts and circumstances of the case, we are inclined to set aside the order passed by the Id. CIT(Appeals) in order to meet the principle of natural justice, and remit the matter back to the file of Id. CIT(Appeals) with a direction to provide one more opportunity of being heard to the assessee. At the same breath, we also hereby caution the assessee to promptly co-operate with the proceedings before the Ld. CIT(Appeals) failing which the Ld. CIT(Appeals) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials available on the record. Thus, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 26/02/2025.

Sd/-
(Rakesh Mishra)
Accountant Member

Sd/-
(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 26th day of February, 2025

*Copies to :(1) M/s. Shreedhan Mercantile Private Limited,
70, Nalini Seth Road, Kolkata-700007*

*(2) Income Tax Officer,
Ward-1(4), Kolkata,
Aayakar Bhawan, 7th Floor,
P-7, Chowringhee Square, Kolkata-700069*

- (3) *CIT(Appeals)-1, Kolkata;*
- (4) *CIT - ;*
- (5) *The Departmental Representative;*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.