

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**ITA No.1124/Kol/2025
Assessment Year: 2009-10**

Kalpanik Vyapaar Pvt. Ltd. 32, Ezra Street, 5 th Floor, Kol-1. (PAN: AADCK3638E)	Vs	ITO, Ward-4(4), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Miraj D. Shah, AR
Respondent by : Shri P. N. Barnwal, CIT-DR

Date of Hearing : 01.09.2025

Date of Pronouncement : 01.09.2025

ORDER

Per George Mathan:

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [hereinafter referred to as the 'CIT(A)'] in appeal no.CIT(A), Kolkata-2/12844/2015-16 dated 07.01.2025 for assessment year 2009-10.

2. Shri Miraj D. Shah, AR represented on behalf of the assessee and Shri P. N. Barnwal, CIT-DR represented on behalf of the revenue.

3. It was the submission of the ld. AR that the notices in respect of assessment were not served on the assessee. It was the submission that even before the ld. CIT(A), the appeal has been disposed off ex parte. It was the prayer that the issues in the appeal may be restored to the file of the Assessing Officer for re-adjudication.

4. In reply, the ld. CIT-DR submitted that the issue may be restored to the file of the ld. CIT(A) as the ld. CIT(A) has also the power of set aside and if necessary, he can call for remand report.

5. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that the assessee has not represented before the Assessing Officer and the ld. CIT(A). The assessee's claim is that the assessee has not been served notices. However, the fact is that the order of the ld. CIT(A) has been received by the assessee and the appeal has been filed without delay which shows that the notices have been sent to the correct addresses. Coming to the arguments of the ld. CIT-DR, a perusal of the assessment order shows that the Assessing Officer has been directed to pursue revision jurisdiction u/s 263 by examining the genuineness and source of share capital in respect of each and every shareholder and to examine the directors as well as the circumstances which necessitated the change in directorship. This cannot be done at the level of the ld. CIT(A). This is more practical and feasible at the level of the Assessing Officer. This being so, we are of the view that the issues in the appeal are restored to the file of the Assessing Officer for re-adjudication. The assessee shall produce directors and such persons in connection with the share application money as may be called for by the Assessing Officer. They shall be the witnesses of the assessee. The address of the assessee and email of the assessee is provided as per Form 36 is as "32, Ezra Street, 5th Floor, Kolkata and kalpanikvyapparprivatelimited@gmail.com". Should the assessee not respond to the notices sent by the email, it would be advisable for the Assessing Officer to issue at least one physical notice before drawing any inference. The Assessing Officer is not required to issue any notice u/s 131 or 133(6) of the Act. It is for the assessee to prove the genuineness of the transactions. The issues in this appeal are restored to the file of the Assessing Officer for readjudication after granting the assessee adequate opportunity of being heard subject to payment of cost of Rs.1,00,000/-

on the assessee to be payable to the Legal Aid Services, 3rd Floor of the Centenary Building, High Court, Calcutta-700001, within sixty days from the date of this order. Should the assessee default in the payment in respect of the amount or the stipulated date or the person to whom the payment is to be made, the order of the ld. CIT(A) shall stand confirmed.

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

Kolkata, the 1st September, 2025.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[George Mathan]

न्यायिक सदस्य/Judicial Member

Dated: 01.09.2025.

RS

Copy of the order forwarded to:

1. Appellant -
2. Respondent –
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches