

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri D.S. Sunder Singh, Accountant Member**

ITA No.1186/Hyd/2017
(Assessment Year: 2011-12)

Shri K.G. Hariharan Vs Income Tax Officer
Tirupathi Ward 2(1)
PAN: AAHPH2589Q Tirupathi
(Appellant) (Respondent)

ITA No.1187/Hyd/2017
(Assessment Year: 2011-12)

Shri K.G. Ranganathan Vs Income Tax Officer
Tirupathi Ward 2(1)
PAN: ACMPK4741N Tirupathi
(Appellant) (Respondent)

For Assessee : Shri K.C. Devdas
For Revenue : Shri K.J. Rao, DR

Date of Hearing: 23.03.2018
Date of Pronouncement: 06.04.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

The assessees in both the above appeals are brothers and common issues are involved in both the appeals and the appeals are against the order of the CIT (A) Tirupati, both dated 15.05.2017. Since the issues are common and are for the very same A.Y, both the appeals are heard together and are disposed of by this common and consolidated order.

2. Brief facts of the case are that the assesseees are individuals and filed their returns of income for the relevant A.Ys. During the assessment proceedings u/s 143 of the Act, the assesseees did not appear before the AO, inspite of issuance of statutory notices. Therefore, the AO completed the assessment u/s 144 of the Act on the basis of the material available before him. Aggrieved, the respective assesseees, filed appeals before the CIT (A). One of the ground raised therein, is that the AO has erred in completing the assessment u/s 144 of the Act, ignoring the fact the assessee's representative appeared on 13.03.2014 and also filed the evidence in support of their claims. It is also stated that before the CIT (A), the assesseees had also filed affidavits of the persons who travelled to Tirupathi and also the train tickets of Shri Sravana Kumar, AR as proof of their visit. The CIT (A), however, held that this did not conclusively prove that they appeared before the AO on 13.3.2014. Further, he also observed that sufficient opportunity was granted to the assessee during the appellate proceedings and there is no ground that the proceedings. He therefore, rejected the ground and proceeded to dispose of the appeals on merit on the basis of the material filed before him. The CIT (A) called for a remand report from the AO.

3. With regard to the evidence filed for deletion of the addition of Rs.27,49,951, we find that the CIT (A), after considering the assessee's contentions and the remand report of the AO upheld some of the additions and deleted some of the additions. We find that with regard to the other additions confirmed by the CIT (A), there is no mention of the remand report of the AO.

4. The learned Counsel for the assessee submitted that the issue should be remanded to the file of the AO as according to him, the assessee should have been given an opportunity before the AO during the assessment proceedings itself and not before the CIT (A). For this purpose, he has relied upon the judgment of the Hon'ble Supreme Court in the case of Tin Box Company vs. Commissioner Of Income-Tax dated 27 February, 2001, reported in (2001) 249 ITR 216 (SC) wherein it was held that once the Tribunal had found that the ITO had not given to the assessee, proper opportunity of being heard, the fact that the assessee could have placed the evidence before the appellate authority or before the Tribunal was really of no consequence for it was the assessment order that counted; and had remanded the matter to the AO by observing that the assessment order had to be made after the assessee had been given a reasonable opportunity of being heard. The Hon'ble Supreme Court has therefore, remanded the matter to the ITO for fresh consideration.

5. The learned DR was also heard.

6. Considering the fact that the assessee was not given proper opportunity of being heard before the AO, during the assessment proceedings, following the decision of the Hon'ble Supreme Court (Supra), we deem it fit and proper to set aside the assessment to the file of the AO for reconsideration in accordance with law.

7. In the result, assessee's appeals are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 6th April, 2018.

Sd/-
(D.S. Sunder Singh)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 6th April, 2018.

Vinodan/sps

Copy to:

- 1 Shri K.G. Hariharan & Shri K.G. Ranganathan, 42G, Car Street, Tirupathi
- 2 Income Tax Officer, WARD 2(1) Tirupathi
- 3 CIT (A)-Tirupati
- 4 Pr. CIT – Tirupati
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order