

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष)Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 1493/Kol/2017
Assessment Year: 2008-09

M/s. Alankar Plastics Pvt. Ltd. (PAN: AACCA3623Q)	Vs.	Income-tax Officer, Wd-3(1), Kolkata
Appellant		Respondent

Date of Hearing	01.08.2018
Date of Pronouncement	08.08.2018
For the Appellant	Shri J. M. Gupta, FCA
For the Respondent	Shri A. K. Tiwari, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the order of the Ld. CIT(A)-9, Kolkata dated 27.03.2017 for AY 2008-09.

2. The only issue involved in this appeal of assessee is against the action of Ld. CIT(A) in confirming the addition of Rs.765 lakhs made by the AO u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

3. At the outset, it has been brought to our notice that the Ld. CIT(A) has passed an ex parte order and no proper opportunity was given to the assessee during appellate proceedings to discharge its burden casted on it u/s. 68 of the Act. Hence, the Ld. AR of the assessee urged before the bench to set aside the order of Ld. CIT(A) and restore the appeal to his file for fresh adjudication. On the other hand, the Ld. DR relied on the order of the Ld. CIT(A). We note that the Ld. CIT(A) has passed an ex parte order, which is evident from para 3 of its order which is as under:

“3. In this case addition has been made amounting to Rs.7,65,00,000/-. Notice has been issued on 26.10.2016 fixing hearing on 10.11.2016. A written submission was filed by the appellant on 21.11.2016. A fresh notice of hearing was fixed on 19.12.2016. On 19.12.2016, the A/R of the appellant attended and filed written submission which was sent to calling for remand report from the AO, the case was adjourned to 23.01.2017. On 23.01.2017, the AR of the appellant attended and stated that he has been called by AO for remand proceedings. Again the case was re-fixed for hearing on 17.03.2017 and there was no compliance on that date.”

4. From the aforesaid observation of the Ld. CIT(A) it is apparent that the assessee prevented by sufficient cause to appear before the Ld. CIT(A) and the Ld. CIT(A) has hastily passed the impugned order ex parte without affording reasonable opportunity of being heard to the assessee. So we are, therefore, of the opinion that assessee did not get proper opportunity before the Ld. CIT(A) during appellate proceedings. In this connection, the Hon'ble (three judge bench) of the Hon'ble Supreme Court in Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC) has held as under:

“It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :

“We will straightaway agree with the assessee's submission that the Income-tax Officer had not given to the assessee proper opportunity of being heard.”

That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of setting out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.

Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus :

“1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?”

In our opinion, there can only be one answer to this question which is inherent in the question itself : in the negative and in favour of the assessee.

The appeals are allowed. The order under challenge is set aside. The assessment order, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforesaid.”

5. In view of the aforesaid ex parte order of the Ld. CIT(A) and in the light of the Hon'ble Supreme Court's decision in Tin Box Company (supra), we set aside the order of

the Ld. CIT(A) and remand the matter back to his file for de novo adjudication and to decide the matter in accordance to law after giving opportunity of being heard to the assessee.

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

Order is pronounced in the open court on 08/08/2018

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 8th August, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – M/s. Alankar Plastics Pvt. Ltd., 12, Waterloo Street, Kolkata-700 069.
- 2 Respondent – ITO, Ward-3(1), Kolkata
- 3 CIT(A)-9, Kolkata (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary