

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1324/Kol/2017
Assessment Year: 2012-13

Manoj Textfab India Pvt. Ltd. (PAN: AAHCM3073B)	Vs.	Income-tax Officer, Wd-1(4), Durgapur.
Appellant		Respondent

Date of Hearing	17.07.2018
Date of Pronouncement	29.08.2018
For the Appellant	Shri Subash Agarwal, Advocate
For the Respondent	Shri G. Hangshing, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the order of Ld. CIT(A), Durgapur dated 27.04.2017 for AY 2012-13.

2. Though the assessee raised 2 grounds of appeal but the sole issue involved is against the action of Ld. CIT(A) in confirming the addition of Rs.8,12,50,000/- made by the AO as unexplained cash credit u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), which sum represented amounts received by the assessee towards share capital and share premium, without affording reasonable opportunity of hearing to the assessee.

3. At the outset, the learned AR drew our attention to page 6 of the assessment order passed by the AO and we take note that since none appeared before the AO to the summons issued by him, the AO drew adverse inference against the assessee company. He also drew our attention that the impugned appellate order passed by the Ld. CIT(A) which is an ex-parte order which action of Ld CIT(A), according to Ld AR was passed without affording

reasonable opportunity of being heard to the assessee. We also note that the year under consideration is the first year and assessee company was set up for textile business and Ld. AR of the assessee replied to AO that given an opportunity the assessee is ready to produce all Directors of the investor companies which fact has been acknowledged by the AO at page 9 of the assessment order. According to learned AR, therefore, the AO ought to have given proper opportunity to assessee to represent and present its case during assessment proceedings. So, as per the Hon'ble (three judges bench) of the Hon'ble Supreme Court in Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC) the reassessment has to be restored back to AO for fresh reassessment.

3. We note that the main grievance of the assessee is that no proper opportunity was given to the assessee to discharge the onus casted upon it as required in sec. 68 matters. We note that since none appeared before the AO to the summons issued by him, the AO drew adverse inference against the assessee company when the facts remain that assessee's AR took an undertaking before the AO to produce all the directors of the investor companies which fact has been acknowledged by the AO at page 9 of assessment order. So, we find force in the submission of the Ld. AR that no proper opportunity the assessee got before the AO during the assessment proceedings. Since proper opportunity was not given to assessee by AO during the assessment proceedings, we are of the opinion that assessee should get proper opportunity before the AO during assessment proceedings. 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.”

4. In the light of the Hon'ble Supreme Court's decision in Tin Box Company (supra), and since proper opportunity was not given to assessee by AO during the assessment proceedings, we set aside the ex parte order of the Ld. CIT(A) and remand the matter back to the file of AO for de novo assessment and to decide the matter in accordance to law after giving opportunity of being heard to the assessee.

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

Order is pronounced in the open court on 29th August, 2018

Sd/-
(Dr. A. L. Saini)
Accountant Member

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

Dated : 29th August, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Manoj Texfab India Pvt. Ltd., C/o Kailash Mundhra, Anand Texztile Agency, 180, M G. Road, Malik Khothi, 3rd floor, Kolkata-700 007. .
2. Respondent – ITO, Ward-1(4), Durgapur
3. CIT(A), Durgapur. (sent through e-mail)
4. CIT – , Durgapur.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary