

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM & Dr.A.L.Saini, AM]

I.T.A. No. 2333/Kol/2017
Assessment Year: 2012-13

Shri Shrawan Kumar Todi PAN ABWPT 5354 P	Vs.	D.C.I.T. Circle-1 (2), Kolkata
Appellant		Respondent

Date of Hearing	22.10.2018
Date of Pronouncement	26 .10.2018
For the Appellant	Shri A.Bose, Advocate
For the Respondent	Shri C.J.Singh, Addl. CIT

ORDER

Per Shri A.T.Varkey, JM

This is an appeal preferred by the assessee against the order of CIT(A)-1, Kolkata dated 09.10.2017 for A.Y.2012-13.

2. At the outset the Id. Counsel for the assessee pointed out that the assessment order has been passed without affording proper opportunity to the assessee. For supporting his aforesaid submission he drew our attention to the assessment order dated 31.03.2015 wherein the AO has specifically stated in para-1 of his order that the case was re-fixed by issuing notice u/s 142(1) along with questionnaire dated 25.03.2015. The Id. Authorised Representative drew our attention to the fact that the matter was fixed on 28.03.2015 which falls on a Saturday and when he appeared the case was adjourned to 30th March 2015. And on 30th March, 2015 when he appeared before the

AO, he was told that the assessment order has already been passed. According to the Id. Counsel even though this fact was brought to the notice of the Id. CIT(A) he did not give much attention to the aforesaid action on the part of the AO, which resulted in violation of natural justice to the assessee at the stage of framing of assessment. We note that initially the case was under the jurisdiction of AO Central-1, Kolkata and later the department while carrying out re-structuring of the jurisdiction transferred the case to DCIT, Circle-1(2), Kolkata. We note that the AO has clearly stated that he had issued questionnaire u/s 142(1) on 25.03.2015. We note from the copy of the diary which has been presented before us by the Id AR that the case was fixed on 28.03.2015. which falls on a Saturday and though the matter was again fixed on 30th March, 2015, the assessment order has been passed on 31st March, 2015 which means the assessee was put on notice just before 7 days before passing the assessment order. So the assessee has made out a case that he did not get proper opportunity to defend his case before the AO. In a similar case the Hon'ble Supreme Court (3 Judges bench) in the case of Tin Box Company vs CIT 249 ITR 216 held as under :-

"1. 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."

2. 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 selling 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.

3. 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 ?"

4. *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.*

5. *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 aforestated. No order as to costs.”*

3. Therefore since the assessee did not get proper opportunity before the AO, we following the decision of the Hon’ble Supreme Court in Tin Box (supra) set aside the impugned order of the CIT(A) and remand the matter back to the file of the AO for framing de-novo assessment. Needless to say, that the assessee to be given opportunity of hearing before framing the fresh assessment order.

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

Order is pronounced in the open court on 26th October 2018

Sd/-

(Dr.A.L.Saini)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 26/10/2018

RG(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Shrawan Kumar Todi, 2/2B, Sarat Bose Road, Kolkata-700020.
- 2 Respondent – D.C.I.T., Circle-1 (2), Kolkata
3. C.I.T.(A)-1, Kolkata 4. C.I.T. Kolkata.

DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar. ITAT, Kolkata Benches, Kolkata.