

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
 (समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की,न्यायिक सदस्य)  
 [Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]

**I.T.A. No. 1178/Kol/2017**  
**Assessment Year: 2012-13**

M/s. Narmadeshwar Rice Mills Pvt. Ltd. (PAN: AADCN5337P)	Vs.	Income-tax Officer, Wd-13(3), Kolkata
Appellant		Respondent
Date of Hearing		14.01.2019
Date of Pronouncement		05.04.2019
For the Appellant		Shri Miraj D. Shah, FCA
For the Respondent		Shri C. J. Singh, JCIT, Sr. DR

**ORDER**

**Per Shri A.T.Varkey, JM**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-5, Kolkata dated 20.03.2017 for AY 2012-13.

2. The sole issue in this appeal of assessee is against the action of Ld. CIT(A) in confirming the addition of Rs.2,50,00,000/- on account of unexplained cash credit in invoking the provisions of section 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) without allowing proper and reasonable opportunity to the assessee to represent its case.

3. Brief facts of the case are that the AO noted after perusal of the Balance Sheet that assessee company has raised share capital amounting to Rs.2,50,00,000/- (including share premium @ Rs.40/-) from 12 companies during the year under consideration and for verifying the nature and source of the share capital raised, the AO directed the assessee to produce both the director of the assessee company and the directors of the share subscribing companies with the documents viz. Proof of identity of the directors, copies of the return of the directors in the individual capacity with the balance sheet and P&L account for the last three assessment years, ROC details of the said share subscribing companies, copy of the return for the last 3 assessment years of the share subscribing companies, bank account

statement for the period 01.04.2011 to 31.03.2012, copies of the AGM meeting and books of accounts viz. cash book/bank book for the FY 2011-12. But according to AO, none appeared. Thereafter, the AO issued letter u/s. 133(6) of the Act to the share subscribing companies and the AO acknowledges that it was duly complied with. However, the AO was of the view that all the share subscribing companies had not explained the source of the fund to his satisfaction. Therefore, he added the said sum of Rs.250.00 lakhs to the income of the assessee u/s. 68 of the Act. Aggrieved, assessee preferred appeal before the Ld. CIT(A) who, confirmed the action of AO by an ex parte order. Aggrieved, assessee is before us.

4. We have heard rival submissions and carefully gone through the facts and circumstances of the case. We note that the assessee company had raised share capital of an aggregate sum of Rs. 2,50,00,000/- by issue of allotment of 5,00,000 equity shares of the face value of Rs. 10/- each (including the share premium @ Rs.40/-) to twelve companies. We note that the AO in order to verify the genuineness of the transactions relating to the issue of share capital and share premium issued notice u/s. 142(1) of the Act to the assessee company to furnish all the relevant documents with computation of the income along with the books of accounts for the period 01.04.2011 to 31.03.2012 along with the directors of the share subscribing companies. In response, the Ld. AR of the assessee appeared and filed particulars viz. including the Form No. 2, copies of the particulars filed with ROC, copy of the return, TAR, Balance Sheet and P&L Account, computation of income. But, according to AO, the assessee could neither produce the directors of the assessee company nor the directors of the share subscribing companies. Thereafter, the AO issued notice u/s. 133(6) of the Act to the share subscribing companies and according to AO, the share subscribing companies complied with the requirement of notice of AO and on the perusal of the documents the AO observed that the share subscribing company had returned low income or in some cases sources of the fund was not explained. Hence, the AO added the said sum of Rs.250.00 lakhs to the income of the assessee u/s. 68 of the Act. On appeal, the Ld. CIT(A) by a non-speaking and ex-parte order confirmed the action of the AO. Before us, the Ld. AR for the assessee drew our attention to ground no.1 of the appeal that the Ld. CIT(A) erred in passing the order without affording reasonable opportunity to the assessee of being heard. We also note from para 2 of the order of Ld. CIT(A) that reasonable opportunity was

not granted to the assessee while disposing of the assessee's appeal. Before us, the Ld. AR also submitted that the Managing Director of the assessee company was unable to attend because he was hospitalized for radiation in respect to cancer treatment. According to Ld. AR, the directors of share subscribing companies and its own directors were not in Kolkata when the AO asked them to be present before him. So, according to Ld. AR, no proper opportunity was given to the assessee during assessment proceedings and also before the Ld. CIT(A). Our attention was drawn to several cases in which no proper opportunity the assessee got at the assessment stage, we have remanded the matter back to the file of the AO relying the decision of the Hon'ble (three judge bench) of the Hon'ble Supreme Court in Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC), wherein it was 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 similar case this Tribunal in ITA No.393/Kol/2016 in M/s. Star Griha (P) Ltd. Vs. ITO for AY 2008-09 dated 15.12.2017 has observed as under:-

*".....We also note that the Ld. CIT after looking into the pernicious practice of converting black money into white money has given the guidelines to AO as to how the investigation should be conducted to find out the source. Since similar order of the Ld. CIT passed u/s. 263 of the Act has been upheld by the Tribunal as well as by the Hon'ble Calcutta High Court as*

*well as the SLP has been dismissed by the Hon'ble Supreme Court, similar order of the Ld. CIT has to be given effect to as directed by the Ld. CIT. We take note that the Ld. CIT with his experience and wisdom has given certain guidelines in the backdrop of black money menace should have been properly enquired into as directed by him. The AO ought to have followed the investigating guidelines and method as directed by him to unearth the facts to determine whether the identity, genuineness and creditworthiness of the share subscribers. We note that the Hon'ble Supreme Court (three judges bench) in the case of Tin Box, (supra), has held that since there was lack of opportunity to the assessee at the assessment stage itself, the assessment needs to be done afresh and thereby reversed the Hon'ble High Court, Tribunal and CIT(A)'s orders and remanded the matter back to AO for fresh assessment. So, since there was lack of opportunity as aforesaid it has to go back to AO.....”*

6. In view of the aforesaid facts noted above and that all the companies have duly complied with the notices u/s. 133(6) of the Act as acknowledged by the AO in the assessment order and in the light of the Hon'ble Supreme Court's decision in Tin Box Company (supra), since assessee did not get proper opportunity before the AO, we set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO for de novo assessment and the AO to decide the matter in accordance to law after giving opportunity of being heard to the assessee.

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

Order is pronounced in the open court on 5th April, 2019

Sd/-

(P. M. Jagtap)  
Vice President

Sd/-

(Aby. T. Varkey)  
Judicial Member

Dated : 5<sup>th</sup> April, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Narmadeshwar Rice Mills Pvt. Ltd. 106, Kiran Chandra Singha Road, Ganges Garden, Block A/3, 2<sup>nd</sup> floor, Howrah-711102
2. Respondent – ITO, Ward-13(3), Kolkata
3. CIT(A)-5, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar