

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri A. T. Varkey, JM and Dr. (Shri) Arjun Lal Saini, AM ]

**I.T.A No. 772/Kol/2017 A.Y 2011-12**

M/s. Raghu Vinncom Pvt. Ltd PAN: AABCR 3990G	Vs.	I.T.O. Ward 7(2), Kolkata
Appellant		Respondent

Date of Hearing	17.10.2019
Date of Pronouncement	31.10.2019

For the Appellant	Shri S. N. Chaubey, CA, Id.AR
For the Respondent	Smt. Ranu Biswas, Addl.CIT, Id. DR

**ORDER**

**PER SHRI A.T. VARKEY, JM**

This is an appeal preferred by the assessee against the order of the Id. CIT (Appeals) [ in short, Id. CIT(A) hereinafter], 18, Kolkata dated 09-01-2017 for the A.Y 2011-12

2. At the outset, it has been brought to our notice by the Id. Counsel for the assessee that the impugned order of the Id. CIT(A) is an *ex parte* order passed against the assessee that the assessee did not receive any notice from the Id. CIT(A) intimating the date fixed for hearing of the appeal of the assessee. According to the Id. Counsel the address of the assessee has been changed with effect from 15-12-2011 from 207, Maharshi Devendra Road, R.N 107, 6<sup>th</sup> Floor, Kolkata-700 007 to 11 Brajo Dulal Street, Flat No. 16, 3<sup>rd</sup> Floor, Kolkata-700 006 from 15-02-2011 onwards. It was also brought to our notice that during the assessment proceedings the assessee could not produce certain important documents since the assessee's projects were going on at three different sites. Therefore according to Id.AR, the AO was not able to frame assessment order in accordance with law. Therefore, he prayed that the assessee be given one more opportunity before AO, since the assessee did not get proper opportunity before the AO.

3. Per contra, the Id. DR opposed the prayer of the assessee and wanted us not to interfere with the impugned order of the Id. CIT(A).

4. We have heard both the parties and perused the record. We note that due to change of address as noted supra, the assessee did not receive any notice of the Id. CIT(A), which prompted him to dismiss the appeal *ex parte*. It was also brought to our notice that the assessee did not get proper opportunity before the AO, since its projects were spread over different parts ( 3 different sites) and therefore, during the assessment proceedings, the assessee could not produce necessary documents before the AO. We, after going through the assessment order and other documents produced before us, are of the view that since the assessee did not get proper opportunity before the AO, we set aside the impugned *ex parte* order of the Id. CIT(A) and remand the same back to the file of the AO for de novo assessment and for that we rely on the decision of the Supreme Court in the case of Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC), wherein the Hon'ble Supreme Court 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 aforestated.”*

Therefore, for the reasons set out supra and in the light of the Hon’ble Supreme Court’s order in Tin Box (supra), we set aside the order of the Id. CIT(A) and restore the matter back to the AO for de novo assessment after affording reasonable opportunity of being heard to the assessee. The assessee is also directed to appear before the A.O and to participate in the assessment proceeding diligently.

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

Order Pronounced in the Open Court on 31 October, 2019

Sd/-  
Arjun Lal Saini  
Accountant Member

Sd/-  
A.T. Varkey  
Judicial Member

Dated 31 -10-2019

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: M/s. Raghu Vinncom Pvt. Ltd 207 Maharshi Devendra Road, Room No. 107, 6<sup>th</sup> Fl., Kolkata-700 007.
2. Respondent/Revenue: The ITO, Ward-7(2), Aaykar Bhawan, 6<sup>th</sup> Fl., P-7 Chowringhee Sq., Kolkata-700 069.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

\*\*PP/SPS True Copy By By Order Assistant Registrar  
ITAT Kolkata