

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM

M.A. No.197/Kol/2019

(Arising out of आयकरअपीलसं./ITA No.1817/Kol/2018)

(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s Shryansnath Enterprises Pvt. Ltd.	Vs.	ITO, Ward-9(4), Kolkata
C/o, Gaurav V Singhvi & Co. Pvt. LLP 3rd Floor, The Financial Super Market Tower, Behind Rishabh Petrol Pump, Ringh Road, Surat-395002.		
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAPCS 0172 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

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(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : Shri Manoj Kataruka, Advocate

Respondent by : Shri Supriyo Pal, JCIT Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 18/10/2019

घोषणाकीतारीख/Date of Pronouncement : 31/10/2019

आदेश / ORDER

Per Dr. A. L. Saini:

This is a miscellaneous application filed by the assessee praying to recall the order of the Tribunal dated 30/04/2019.

2. The case of the assessee in this miscellaneous application is that assessee could not receive the notice from the office of the tribunal therefore he could not attend the hearing before the Tribunal. The Id. Counsel stated the reasons of non-appearance before this Tribunal in the MA filed by him which is given below:

“2. That the Hon’ble ITAT, “D” Bench, Kolkata in ITA No. 1817/Kol/2018 vide order dated 30.04.2019 has dismissed the appeal of the assessee for non-prosecution.

3. That the assessee did not receive any notice of hearing on any dates and also was not aware of hearing fixed on 15.03.2019 or 18.04.2019 as mentioned in the order of the Hon’ble Tribunal.

3. We note that the assessee was unaware of the date of hearing which has resulted in non-attendance by the assessee. The notice of hearing did not serve on the assessee. Therefore, keeping in mind the principle of natural justice and fair play we recall the order of Tribunal dated 30.04.2019.

4. With the consent of both the parties the related appeal itself has been heard today and is being disposed of by this order. Now we shall take up the assessee’s appeal in I.T.A. No. 1817/Kol/2018 for assessment year 2012-13.

5. The captioned appeal filed by the assessee, pertaining to assessment year 2012-13, is directed against the order passed by the Commissioner of Income Tax

(Appeal)-18, Kolkata, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 14/03/2015.

6. At the outset itself, the Id. Counsel for the assessee submitted that during the assessment proceedings, the assessee submitted the copy of income tax return, balance sheet, profit and loss account, allotment advice of shares, bank statements, PAN no. etc. in respect of assessee company. The assessee also submitted documents in respect of share subscribing companies which were not considered by the Assessing Officer. The Id. Counsel also submitted that assessee did not get opportunity of being heard during the assessment stage, therefore, an another opportunity should be given to the assessee to plead his case before Id. Assessing Officer.

7. The Id. DR, on the other hand, has not controverted the contention of the Id. Counsel for the assessee.

8. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. We note that during the assessment stage, the assessee submitted copy of income tax return, balance sheet, profit and loss account, allotment advice of shares, bank statements, PAN No etc. of the assessee company. The Assessing Officer has not considered the same while making assessment order. The Assessee also submitted various documents and evidences relating to share subscribing companies, which were not considered by Assessing Officer. Therefore, it is against the principle of natural justice. We also note that Id AO did not provide adequate opportunity to the assessee of being heard. 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 aforestated.”

Therefore, we are of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld. Assessing Officer for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Id. Assessing Officer to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

9. In the result, the Miscellaneous Application of the Assessee is allowed and the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 31.10.2019.

Sd/-
(S.S.GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 31/10/2019
(SB, Sr.PS)

Copy of the order forwarded to:

1. M/s Shryansnath Enterprises Pvt. Ltd.
2. ITO, Ward-9(4), Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches