

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

I.T.A. No. 2413/Kol/2019
Assessment Year: 2012-13

Subhlaxmi Nirman Pvt. Ltd. (PAN: AALCS1594H)	Vs.	Income-tax Officer, Ward-1(3), Kolkata
Appellant		Respondent
Date of Hearing		22.11.2019
Date of Pronouncement		20.12.2019
For the Appellant		Shri Miraj D. Shah, R
For the Respondent		Shri Supriyo Pal, JCIT

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-17, Kolkata dated 01-10-2019 for the assessment year 2012-13.

2. At the outset itself, the Ld. Counsel for the assessee Shri Miraj D. Shah contended that the impugned order is an ex parte order passed by the Ld. CIT(A) and it was brought to my notice that assessee had shifted to new address i.e. “3rd floor, RZ-154, Main Jagdamba Road, Tuglakabad Extn., New Delhi-110019” therefore, the assessee did not receive any notice about the date of hearing before the Ld. CIT(A). Hence, according to him, due to the aforesaid reason, the assessee could not participate during the appellate proceedings and since the assessee had not been heard on the merits of the appeal, according to him, there is violation of natural justice and that non-participation before Ld. CIT(A) was not intentional on the part of the assessee. Moreover, the Ld. AR also brought to our notice that the AO has made the addition u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”). It was also brought to our notice that during assessment stage, the AO had issued notice u/s. 133(6) of the Act to the share subscribers and the same was duly complied with. However, since summons issued by the Ld. AR to produce the directors could not be complied with, adverse view has been drawn against the share capital/premium and the

addition has been made. According to Ld. AR, the reason for non compliance was that the director/directors were out of station, so could not appear before the AO and non appearance of them before the AO was not intentional or deliberate. In the aforesaid scenario, according to Ld. AR, given a chance for the ends of justice, he/the Ld. AR undertakes to comply with the summons and produce the directors before AO. Therefore, since no proper opportunity was given by the AO at the assessment stage or proper time to produce the directors, he pleads that the matter may be remanded back to AO. We find force in the contention of the assessee and as held by the Hon'ble Supreme Court in Tin Box Company Vs. CIT (2001) 249 ITR 216 (SC) if the assessee did not get proper opportunity before AO, then the matter needs to be remanded back to AO. In the said judgment, the Hon'ble Apex Court has held as under (Head Note):

“Held, reversing the decision of the High Court, that once the Tribunal found that the Income-tax Officer had not given to the assessee proper opportunity of being heard, that the assessee could have placed the evidence before the appellate authority or before the Tribunal was really of no consequence for it was the assessment order that counted: that order had to be made after the assessee had been given a reasonable opportunity of being heard.”

Therefore, in view of the above facts discussed since the AO has drawn adverse inference against the assessee only on the basis that directors did not comply with the summons, we set aside the impugned order of the Ld. CIT(A) and restore the matter back to the file of the AO for fresh assessment after affording reasonable opportunity of being heard to the assessee and the assessee's AR to comply with the undertaking before us.

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

Order is pronounced in the open court on 20th December, 2019.

Sd/-
(P. M. Jagtap)
Vice President

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

Dated :20th December, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Subhlaxmi Nirman Pvt. Ltd., 3rd floor, RZ-154, Main Jagdamba Road, Tuglakabad Extn., New Delhi-110019
2. Respondent – ITO, Ward-1(3), Kolkata.
3. CIT(A)-17, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar